

# LESSONS LEARNED

## NAEP Conference Looks to NEPA's Future

By: Brian Costner and Connie Chen, Office of NEPA Policy and Compliance



"It is time to reclaim NEPA," said Lucinda Low Swartz, environmental consultant and former Deputy General Counsel at the Council on Environmental Quality (CEQ), at this year's conference of the National Association of Environmental Professionals (NAEP). She challenged NEPA practitioners to start by simplifying NEPA analysis and documentation.

Throughout the Conference, *Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment*, held April 28–30 in Atlanta, Georgia, about 250 participants discussed ways to reinvigorate NEPA.

"NEPA began a brand new chapter in the way America treats the public," said Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, in his keynote address. In 1970, NEPA established openness and public involvement as basic components in Federal decisions, he said, and the Obama Administration's Open Government Initiative places an even stronger focus on Government transparency and accountability in the NEPA process.

### Guidance To Reaffirm Purposes of NEPA

Mr. Greczmiel described CEQ's three current draft guidance initiatives as "opportunities to reaffirm the purposes of NEPA" (*LLQR*, March 2010, page 3). The guidance on establishing categorical exclusions, he said, would improve transparency in how Federal agencies substantiate new categorical exclusions and how they use them. The guidance on mitigation and monitoring would recommend monitoring programs and public access to monitoring reports to help ensure that mitigation measures that agencies commit to are, in fact, implemented and effective, Mr. Greczmiel said. He called the lack of monitoring the "great gap in NEPA."

Climate change is one of "a suite of issues we have to deal with" in NEPA reviews, he said. The guidance on when and how Federal agencies should consider greenhouse gas emissions and climate change for their proposed actions would help the public and decisionmakers understand

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## Celebrating 40 Years with NEPA and Earth Day!

*"At the risk of sounding like Pollyanna, I believe that the elegant little statute known as NEPA has changed the United States and, indeed, the world."*

– Anne Norton Miller

To mark the 40<sup>th</sup> anniversary of NEPA, the Office of NEPA Policy and Compliance is inviting distinguished NEPA practitioners to share their thoughts on the occasion. In this issue, Anne Norton Miller, former Director of the Office of Federal Activities at the U.S. Environmental Protection Agency, shares her perspective on NEPA's origins, legacy, and future (page 6).

In April, DOE also celebrated the 40<sup>th</sup> anniversary of Earth Day. At DOE Headquarters, exhibits showcased DOE green energy activities. The NEPA Office exhibit highlighted 40 years of NEPA at DOE and its benefits to the Department. In addition, DOE Field Offices celebrated by hosting their own events, including recycling drives and outdoor native vegetation planting. (Learn more, page 8.)

## Inside *LESSONS LEARNED*

Welcome to the 63<sup>rd</sup> quarterly report on lessons learned in the NEPA process. In this issue, we continue our observance of the 40<sup>th</sup> anniversary of NEPA. This is a time to address the need to reinvigorate NEPA implementation for the next 40 years. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

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*Carol Borgstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 2, 2010. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due August 2, 2010

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2010 (April 1 through June 30, 2010) should be submitted by August 2, 2010, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. Beginning with this issue, DOE will provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

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This icon indicates that LLQR online ([nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned) provides a link to a referenced webpage whose URL is too long to be useful when printed.



## Mark Your Calendars: Upcoming Conferences



### GreenGov Symposium: October 5–7

The Office of the Federal Environmental Executive will hold the 2010 GreenGov Symposium at George Washington University in Washington, DC, October 5–7. Additional events hosted by DOE will be scheduled around the Symposium. For more information, contact Beverly R. Whitehead, Office of Environmental Policy and Assistance, at [beverly.whitehead@hq.doe.gov](mailto:beverly.whitehead@hq.doe.gov).



### Climate Change Symposium: November 15–16

The International Association for Impact Assessment will hold a symposium in Washington, DC, November 15–16 emphasizing practical examples and guidance for infrastructure likely to be affected by climate change. Participants will also explore the application of strategic environmental and cumulative effects assessment. Visit [www.iaia.org/conferences](http://www.iaia.org/conferences) for further details.



## DOE NEPA Website Pursues Continuous Improvement

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

The look and content of the DOE NEPA Website has recently been improved, and further changes are anticipated as we continue a systematic review. Several improvements were made in response to suggestions from the DOE NEPA Community, and we welcome further suggestions. Our objective is to make the website more intuitive and user-friendly, both for the DOE NEPA Community and for the public.

One change that may not be immediately noticeable is that the DOE NEPA Website has a new address (URL): [nepa.energy.gov](http://nepa.energy.gov). (NOTE: <http://> and [www.](http://www) are not needed.) Although the old URL will continue to work, the new address should be used when citing the NEPA website in DOE NEPA documents and notices.

Other changes include reorganization of the NEPA News on the homepage; the Contact Us page; and the pages containing Final Environmental Impact Statements (EISs) and Environmental Assessments (EAs), which are now sorted by year of document issuance. In addition, the Lessons Learned page has a new look, with thumbnail picture links to the most recent editions of the *Lessons Learned Quarterly Report* ([nepa.energy.gov/lessons\\_learned.htm](http://nepa.energy.gov/lessons_learned.htm)). In response to a suggestion from Mark Lusk, NEPA Compliance Officer, National Energy Technology Laboratory, the DOE NEPA Document Certification and Transmittal Form can now be completed online.


### EISs Moved from Secure Server

We recently moved five EISs from the secure server to the public server of the NEPA website at the request of the Savannah River Operations Office (text box). Although these are relatively old EISs, they are sometimes referenced in newer NEPA reviews; making them electronically available online will make them more readily available to the public. Consistent with the President's emphasis on transparency in Government, the NEPA Office encourages other Program and Field Offices

The Savannah River Operations Office has determined that, consistent with Department of Justice guidance on the Freedom of Information Act (FOIA),<sup>1</sup> five EISs that were previously on the secure server of the DOE NEPA Website could be made available on the public server because they already were in the public domain (they were available online on another website):

- DOE/EIS-0062; Waste Management Operations: Double-Shell Tanks for Defense High-Level Radioactive Waste Storage at the Savannah River Plant, Aiken, South Carolina (Supplement to ERDA-1537, September 1977) (April 1980)
- DOE/EIS-0120; Waste Management Activities for Groundwater Protection at the Savannah River Plant, Aiken, South Carolina (December 1987)
- DOE/EIS-0220; Interim Management of Nuclear Materials (October 1995)
- DOE/EIS-0271; Construction and Operation of a Tritium Extraction Facility at the Savannah River Site (March 1999)
- DOE/EIS-0279; Savannah River Site Spent Nuclear Fuel Management (March 2000)

to review their EISs on the secure server to see if they can be made publicly available online.

The NEPA website is a valuable online resource for the NEPA Community and the public. We need your feedback on how to improve the usability of the site. In particular, we welcome suggestions on ways to improve the DOE NEPA Document and Guidance pages. We are evaluating how to create a searchable database for EAs and EISs. We are also considering creating a Facebook page for the NEPA website. Submit your comments, ideas, suggestions, and recommendations to Denise Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov). 

<sup>1</sup> March 19, 2009, Memorandum from the Attorney General on FOIA (LLQR, June 2009, page 25).

# DOE Gains Experience in Posting CX Determinations

By: Jeffrey Dorman, Office of NEPA Policy and Compliance

The number of DOE categorical exclusion (CX) determinations posted online continues to grow. Approximately 2,400 CX determinations have been posted since November 2, 2009, the effective date of DOE's policy to document and post online determinations based on the CXs listed in Appendix B to Subpart D of DOE's NEPA regulations (10 CFR Part 1021). (See [LLQR, December 2009, page 1.](#)) The CX determinations may be accessed through [nepa.energy.gov](http://nepa.energy.gov) as described below.

DOE's experience in implementing the policy has been instructive. Among the lessons learned, use of electronic forms has proven to be a highly effective way to streamline the process of producing CX determinations and posting them online. Use of electronic forms also promotes consistency among DOE offices and, compared to manual scanning of paper CX determinations, facilitates compliance with requirements<sup>1</sup> to make Federal electronic information available to people with disabilities.

Many NEPA Compliance Officers (NCOs) now use electronic forms. "Use of an electronic CX determination form provides several benefits to the Office of Energy Efficiency and Renewable Energy [EERE], including

streamlining the concurrence, web-posting, and record keeping processes, and providing the flexibility to revise CX determinations when appropriate," said John Jediny, EERE. (Note: Mr. Jediny created an electronic form that is available on the CX page of the DOE NEPA Website.)

## CX Database Upgraded

In view of the large number of determinations being posted on individual Program and Field Office websites, a centralized database was needed to ensure the transparency and openness envisioned under the CX policy. Accordingly, the NEPA Office launched the CX Database on the DOE NEPA Website, and registered the Database with [Data.gov](http://Data.gov) ([LLQR, March 2010, page 1](#)). The CX Database contains searchable information about all of the CX determinations that have been posted, and links to the determinations. The NEPA Office updates the Database at least monthly.

Based on our experience in managing the Database, we identified a need for an upgrade. DOE Program and Field Offices post CX determinations to their individual websites. Before the upgrade, the CX Database linked

*(continued on next page)*

The screenshot shows the DOE CX Database search page. At the top, it displays the U.S. Department of Energy logo and the title "U. S. Department of Energy (DOE) Categorical Exclusion (CX) Determinations Under the National Environmental Policy Act (NEPA)". On the right, it shows statistics: "Total number of entries: 2072", "Date of last update: 05/04/2010", and "Number of new entries: 723". The search interface includes a "Search" button and a "Search Help" link. Below the search bar, there are several filter sections: "States / Territories" with a list of states and "Other" (Nationwide, Other, Alabama, Alaska, American Samoa, Arizona); "CXs Applied" with a list of categories including "85.1 Actions to conserve energy" (checked); "Determination Date" with a date range selector (Between 1/1/2009 and 5/10/2010); "Program / Field or Site Office" with a list of offices; "Tribal / Native Alaskan Area" with a checkbox for "Include in search filter"; "Recovery Act (ARRA)" with a checkbox for "Include in search filter"; and "Text Search" with a text input field and a "Clear Search Criteria" button. At the bottom, there is a "Search CX Database" button and a checkbox for "Display search results in new browser window".

CX Database search page.

<sup>1</sup> Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998.

# Posting CX Determinations

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search results to an individual CX determination file on the Program or Field Office website. With this approach, whenever files were moved to a new location, such as when a website was redesigned, the link from the CX Database to the CX determination stopped working, potentially frustrating users. Each link had to be reset, a time-consuming exercise that requires continuous monitoring. In addition, in a few cases, Field Offices removed CX determinations from their websites shortly after posting them, resulting in broken links from the CX Database.

To solve this problem, electronic copies of CX determinations are now stored on the CX Database server so that the files will remain available to the public indefinitely. Individual Program and Field Office websites and CX determination postings remain available through links from the DOE NEPA Website.

## Implementation Guidance Revised – CX Determinations Online at Least 3 Years

Several NCOs have asked the NEPA Office to clarify how long CX determinations should remain online. Some NCOs interpreted the guidance to allow removal of CX determinations from their websites after 2 weeks if there has been no expression of public interest.

To clarify the intent of the CX policy, the NEPA Office, in consultation with the Assistant General Counsel for Environment, has revised the Implementation Guidance, first issued October 16, 2009. The response to Question 12 of the revised *Implementation Guidance for the DOE Policy on Documentation and Online Posting of Categorical Exclusion*



*Determinations: NEPA Process Transparency and Openness* now states, “Consistent with electronic records management procedures and policies, CX determinations should remain online as long as the action may be of interest, and for at least 3 years. If circumstances (e.g., site closure or reorganization) require disestablishment of the host Office’s website, please notify the NEPA Office so that the determinations can be posted on the DOE NEPA Website or archived, as appropriate.”

In updating the CX Database, NEPA Office staff has observed that some offices post scanned copies of original CX determinations that were hand signed and dated. In some cases, offices have published unsigned and undated versions, with notation that a signed version is on file.

## The CX Database (as of May 27, 2010):

- 2,403 CX determinations from 38 DOE offices
- 1,570 of those are related to Recovery Act projects

The most frequently invoked CXs are:


- B5.1 – Actions to conserve energy (1,229)
- A9 – Information gathering/data analysis/document preparation/dissemination (1,090)
- A11 – Technical advice and assistance to organizations (576)
- B3.6 – Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects (494)
- B2.5 – Safety and environmental improvements of a facility, replacement/upgrade of facility components (297)

*Note: The total number of CX determinations is less than the number of CXs invoked because some determinations invoked more than one CX.*

The effective date and NCO name should be provided on all CX determinations.

## What the Data Show So Far

Recent data on CX determinations (text box) should be interpreted cautiously because the data appear to be highly skewed by American Recovery and Reinvestment Act (Recovery Act) implementation. Approximately two-thirds of the CX determinations in the Database are for Recovery Act projects, and more than half of the determinations in the Database were based on CX B5.1 – Actions to conserve energy, which is frequently used for EERE Recovery Act projects. Although DOE has no prior historic data regarding its CX determinations, recent experience is unlikely to be representative of the past in terms of the rate of CX determinations and the distribution of the CXs being applied.

For more information about the CX Database, contact Jeffrey Dorman at [jeffrey.dorman@hq.doe.gov](mailto:jeffrey.dorman@hq.doe.gov) or 202-586-3181. 

# Celebrating 40 Years with NEPA!

*This is the second article in a series marking the 40<sup>th</sup> anniversary of NEPA. Anne Norton Miller, former Director of the Office of Federal Activities, U.S. Environmental Protection Agency (the agency's NEPA office), is recognized as a strong advocate for early stakeholder involvement as a way to streamline the NEPA process and achieve better decisions. We wish to express our appreciation for her four decades of leadership, and especially her contributions to the DOE NEPA Community meetings. (See LLQR, March 2008, page 17.)*

## NEPA Then and Now – A Personal Reflection

By: Anne Norton Miller

**2010:** In April I attended the annual meeting of the International Association for Impact Assessment (IAIA) in Geneva, Switzerland. The meeting focused on the role of impact assessment in transitioning to a green economy. IAIA is the leading global network on best practices in impact assessment for informed decisionmaking on policies, programs, plans, and projects. It is a nonprofit association for environmental professionals and impact assessment practitioners, with about 1,600 members representing more than 120 countries.

The IAIA meeting was attended by about 600 energetic and engaged individuals, sharing their expertise and experiences, learning from others how to better perform their tasks and improve decisionmaking around the globe. These folks – experienced practitioners and students alike – are interested in building and maintaining vibrant economies while protecting and strengthening their human and natural resource bases. Some are more interested in health impacts, others in social impacts, but at the end of the day they are all committed to using environmental impact assessment to assure that the decisions we make today will take into account any potential adverse impacts. They understand that informed decisions will, in the end, be wiser decisions.

**1970:** This was a time when rivers could burn, and also a time when someone who fell into a river could die NOT from drowning but from oil inhalation (I was working in Cleveland when the Cuyahoga burst into flames). Not a pretty picture. The National Environmental Policy Act had just been passed, and in January 1970 it was signed into law. April 1970 saw the first Earth Day, and in December the U.S. Environmental Protection Agency was created. And the changes just kept coming – including my agency's (Federal Water Quality Administration) assumption into the newly created EPA.

NEPA ensured that federal decisionmakers, who routinely considered economic factors and technical feasibility in their decisions, would now also consider the environmental consequences of their decisions. NEPA also opened the decisionmaking process to the public. Now the decisionmakers would understand the impacts, and the public would also understand the impacts and know that the decisionmakers did, too. The surprising thing is that NEPA makes only one reference to the public: it says that



*Ms. Miller began her career as a bench microbiologist at the Federal Water Pollution Control Administration (circa 1970).*

a “detailed statement” – an environmental impact statement (EIS) – must be made available to the public. The Council on Environmental Quality and the courts have interpreted that requirement broadly, and the opening-up of the federal decisionmaking process to the public has become one of the most important aspects of NEPA.

Having moved to New York City in 1971 as a charter employee of EPA, I reviewed my first EIS, which was for the Sports Complex in the Hackensack Meadowlands. I was not trained in environmental impact assessment; we picked it up – indeed we created it – as we went along. As in the story of the three bears, environmental documents in those days tended to be TOO short or TOO long; rarely were they just right. But we learned as we went along, and colleges and universities began training students in the field. Direct impacts, indirect impacts, the (still) dreaded cumulative impacts analysis; biodiversity; endangered species; socioeconomic impacts and environmental justice; strategic assessments; sustainability; climate change – the issues that need to be addressed continued to multiply and the danger of creating encyclopedias rather than on-point, comprehensible analyses increased as well.

**Over the decades:** Our Nation's population has continued to increase, and the attendant development is not proportional – i.e., development occurs at an even greater pace than the population increases. The woes of suburban sprawl are widely proclaimed, and this pressure is particularly evident in the congestion of our transportation networks.

*(continued on next page)*

# Celebrating 40 Years with NEPA!

## NEPA Then and Now (continued from previous page)

Increasing population also places considerable stress on our natural resources. Water wars continue, with conflicts among the drinking water needs of metropolitan areas, the irrigation needs of agriculture, the need for hydropower generation, the need for navigation, and last (unfortunately last but not in my opinion least) the needs of the numerous species other than *Homo sapiens* that depend on stream flows for their existence.

The effects on human quality of life, the loss of habitat, the creation of additional threatened and endangered species, the increase in greenhouse gases and their potential impact on climate, and the ever-escalating controversies over additional development are extremely difficult to balance. And the same situation exists in every country around the globe – the Americas, Asia, Europe, Africa. Even Antarctica is threatened by climate change and by the ever-increasing number of visitors each year. Over 100 countries have followed in the footsteps of the United States and created environmental impact assessment legislation that requires analysis and a role for citizens in decisionmaking.

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***We have not done as good a job as we might have in convincing people that what we do IS valuable; we were too busy doing it.***

***– Anne Norton Miller***

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**2010: NEPA at 40.** As I reflect, I have mixed feelings, and it's truly a case of good news/bad news. The bad news is that the issues are becoming increasingly complex, both technically and politically. There is tremendous opposition to environmental review: "it takes too long, it's too expensive, it doesn't add anything." This may be linked to the occasional misperception on the part of some agencies – and their contractors – that quantity equals quality. While NEPA itself has not been altered, there have been other legislative moves to limit agency compliance on a statute-by-statute basis. The federal budget is not robust, and it does take a certain level of resources to do a good environmental review. And it's hard to sell a negative – what would our environment be like now if we hadn't had NEPA? Remember that oily burning river?

The good news is that overall we do have better environmental conditions than we did 40 years ago, even though we can do better, and we must address such problems as climate change. Development has continued, and generally federal projects have eliminated, minimized, or otherwise mitigated the adverse impacts that would have occurred without an environmental review. And this process has been used as a model by more than 100 countries and a number of funding institutions, such as the World Bank, improving an unknown but huge number of projects, plans, programs and policies world-wide. Many countries now



*Since her 2008 retirement, which concluded nearly 40 years at EPA, Ms. Miller has been traveling around the world (visiting New Zealand, above) and enjoying the environment.*

routinely consider environmental impacts and involve their citizens in the decisionmaking process. NEPA has had a HUGE spin-off effect!

We must continue to focus on improving the process and its results. We need to start our environmental impact assessments at the planning stage, where we still have real alternatives. We need to keep an open mind, and not jump to conclusions on how best to address a problem without considering other alternatives. We need to honestly and openly consult with all stakeholders. It's not just a matter of building trust, although that is important. We need to understand that we can actually learn from stakeholders – including but not limited to community members, developers, business men and women, farmers, environmentalists, academics, and representatives of federal, state, tribal, and local governments. And we need to streamline the process, emphasizing early involvement and concurrent reviews where there are multiple requirements.

I believe that focused implementation of NEPA and all those comparable statutes around the world are vital as we work to solve the complex issues that threaten human health, public welfare, and the environment. This was brought home to me most recently by the IAIA meeting I attended in April. NEPA has forced us to consider environmental consequences, and it has led to the involvement of citizens in government decisionmaking, both here at home and within many countries where that would not otherwise have occurred. **LL**

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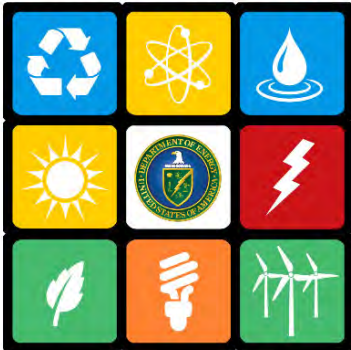
***And, after all, NEPA is ONLY 40. That's pretty young, to my way of thinking.***

***– Anne Norton Miller***

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# DOE Celebrates Earth Day 40

## U.S. DEPARTMENT OF ENERGY EARTH DAY 40



**EARTH DAY, EVERY DAY!**  
REDUCING DOE'S CARBON FOOTPRINT

The Office of NEPA Policy and Compliance celebrated Earth Day during the week of April 19–23, 2010, with other DOE Headquarters Offices, promoting the theme “**Earth Day, Every Day! Reducing DOE’s Carbon Footprint.**” Exhibits showcased the goals of Executive Order 13514, *Leadership in Environmental, Energy, and Economic Performance*. (See related article, page 16.) With over 30 exhibitors and a peak crowd size of approximately 1,500 people, over 100 pounds of batteries were collected, and about 100 people toured the rooftop solar panels. As Earth Day coincided with Take Our Daughters and Sons to Work Day, there were family-friendly festivities in DOE’s Earth Day Village, including hands-on demonstrations of green products, services, and technologies, and crafts and face painting. Events also included tree planting on the DOE grounds and a Smithsonian garden walk. Over 130 t-shirts were purchased with the DOE Earth Day 40 logo (left).

The NEPA poster (below) was displayed during Earth Week by NEPA Office staff and at the NAEP Conference. DOE Field Offices also observed Earth Day (examples, opposite page). 

# Celebrating 40 Years of NEPA At the Department of Energy

## DOE NEPA Milestones

### 1970-1979

- 1970 NEPA Signed into Law; Established the Council on Environmental Quality (CEQ)
- 1977 Department of Energy (DOE) Established  
First DOE EIS (Bryan Mound Salt Dome EIS)
- 1979 DOE Adopts CEQ NEPA Regulations (10 CFR Part 1021)  
First Site-wide EIS (Mound Facility EIS)

### 1980-1989

- 1980 First DOE NEPA Guidelines (supplemental procedures)
- 1981 First DOE NEPA Compliance Guide
- 1988 First DOE-wide NEPA Meeting
- 1989 Clean Coal Technology Demonstration Program EIS (addressed greenhouse gas emissions, global climate change)

### 1990-1999

- 1990 DOE NEPA Compliance Officers Established
- 1992 “Thank God for NEPA” – Former Energy Secretary Watkins to Congress
- 1993 DOE NEPA Website Established  
Recommendations for the Preparation of EAs and EISs (“Green Book”)
- 1994 DOE NEPA Document Managers Established  
First Issue of *Lessons Learned Quarterly Report*  
First DOE NEPA Stakeholders Directory
- 1995 DOE NEPA Program Wins CEQ/National Association of Environmental Professionals (NAEP) Federal Environmental Quality Award  
Tritium Supply and Recycle Programmatic EIS (led to 3 tiered project-specific EISs)
- 1997 First DOE-wide NEPA Task Order Contracts  
Waste Management Programmatic EIS

### 2000-2010

- 2000 DOE’s NEPA “Lessons Learned” Program Wins NAEP Environmental Excellence Award
- 2002 Accident Analysis Guidance
- 2005 Updated DOE NEPA Compliance Guide on DOE NEPA Website  
DOE, NEPA and You: A Guide to Public Participation
- 2006 DOE Wins NAEP Special Achievement Award for “NEPA 35: Spotlight on Environmental Excellence” Conference  
EIS Distribution Guidance
- 2007 50<sup>th</sup> Issue of *Lessons Learned Quarterly Report*
- 2009 DOE Posts Categorical Exclusion (CX) Determinations Online
- 2010 CX Database Identified as “High Value” Set in Data.gov

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. . . .

President Barack Obama  
Proclamation on the 40<sup>th</sup> Anniversary  
of the National Environmental Policy Act, 2010

## Benefits of NEPA Process Noted by DOE Practitioners

### COOPERATION/COORDINATION

The process allowed us to work closely with a cooperating agency and the public to develop alternatives that responded more to the needs of all parties involved. I continue to be sold on the value of the NEPA process!

### ALTERNATIVES

The NEPA process definitely assisted in developing a project alternative that was less costly and had fewer environmental impacts than alternatives initially considered.

### OVERALL PROCESS

The NEPA process forced the project staff to define problems that they hadn’t yet identified. Important issues and considerations would have been overlooked if NEPA was not done.

### DECISIONMAKING

NEPA helped the decisionmaker focus on the relevant factors needed to make a quality decision.

FOR MORE DETAILED INFORMATION – PAST, PRESENT AND FUTURE – VISIT [NEPA.ENERGY.GOV](http://NEPA.ENERGY.GOV)



# Earth Day 40



Bonneville Power Administration (BPA) celebrated Earth Day's 40<sup>th</sup> anniversary all month long with the theme, "Do your part." Employees helped plant native vegetation to shade Beaver Creek, in Troutdale, Oregon, improving habitat for migrating salmon.



BPA's E-recycling Event in Longview, Washington, encouraged everyone to recycle old home electronics, including cell phones, computers, calculators, video game equipment, and hair dryers.



Western Area Power Administration (Sierra Nevada Region) packaged fluorescent light bulbs dropped off by staff for recycling.



Employees of the Waste Isolation Pilot Plant, Carlsbad, New Mexico, were given aluminum water bottles to encourage use of reusable drink containers.



Legacy Management (LM) employees at the Mound Facility, Miamisburg, Ohio, handed out energy-related bookmarks.



At the Grand Junction Office, LM employees demonstrated how to be safe around downed electric power lines.



this global issue and the potential impacts of a project's emissions, he said. Addressing such issues, Mr. Greczmiel said, demonstrates how "NEPA adapts; it doesn't have to be re-made."

## "Foster Excellent Action," Not Paperwork

Many discussions at the NAEP Conference demonstrated a tension between the purposes of NEPA to improve decisionmaking and results, and the too common experience that NEPA's objectives get lost among mounds of paperwork. CEQ recognized this potential conflict when it established the NEPA regulations: "NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action" (40 CFR 1500.1(c)).

Lynton Caldwell's 1979 article, "Is NEPA Inherently Self-Defeating?" included a criticism that environmental impact statements (EISs) and environmental assessments (EAs) "were and still are sometimes encyclopedic, rambling, difficult to understand, and full of extraneous background data" (*LLQR*, September 2006, page 1). David Key, NEPA Coordinator, National Marine Fisheries Service, Southeast Region, said that 30 years later, this issue is "still a big problem, especially the part concerning large, unfocused EISs. . . . The truly important information gets lost in a sea of minutia."

## Reinvigorate and Reclaim NEPA

What is the truly important information? The information that is important to the public and the decisionmaker, said several participants. "Count what counts," emphasized Lamar Smith, Team Leader, Environment Technical Service Team, Federal Highway Administration (FHWA).

"Strive to prepare documents that look and read like summaries," recommended Ms. Swartz, "leaving detailed information and technical analyses to technical reports." "Resist the temptation to pad a NEPA document with appendices," she continued. Include only material that was prepared for the NEPA document and that is "essential for understanding the NEPA document itself," she said.

During the 10 Conference sessions on NEPA implementation, panelists and audience members discussed a wide range of other suggestions for improving the NEPA process and documentation. Suggestions encouraged early participation, clearly defining the proposal, and using scoping to focus on what's important, among other topics.

Several participants addressed document preparation and the value of clear writing, good organization, and informative graphics to make NEPA documents more useful to the public and decisionmakers. Ms. Swartz reminded participants that the courts have found some NEPA documents to be inadequate because, for example,

information was so scattered throughout the document as to make it incomprehensible.

## Is NEPA an Umbrella?

"Some of NEPA's strongest supporters are often planners and decisionmakers who become champions after their first brush with the statute and the process," said Ray Clark, Senior Partner at The Clark Group and former Associate Director for NEPA Oversight at CEQ.

NEPA is not an umbrella to hold up and cover other environmental statutes, said Mr. Greczmiel. "It's an upside down umbrella to contain all those statutes, to bring it all together," he said. Mr. Greczmiel and others agreed that the fundamental components of the NEPA process mirror good planning and project management. If you set NEPA aside and look at other requirements, "By and large," Mr. Greczmiel said, "you would come up with the need for something pretty close to a NEPA process."

Jomar Maldonado, Environmental Officer at the Federal Emergency Management Agency (FEMA), agreed. Section 316 of the Stafford Act exempts some FEMA actions from NEPA. "When we don't have that NEPA umbrella, we still have to comply with the Endangered Species Act, the National Historic Preservation Act, and other laws," he said. He explained that good planning still requires FEMA to identify a purpose and need, scope of work, and alternatives. "The process looks very much like NEPA," he said.

## Meeting Recovery Act Challenges

NEPA compliance for projects funded by the American Recovery and Reinvestment Act (Recovery Act) was the focus of one Conference session. Most participants had been involved in NEPA reviews related to the Recovery Act and indicated they thought the process was going well, though with room for improvement.

Ron Bass, Senior Regulatory Specialist, ICF International, moderated the panel and asked whether the tens of thousands of categorical exclusion determinations made for Recovery Act projects should raise any red flags. Panelists Mr. Smith, FHWA, and Brian Costner, DOE NEPA Office, described the types of projects their respective agencies are funding through the Recovery Act. Mr. Smith identified projects such as improvements to existing bridges and roads. Mr. Costner said that most of the funds obligated by DOE thus far are for projects such as weatherization, improvements to existing buildings, and research and development projects. For both agencies, such projects have been the subject of categorical exclusion determinations for many years, the panelists said. (See related article, page 14.)

# Baltimore Harbor Project Receives NAEP NEPA Excellence Award



Public participation, interagency cooperation, and integrated planning were critical elements in providing a solution for future placement of dredged materials in Maryland's Baltimore Harbor, explained Kaitlin McCormick, Environmental Scientist with EA Engineering, Science and Technology, in describing the project that received NAEP's 2010 NEPA Excellence Award. The winning project was the Development and Implementation of Masonville Dredged Material Containment Facility, Masonville Cove Environmental Education Center, and Associated Mitigation Plan at Masonville Cove.

"The Masonville Dredged Material Containment Facility addresses the long-term need for adequate placement of Baltimore Harbor's dredged materials, providing over 15.4 million cubic yards of capacity," wrote NAEP in describing the winning project. "Comprehensive planning by five committees enabled the project to successfully utilize existing NEPA reviews, coordinate compatible objectives, review likely alternatives, and select an effective and efficient operation for Baltimore Harbor commerce, which provides annual tax revenues of over \$270 million and wages of \$2.4 billion per year."

The Maryland Port Administration (MPA) and the U.S. Army Corps of Engineers (Corps) both have responsibilities for various operations in Baltimore Harbor. Regular channel maintenance to ensure safe passage through the harbor and other dredging projects are projected to generate about 1.5 million cubic yards of dredged material annually, Ms. McCormick said. Because of contaminants associated with past activities in and around the harbor, dredged sediment must be placed in a confined facility. MPA and the Corps began work almost a decade ago to meet long-term needs for dredged material in anticipation of closure of an existing dredged material placement facility.

Ms. McCormick described how, in 2003, the Harbor Team (comprised of local citizens groups, Federal and state agencies, local industry, and non-profit groups) screened hundreds of potential options for managing dredged materials. The team's recommendations fed into two tiered EISs prepared by the Corps and identification of a preferred alternative at Masonville Cove. The alternative ultimately selected included the innovative reuse of




In 2007, the Maryland Port Administration began construction of the containment dikes for the Masonville Dredged Material Containment Facility. (photo: Kaitlin McCormick)


dredged material from a separate project to help construct the proposed Masonville Dredged Material Containment Facility. Analysis in the EIS addressed several complex issues, including potential impacts on essential fish habitat, listed species, cultural resources, and air quality. MPA completed the initial construction of the facility in 2009 and will have placement capacity available in 2010.

## Mitigation Provides Environmental Benefits

Public involvement throughout the planning process, including the EISs, helped identify several mitigation options. Federal and state resource agencies and the community adjacent to the proposed project identified opportunities for ecological enhancement, education, and recreation in Masonville Cove. The Cove is designated by the City of Baltimore as a Habitat Protection Area, because it is an historic waterfowl staging and concentration area. Mitigation plans would improve aquatic habitat, which the EIS found could have secondary positive effects on water quality. Other mitigation commitments include remediation of 25 derelict vessels and capping of sediments to reduce toxics burden in the area, and establishing an environmental education center and system of trails.

For additional information, contact Ms. McCormick at [kmccormick@eaest.com](mailto:kmccormick@eaest.com) or 410-771-4950. 

## Abstracts for 2011 NAEP Conference Due September 30

The 2011 NAEP conference, planned for April 26–29 in Denver, will explore the theme of *Seventh Generation Thinking from the Past – Planning for the Future*. NAEP will also present its National Environmental Excellence Awards. The NAEP website ([www.naep.org](http://www.naep.org)) provides further information, including instructions for submitting abstracts and award nominations, which are due September 30, 2010. 

# BPA Honors NEPA Accomplishments

In an awards ceremony on the theme of “Going the Extra Mile,” the Bonneville Power Administration (BPA) recently recognized two of its staff for outstanding effort and achievement. In the March 18 ceremony at BPA’s Portland, Oregon, headquarters, Administrator Steve Wright presented Administrator’s Excellence Awards to Kathy Pierce, BPA’s long-serving NEPA Compliance Officer, and Sheron Jones, Administrative Specialist.

Nominated by her peers, Kathy Pierce received the *Meritorious Service Award*, BPA’s highest award, for her impressive NEPA achievements during 28 years in BPA’s environmental organizations. She was recognized for providing extraordinary contributions to BPA’s mission – through “unusual initiative, regional and national innovation, and outstanding customer service; exemplary management skills and devotion to duty; and dramatic cost-savings for BPA and the region.”

- In the mid-1990s, Ms. Pierce helped conceive the Business Plan EIS (DOE/EIS-0183) and guided its development. This EIS allows BPA the flexibility to conduct daily transactions without separately analyzing each decision, and has served as a model for expediting projects and saving money while meeting the spirit and letter of environmental laws. The Business Plan EIS was upheld in the Ninth Circuit Court, and its approach was endorsed by the Council on Environmental Quality. (See [LLQR, December 1997, page 16.](#))
- Ms. Pierce also captained a team that conceptualized and completed the Fish and Wildlife Implementation Plan EIS (DOE/EIS-0312), which accomplished for BPA’s Fish and Wildlife Program what the Business Plan EIS did for the power marketing program. And more recently, in developing the 2007–2009 Fish and Wildlife Tiered Record of Decision, she encouraged staff to develop ideas that led to even higher levels of NEPA efficiency. (See [LLQR, June 2001, page 6.](#))



BPA Administrator Steve Wright awarded Kathy Pierce, NEPA Compliance Officer, with BPA’s highest award, the Meritorious Service Award, on March 18.

Sheron Jones received the *Unsung Hero* award in recognition of her administrative support at BPA’s Washington, DC, office. “Sheron’s people skills and know-how are essential to BPA’s ability to work effectively with DOE, Federal offices, and Congressional staff. BPA’s environmental staff see Sheron as an irreplaceable member of their team,” said Ms. Pierce.

Greg Delwiche, Vice President, Environment, Fish and Wildlife, BPA, reflected on the recognition of significant environmental contributions with these awards. “They are a testimonial to environmental stewardship having truly become part of the agency’s mainstream culture and not merely BPA-Environment’s job. It is gratifying and fulfilling that through our organizational role as the ‘agency’s environmental conscience,’ BPA is taking ownership of environmental values,” he said. **LL**

## Federal Register Notices Issued Jointly Must Include All Agencies’ Signatures

Recently a NEPA lesson was learned the hard way, when a required signature was omitted on a document submitted for publication in the *Federal Register*. When DOE initially submitted a notice of intent to prepare an EIS jointly with another agency, the Office of the Federal Register, National Archives and Records Administration, returned the notice because no official representing the joint lead agency had signed. (Note: This requirement is not applicable for cooperating agencies, only “co-lead”

agencies.) By the time a properly signed original was delivered and the notice was published, only a few days remained before a public scoping meeting was to take place. Fortunately, the agencies had fully publicized the scoping meeting in the local media and were willing to conduct a subsequent meeting if the delayed *Federal Register* notice led an interested person to request such a meeting. No one requested an additional scoping meeting. **LL**

# DOE General Counsel Presents “Green Sock” Awards




DOE General Counsel Scott Blake Harris awarded “green socks” to several staff in a ceremony on May 19, 2010, to acknowledge creativity or unusual effort in the public interest. Recipients included Eric Cohen, Brian Costner, Jeffrey Dorman, and Denise Freeman from the Office of NEPA Policy and Compliance, and Rick Ahern and Felix Amerasinghe from the Office of the Assistant General Counsel for Environment.

Eric Cohen and Denise Freeman were recognized for their work in implementing the Deputy Secretary’s policy to post DOE categorical exclusion (CX) determinations online (*LLQR*, December 2009, page 1). They developed web-related portions of the Implementation Guidance and created links from the DOE NEPA Website to access CX determinations on more than 50 Program and Field Office websites.

Jeffrey Dorman was recognized for his efforts in launching and managing the Department’s online database for CX determinations, which was listed as a “featured tool”


and recognized as a “high value dataset” on *Data.gov*. Mr. Dorman developed creative solutions to technical problems, enabling timely development of the CX Database.

Rick Ahern and Brian Costner were recognized for their extraordinary work under extreme deadlines to complete a NEPA analysis of a time-sensitive project. They prepared a draft EA for a wind farm just 2 weeks after first receiving information about the project from the state. They finalized the EA and facilitated the issuance of a finding of no significant impact 2 weeks later.

Felix Amerasinghe earned his award for his creativity in developing “NEPA Templates” for the Energy Efficiency and Conservation Block Grant Program and the State Energy Program. These templates have streamlined NEPA review, enabling the Department to comply with its NEPA obligations by categorically excluding entire subgrant programs. 

## DOE Categorical Exclusion Rulemaking Update

DOE is in the process of reviewing and updating its list of categorical exclusions (CXs) (10 CFR Part 1021, Subpart D) because the Department’s existing CXs do not fully account for DOE’s current priorities or advances in technology (*LLQR*, March 2010, page 19). As part of this effort, the Office of NEPA Policy and Compliance is working with DOE NEPA Compliance Officers to develop proposed new and modified CXs and to identify supporting information. To date, the Department is considering proposing about nine new CXs and modifying more than 40 of its existing CXs.

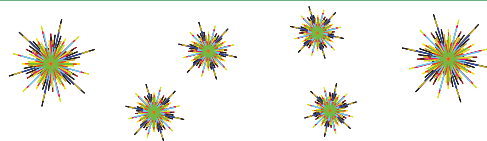
DOE will publish a notice of proposed rulemaking in the *Federal Register* and will consider comments received, before preparing a final rule. The Request for Information that announced DOE’s intent to update its CXs (74 FR 68720; December 29, 2009) and responses are posted in the DOE CX rulemaking docket at *Regulations.gov* (Docket ID: DOE-HQ-2010-0002). The notice of proposed rulemaking and public comments also will be posted in this docket. 

### What Does NEPA Mean to You?

#### Share Your Inspiration with Readers of *LLQR*

In this 40<sup>th</sup> anniversary year of NEPA, *LLQR* is featuring a series of articles by NEPA practitioners; the second in this series is on page 6. We would like to include brief essays contributed by our readers on subjects

connected to NEPA. Please send your drafts (no more than 300 words) to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) by August 2 for consideration in the September issue.





# Recovery Act NEPA Reviews Remain Timely

Federal agencies continue to report timely progress toward completing NEPA reviews for American Recovery and Reinvestment Act (Recovery Act) projects and activities (projects), said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), during a May meeting with agency NEPA contacts. CEQ submitted the fifth quarterly report on the NEPA status of projects receiving Recovery Act funds to Congress on May 3, 2010.

Congress reviews each report, he explained, with some Members particularly interested in NEPA reviews that remain pending for two or more quarters and, thus, may indicate delay. Mr. Greczmiel pointed, for context, to the many activities that may be encompassed within the NEPA review process such as project definition and consultations among Federal agencies.

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*There is a difference between delay and time well spent.*

*– Horst Greczmiel, CEQ*

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The May report summarizes the NEPA status of more than 183,700 Recovery Act projects. Cumulatively through March 31, 2010, Federal agencies completed more than 165,000 categorical exclusion (CX) determinations and 7,300 EAs. More than 800 projects had been analyzed in

EISs. Agencies concluded that NEPA is not applicable to about 4,200 other Recovery Act projects. Together, these projects involve obligations of more than \$216 billion funded under Division A of the Recovery Act. In addition, CEQ reported that more than 2,750 NEPA reviews are underway, including 1,600 CX determinations, 1,120 EAs, and 45 EISs.

As of March 31, DOE had completed nearly 5,575 NEPA reviews supporting the obligation of more than \$26.6 billion for projects receiving Recovery Act funding, an increase of more than \$3.3 billion since December 31, 2009 (*LLQR*, March 2010, page 14). DOE completed more than 800 of these NEPA reviews during the first quarter of 2010.

## 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 June 30, 2010. Federal agency reports are due to CEQ by July 15, 2010, and CEQ will submit the next report to Congress in August.

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

## NEPA Contracting Updates

Aneesah Vaughn, Contract Specialist for the DOE-wide NEPA Contracts, participated in the recent NAEP Conference (related article, page 1), and shares her impressions: “The Conference helped me to clarify the laws and policies of the NEPA environment. I found it interesting to learn about the Government’s roles and responsibilities when putting together an EA or EIS. It also helped me understand what to look for when dealing with a new requirement for NEPA documentation. Going through the EIS process in its entirety gave me a better understanding about the Performance Work Statements and Statements of Work that I receive from DOE’s Program Offices. I would recommend that all Contract Specialists who deal with the NEPA environment attend this Conference at least once.”

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under the contracts, contact Ms. Vaughn at [aneesah.vaughn@nnsa.doe.gov](mailto:aneesah.vaughn@nnsa.doe.gov) or 202-586-1815. Information and resources for potential users of these contracts, such as the DOE-wide Contracts’ Statement of Work and a listing of Contractor Program Managers, are available on the DOE NEPA Website, [nepa.energy.gov](http://nepa.energy.gov), under NEPA Contracting.

Description	DOE Contact	Date Awarded	Contract Team
EA for Transfer of Two Land Tracts Located within Kirtland Air Force Base	Joseph (Jeff) Robbins 505-845-4426 <a href="mailto:jfrobbs@doeal.gov">jfrobbs@doeal.gov</a>	2/17/2010	Los Alamos Technical Associates, Inc.
Supplement Analysis: Los Alamos National Laboratory Site-wide EIS	Abigail Cuthbertson 202-586-2391 <a href="mailto:abigail.cuthbertson@nnsa.doe.gov">abigail.cuthbertson@nnsa.doe.gov</a>	4/21/2010	SAIC



## CEQ Reiterates Emergency Guidance


The Council on Environmental Quality (CEQ) recently reiterated its 2005 guidance for NEPA compliance for emergency response actions. The May 12, 2010, memorandum from Nancy Sutley, Chair of CEQ, clarifies that the previous CEQ guidance, which followed Hurricane Katrina, remains applicable to current situations, such as the ongoing Federal response to the oil spill in the Gulf of Mexico. Two attachments to the memorandum are essentially the same as those provided in 2005, except as noted below.

“As agencies develop their response to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established” in the CEQ regulations and agency implementing procedures, Ms. Sutley stated. The CEQ regulations provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental impacts, requiring an EIS. Alternative arrangements are limited to the actions necessary to control the immediate impacts of the emergency and are developed, based on specific facts and circumstances, during consultation with CEQ, she continued, adding that “the long-term disaster response and the recovery actions that remain would be subject to the regular NEPA process.”

One attachment to the memorandum, “Emergency Actions under the National Environmental Policy Act,” outlines a step-by-step process for determining the appropriate path forward for the NEPA environmental review of all

actions proposed in response to an emergency situation. A notable change from the earlier guidance is in the reordering of steps, with the first step placing the emphasis on not delaying immediate actions “necessary to secure lives and safety of citizens or to protect valuable resources.” Agencies are to consult with CEQ as soon as feasible when taking action. The next steps are to determine if NEPA is triggered, and if so, the appropriate level of NEPA review.

Alternative arrangements (40 CFR 1506.11) do not apply to actions if the environmental impacts are not expected to be significant. If a categorical exclusion cannot be applied to such an action and NEPA review is required, a second attachment provides guidance on “Preparing Focused, Concise and Timely Environmental Assessments.” This attachment gives new emphasis to an agency’s consideration of alternatives, stating that “the agency must use its discretion to ensure the number of reasonable alternatives is reasoned and not arbitrary or capricious.” With regard to EAs, Ms. Sutley stated that “Agencies must continue their efforts to notify and inform affected public, state, regional, Federal and tribal representatives of the Federal agency activities and proposed actions.”

For the recent CEQ guidance, go to [nepa.energy.gov](http://nepa.energy.gov), click on Guidance, then New Guidance Tools. For a discussion of the 2005 guidance and CEQ guidance that followed September 11, 2001, see [LLQR, December 2005, page 30](#), and [December 2001, page 6](#), respectively. For information on DOE’s use of alternative arrangements, see [LLQR, March 2006, page 1](#); [June 2004, page 8](#); [September 2001, page 4](#); and [September 2000, page 1](#). 


## DOE Comments on CEQ Draft NEPA Guidance

In February, CEQ distributed for public review draft NEPA guidance on three topics: establishing and applying categorical exclusions (CXs); considering greenhouse gas (GHG) emissions and climate change; and mitigation and monitoring. The draft guidance documents are available on the CEQ website at [NEPA.gov](http://NEPA.gov), and are described in detail in [LLQR, March 2010, page 3](#).

With the assistance of the DOE NEPA Community and the Office of the Assistant General Counsel for Environment, the NEPA Office provided comments on these guidance documents to CEQ on April 9 (CXs) and May 21 (GHG/climate change and mitigation/monitoring).

DOE recommended that CEQ’s CX guidance acknowledge experience with EAs and findings of no significant impact as an appropriate basis for establishing a new CX, not just EAs for actions with post-implementation monitoring. In addition, DOE suggested that CEQ clarify the status of its

existing 1983 guidance on CXs and also expectations regarding public involvement before applying a CX and monitoring of impacts after a CX determination.

In its comments on CEQ’s draft guidance on GHG emissions and climate change, DOE requested that CEQ clarify that the “direct” emissions to be accounted for as a “reference point” (indicating when discussion of GHG emissions is warranted) correspond to “scope 1” emissions as defined in Executive Order 13514, and should not include “scope 2” emissions. (See related article on page 16.) DOE also requested that CEQ clarify that, while references and analytical tools discussed in the guidance are recommended, other references and tools also may be used. In its comments on CEQ’s draft guidance on mitigation and monitoring, DOE described its procedures for the preparation of mitigation action plans and annual monitoring reports. 

# DOE's Strategic Sustainability Performance Plan

By: Steven Woodbury, Office of Environmental Policy and Assistance,  
Office of Health, Safety and Security

DOE will submit its initial multi-year Strategic Sustainability Performance Plan (SSPP) to the Office of Management and Budget (OMB) for approval on June 2, 2010. The SSPP will affect how the Department plans, budgets, and manages its facilities and activities in the coming years.

## What Is the SSPP?

DOE is required to develop and implement an SSPP to achieve the sustainability goals established in Executive Order (E.O.) 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (October 2009). (See *LLQR*, December 2009, page 9.)

The major new requirement in E.O. 13514 is for Federal agencies to establish targets for reducing their greenhouse gas (GHG) emissions and to inventory and report these emissions annually. DOE has established a target of reducing scope 1 and scope 2 GHG emissions by 28 percent by 2020 from its 2008 baseline.<sup>1</sup> We are also establishing a target to reduce scope 3 GHG emissions by 10 percent by 2020 from its 2008 baseline.<sup>2</sup>

Additional goals include:

- Improving water use efficiency and management
- Preventing pollution and eliminating waste
- Advancing regional and local integrated planning
- Implementing high-performance sustainable Federal building design, construction, operation and management, maintenance, and deconstruction, and
- Advancing sustainable acquisition

Each year DOE will evaluate past performance, identify opportunities for improvement, and update its SSPP.

## How Was the SSPP Developed?


The Department developed its SSPP through a variety of committees and work groups representing program and support offices, headquarters and field staff. The Deputy Secretary, as DOE's designated Senior Sustainability Officer, oversaw this process, and will submit the plan to the Council on Environmental Quality (CEQ) and OMB. Following review by CEQ and OMB,

the Director of OMB is responsible for approving the SSPP, as well as each annual update of the SSPP.

## How Does This Relate to NEPA?

E.O. 13514 includes only one reference to NEPA. As part of the goal to "advance regional and local integrated planning" (Section 2(f)), Federal agencies are to identify and analyze the impacts from energy usage and alternative energy sources in all EISs and EAs for proposals for new or expanded Federal facilities. To ensure compliance with Section 2(f), the SSPP states that DOE will update Departmental policy and guidance in this regard by a target date of 2012.

But more broadly, NEPA analyses increasingly can be expected to serve as an important planning tool as the Department looks for ways to meet its GHG reduction goals and other sustainability goals. Site-wide EISs appear particularly well-suited for this purpose because their scope typically includes a comprehensive look at the reasonably foreseeable activities at a site under alternative site management strategies, such as under reduced and expanded use scenarios. Site-wide EISs also could enable a collective look at strategies for reducing scope 3 emissions, such as transportation improvements that reduce GHG emissions from employee commuting, and purchasing strategies that reduce the carbon footprint of vendors.

For more information on E.O. 13514 and the SSPP, contact Steven Woodbury ([steven.woodbury@hq.doe.gov](mailto:steven.woodbury@hq.doe.gov), 202-586-4371). 

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***In order to create a clean energy economy that will increase our Nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, the Federal Government must lead by example.***

***– President Obama in E.O. 13514,  
October 5, 2009***

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<sup>1</sup> Scope 1 emissions are direct emissions from sources that DOE owns or controls; scope 2 emissions are those associated with purchased electricity, heat, or steam.

<sup>2</sup> Scope 3 emissions are indirect emissions from sources that DOE does not own or control, such as those associated with employee travel, employee commuting, waste treatment, and production and transportation of goods we buy.



# Transitions




## Golden Field Office – New NCOs

**Robin Sweeney** has been designated as one of the NEPA Compliance Officers (NCOs) for the Golden Field Office, where she is Division Director for the Environmental Stewardship and NEPA Branches. Dr. Sweeney has worked on a wide range of NEPA documents, both at Headquarters and at various Field Offices since joining DOE in 1990. She previously was an NCO for the Yucca Mountain Site Characterization Office, and most recently she was the Construction Manager at the Yucca Mountain Office. She looks forward to rejoining DOE's NEPA Community. Due to the increased Energy Efficiency and Renewable Energy NEPA workload from the Recovery Act, there are now four NCOs at the Golden Field Office and four additional NCOs from other Field Offices supporting this effort at Golden. Steve Blazek, the NEPA Branch Chief, continues to be the Senior NCO at the Golden Field Office. Lori Plummer and Kristin Kerwin are the other Golden NCOs. Dr. Sweeney can be contacted at [robin.sweeney@go.doe.gov](mailto:robin.sweeney@go.doe.gov) or 720-356-1562.

**Lori Plummer**, formerly Deputy NCO for the Nevada Site Office, is now an NCO at the Golden Field Office, where she is also the Environmental Stewardship Branch Chief. She can be reached at [lori.plummer@go.doe.gov](mailto:lori.plummer@go.doe.gov) or 720-356-1568.

## Nevada Site Office

**Kathryn Knapp**, formerly an NCO for the Office of Civilian Radioactive Waste Management, has taken a position with the National Nuclear Security Administration's Nevada Site Office, where one of her duties will be to assist that Office's NCO, Linda Cohn. Ms. Knapp can be reached at [knappk@nv.doe.gov](mailto:knappk@nv.doe.gov) or 702-295-5795. 

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## In Memoriam: Bill Cohen (1939–2010)

We remember a great friend of NEPA, William (Bill) Cohen, who died on April 18, 2010. Mr. Cohen's long legal career was marked by his service as Chief of the General Litigation Section, Environment and Natural Resources Division of the U.S. Department of Justice (DOJ). In that capacity for 14 years, he litigated and conducted Alternative Dispute Resolution in cases involving natural resources, energy, water, environmental justice, and Federal land planning issues. He received numerous awards for his service, including the Natural Resources Council of America's 2000 National Environmental Quality Award.



After retiring from the Department of Justice in 2000, Mr. Cohen joined the faculty of the Washington College of Law, American University, where he taught environmental and natural resources law and assisted in the organization and implementation of the environmental law summer program. Mr. Cohen was a distinguished lecturer on environmental law and litigation at several universities, including the Nicholas School of the Environment, Duke University, which has established a scholarship fund in his name to support the tuition of students seeking to take a NEPA course or pursuing a Certificate in NEPA education. (See [Bill Cohen Memorial Scholarship](#) for information on donating or applying.)



*The Office of NEPA Policy and Compliance remembers Bill Cohen's participation as a panelist at the 1995 conference commemorating the 25<sup>th</sup> anniversary of NEPA, hosted by DOE in partnership with CEQ. Mr. Cohen spoke about his experiences at DOJ, including with litigation involving categorical exclusions and programmatic EISs.*

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# Litigation Updates

## Other Agency NEPA Litigation

### Court Ruling Considers Presentation of Information and Significance of Private Interests in BLM EIS

In litigation involving a land exchange approved by the Bureau of Land Management (BLM), the U.S. Court of Appeals for the Ninth Circuit both affirmed and reversed portions of an earlier opinion by the U.S. District Court for the Central District of California. The NEPA issues involved the thoroughness of impact analysis and the extent to which the agency considered private interests in formulating its statement of purpose and need for agency action.

The National Parks Conservation Association and two individuals challenged BLM's approval of a developer's request to exchange certain private lands for several parcels of surrounding BLM-owned land to develop a landfill on a property near Joshua Tree National Park in southern California. The suit alleged violations of NEPA as well as the Federal Land Policy and Management Act. The district court held for the plaintiffs on some of the issues, and both sides appealed.


#### Form Matters

In considering the adequacy of two parts of the impact analysis, the appeals court found that the extensive analysis of potential impacts on bighorn sheep was adequate, but agreed with the district court that the EIS insufficiently addressed the potential for eutrophication.<sup>1</sup> The court noted that "in determining whether an EIS fosters informed decisionmaking and public participation, we consider not only its content, but also its form." The court found the discussion of eutrophication in the EIS to be "neither full nor fair" because readers had to "cull through entirely unrelated sections of the EIS and then put the pieces together." It concluded that such a *"patchwork" treatment did not constitute a "reasonably thorough" discussion of the issue.*

#### Agency or Private Purpose and Need?

The appeals court also considered the extent to which an agency statement of purpose and need may consider private objectives. Only one of the four goals outlined in the purpose and need statement, meeting long-term landfill demand, was a valid BLM purpose, the court found. The other three – those of the private developer – served as the defining characteristics of the proposed project.

In acknowledging findings from other appeals courts that an agency must acknowledge private parties' goals in formulating a statement of purpose and need, the court held that "[r]equiring agencies to consider private objectives, however, is a far cry from mandating that those private interests define the scope of the proposed project." Instead, agencies must "look hard at the factors relevant to the definition of purpose," including Congressional directives. In particular, the court discussed a case involving a statement of purpose and need in a U.S. Army Corps of Engineers EIS that included private goals and noted the different regulatory frameworks guiding the Corps and BLM. While Corps regulations explicitly emphasize the primacy of private interests, the Department of the Interior's NEPA guidelines call for the purpose and need statement to "describe the BLM purpose and need, not an applicant's . . ." Therefore, the court sought to determine whether the EIS "properly states the BLM's purpose and need, against the background of a private need, in a manner broad enough to allow consideration of a reasonable range of alternatives."

The appeals court concluded that "[s]uch a narrowly drawn statement necessarily and unreasonably constrains the possible range of alternatives," so that all six of the alternatives BLM considered in detail, except for the No Action alternative, would result in some type of landfill development and require some portion of the land exchange under analysis to occur. Although BLM identified several other alternatives to meet long-term landfill demand, the EIS did not consider these in any detail because none met the private objectives. Therefore, the court found that "BLM adopted the private developer's interests as its own to craft a purpose and need statement so narrowly drawn as to foreordain approval of the land exchange. **As a result of this unreasonably narrow purpose and need statement, the BLM necessarily considered an unreasonably narrow range of alternatives.**" (*National Parks Conservation Association v. Bureau of Land Management*; Case No.: 56814; November 10, 2009) 



<sup>1</sup> The opinion defines eutrophication as "the introduction of nutrients into the desert environment."



## Groups Challenge Minerals Management Service Categorical Exclusions for Gulf Oil and Gas Exploration

Three lawsuits<sup>1</sup> were filed recently against the U.S. Department of the Interior's Minerals Management Service (MMS) claiming NEPA violations with regard to oil and gas exploration in the Gulf of Mexico. The suits were filed in response to the April 20, 2010, Deepwater Horizon oil spill. For projects in the Gulf of Mexico, MMS normally prepares an EA or EIS for lease sale decisions and applies a categorical exclusion (CX) for approvals of exploration and development and production plans.

The Center for Biological Diversity filed a request for an injunction against MMS, seeking to have MMS withdraw its CX policy that excludes outer continental shelf (OCS) drilling operations, and to have the court set aside all CX determinations for OCS drilling operations issued by MMS subsequent to the Deepwater Horizon oil spill. The plaintiff alleges that the adoption of a CX listed in the MMS Departmental Manual for the approval of exploration and development and production plans, and the issuance of CXs subsequent to the spill, violates NEPA as well as MMS's own NEPA regulations (43 CFR 46.10). (*Center for Biological Diversity v. MMS*; Case No.: 10-816; May 18, 2010 (D. DC))

A separate suit filed by the Defenders of Wildlife includes three claims: (1) MMS violated NEPA in its failure to apply its own regulations and to explain its apparent decision that extraordinary circumstances do not exist, (2) the adoption of CXs in its Manual is in violation of NEPA and its own regulations, and (3) "new circumstances or information relevant to environmental concerns" resulting from the spill require that MMS prepare a supplemental EIS. The plaintiff requests, among other things, that the court vacate provisions of the Manual providing CXs for exploration and development and productions plans, set aside the 27 CX determinations issued since April 20, 2010, and enjoin MMS from authorizing further CX determinations for oil drilling operations in the Gulf of Mexico. The plaintiff also asks the court to vacate and remand the Gulf of Mexico OCS Shelf Oil and Gas Lease Sales: 2007–2012 EIS and to enjoin all future lease sales authorized by the EIS until MMS prepares a supplemental EIS. (*Defenders of Wildlife v. MMS*; Case No.: 10-254; May 17, 2010 (S.D. Alabama))



In a third suit, filed by the Gulf Restoration Network and the Sierra Club, the plaintiffs claim, among other things, that MMS's Notice to Lessees (NTL) in Federal waters of the Gulf, NTL-2008-G04, was issued in violation of NEPA. They allege that MMS's reliance on this NTL, which they say effectively waived MMS's blowout scenario and worst case spill requirements, is an action that may significantly affect the quality of the environment and that MMS should have prepared NEPA documentation or analysis with respect to the NTL. The plaintiffs request that the court enjoin the use of the NTL until MMS prepares adequate NEPA documentation. (*Gulf Restoration Network v. DOI*; Case No.: 10-01497; May 18, 2010 (D. Eastern Louisiana))



LLQR will continue to report on developments in these cases. **LL**

## Other Litigation in Brief

Three recent legal decisions involving NEPA issues are summarized below, listed by lead plaintiff.<sup>1</sup> In these brief reports, LLQR summarizes outcomes using the court's language, as appropriate; the computer icon links to the full opinion. We encourage readers to examine the entire opinion for cases of interest.

- In *Nine Mile Canyon Coalition*, the parties reached a settlement and BLM agreed to several conditions, including not applying further categorical exclusions (CXs) until it completes an EA or EIS on gas development in the project area.
- In *Russell Country Sportsmen*, the district court found that the draft EIS was inadequate in its consideration of alternatives.
- In *Not 1 More Acre!*, the district court ordered that the record of decision (ROD) be vacated, finding that the EIS did not include specific information regarding future land use and, therefore, could not consider all reasonable alternatives or adequately examine impacts.


(continued on next page)

<sup>1</sup> Many cases have multiple plaintiffs and defendants, which may change during litigation. In LLQR, cases are referred to by the lead plaintiff and first defendant agency as identified in the opinion. For example, the defendant in cases involving the USDA Forest Service may be identified as USDA or USDA Forest Service in LLQR; in the broader literature, these cases may be known by the name of the Secretary of Agriculture or the Chief of the Forest Service at the time the legal document was issued.




## Litigation Updates *(continued from previous page)*

### Nine Mile Canyon Coalition v. Bureau of Land Management

- **Agency Action:** BLM issued a series of permits between April and June of 2008 authorizing the creation and operation of numerous gas wells within the West Tavaputs area of Utah's Nine Mile Canyon Region.
  - **NEPA Issue:** The Nine Mile Canyon Coalition filed a complaint against BLM concerning its use of statutory CXs established in Section 390 of the Energy Policy Act of 2005 (EPAct) to expedite gas well development. It argued that BLM's use of these CXs violated NEPA because Federal agencies are obligated to consider whether there are extraordinary circumstances related to the proposal before making a CX determination. The plaintiff claimed that truck traffic and other activities associated with gas well development would significantly degrade air quality and historic properties, constituting an extraordinary circumstance. The plaintiffs and BLM entered into a settlement agreement, which states that BLM must:
    - Not invoke any further CXs under EPAct Section 390 in the West Tavaputs area until an EA or EIS has been completed for the development area,
    - Issue a new Instruction Memorandum modifying the BLM's NEPA Handbook and stating that **future EPAct CXs will not be invoked without a determination that there are no extraordinary circumstances**, and
    - Not use EPAct Section 390 CXs when approving applications for permits to drill in Utah unless there is a prior NEPA analysis.
  - **Other Issues:** The Nine Mile Canyon Coalition argued that BLM was in violation of the National Historic Preservation Act because of the potential impact of development activity on historic rock art. The settlement agreement requires that, within 6 months of issuing the ROD for the West Tavaputs Plateau EIS, BLM will initiate a study focusing on how to address existing and potential future impacts of dust and chemicals to rock art and other historic properties within the Nine Mile Canyon Region.
-  U.S. District Court for the District of Utah. Case No.: 08-586; March 26, 2010.


### Russell Country Sportsmen v. Forest Service

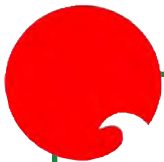
- **Agency Action:** The U.S. Forest Service, after preparing an EIS and issuing a ROD, approved a 2007 Travel Management Plan for the Lewis and Clark National Forest.
  - **NEPA Issue:** The alternatives presented in the final EIS, including the one selected in the ROD, contained significant changes that "fell outside the range of alternatives" described in the draft EIS. The public was not afforded the opportunity to comment on major portions of the final EIS and ROD because the draft EIS was not supplemented. The decision reduced the total mileage open for motorized travel by nearly 30 percent beyond the most restrictive alternative in the draft EIS, closed several trails not specified for closure in the draft EIS, reduced the snowmobile season short of any draft EIS alternative, and scrapped a 300-foot-off-road-travel rule for a much more restrictive "vehicle plus trailer length" area. The court found that the Forest Service violated NEPA in that its **"DEIS is inadequate in its consideration of alternatives."**
  - **Other Issues:** The court found that the Forest Service's attempt to enhance or create wilderness character by adopting the 2007 Travel Management Plan exceeded its authority under the Montana Wilderness Study Act.
-  U.S. District Court for the District of Montana. Case No.: 00064; March 10, 2010.

*(continued on next page)*



## Not 1 More Acre! v. Department of the Army

- **Agency Action:** The Department of the Army issued a ROD in 2007 to increase the use of the Pinon Canyon Maneuver Site in Colorado. The proposed expansion would accommodate the Army's need to conduct combat training and provide related facilities for an increased troop population stationed at a nearby base. The Army made its decision after consideration of the issues addressed in the EIS.
- **NEPA Issues:** In describing the training operations anticipated for the site, the EIS did not provide details on their frequency, duration, and intensity. The plaintiffs argued that the EIS should have considered different training intensities at the site, and the failure to provide sufficient detail about the expected level of use limited the range of alternatives considered. The EIS also stated that the continuation of existing land management programs would be adequate, but because training operations could be conducted essentially constantly, the court held that such intensive use would not permit meaningful mitigation of the resulting environmental impacts. Furthermore, the court noted that the EIS did not take into account related EISs and analyses that addressed mitigation by quantifying the level of training operations that would be consistent with sustainability. The court found that, **"Because the EIS does not adequately assess the impact on the environment of the increase in the intensity and duration of training operations necessary to meet the Army's stated purposes for its action, the Army's reliance on it makes the ROD an arbitrary and capricious action, an abuse of discretion and a decision not in accordance with NEPA."** Therefore, the court vacated the ROD that authorized the proposed action described in the EIS.
- U.S. District Court for the District of Colorado. Case No.: 08-00828; September 8, 2009. 



## CX Litigation on the Rise

At the recent NAEP Conference, Lucinda Low Swartz, environmental consultant and former Deputy General Counsel at CEQ, provided her annual review of NEPA litigation. She highlighted five cases in 2009 related to the application of categorical exclusions (CXs) and noted that last year was the first time there have been this many cases regarding CXs. "Federal courts are not shy about reviewing CXs," she concluded.

The five cases identified by Ms. Swartz are:

- *Brady Campaign to Prevent Gun Violence v. Salazar* (D. DC 2009) – The court issued a preliminary injunction for the application of a CX to a final National Park Service rule allowing persons to possess concealed weapons in national parks.
- *Delaware Audubon Society v. Secretary of the Department of the Interior* (D. Del. 2009) – The court found that the agency violated NEPA by approving an action without preparation of an EA or EIS.
- *People of California v. U.S. Department of Agriculture* (9<sup>th</sup> Cir. 2009) – The court invalidated

the U.S. Forest Service's (USFS) application of a CX for its 2005 State Petitions Rule for roadless areas, disagreeing that the rule fell within the CX and finding the explanation regarding the absence of extraordinary circumstances to be insufficient.

- *Wild Fish Conservancy v. Kempthorne* (E.D. Wash. 2009) – The court found that a CX was appropriately applied for the operation of a fish hatchery.
- *Alliance of the Wild Rockies v. Tidwell* (D. Mont. 2009) – The court found that USFS had properly applied a CX for a sanitation harvest of primarily diseased, dead, or dying fir trees for the purpose of trying to save the rest of the forest from a beetle infestation.

Ms. Swartz's annual summary of NEPA litigation is available on her website at [www.lucindalowschwartz.com](http://www.lucindalowschwartz.com) under NEPA Information and Resources. She can be reached at [lls@lucindalowschwartz.com](mailto:lls@lucindalowschwartz.com) or 301-933-4668. See related article regarding recent challenges to CX determinations issued by the Minerals Management Service, page 19.

# Training Opportunities

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

- Environmental Protection Agency  
Office of Federal Activities  
202-564-7164  
[mccaffrey.sandra@epa.gov](mailto:mccaffrey.sandra@epa.gov)  
[www.netionline.com](http://www.netionline.com)

## **NEPA Cross-Cutting Training (FED 108)**

Lakewood, CO: June 8-9  
No Fee

- American Law Institute  
and American Bar Association  
800-253-6397  
[www.ali-aba.org](http://www.ali-aba.org)

## **Environmental Litigation**

Boulder, CO: June 16-18  
\$1,299 (\$999 webcast)  
(course reference code CR045)

- ICF International  
916-332-6870  
[kbogdan@icfi.com](mailto:kbogdan@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)

## **NEPA: A Step-by-Step Approach**

Riverside, CA: June 10-11  
\$329

- International Association for Public Participation  
1-800-644-4273  
[training@iap2.org](mailto:training@iap2.org)  
[www.iap2.org](http://www.iap2.org)

## **Planning for Effective Public Participation**

Irvine, CA: July 12-13  
Kansas City, MO: August 2-3  
Chicago, IL: September 13-14  
San Antonio, TX: September 20-21  
Santa Fe, NM: October 4-5  
\$700

## **Communications for Effective Public Participation**

Irvine, CA: July 14  
Kansas City, MO: August 4  
Chicago, IL: September 15  
San Antonio, TX: September 22  
Santa Fe, NM: October 6  
\$350

## **Techniques for Effective Public Participation**

Irvine, CA: July 15-16  
Kansas City, MO: August 5-6  
Chicago, IL: September 16-17  
San Antonio, TX: September 23-24  
Santa Fe, NM: October 7-8  
\$700

- Nicholas School of the Environment  
and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del](http://www.nicholas.duke.edu/del)

## **Implementation of NEPA**

Durham, NC: July 26-30  
\$1,250

## **Tribal Consultation and Accounting for Cumulative Effects in the NEPA Process**

Durham, NC: September 13-17  
\$1,665

## **Scoping, Public Involvement and Environmental Justice and Socioeconomic Impact Analysis under NEPA**

Durham, NC: December 6-10  
\$1,665

## **Certificate in the National Environmental Policy Act**

Requires successful completion of one core and three elective 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](mailto:info@nwetc.org)  
[www.nwetc.org](http://www.nwetc.org)

## **NEPA: Writing the Perfect EA/FONSI or EIS**

Portland, OR: June 16-17  
St. Paul, MN: July 15-16  
St. Louis, MO: July 19-20  
\$495 (\$395 for Federal employees)

*(continued on next page)*

# Training Opportunities

(continued from previous page)

## **Preparing, Reviewing, Challenging, and Defending Documents Prepared under NEPA and CEQA**

Pasadena, CA: October 26-27  
\$495 (\$395 for Federal employees)

- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)

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

Portland, OR: June 7-11  
\$1,385 (GSA contract: \$1,295)

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

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

## **NEPA Cumulative Effect Analysis and Documentation and NEPA Climate Change Analysis and Documentation**

Baltimore, MD: July 13-16  
\$1,195 (GSA contract: \$1,095)

## **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

## **Applying the NEPA Process: Emphasis on Native American Issues**

Olympia, WA: August 11-13  
\$945 (GSA contract: \$855) until 6/30/10

## **Applying the NEPA Process and Writing Effective NEPA Documents**

New Orleans, LA: August 17-20  
\$1,145 (GSA contract: \$1,055) until 7/7/10

## **Clear Writing for NEPA Specialists**

Salt Lake City, UT: August 25-27  
Nashville, TN: September 7-9  
\$945 (GSA contract: \$895) until 7/14/10 and 8/10/10

## **Core Principles: Telling the NEPA Story, Keeping Documents Brief, and Meeting Legal Requirements**

Las Vegas, NV: September 14-16  
\$945 (GSA contract: \$855) until 8/3/10

## **NEPA Certificate Program**

Requires successful completion of eight courses offered by The Shipley Group.

\$5,450

Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/htm/students/grad-degrees/nepa/](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa/)

- US Institute for Environmental Conflict Resolution  
(520) 901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training](http://www.ecr.gov/training)

## **Collaborative Capabilities**

Lakewood, CO: June 15-17  
\$750

## **Advanced Multi-Party Negotiation of Environmental Disputes**

Lakewood, CO: September 14-16  
\$750

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- ICF International  
916-737-3000  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeeps@mchsi.com](mailto:jleeeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)

# EAs and EISs Completed January 1 to March 31, 2010

## EAs<sup>1</sup>

### **Carlsbad Field Office/**

#### **Office of Environmental Management**

[DOE/EA-1755\\*](#) (1/27/10)

*Reconstruction of the South Access Road (CR 802) in Support of the Department of Energy, Waste Isolation Pilot Plant (WIPP) in Eddy County, New Mexico*

[DOE adopted EA on 1/27/10](#); therefore cost and time data are not applicable. [Bureau of Land Management, the lead agency, issued a finding of no significant impact on 12/8/09. DOE, Carlsbad Field Office, was a cooperating agency.]

### **Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1748](#) (3/9/10)

*Energy Conservation Program: Energy Conservation Standards for Small Electric Motors*

Cost: \$35,000

Time: 4 months

[DOE/EA-1774](#) (3/22/10)

*Energy Conservation Program: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters*

Cost: \$35,000

Time: 3 months

### **National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1708\\*](#) (3/30/10)

*Financial Assistance to Dow Kokam MI, LLC to Manufacture Advanced Lithium Polymer Batteries for Hybrid and Electric Vehicles at Midland, Michigan*

Cost: \$29,000

Time: 4 months

[DOE/EA-1710\\*](#) (3/30/10)

*Financial Assistance to EnerDel, Inc. for Its Expansion of Battery Manufacturing Capabilities at Indianapolis, Noblesville, and Greenfield, Indiana*

Cost: \$45,000

Time: 4 months

[DOE/EA-1711\\*](#) (3/16/10)

*Saft America, Inc. Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Jacksonville, Florida*

Cost: \$29,000

Time: 4 months

[DOE/EA-1712\\*](#) (3/10/10)

*Exide Technologies Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Bristol, Tennessee, and Columbus, Georgia*

Cost: \$45,000

Time: 4 months

[DOE/EA-1714\\*](#) (3/25/10)

*Toda America, Incorporated, Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Battle Creek, Michigan*

Cost: \$37,000

Time: 4 months

[DOE/EA-1717\\*](#) (3/25/10)

*BASF Catalysts, LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Elyria, Ohio*

Cost: \$37,000

Time: 4 months

[DOE/EA-1721\\*](#) (3/16/2010)

*Johnson Controls, Inc. and ENTEK Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Holland, Michigan; Lebanon, Oregon; and Milwaukee, Wisconsin*

Cost: \$52,000

Time: 4 months

[DOE/EA-1725\\*](#) (3/30/10)

*SBE, Inc. Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Power Ring Manufacturing Scale-up, Barre, Vermont*

Cost: \$44,000

Time: 4 months

[DOE/EA-1737\\*](#) (2/12/10)

*Financial Assistance to Pennsylvania for Frey Farm Landfill Wind Energy Project, Manor Township, Lancaster County, Pennsylvania*

Cost: \$40,000

Time: 2 months

### **Oak Ridge Operations Office/Office of Science**

[DOE/EA-1651](#) (1/13/10)

*U-233 Material Downblending and Disposition Project at the Oak Ridge National Laboratory, Oak Ridge, Tennessee*

Cost: \$75,000

Time: 12 months

(continued on next page)

\* Recovery Act project

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.



# EAs and EISs Completed January 1 to March 31, 2010 (continued from previous page)

**Office of River Protection/  
Office of Environmental Management**  
DOE/EA-1682\* (2/3/10)  
*Upgrades and Life Extension of the 242-A  
Evaporator, Hanford Site, Richland, Washington,  
Conducted Under the American Recovery and  
Reinvestment Act of 2009*  
Cost: \$42,000  
Time: 12 months

## EISs

**Office of Environmental Management**  
DOE/EIS-0226\* (75 FR 4812, 1/29/10)  
(EPA Rating: EC-1)  
*Decommissioning and/or Long-Term Stewardship  
at the West Valley Demonstration Project  
and Western New York Nuclear Service Center,  
West Valley, New York*  
Cost: \$31 million<sup>1</sup>  
Time: 82 months<sup>1</sup>  
[Co-lead: New York State Energy Research and  
Development Authority]

<sup>1</sup> Data reflect work since the March 2003 Notice of Intent to prepare a Revised Draft EIS. For more information on this EIS see LLQR, March 2009, page 19.

**Western Area Power Administration**  
DOE/EIS-0398 (75 FR 6027, 2/5/10)  
(EPA Rating: EC-2)  
*Delta-Mendota Canal/California Aqueduct Intertie,  
Central Valley Project, California*  
EIS was adopted; therefore cost and time data are not applicable. [Bureau of Reclamation was the lead agency; WAPA was a cooperating agency.]  
DOE/EIS-0443 (75 FR 7479, 2/19/10)  
(EPA Rating: EC-2)  
*Project Financing for Southwest Intertie Project-South, Clark, Lincoln, Nye, and White Pine Counties, Nevada*  
EIS was adopted; therefore cost and time data are not applicable. [Bureau of Land Management was the lead agency.]

### 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](http://www.epa.gov/compliance/nepa/comments/ratings.html).)

## NEPA Document Cost and Time Facts

### EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 13 EAs for which cost data were applicable was \$40,000; the average cost was \$42,000.
- Cumulatively, for the 12 months that ended March 31, 2010, the median cost for the preparation of 29 EAs for which cost data were applicable was \$45,000; the average cost was \$60,000.
- For this quarter, the median completion time of 13 EAs was 4 months; the average was 5 months.
- Cumulatively, for the 12 months that ended March 31, 2010, the median completion time for 36 EAs was 6 months; the average was 10 months.

\* Recovery Act project

### EIS Cost and Completion Times

- For this quarter, the cost for the completion of 1 EIS was \$31 million.
- Cumulatively, for the 12 months that ended March 31, 2010, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1.4 million; the average cost was \$10.9 million.
- For this quarter, the completion time for 1 EIS was 82 months.
- Cumulatively, for the 12 months that ended March 31, 2010, the median completion time for 4 EISs was 50 months; the average was 58 months.

# Recent EIS-Related Milestones (March 1 to May 31, 2010)

## Notices of Intent

### Office of Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0431\*

*Hydrogen Energy International Integrated Gasification Combined Cycle and Carbon Capture and Sequestration Project*, Kern County, California  
April 2010 ([75 FR 17397](#), 4/6/10)

### Western Area Power Administration

DOE/EIS-0439

*Rice Valley Solar Energy Project*,  
*Riverside County, California*  
March 2010 ([75 FR 15427](#), 3/29/10) [Co-lead:  
Bureau of Land Management]

DOE/EIS-0442

*Forest Service Reauthorization of Transmission Lines on Forest Service Lands in Colorado, Utah and Nebraska for Routine Maintenance Practices including Changes in Vegetation Management*  
[Co-lead: U.S. Forest Service]  
April 2010 ([75 FR 17913](#), 4/8/10)

## Draft EIS

### Bonneville Power Administration

DOE/EIS-0419

*Whistling Ridge Energy Project*, Skamania County,  
Washington  
May 2010 ([75 FR 30022](#), 5/28/10)

## Notice of Extension of Public Comment Period

### Office of Environmental Management/ Richland Operations Office

DOE/EIS-0391

*Tank Closure and Waste Management for the Hanford Site*, Richland, Washington  
March 2010 ([75 FR 13268](#), 3/19/10)  
[Amended Notice, [75 FR 14595](#), 3/26/10, extending comment period to 5/3/10.]

## Final EISs

### Office of Fossil Energy/ National Energy Technology Laboratory

DOE/EIS-0409

*Kemper County Integrated Gasification Combined-Cycle (IGCC) Project*, Kemper County, Mississippi  
May 2010 ([75 FR 28612](#), 5/21/10)

### Western Area Power Administration

DOE/EIS-0415

*Deer Creek Station Energy Facility Project*,  
Brookings County, South Dakota  
May 2010 ([75 FR 30022](#), 5/28/10)

## Records of Decision

### Bonneville Power Administration

DOE/EIS-0183

*Electrical Interconnection of the Juniper Canyon I Wind Project*, Klickitat County, Washington  
May 2010 ([75 FR 27550](#), 5/17/10)

DOE/EIS-0384

*Chief Joseph Hatchery Program*, Okanogan County,  
Washington  
March 2010 ([75 FR 15430](#), 3/29/10)

### Office of Environmental Management

DOE/EIS-0226\*

*Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*,  
West Valley, New York  
April 2010 ([75 FR 20582](#), 4/20/10)

## Supplement Analyses

### Bonneville Power Administration

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

DOE/EIS-0285/SA-424

*Vegetation Management along the Dworshak-Taft No.1, 230-kV Transmission Line Corridor Right-of-Way*, Montana  
(Decision: No further NEPA review required)  
March 2010

DOE/EIS-0285/SA-425

*Vegetation Management along the Four Lakes Tap No.1, 115-kV Transmission Line Corridor Right-of-Way*, Washington  
(Decision: No further NEPA review required)  
March 2010

DOE/EIS-0285/SA-426

*Vegetation Management along the Ostrander-Pearl No.1 Transmission Line Corridor*, Oregon  
(Decision: No further NEPA review required)  
March 2010

\* Recovery Act project

(continued on next page)

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

### [DOE/EIS-0285/SA-427](#)

*Vegetation Management along the Addy-Cusick No. 1, 230-kV Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
March 2010

### [DOE/EIS-0285/SA-428](#)

*Vegetation Management for a Portion of the Midway-Rocky Ford No. 1 and Midway-Potholes No. 1, 230-kV Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
April 2010

### [DOE/EIS-0285/SA-429](#)

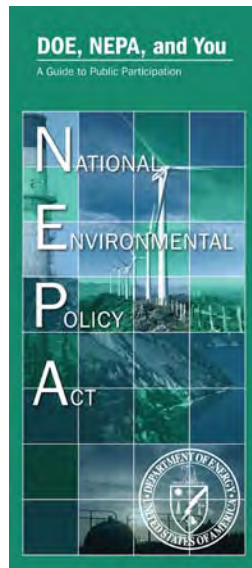
*Vegetation Management along the Bell-Boundary No. 1, 230-kV Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
April 2010

### [DOE/EIS-0285/SA-430](#)

*Vegetation Management along the Lancaster-Noxon No. 1, 230-kV Transmission Line Corridor Right-of-Way, Idaho and Montana*  
(Decision: No further NEPA review required)  
May 2010

### [DOE/EIS-0285/SA-431](#)

*Vegetation Management along the Lancaster-Noxon No. 1, 230-kV Transmission Line Corridor Right-of-Way, Montana*  
(Decision: No further NEPA review required)  
May 2010



## *DOE, NEPA, and You Reprinted*

In response to requests from NEPA Compliance Officers, the Office of NEPA Policy and Compliance has recently reprinted the brochure, “DOE, NEPA, and You – A Guide to Public Participation.” This NEPA brochure is a resource that provides the public with an overview of the DOE NEPA process, focusing on the public’s role in DOE’s preparation of an EIS.

The NEPA brochure can be used as a handout at DOE NEPA public participation meetings, such as public scoping meetings and public hearings. The brochure is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov), under Guidance, then New Guidance Tools. Requests for paper copies of the brochure can be submitted to Denise Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov) or to [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov).

## 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.*

## Data Collection/Analysis

### What Worked

- *Use of model.* One innovative approach involved utilizing a landscape evolution model to evaluate potential erosion impacts. The model was calibrated with geological surface maps representing conditions from approximately 17,000 years ago to model forward to current topography.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Team diligence.* The willingness of EIS team members to work round-the-clock to meet internal deadlines and weekly monitoring of interim schedule activities enabled timely completion of documents.
- *Core team process.* Utilization of a core team process to generate consensus and momentum, as well as use of a Responsible Opposing View by the joint lead agency, moved the document forward without full agreement among agencies.
- *Rolling production and review.* Participating agencies were willing to produce and review parts of the preliminary draft EIS on a rolling production schedule to eliminate one lengthy full-EIS production and review cycle. Face-to-face cooperating agency concurrence review meetings at headquarters also were effective.
- *Engaged document manager.* The document manager was present to walk final concurrence packages through headquarters and resolve questions and issues immediately.
- *Issue resolution.* Effective DOE site leadership and multiagency meetings helped to resolve issues.

### Factors that Inhibited Timely Completion of Documents

- *Internal disagreements.* Timely completion was slowed by aggressive scheduling and complicated by disagreements among participating agencies on technical and analytical approaches for the EIS.
- *Responding to comments.* Late receipt of comments on the internal advanced drafts from participating agencies, an extended public comment period, and responding to the high volume of public comments received made it difficult to complete the document on time.
- *Closed discussions.* Many discussions within the core team were not reported to the larger group.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Effective response planning.* The early and regular communication with headquarters ensured the availability of reviewers and resources to obtain concurrence on planned approaches for analyses and the support of senior staff.
- *Productive teamwork.* Early discussion of issues facilitated timely and productive teamwork.
- *Accountability.* Having an engaged, committed, and accountable project manager, who also asked for contractor accountability, resulted in effective teamwork.
- *Agency agreements.* Having an effectively written Memorandum of Understanding with partnering agencies directly enhanced teamwork.
- *Utilization of expertise.* Personnel with historic site expertise to work on the EIS gave a sense of confidence to the team.

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

### Factors that Inhibited Effective Teamwork

- *Lack of communication.* The hesitancy to bring all of the DOE team in on discussions of the comments inhibited good communication and led to misunderstanding of the exact nature of the comments.

## Process

### Successful Aspects of the Public Participation Process

- *Multiple public hearings.* Holding public hearings in multiple locations across the state and communicating with stakeholders was successful.
- *Recordings.* Having an audio recording along with a court reporter to verify accuracy of the text during proofing was valuable.
- *Involvement.* The Citizen's Advisory Board assisted the public's participation in the NEPA process.

### Unsuccessful Aspects of the Public Participation Process

- *Extended comment period.* Extending the public comment period from 6 to 9 months did not improve the quality of comments received.
- *Unfamiliarity with the NEPA process.* Stakeholders were unfamiliar with the NEPA process, and seemed to confuse it with the requirements of the CERCLA process. Additionally, people seemed to think of it as a voting process – whichever alternative got the most votes would be the one selected.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Project completion.* The EIS was used to determine a decommissioning path to completion of DOE responsibilities.

### Enhancement/Protection of the Environment

- *Mitigation measures identified.* Mitigation measures were identified during the NEPA process to provide environmental protection during construction activities.

## Other Issues

### Guidance Needs Identified

- *Standard concurrence process.* Establish a process for moving both headquarters-generated and field-generated EISs, Notices of Availability, Records of Decision, and distribution letters through the headquarters' concurrence process that is understood and agreed to by all involved parties.
- *Writing on legal issues.* NEPA document preparers would benefit from guidance on writing about regulatory requirements.

## 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 1 questionnaire response was received for an EA and 2 responses were received for EISs, 3 out of 3 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the NEPA process allowed DOE, the public, and other agencies to get the information they all needed in a timely manner.
- A respondent who rated the process as "4" stated that use of a core team process within the context of the NEPA process enabled the involved agencies to reach consensus on how to best address technical issues that were impeding completion of the NEPA analysis. This process led to development of a possible approach to achieve the proposed action that had not previously been envisioned or considered. That alternative was identified as the preferred alternative and ultimately selected in the Record of Decision.
- A respondent who rated the process as "3" stated that, as a result of the NEPA process, reconstruction will take place in an existing road corridor to minimize potential impacts.