NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

December 1, 2010; Issue No. 65 Fourth Quarter FY 2010

Celebrating NEPA's Origins and Enduring Value

By: Eric Cohen, Office of NEPA Policy and Compliance

At a celebration of the 40th Anniversary of the National Environmental Policy Act (NEPA), sponsored by the Environmental Law Institute (ELI) and the Partnership Project, the framers of the landmark legislation joined current practitioners in praising NEPA's transformative influence on environmental awareness and citizen participation in Government decisionmaking. Participants described many examples of the effectiveness of NEPA in making Government more responsive.

Featured speakers included Representative John Dingell, who in 1969 (with Senator Henry "Scoop" Jackson) introduced the bill, which was signed by President Richard Nixon on January 1, 1970; Mr. Russell Train, who advised both Senator Jackson and the White House on environmental policy and served as the first Chair of the Council on Environmental Quality (CEQ) from 1970 to 1973; and Mr. Gary Guzy, current Deputy Chair and General Counsel at CEQ.

(continued on page 3)

Mr. Train (left) and Rep. Dingell congratulated each other after recounting NEPA's creation and positive results. Mr. Guzy (center) provided CEQ's forward look. (Photo courtesy of ELI.)

CEQ Issues Categorical Exclusion Guidance

After coordinating with Federal agencies and addressing public comments, the Council on Environmental Quality (CEQ) issued final guidance on *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* on November 23, 2010. The guidance was developed to assist agencies in making their NEPA processes more transparent and efficient. It does not impose new requirements and allows for agency flexibility.

CEQ's recommendations describe how to: establish a categorical exclusion (CX) (including defining and substantiating it); apply a CX (including determining when to prepare documentation and involve the public); and conduct periodic reviews of CXs to assure their continued appropriateness and usefulness.

Appropriate reliance on categorical exclusions provides a reasonable, proportionate, and effective analysis for many proposed actions, helping agencies reduce paperwork and delay.

– CEQ Guidance, Introduction

(continued on page 8)

Inside *LESSONS LEARNED*

Welcome to the 65th quarterly report on lessons learned in the NEPA process. In this issue, we conclude our celebration of the 40th Anniversary of NEPA and look forward in the year ahead to implementing new tools from the Council on Environmental Quality and finalizing our NEPA rulemaking. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

Carol Borgstrom
Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report.* We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2011. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov.

Quarterly Questionnaires Due February 1, 2011

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2011 (October 1 through December 31, 2010) should be submitted by February 1, 2011, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at *nepa.energy.gov* under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at 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. We provide paper copies only on request. Send distribution requests to yardena.mansoor@hq.doe.gov.

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Mark Your Calendars: Upcoming Conference

NAEP 2011 Conference Includes NEPA and Energy Symposia

The National Association of Environmental Professionals (NAEP) 2011 conference will be held April 26–29 in Denver. The theme of this year's conference is *Seventh Generation Thinking: Learning from the Past – Planning for the Future.*

As part of its annual conference, NAEP will hold two concurrent symposia on Tuesday, April 26. The NEPA Symposium will cover a variety of topics within the NEPA field, such as streamlining the contracting process, using geographic information systems and other tools to streamline alternative selection, linking planning and NEPA, document quality initiatives, and fast-tracking projects funded by the American Recovery and Reinvestment Act. The Energy Symposium will cover environmental planning associated with renewable and non-renewable energy siting and operation, including NEPA analysis considerations associated with applying for Federal financing under DOE and U.S. Department of Agriculture Rural Utilities Service programs. Registration and additional information are available at *www.naep.org*.

Celebrating NEPA (continued from page 1)

In introducing the featured speakers, ELI President Leslie Carothers said she was especially pleased to have distinguished speakers involved in the creation of NEPA – Mr. Dingell and Mr. Train – as well as a current leader guiding its future – Mr. Guzy, and to be part of a program to showcase "an often untold story" of NEPA's successes.

Looking back on NEPA's origins, speakers at the 40th Anniversary Celebration noted the "surprising" positive results of the legislation:

- "NEPA's requirement to 'look before you leap' has stopped many terrible mistakes from happening," Mr. Dingell said.
- "No doubt NEPA is one of the most significant acts of legislation of our time," said Mr. Train.

Looking forward, Mr. Guzy noted NEPA's continuing importance, citing President Obama's 2010 proclamation on NEPA and the new guidance tools that CEQ is developing to reinvigorate NEPA (pages 1 and 19).

The 40th Anniversary Celebration, held September 15, 2010, at the U.S. Capitol Visitor Center, also featured a symposium panel that focused on the importance of public participation in the NEPA process (page 4) and the issuance of the publication *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government* (page 13). Photographs in these articles are provided courtesy of ELI.

Turning Initial Opposition to Support

Mr. Train described his early work on environmental issues, beginning in 1968, when he was president of the Conservation Foundation (now called the World Wildlife Fund). He said Senator Jackson and members of his staff asked him to support work on environmental impact assessment as a government process, and the Conservation Foundation agreed. After President Nixon was elected in 1968, Nixon's transition staff asked him to work on a task force on the environment and establish a White House focal point on environmental policy called the Interagency Environmental Council. Mr. Train noted, "It accomplished nothing."

"What we launched in 1970 has become a contribution to the planet not less than to our citizenry," Mr. Train wrote in the foreword to NEPA Success Stories.

As Under Secretary of the Department of the Interior in 1969 and 1970, he said he expressed the White House's opposition to proposed NEPA legislation on the grounds that there already was an Interagency Environmental Council. However, Mr. Train said he subsequently managed to persuade the White House to change its position on NEPA because, he believes, he convinced the White House that NEPA was going to pass in the House of Representatives overwhelmingly. Mr. Train recalled that he received a standing ovation when he testified in favor of NEPA when the legislation was introduced by Mr. Dingell.

How the Decade of the Environment Began

"I didn't realize it's been 40 years!" Mr. Dingell told celebration participants as he began his remarks. "NEPA is a rather peculiar law. It surprised everybody." "NEPA had no real effect until lawsuits were decided," Mr. Dingell explained. "Surprisingly," he said, "business found virtue in NEPA" because they could learn what to expect from Government.

Among other effects of NEPA, Mr. Dingell said "the Army Corps of Engineers became good stewards of the environment. Also, after the Calvert Cliffs case, the Atomic Energy Commission became an open entity. The best thing that is in NEPA is what Senator Jackson added on the Senate side – the requirement to prepare an environmental impact statement [EIS]. Also, the Council on Environmental Quality turned out to be a useful tool."

"NEPA covers every situation that we confront," Rep. Dingell said. "Despite attacks over the years, people realized the tremendous success of the statute."

In describing the statute's creation, Mr. Dingell said he "never thought Nixon would look kindly on NEPA, but it came together for reasons hard to explain. The real author of NEPA was Senator Jackson, who got things done quickly, in unconventional ways." Mr. Dingell noted that the Senate bill focused on the EIS, the proposition that Government had to be an open process, and the recognition resulting from past government agency decisions of the need to "look before you leap." He recalled that the House "received it kindly."

After a few hearings, the bill made it out of a "remarkably bi-partisan committee" and through the House. He further recalled that, after conference with the Senate, the support

(continued on page 7)

Symposium Reflects on NEPA's Successes and Challenges

By: Eric Cohen, Office of NEPA Policy and Compliance

"The purpose of the symposium is . . . to focus on that aspect of NEPA which draws on the collective wisdom and expertise of the American people and agencies of state, local, tribal and Federal governments in making better decisions," said Jim McElfish, Director of the Environmental Law Institute's (ELI's) Sustainable Use of Land Program, at the recent NEPA 40th Anniversary Celebration.

"Democratic wisdom underneath," Mr. McElfish said, quoting the American poet Walt Whitman, is the part of NEPA that really appeals as Government seeks to make better decisions. Mr. McElfish asked symposium panelists how engagement with the public improves decisionmaking, how agency practice has improved the NEPA process, and what are opportunities to "make NEPA work even better than it has these first 40 years."

Ecological Basis Gives NEPA Resiliency

"Has age dampened NEPA's resilience?" asked Professor Sam Kalen. "After 40 years, it is not surprising that some have begun a dialogue about whether NEPA can accommodate modern day issues and concerns," he said. I would like to suggest that NEPA is perhaps one of the most resilient environmental laws, capable of adapting over time to changing circumstances." Professor Kalen said that NEPA's resiliency in large measure reflects Congress embracing the role of ecology in public administration when drafting NEPA.

"NEPA's journey began with ecologists' efforts to convince Congress of the role of ecology in the national agenda," Professor Kalen said. He cited the influence of Eugene Odum's classic text book, *Fundamentals of Ecology*, and recounted how the importance of ecology in public administration was recognized by Lynton Caldwell in his influential Congressional staff memorandum in 1967. Mr. Caldwell, then a consultant to Senator Jackson, is widely recognized as a principal architect of NEPA and author of the action-forcing provision in the statute requiring a "detailed statement."[1]

Ecosystem Services and Adaptive Management

Two ecology concepts have been gaining prominence over the past 20 years and these align with the NEPA process, Professor Kalen said. He explained that the central thesis of the first concept, *ecosystem services*, is that ecological resources serve as natural capital for producing not only valuable commodities such as timber, minerals, and water, but also valuable services, such as water filtration, storm surge mitigation, water recharge, soil stability, and pollination. Identifying, analyzing, and evaluating the benefits that ecosystems provide, and the impact of people on these resources, requires a blend of disciplines, as does the NEPA process, he said.

Professor Kalen described how the second concept, *adaptive management*, is rooted in the ecologist's growing recognition of the dynamic or chaotic state of nature, which results in uncertainty regarding predictions of future environmental impacts. He said that the Council on Environmental Quality (CEQ) recognized the non-static nature of the environment in recent draft guidance emphasizing the importance of monitoring to verify predicted impacts and enable appropriate measures to be taken if the predictions proved to be incorrect. "Adaptive management means there is not a single decisionmaking event, as has often been the case under NEPA," he said.

"NEPA has proved resilient enough to respond to these evolving concepts, and I am confident that NEPA also will respond to other issues such as climate change and other future challenges," he concluded.

The Profound Influence of NEPA

"Alternatives and mitigation have become part of how we think because of NEPA," said Mr. Yost, key author of the CEQ NEPA Regulations and currently Partner, SNR Denton US LLP.

"The current practice of public participation is not as the founders envisioned. The statute requires Federal agencies to obtain the comments of other Federal agencies and

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[1] *Mr. Caldwell, the "Father of NEPA," served as a consultant to the Senate Committee on Interior and Insular Affairs when he prepared* A National Policy for the Environment, *much of which was incorporated into NEPA. See* LLQR, *September 2006, page 1, for additional information on Mr. Caldwell's NEPA contributions.*

40th Anniversary Symposium *(continued from previous page)*

make the comments available to the President and the public. As originally written, however, NEPA documents were to be made publicly available only through the Freedom of Information Act (FOIA). Nothing further was required," he said.

"NEPA has become a public participation model," said Mr. Yost as he described several aspects of public participation under NEPA. He pointed out that public participation as practiced today was not required until CEQ Guidelines, and later CEQ Regulations, were issued.

Mr. Yost noted that the concept of "scoping" was borrowed from the Massachusetts Environmental Policy Act. CEQ Regulations regarding commenting on draft EISs, the "waiting period" after a final EIS, and the public participation provisions in 40 CFR 1506.6 today are the heart of the public participation mechanism. The requirement for records of decision was borrowed from the State of California, including that decisions must be linked to environmental considerations in an EIS. Mr. Yost noted a longstanding tension between public participation and efficiency of the NEPA process, which has resulted in periodic consideration of time limits.

NEPA has furthered not only its stated aim of building environmental considerations into Government decisionmaking. [NEPA has] become an instrument of democracy – building public participation into that very decisionmaking.

– Nicholas Yost
former CEQ General Counsel

Mitigation Successful in Reducing Impacts

In discussing litigation trends, Mr. Yost noted that all "16 or 17 Supreme Court rulings were anti-NEPA." He cited a key Supreme Court finding[1] that NEPA is a procedural law, not a substantive law that dictates outcomes. "Courts of Appeal, however, have unanimously upheld the concept of mitigated findings of no significant impact [FONSIs]; these courts reasoned that NEPA is not intended to generate paperwork, but rather to generate environmental results. Mitigated FONSIs with enforceable provisions are substantive," Mr. Yost stated.

"This finding is significant," he said, because of the large number of environmental assessments (EAs) prepared in comparison with EISs: agencies annually complete about 450 draft and final EISs for about 225 EIS projects, and issue 40,000 EAs. CEQ's early opposition to mitigated FONSIs has been overtaken by the significant environmental results achieved through EAs with mitigation."

On reflection, Mr. Yost noted that NEPA has spawned progeny in state law and has been imitated by similar laws in more than 80 countries. "NEPA has served the Nation well. Happy Birthday!" he concluded.

What Works and What Doesn't Work in Public Participation

"We've come a long way since the original statute was issued, under which members of the public might have needed to file a FOIA request to see an EA," Ms. Bear said. "The most important innovation in NEPA is the requirement to consider alternatives. Alternatives have been and remain the most important vehicle for public involvement."

Ms. Bear cited DOE innovations in public involvement, such as recent posting of categorical exclusion determinations on the Internet. She also recounted stories of members of the public seeking to understand the NEPA process, which inspired her to prepare a basic primer on NEPA, published by CEQ in December 2007. [*A Citizen's Guide to the NEPA: Having Your Voice Heard* is available on the CEQ and DOE NEPA websites (respectively, *NEPA.gov* and *nepa.energy.gov*).]

She issued a plea for future improvements to the NEPA process, including:

- **Public education.** "We need to do a better job on public education, even before we get to a proposed action. Websites are not enough. We need to explain to the public the structure of agencies, not recite the NEPA regulations to them."
- **Open houses.** "Agency field offices should conduct open houses at least annually to explain the NEPA process, rather than trying to explain the process at the time of a hearing on an EIS."

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[1] *From the Vermont Yankee case [*Vermont Yankee Nuclear Power Corp. v. NRDC, *435 U.S. 519, 548-549 (1978)].*

40th Anniversary Symposium (continued from previous page)

- **Appropriate public forums.** "Agencies should be flexible in public forums. For example, coffee house settings may be appropriate in Seattle. An easy way to improve is to understand, starting at the scoping process, how the public wants to be involved. I have experienced situations with demographic groups that hate formal hearings, but the agency refused to consider other formats. On the other hand, I have also experienced situations where a sophisticated audience wanted a formal hearing on the record, but the agency refused."

Dinah Bear summarized several recommendations from the 2008 National Academy of Sciences report, *Public Participation in Environmental Assessment and Decisionmaking*, which concluded that public involvement usually leads to better environmental decisionmaking, and described her observations of their applicability to the NEPA process:

- **Ensure clarity of purpose.** "Clarity is a make-or-break factor for success. Explaining why an agency is undertaking NEPA is especially important for programmatic EISs. Some recent high profile programmatic EISs had no clear purpose. When I asked why the agency was preparing the document and what decisions needed to be made, agency officials responded 'lawyers said to do it' and that they did not know what decisions were to be made."
- **Use the environmental review process to inform decisions.** "Agencies are getting better at using NEPA documents to actually inform their decisions, but there is still some need for improvement."
- **Ensure adequate resources and staff.** "This longstanding problem for agencies has been getting worse." Ms. Bear noted that one agency that recently lost NEPA staff sought environmental information from the public because the agency lacked the resources to obtain the information independently. "It didn't work," she said.
- **Ensure appropriate timing of environmental reviews relative to decisions.** "Setting unrealistic schedules, such as 6 months to complete an EIS, has been done but rarely succeeds."
- **Do not fear the public.** "This continues to be a problem for some agencies."

The Importance of Consideration of Alternatives by the Public

"No U.S. law comes close to NEPA in its honoring of public input and acknowledgement that anyone might have a better idea or information . . . . No U.S. law implements democracy more comprehensively than NEPA," said Ms. O'Brien.

She described the significant positive contributions of NEPA from her perspective at Grand Canyon Trust, a conservation organization advocating for science-based solutions to energy, water, public lands, and Native American community issues throughout the Colorado Plateau.

"NEPA supports American ingenuity," she said. "This results from the consideration of alternatives. Alternatives are at the heart of NEPA," she said. "Through the requirement to consider alternatives in 40 CFR 1502.14, NEPA provides a clear basis for choice, and the ability to achieve, if not consensus, then at least a disinclination to litigate."

Ms. O'Brien said she was pleased to present a beautiful publication, *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government*. Issued jointly by ELI, the Grand Canyon Trust, and the Partnership Project, this publication reflects the effectiveness of NEPA in making Government more responsive (related article, page 13). Noting that there have been numerous NEPA success stories, Ms. O'Brien said that 13 examples were selected for inclusion in the publication, and described several examples (e.g., the Moab Uranium Millsite project) that illustrate the importance of considering alternatives. "Just the process of examining alternatives usually leads to better decisions, including the success stories featured in the publication," Ms. O'Brien said, in response to a comment from the audience stating that NEPA is ineffective because it is "procedural."

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40th Anniversary Symposium *(continued from previous page)*

Good Public Participation and DOE's Recent Efforts

"Good decisionmaking is why NEPA matters," Ms. Borgstrom said, referring to DOE's three examples among the 13 in the *NEPA Success Stories* publication.

Observing that she was the only current Federal employee on the panel, Ms. Borgstrom said that, based on her experience at DOE "since day 1," she has learned the importance of good public participation, which sometimes is a struggle.

In response to a comment from the audience questioning the value of public participation in the NEPA process, Ms. Borgstrom said, "the process itself deselects a lot of bad ideas, so bad ideas never make it to the table because the agency knows that they would be subject to public scrutiny."

Ms. Borgstrom described DOE efforts to foster public participation in the NEPA process, focusing on use of technology. "Knowledge is power," she said, "and proper use of the Internet is part of good government." She said the DOE NEPA Website has evolved into an effective community bulletin board, and is a resource for "all things NEPA at DOE" for NEPA practitioners as well as members of the public.

Ms. Borgstrom described key features of the DOE NEPA Website, including: requirements and guidance (including *LLQR*s), an archive of completed NEPA documents, a public participation calendar, and monthly updates of NEPA document schedules and status reports.

In addition, Ms. Borgstrom described relatively new features reflecting DOE transparency initiatives, including DOE's online posting of: (1) categorical exclusion determinations and an associated central database of the determinations on the DOE NEPA Website (*LLQR*, December 2009, page 1; March 2010, page 1), and (2) draft EAs and an associated email notification system (*LLQR*, September 2010, page 1).

Celebrating NEPA *(continued from page 3)*

of one more Senator was needed. After working on a compromise for about three months, Mr. Dingell said "we wound up with the same bill as the original. The problem became: how to get the bill signed? Nixon signed it on New Year's Day, and said 'this is going to be the decade of the environment,' which turned out to be true."

Economic, Environmental Health Linked to NEPA

Mr. Guzy said he remembered his first meeting with Mr. Dingell and learning of his reverence for the environment. He also recalled reading the September 23, 1969, *Congressional Record* when Mr. Dingell introduced NEPA in the House.

Looking to NEPA's continued importance in the future, Mr. Guzy cited President Obama's proclamation on NEPA (*LLQR*, March 2010, page 7) and pointed to new tools that CEQ is developing to reinvigorate NEPA.

Mr. Guzy said that CEQ is developing new tools to reinvigorate NEPA, including guidance on categorical exclusions (issued), mitigation and monitoring, and greenhouse gas emissions.

"America's economic health is inexorably linked to environmental health, and so it is linked to NEPA," he said. "I look forward to furthering the Administration's efforts to ensure there is a strong scientific and legal basis for our environmental policy; move the nation to greater reliance on clean energy and to increased energy security; combat global warming while growing the green economy; provide increased protection for public health and the environment; and protect and restore our great ecosystems," said Mr. Guzy.

New CEQ Guidance *(continued from page 1)*

Establishing Categorical Exclusions

The CEQ Regulations (40 CFR 1508.4) define a CX as a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.

The guidance advises that the text of a CX should clearly define the eligible category of actions, as well as any physical, temporal, or environmental factors that would constrain its use. The guidance states that Federal agencies must be sure that a proposed category captures an entire action, that is, a standalone action that has independent utility (not a segment or an interdependent part of a larger action). Agencies are encouraged to provide representative examples of the types of activities covered by the text of a CX.

The CEQ Regulations (40 CFR 1508.4) require an agency's CX process to provide for "extraordinary circumstances" in which a normally excluded action may have a significant environmental effect (that is, would require analysis in an EA or EIS). The guidance states that agency NEPA implementing procedures should clearly describe the manner in which an agency considers extraordinary circumstances and the circumstances under which additional analysis in an EA or EIS is warranted.

The guidance presents four sources of information that a Federal agency may use to substantiate its determination that a proposed new or revised CX would not have significant impacts:

- **Previously implemented actions:** Use monitoring or other evaluations of the effects of implemented actions.
- **Impact demonstration projects:** Design a project to demonstrate environmental outcomes of actions that represent the scope, operational context, and the environmental context of a CX the agency is considering establishing.
- **Information from professional staff, expert opinions, and scientific analyses:** Use analysis and knowledge of qualified individuals, whether within or outside the agency.
- **Benchmarking other agencies' experiences:** Use another agency's experience with a comparable CX and the administrative record developed by that agency. May also draw support from experience of other public or private entities.

Applying Categorical Exclusions

"The use of categorical exclusions can reduce paperwork and delay," explains the guidance, "so that EAs or EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects."

Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review.

– CEQ Guidance, Introduction

The guidance discusses when documentation of the use of a CX may be warranted and recommends making CX determinations available to the public. It identifies DOE's 2009 initiative to post CX determinations online as an example of increasing transparency of decisionmaking (*LLQR*, December 2009, page 1).

Reviewing and Revising Categorical Exclusions

CEQ urges agencies to periodically review their CXs to identify potential for additions, revisions, and deletions to maintain a set of CXs that are current and appropriate. The guidance recommends that agencies develop a process and timeline for such periodic review and that those reviews be conducted at least every 7 years, unless the agency has a basis for a different timeframe.

The guidance also emphasizes that a Federal agency should develop and maintain the capacity to review its CXs to ensure that predictions that there will be no significant impacts are borne out in practice. The methods used may parallel those for establishing CXs. The type and extent of monitoring and other supporting information, as well as the responsible entities within an agency, will vary with the nature of the actions and anticipated effects. Overall, CEQ urges agencies to exercise sound judgment about the appropriateness of categorically excluding activities in light of changing conditions and technologies.

The guidance became effective November 23 and will soon be published in the *Federal Register*. It is posted on the CEQ and DOE NEPA websites (respectively, *NEPA.gov* and *nepa.energy.gov*). Questions about this guidance may be addressed to Yardena Mansoor at yardena.mansoor@hq.doe.gov.

NEPA Reviews Support Recovery Act Goals

The status of NEPA compliance for more than a quarter million projects and activities (projects) funded by the American Recovery and Reinvestment Act (Recovery Act) was tracked in the Council on Environmental Quality's (CEQ's) seventh quarterly report to Congress, submitted on November 5, 2010. During the quarter ending September 30, 2010, Federal agencies completed more than 5,600 NEPA reviews for Recovery Act projects. More than 800 (about 14 percent) of these were completed by DOE.

The NEPA work continues to demonstrate environmental stewardship and commitment to the sustainability goals embodied in many of the provisions of [the Recovery Act].

– Council on Environmental Quality
November 5, 2010, Report to Congress

Cumulatively through September 30, 2010, Federal agencies completed almost 180,000 categorical exclusion (CX) determinations and 6,400 EAs,[1] and analyzed more than 820 projects in EISs. Agencies concluded that NEPA is not applicable to about 4,300 other Recovery Act projects. Together, these projects involve obligations of approximately $293 billion funded under Division A of the Recovery Act. In addition, CEQ reported that more than 800 NEPA reviews are underway, including approximately 290 CX determinations, 470 EAs, and 40 EISs.

As of September 30, DOE had completed more than 8,100 NEPA reviews supporting the obligation of more than $33 billion for projects receiving Recovery Act funding, an increase of almost $3.5 billion since June 30, 2010 (*LLQR*, September 2010, page 11). Over the next year, DOE will make additional obligations involving Recovery Act funds.

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 December 31, 2010. Federal agency reports are due to CEQ in January 2011, and CEQ will submit the next report to Congress in February.

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

Recovery Act Makes 2010 a Very Busy Year for NEPA

How many NEPA reviews have you done this year? If you answered more than in previous years, you are not alone. The level of NEPA activity has been exceptionally high within DOE. So far this year, DOE has issued 17 draft and 12 final EISs and completed 69 EAs. Additionally, 68 EISs and 107 EAs are in preparation.

Although the total NEPA workload fell somewhat below the level projected in the 2010 Annual Planning Summaries (APSs) (*LLQR,* March 2010, page 15), most office workloads are near their projections, and the total workload is still much higher than in years past.

Much of this unusually high level of NEPA activity is attributable to Recovery Act projects, with certain DOE offices bearing most of the workload. The National Energy Technology Laboratory (NETL) has been particularly busy preparing EAs for carbon capture and sequestration, electric vehicles and batteries, smart grid technologies, and other energy projects. At the beginning of 2010, NETL projected in its APS that it would prepare about 50 EAs during the next 12 months. With only one month remaining, NETL has completed 35 EAs and has an additional 21 EAs underway – a close match to its forecast.

The Loan Programs Office had forecast a total workload of 16 EAs during 2010 and 17 EISs during 2010 and 2011, but already has greatly exceeded that forecast with 30 EAs and 14 EISs in process or completed during the year. The Office's NEPA Compliance Officer (NCO) Matt McMillen reports: "We expect the workload to increase dramatically in December and January as final applications are submitted for projects that are trying to take advantage of [Recovery Act] credit guarantees and have their NEPA review completed in time to close the loan guarantee process and commence construction by September 30 of next year."

The Golden Field Office has completed an unprecedented number of NEPA reviews this year. Steve Blazek, NCO, said: "With the addition of thousands of Recovery Act projects, we are having an exceptionally busy year." So far this year, Golden has completed 14 EAs; 32 EAs are in preparation, 15 of which are expected to be completed by the end of the year. Efforts to more clearly define project scopes have resulted in categorical exclusions being applied to 24 projects that were earlier counted as likely EAs.

[1] *This corrects the number of completed EAs (previously reported as 9,000) to take into account the use of programmatic EAs for multiple projects that previously were reported as individual EAs for these projects.*

DOE Best Practices Manual Focuses on Public Outreach

By: Michael Wach, Office of NEPA Policy and Compliance

Although conducting public outreach can be a challenge, effective outreach can help inform agency decisionmaking while building community support for projects. DOE's National Energy Technology Laboratory recently issued *Public Outreach and Education for Carbon Storage Projects*, a manual of best practices for conducting public outreach in support of carbon dioxide capture and sequestration (CCS) projects. These practices were developed for a specific type of project but could be adapted to a broad range of planning processes that involve public participation, including the NEPA process.

Experience-based Manual

The manual is based on the experiences of seven Regional Carbon Sequestration Partnerships that were established to develop the infrastructure and knowledge base needed to commercialize CCS technologies. Working with local organizations and citizens, the Partnerships used outreach and education to inform stakeholders about CCS generally, and the pilot-scale field tests that they planned to conduct.

> ***[P]ublic outreach should be an integrated component of project management. Conducting effective public outreach will not necessarily ensure project success, but underestimating its importance can contribute to delays, increased costs, and community ill will.***
>
> *– DOE Best Practices Manual*

The manual distills its public outreach approach into 10 best practices that share a key goal of opening and maintaining lines of communication with the public, thereby fostering trust and enabling public input at all stages of project implementation. The manual presents several case studies to illustrate the challenges of conducting effective public outreach, and describes how these challenges were met in a variety of CCS projects.

For example, the Midwest Geological Sequestration Consortium wanted a better way to show the public what carbon dioxide (CO_2) sequestration actually looked like. They prepared demonstration kits with core samples of sandstone (the carbon storage unit), shale (the caprock seal), and a water dropper to show how one layer could absorb CO_2, while another layer could keep the CO_2 from escaping. Similar kits demonstrated how enhanced oil recovery works. These kits provided learning opportunities for a broad range of audiences and stimulated discussion with members of the public.

Public tours create opportunities for informal discussions with the technical team.

The most important lesson learned by the Partnerships, according to the manual, is that public outreach and education should be fully integrated with the overall management of a project: outreach begins at the onset of the project, continues through the close of the project, and involves each individual on the project team. The effectiveness of the public outreach process should be assessed regularly and outreach techniques adjusted as necessary. The manual encourages a comprehensive approach to public outreach and provides detailed advice on how to build a strong outreach team.

The team should include individuals who are involved in and knowledgeable about the technical details of the project as well as those who have backgrounds in

Best Practices for Public Outreach

- Integrate public outreach with project management
- Establish a strong outreach team
- Identify key stakeholders
- Conduct and apply social characterization
- Develop an outreach strategy and communication plan
- Develop key messages
- Develop appropriate outreach materials tailored to the audiences
- Actively oversee and manage the outreach program throughout the life of the project
- Monitor the performance of the outreach program and changes in public perceptions and concerns
- Be flexible – refine the public outreach program as warranted

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DOE Best Practices Manual *(continued from previous page)*

Public outreach can include demonstrations to provide interactive learning opportunities.

communication, education, and community relations, preferably with some knowledge of the local community. In producing communication materials, the manual suggests producing visually appealing materials that directly relate to stakeholder concerns, while incorporating credible information and expert opinion.

Stakeholder Involvement Is Crucial

The manual provides several concise summaries of key information and steps needed to implement an outreach strategy. The manual identifies important stakeholders – officials, regulators, business interests, landowners and neighbors, civic groups, environmental groups, senior citizens, religious groups, and educators – and describes the concerns of each group in regards to pilot-scale CCS studies.

Gathering and evaluating information to obtain an accurate portrait of stakeholder groups, their perceptions, and concerns (called "social characterization") is a crucial step in the public outreach process. The manual also outlines major outreach goals, such as identifying and informing stakeholders, preparing for media coverage and public hearings, building public awareness and support, responding to concerns, and strengthening stakeholder relationships, and lists activities suitable for attaining each goal. It also provides readers with a detailed timeline for implementing a comprehensive public outreach process.

The manual is available on the National Energy Technology Laboratory website. For additional DOE guidance on public participation in the NEPA context, see *Effective Public Participation under the National Environmental Policy Act*, Second Edition, August 1998, on the DOE NEPA Website under Guidance, then Selected Guidance Tools.

DOE Hosts Workshop with Cooperating Agencies for Hanford Tank Closure and Waste Management EIS

DOE's Office of River Protection convened a 3-day workshop in late October with its cooperating agencies on the *Tank Closure and Waste Management EIS for the Hanford Site, Richland, Washington (DOE/EIS-0391)*. This complex EIS includes the scope of three earlier EIS efforts and will inform DOE decisionmaking on the management of radioactive waste at the Hanford Site (*LLQR*, December 2009, page 4).

The U.S. Environmental Protection Agency (EPA) and the State of Washington's Department of Ecology (Ecology) are cooperating agencies. Staff from EPA Region X, EPA Headquarters, Ecology, DOE's Office of River Protection, DOE's Office of Environmental Management, DOE's Office of NEPA Policy and Compliance, and the EIS-preparation contractor reviewed preliminary results of new EIS sensitivity analyses that DOE is preparing in response to Draft EIS comments from both cooperating agencies. In addition, DOE briefed participants on a number of preliminary responses to Draft EIS comments related to the workshop's primary technical issues.

Attendees from Washington State and the Washington, DC, area participated either in person, via televideo, or using teleconference capability and a data exchange website (which allowed attendees participating by phone to view presentation slides "live" on their personal computer). "Hosting a workshop for the agencies involved is a good practice to promote understanding of important technical issues and outcomes," said Carrie Moeller, DOE NEPA Office.

EPA and CEQ Host Environmental Justice Meeting; White House Forum Planned

By: Denise Freeman, Office of NEPA Policy and Compliance

For the first time in more than a decade, U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson and the Council on Environmental Quality (CEQ) Chair Nancy Sutley reconvened the Interagency Working Group on Environmental Justice (Working Group) in a meeting held at the White House on September 22, 2010. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* signed by President Clinton in 1994, established the 17-member Working Group. EPA and CEQ have recently invited several additional agencies and offices to participate.

The Working Group assists Federal agencies with identifying specific projects where Federal collaboration can support the development of healthy and sustainable communities, provide opportunities for green jobs training in communities in need, and promote a clean energy economy.

From September 22, 2010, EPA News Release:

As the chair of the Council on Environmental Quality, I am committed to ensuring that environmental justice isn't just an afterthought – it's an integral part of our mission.

— Nancy Sutley, CEQ Chair

Revitalizing this workgroup creates an important chance to work together on environmental justice issues that have held back the prosperity of overburdened communities for far too long.

— Lisa P. Jackson, EPA Administrator

Five cabinet members participated in the Working Group meeting, and DOE was represented by Dr. Kristina M. Johnson, then Under Secretary of Energy. DOE Environmental Justice (EJ) Program Manager Melinda Downing participated in the meeting and stated, "the outcome of the meeting was a resounding commitment to EJ by all participants."

Dr. Johnson presented three active DOE projects for interagency collaboration candidates: (1) Annual State of Environmental Justice in America Conference (provides for the exchange of new ideas and approaches to EJ among Federal, state, and local governments and EJ communities); (2) Community Leaders Institute (provides economic development, job, and health disparities training; technical assistance; and grant writing assistance); and (3) Minority Alternative Energy Consortium (a collaboration of nonprofit organizations, Federal agencies, and private sector corporations to increase procurement opportunities with DOE for Historically Black Colleges and Universities and other Minority Serving Institutions).

The immediate next steps for the Working Group include:

- holding monthly meetings (including assigning senior agency officials to coordinate EJ activities)
- organizing regional "Listening Sessions" in 2011 to better understand the issues facing disadvantaged groups; hold follow-up Working Group Principals Meetings in April and September 2011
- developing or updating Federal agency EJ strategies by September 2011.

In addition, the Working Group is planning a White House Forum for EJ leaders and stakeholders on December 15, 2010. The objective of the Forum is to develop working relationships and effective collaboration among EJ organizations; Federal, state, and local governments; and public and private partnerships, and to promote and establish easier access to Federal and interagency EJ programs. Participants will include community-based/grassroots environmental/EJ organizations, faith-based organizations, nongovernmental organizations (smart growth/equitable development, green jobs/economy, policy institutes, think tanks, etc.); Federal, state, and local government agencies, and tribal communities.

Implications for NEPA Reviews

In view of the heightened focus on EJ generally, further attention to EJ issues may be warranted at all stages of a NEPA review, from scoping through document preparation to decisionmaking. Also, NEPA practitioners should be aware that EPA, as the Federal lead agency for the Working Group, considers EJ issues in reviewing and commenting on draft and final EISs. EPA's *Final Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews* can be found on the DOE NEPA Website.

For more information about DOE's EJ Program, contact Melinda Downing, DOE EJ Program Manager, at melinda.downing@hq.doe.gov. Comments and questions about EJ issues in the NEPA process may be addressed to Denise Freeman at denise.freeman@hq.doe.gov.

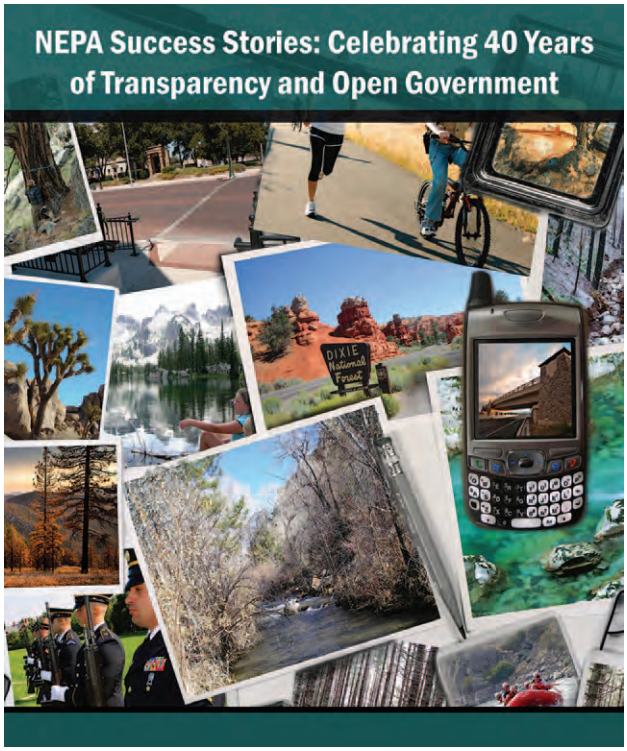
"Quiet" Success Stories Illustrate NEPA's Value

"It is not often that one has the opportunity to review an experiment in governance with the perspective of 40 years of experience." Thus begins the foreword, by Russell Train, first Chair of the Council on Environmental Quality, to a recent report entitled *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government.* The report, prepared by the Environmental Law Institute (ELI), the Grand Canyon Trust, and the Partnership Project, uses the occasion of NEPA's 40th anniversary to examine the "revolutionary change in governmental decisionmaking" brought about by NEPA. It describes 13 examples, three of which are DOE's, of how NEPA helps improve Government decisionmaking through public input and collaboration with other agencies.

Mr. Train noted that by requiring Government officials to listen to the public and seek comment before acting, "NEPA democratized decisionmaking." These "quiet" NEPA success stories "fundamentally examine how public involvement and careful consideration of alternatives has produced better outcomes," he wrote.

The report highlights four important benefits of the NEPA process:

- *NEPA recognizes that when the experts work together, public and Federal government collaboration results in better decisions.* Public input often provides perspectives not considered by Federal officials. The public may present alternatives, data, and environmental issues that a Federal agency would not have otherwise identified or studied.
- *Public input really matters.* Federal officials have an obligation under NEPA not simply to solicit or collect public input, but to consider it. Most importantly, this information can change the course of an agency's decisionmaking; Federal agencies have selected alternatives that were identified by members of the public. In addition, members of the public have identified errors in the underlying data or analyses that have affected the decisions made.
- *NEPA requires agencies to explain themselves.* The NEPA regulations lay out the decisionmaking process that Federal agencies must follow. Federal officials have a duty to explain their decisions and respond to all substantive comments, either noting how they were resolved in the analysis or why no changes were warranted.
- *Courts play an important role.* The courts are available to members of the public to address their concerns with an agency's NEPA process. The cases that are litigated are important, but the knowledge that litigation is an option helps ensure that Federal agencies complete a comprehensive, substantive review to avoid that path.



The NEPA process derives its power and usefulness from the way in which it provides other agencies, tribes, local governments, independent scientists, companies, and citizens an opportunity to actively participate in and contribute to these considerations.

— NEPA Success Stories

The following are brief summaries of the 13 case studies as presented in *NEPA Success Stories*.

DOE NEPA Success Stories

Robust Consideration of Alternatives Protects Drinking Water

The case of the Moab Uranium Millsite shows how a thorough NEPA review of reasonable alternatives and their environmental consequences – including those identified by members of the public – leads to better decisionmaking. The site contained almost 16 million tons of uranium mill tailings piled within the floodplain of the Colorado River, which serves as a primary drinking water supply for millions of people. The case summary notes that after issuing a single-alternative EA in 1986, the U.S. Nuclear Regulatory Commission (NRC) issued a finding of no significant impact in 1993 on the mill owner's plan to cap the tailings pile in place.

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NEPA Success Stories *(continued from previous page)*

The local county government protested this decision, wishing an alternate location to be considered, and Senator Orrin Hatch asked the NRC to prepare a full EIS on disposal options. The NRC believed that it could evaluate only alternatives proposed by its licensee, and so its EIS continued to examine only one action alternative. The EIS also did not address ground and surface water contamination because NRC determined there was no risk of contamination. Several Federal agencies challenged this assessment, presenting evidence of existing contamination. After the mill owner filed for bankruptcy, Congress assigned cleanup responsibility to DOE.

DOE held public scoping meetings and issued a draft EIS that explored the alternative of moving the tailings to a safer place. The Department received comments from diverse stakeholders, including bipartisan coalitions of Governors and Members of Congress; Federal, state, and local agencies; conservation groups; and members of the public. As a result of these comments, DOE gave greater consideration to the alternative of offsite disposal based on the risks of water contamination and to remediation alternatives, and the 2005 record of decision selected the preferred alternative from the final EIS, removing and relocating the tailings.

Interagency Comments Spur Mitigation Planning

DOE's experience preparing the site-wide EIS for Los Alamos National Laboratory (LANL) illustrates the valuable insight to be gained through interagency comments as part of the NEPA process. The draft EIS issued by DOE in 1998 did not identify wildfire as a plausible risk in its accident scenarios. Citing a then-recent U.S. Forest Service report about the threat of wildfire, commenters from the U.S. Department of the Interior and the Forest Service urged DOE to consider wildfire in its analysis. As a result, the final EIS included an extensive wildfire as an accident scenario. DOE committed to develop a wildfire mitigation plan by the end of 1999 and immediately implemented its recommendations to reduce potential fire impacts. Less than a year later, the Cerro Grande Fire broke out, burning 7,650 acres of the LANL site. DOE relied on the final EIS to respond to public concerns during the fire and to plan post-fire recovery. As noted by Eric Cohen of the DOE Office of NEPA Policy and Compliance in his summary of the case, "Without the interagency comments DOE received during the draft EIS stage, DOE may have not had the foresight to consider and prepare for the possibility of a fire, resulting in more severe damage to LANL and the surrounding area."

DOE responded to public and other agency concerns about the potential for the Moab tailings pile (center) to contaminate the Colorado River.

Considering Purpose and Need Results in Better Decisions

The emphasis in the NEPA process on identifying the purpose and need for agency action supports the development of appropriate alternatives, as illustrated by DOE's analysis of alternative technologies for tritium production. In 1989, DOE began preparing an EIS to evaluate alternative reactor technologies and locations to produce tritium to support the U.S. nuclear weapons stockpile. However, by 1992, the Cold War had ended and tritium requirements were expected to drop by as much as 75 percent. This provided a new opportunity to consider alternatives previously rejected because they would not have supplied sufficient tritium for Cold War planning levels, wrote Brian Costner, DOE NEPA Office, in the case summary.

Admiral James Watkins, then Secretary of Energy, explained at the time that the analyses performed for the tritium production reactor EIS helped him avoid making a bad decision. "[T]hank God for NEPA," said Secretary Watkins,"because there were so many pressures to make a selection for a technology that might have been forced upon us and that would have been wrong for the country."

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Other Agency NEPA Success Stories

Expansion of an Army National Guard Readiness Center – Army National Guard Bureau

Issue: Provide new office space and parking for 1,200 relocated staff while addressing traffic concerns

NEPA Process: In response to an EA for new office and parking facilities, cooperating agencies, local government, community leaders, and the public identified significant concerns with regard to traffic congestion and transportation management. The Army National Guard Bureau held public meetings to better understand the concerns. Public comment helped the Army understand potential adverse effects and develop solutions to mitigate them.

NEPA Lesson: The successful implementation of mitigation measures can further NEPA's goal of protecting the environment and can also improve the overall project.

A Highway, a Wetland, and a Divided Community – Federal Highway Administration

Issue: Reconcile the need to build a highway in wetlands with the desire to expand and protect those wetlands

NEPA Process: In both the draft EIS and supplemental draft EIS for a highway project, all action alternatives crossed through wetlands. The subsequent permitting process determined that information was needed on alternatives that did not cross wetlands. Pro-highway and pro-wetland groups formed a professionally facilitated collaborative to consider alternatives and encourage development of an integrated land use and transportation solution that would be broadly supported by stakeholders. The Federal Highway Administration selected a "no-build" option, meaning that the highway would not be built through wetlands.

NEPA Lesson: NEPA's requirement to consider alternatives can serve as the key to breaking a stalemate among stakeholders.

Preserving a Historic Brick Highway – Texas Department of Transportation

Issue: Provide for roadway safety and preserve a historic highway

NEPA Process: The Texas Department of Transportation was concerned that a brick roadway had deteriorated and become unsafe, while local residents wanted to retain the historic highway. The Department took care to involve locals in the scoping process, resulting in a productive discussion of alternatives. The public continued to be involved after the selection of the preferred alternative all the way through construction.

NEPA Lesson: The NEPA process can bridge distance between government and the local community, resulting in greater trust.

Joshua Tree National Park – Department of the Navy

Issue: Allow training flights while avoiding disturbance to national park visitors and staff

NEPA Process: An EIS for basing a new type of aircraft at a naval air station gave the National Park Service opportunity to comment on low flights over a national park. However, the Navy's record of decision did not address these concerns. Staff from the National Park Service and the Navy prepared an EA to analyze locations for flight paths and developed a solution allowing for low flights in less sensitive areas of the park.

NEPA Lesson: The NEPA process can provide an avenue for developing consensus.

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NEPA Success Stories (continued from previous page)

Siskiyou National Forest Watershed Protection Project – Forest Service

Issue: Reduce wildfire risks while protecting water quality

NEPA Process: The Forest Service planned to improve protection from wildfire by removing large trees in a national forest and selling the timber. Community members objected, citing water quality concerns, and formed a diverse group to oppose the project. The group participated in the EIS public comment process and developed an alternative proposal to thin only smaller trees and leave the large fire-resistant trees.

NEPA Lesson: The NEPA process provides an opportunity for the public to propose improvements to an agency proposal.

Rethinking Routes and Roads on a National Forest – Forest Service

Issue: Balance environmental protection with recreational uses of a national forest

NEPA Process: The Forest Service is required to establish what routes are open to different types of vehicles for each of its national forests. The debate can be intense between competing desires for environmental protection and economic development related to the recreational use of vehicles in the forest. The Service facilitated public input to the EIS by providing detailed data about the existing routes, their current uses, and related environmental concerns. The scoping period was extended by a year to allow the Service to hold in-depth discussions with commentors who had proposed individual routes. Although the Service ultimately decided to close a significant number of existing routes, its decision was broadly accepted.

NEPA Lesson: A flexible NEPA process gives the public an opportunity to be a part of, and more readily accept, the final decision.

Hells Canyon Comprehensive Management Plan – Forest Service

Issue: Revision of a comprehensive land use management plan

NEPA Process: The Forest Service intended to revise a land use management plan. Before the end of the scoping process, a group comprising tribal, state, and local government representatives; environmental organizations; and outside consultants developed an alternative proposal for consideration. The first draft EIS did not include this alternative, but the Service later added it to the second draft EIS. The Service convened a multi-stakeholder subcommittee of an existing advisory committee that provided input, and the final EIS included many features of the outside alternative.

NEPA Lesson: The NEPA process provides an opportunity to take a fresh look at current practices when revisions are being considered.

The Point Project, Klamath National Forest – Forest Service

Issue: Public opposition to a logging plan restarts NEPA process

NEPA Process: A court ruling halted a Forest Service plan to log and sell old-growth trees and replace them with young fiber plantations, a common practice in the past but one with potentially great environmental impacts. The Service developed a new plan to thin small-diameter trees and to use controlled burning to reduce wildfire risk. During the NEPA process for the new plan, the Service worked more closely with concerned local groups to address their concerns. The resulting plan both preserved natural forest processes and protected the community from wildfire.

NEPA Lesson: The NEPA process facilitates the identification of innovative solutions that are sensitive to site and community needs.

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Changing a Highway to a Parkway, and a Road to a Multi-Modal Transportation System – Federal Highway Administration and Army Corps of Engineers

Issue: Highway project subject to numerous lawsuits

NEPA Process: A draft EIS was issued to address the issuance of permits for a portion of a state-proposed highway. Several citizen groups and state and Federal agencies, including the Environmental Protection Agency and the Fish and Wildlife Service, criticized the draft EIS on multiple grounds. Although the final EIS made changes to address these concerns, a coalition of environmental and transportation advocacy groups filed suit and won. As a result, the parties worked together to combine the best aspects of the state's proposal and the public's ideas while still fulfilling the state's intended purpose.

NEPA Lesson: Although agencies should strive to avoid litigation under NEPA, it can result in an improved outcome by allowing the parties to better appreciate the merits of each other's positions.

West Alsea Landscape Management Project – Forest Service

Issue: Planning a habitat restoration project

NEPA Process: Nearly a year before the formal beginning of the scoping process, the Forest Service began reaching out to a local organization whose work was concentrated on the watershed area encompassed within the project. The Service held field tours and meetings both to provide information to and solicit input from the group and others. The Service incorporated these suggestions and concerns into the proposed action before scoping and before the draft EA was published for comment. This early involvement of the public led the Service to consider alternatives to the proposed action and improvements to the design criteria that it might not have considered otherwise and resulted in a final EA that enjoyed broad public support.

NEPA Lesson: Interactions between agencies and stakeholders before beginning the NEPA process can improve the success and efficiency of the subsequent process.

Download the Report

The report is available as a free download at the ELI website at *www.eli.org*. (The story of NEPA review for the Cerro Grande Fire at the LANL site is told on page 1 of the June and September 2000 issues of *LLQR*; the Moab EIS is covered in June 2005 on page 8 and in September 2005 on page 10; the tritium decision, in 1992, predates *LLQR*.)

Categorical Exclusion Determinations: A Year in Review

By: Jeffery Dorman, Office of NEPA Policy and Compliance

It's been more than a year since the effective date (November 2, 2009) of DOE's policy to document and post online its categorical exclusion (CX) determinations under Appendix B of its NEPA implementing regulations (10 CFR Part 1021). Since that time, all CX determinations posted online have been collected into a single database for public review. The CX database facilitates analysis of data about categorically excluded actions, such as where the actions are being taken and the frequency with which CX categories are invoked. DOE is the only agency to make CX determinations available in a centralized online database, and the only agency with a NEPA presence on *Data.gov* (*LLQR*, March 2010, page 1).

To date, more than 4,400 CX determinations, issued by 49 DOE Program and Field Offices, are in the database. The National Energy Technology Laboratory and the Office of Energy Efficiency and Renewable Energy (primarily the Golden Field Office) issued approximately 75 percent of these CXs determinations. In the past year, DOE issued CX determinations at a steady pace of about 80 determinations per week.

More than half of these CX determinations were for Recovery Act projects. The number of CX determinations going forward likely will decrease as Recovery Act projects are implemented.

Questions and comments may be addressed to Jeffrey Dorman at jeffrey.dorman@hq.doe.gov.

Most Commonly Invoked CXs

(ordered by frequency; Nov. 2009 – Nov. 2010)

B5.1 Actions to conserve energy

A9 Information gathering, data analysis, document preparation, and dissemination, but not including site characterization or environmental monitoring

B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects

A11 Technical advice and planning assistance to international, national,state, and local organizations

B2.5 Safety and environmental improvements of a facility, replacement/upgrade of facility components

DOE NEPA Rulemaking Update

DOE is now in the final stages of interagency coordination, through the Office of Management and Budget, of a draft Notice of Proposed Rulemaking that focuses on revising the CXs listed in 10 CFR Part 1021, Subpart D, Appendices A and B. The Offices of NEPA Policy and Compliance and the Assistant General Counsel for Environment, while developing the proposal to revise DOE's CXs, were especially mindful of the policy and recommendations emphasized in the guidance that CEQ was developing at the same time (page 1).

CEQ Issues Greenhouse Gas Accounting Guidance

The Council on Environmental Quality (CEQ) issued *Final Guidance on Federal Greenhouse Gas Accounting and Reporting*, as required by Executive Order (E.O.) 13514 (*Federal Leadership in Environmental, Energy, and Economic Performance*) in October 2010. The Guidance establishes government-wide requirements for calculating and reporting greenhouse gas (GHG) emissions from Federal agency operations, and is accompanied by a Technical Support Document providing detailed information on Federal inventory requirements and calculation methodologies. These documents may be relevant in preparing DOE NEPA documents, and are available on CEQ's website.

Intended for E.O. 13514 Reporting

Federal agencies must use this Guidance to comply with E.O. 13514, which requires agencies to measure, report, and reduce their GHG emissions from direct and indirect activities. Among other things, agencies must establish and report to CEQ and the Office of Management and Budget by January 31, 2011, a comprehensive inventory of absolute GHG emissions, including Scope 1, Scope 2, and specified Scope 3 emissions for fiscal year 2010, and to report annually thereafter. The Guidance states, however, that accounting methods for Scope 3 emissions are evolving and requires agency reporting of only certain categories of Scope 3 emissions for which reliable accounting methods are available (i.e., Federal employee air and ground travel, commuting, contracted solid waste and wastewater disposal, and transmission and distribution losses associated with purchased electricity). Annual reports will be used to measure progress in achieving GHG percentage reduction goals that agencies must establish under E.O. 13514 (related article, page 20).

Noting that some agency facilities may be subject to GHG emissions reporting under state, regional, or international protocols, the Guidance states "[F]or purposes of Federal GHG reporting and accounting established by E.O. 13514, this Guidance takes precedence over all other established GHG accounting protocols and standards."

Accordingly, NEPA practitioners should use the Guidance in developing GHG analyses in NEPA documents for proposed actions at DOE facilities subject to the E.O. 13514 reporting requirements. The Guidance may be particularly applicable to site-wide EISs (*LLQR*, June 2010, page 16), and also useful in preparing other NEPA documents for proposals not subject to reporting under E.O. 13514.

GHG Emission Terms under E.O. 13514

- Scope 1 refers to direct emissions primarily from generation of electricity, heat, cooling, or steam, or from mobile sources as well as fugitive emissions.
- Scope 2 refers to indirect emissions from consumption of purchased electricity, steam, and heat.
- Scope 3 refers to all other indirect emissions not included in Scope 2, which include emissions that are attributable to an agency but released outside its organizational boundary.

DOE Supported Guidance Development

CEQ based its guidance on DOE's Federal Energy Management Program (FEMP) recommended Federal GHG reporting and accounting procedures. As directed by E.O. 13514, FEMP developed its procedures in coordination with the Environmental Protection Agency, the Department of Defense, the General Services Administration, the Department of the Interior, the Department of Commerce, and other agencies. NEPA practitioners may be interested in the public comments on the Draft Guidance, issued on July 12, 2010, which are available online.

Future CEQ Guidance Anticipated

CEQ indicated in its *Federal Register* notice of availability of the Final Guidance (75 FR 63823; October 18, 2010) that, over time, additional requirements, methodologies, and procedures will be included in revisions to the guidance. To that end, in October 2010, CEQ asked DOE's FEMP to reconvene an interagency Federal workgroup and to plan efforts to develop additional accounting methods for certain types of Scope 3 GHG emissions, including emissions associated with leased assets, employee travel and commuting, and vendor, contractor and supply chain activities. CEQ also asked FEMP for, among other things, recommendations on accounting for emissions from biological sequestration (including consideration of land use, agriculture, and biogenic fuel sources), and for conventional and renewable energy generation by third parties on Federal property.

Additional information, including online training courses for Federal agency GHG reporting under E.O. 13514, is available on FEMP's website. Further information also is available on the FedCenter GHG Inventory Reporting website. *LLQR* will continue to report on future development of the CEQ Guidance and its applicability to the NEPA process.

DOE Strategic Sustainability Performance Plan: Analyze Sustainability Impacts in Facility EAs and EISs

The Department of Energy's first Strategic Sustainability Performance Plan, *Discovering Sustainable Solutions to Power and Secure America's Future*, has been issued by DOE's Senior Sustainability Officer, Deputy Secretary Daniel Poneman. The DOE Plan responds to Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, which includes direction for Federal agencies to achieve targeted reductions in greenhouse gas (GHG) emissions. The Executive Order includes a NEPA provision: that EISs and EAs for proposed new or expanded facilities identify and analyze impacts associated with energy usage and alternative energy sources.

Per the Executive Order, DOE established GHG emission reduction goals for fiscal year (FY) 2020 relative to a 2008 baseline. DOE committed to reducing Scope 1 and 2 emissions by 28 percent from the FY 2008 baseline. DOE set the goal of reducing Scope 3 emissions by 13 percent. (See text box, page 19.)

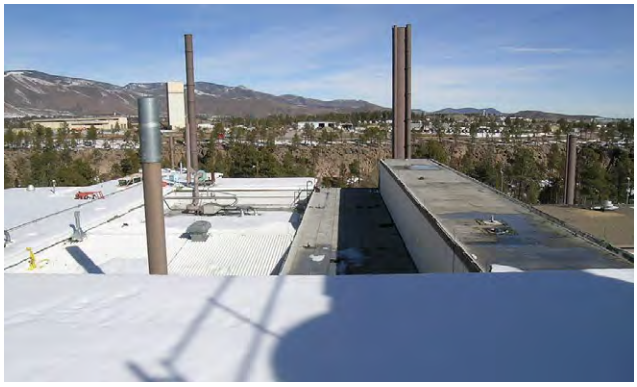
DOE Strategies for Sustainability

DOE's strategies for attaining these targeted reductions in GHG emissions also produce improvements in related sustainability goals, particularly those involving energy.

For Scope 1 and 2 emissions, DOE intends to meet its targets by:

- using carbon intensity[1] to prioritize investment in efficiency measures and infrastructure improvements
- reducing the use of petroleum-based fuels
- deploying best practices for operations and maintenance
- metering
- upgrading real property (e.g., buildings) to meet high-performance sustainable building principles
- reducing fugitive GHG emissions other than carbon dioxide, specifically sulfur hexafluoride.

DOE will also identify approaches that could be implemented in the future to meet the FY 2020 goals. Examples include assessing the feasibility of using DOE facilities as technology innovation sites for carbon capture and sequestration or beneficial reuse, and exploring low-carbon, next-generation energy technologies such as fuel cells, cogeneration, biomass, and other renewable technologies, including emerging technologies.



This "cool" white roof, which promotes sustainability, has been painted white and still holds snow, while the original black section has warmed up enough to melt the snow. (More at DOE's Cool Roof Resources guidelines.)

To reduce its Scope 3 emissions, DOE intends to:

- expand the use of teleconferencing, video conferencing, and web-based meetings to reduce employee air travel
- reduce transmission and distribution losses through on-site power generation
- reduce waste generation by increasing sustainable purchasing and recycling.

NEPA Guidance To Address Sustainability

The Plan outlines approaches and goals to guide the targeted emissions reductions. One such approach focuses on regional and local planning. Noting that DOE sites operate in a variety of environmental settings and social environments, such as close proximity to military bases, universities, and stand-alone facilities, the Plan cites the NEPA process as an opportunity for public involvement, through comment on proposed DOE actions. A sustainability goal identified in the Plan is to **"update Departmental policy and guidance to ensure that all EISs and EAs for proposed new or expanded Federal facilities identify and analyze impacts associated with energy usage and alternative energy sources."**

The Plan is available at *www.energy.gov*. See *LLQR*, December 2009, page 9, for additional information on Executive Order 13514 and June 2010, page 16, for DOE's initial steps in response. For additional information on the the Plan and DOE's activities, contact Jennifer MacDonald, Acting Director, Sustainability Performance Office, at jennifer.macdonald@hq.doe.gov.

[1] *Carbon intensity reflects the amount of GHGs emitted by a facility or activity. Different GHGs have different global warming potential; these are all converted to units of CO_2e (carbon dioxide equivalent). Carbon intensity may refer, for example, to CO_2e emitted per unit of energy used, or per unit of production, or per square foot.*

Green Government Best Practices Promoted at Inaugural Symposium

"A year ago today, President Obama signed Executive Order [E.O.] 13514 to ask the Federal Government to look at itself, to push, and leverage our assets, our purchasing power, and our large and dedicated workforce to help build the clean energy economy of the future, to cut pollution . . . and to save taxpayers money in the process," said Nancy Sutley, Council on Environmental Quality (CEQ) Chair, launching the first annual GreenGov Symposium. The E.O. acknowledges that in our day-to-day operations alone the Federal government has tremendous power to influence the direction of this country towards a 21st century sustainable future, but we also have an obligation to lead by example, she emphasized.

The Symposium, sponsored by CEQ and hosted by the George Washington University, in Washington, DC, on October 5–7, 2010, brought together leaders from Federal, state, and local governments, nonprofit organizations, academia, and the private sector to focus on the goals set forth by E.O. 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, and identify opportunities for greening the Federal government. (Related articles, pages 19 and 20.)

At the Symposium, Secretary of Energy Steven Chu announced, on behalf of the President, plans to install solar panels and a solar hot water heater on the roof of the White House Residence. These two solar installations are part of a DOE demonstration project – a "symbol of America's commitment to a clean energy future," said Secretary Chu. In his presentation, "The Energy Opportunity," Secretary Chu highlighted DOE's Federal Energy Management Program (FEMP) as a key resource for the entire Federal government that promotes cost-effective energy management and investment practices, including the use of DOE's Energy Saving Performance Contracts. The Contracts, which can be used for any federally-owned facility worldwide, help agencies meet energy efficiency, renewable energy, water conservation, and emissions reduction goals by streamlining contract funding for energy management, and accomplishing energy savings projects without up-front capital costs and without special congressional appropriations projects. (For more information, see FEMP's website at *www1.eere.energy.gov/femp*.)

Secretary Chu also described a number of "smart" building technologies – one example involved computer-controlled building operations that use sensors and controls to allow for real-time optimization of building performance. It is all about "letting the intelligence of the building tune itself," said Secretary Chu. "Computer-aided design and operation will lead to enhanced comfort, energy savings, and cost savings," he said. Giving the audience his "plug" for white roofs, Secretary Chu admitted, "I personally think they are very beautiful," explaining that if we took all urban roofs and pavement and made them white or "cool," it would be equivalent to eliminating carbon emissions from all of the world's automobiles for 11 years! In closing, Secretary Chu noted that "science is predicting that we are altering the destiny of the Earth," and encouraged Symposium participants to be leaders and use available resources to help achieve a clean energy future.

"The scale of the Federal government means we can have an enormous impact," noted Ms. Sutley. She challenged participants to use the Symposium – to "turn a vision into practice" – to teach, learn, and form partnerships that spark ideas, allowing the Federal government to lead. For more information about GreenGov, visit *www.whitehouse.gov/greengov*. GreenGov Symposium videos and speaker presentations for select sessions are available online at *www.planetforward.org* (search "GreenGov") and *www.fedcenter.gov*, respectively.

How Can You Start Consulting Nature?

"Biomimicry is learning from and emulating life's genius," said Janine Benyus, a natural sciences writer and president of the Biomimicry Institute, in her keynote address at the GreenGov Symposium. Sustainability needs to go beyond a checklist – to a culture, she said. Ms. Benyus offered a number of examples of how scientists are learning from nature, using the "biological lens to generate new ideas" – to invent things that are more efficient and sustainable. For example, she described thin-film solar films inspired by the structure and design of a leaf, mussel-inspired plywood glue as an alternative to urea-formaldehyde glue, and use of honeybee algorithms to improve data server allocation. Visit the Biomimicry Institute's website (*www.biomimicryinstitute.org*) for additional information (and examples) on biomimicry.

Scientists are mimicking scalloped edges of humpback whales to reduce drag and improve wind turbine design.

Survey Asked for Tribal Communication Preferences

In the summer of 2010, a team from the Office of Energy Efficiency and Renewable Energy surveyed representatives of tribal nations that participate in DOE's Tribal Energy Program to identify their preferred methods of communication when collaborating with Federal agencies. The Program promotes tribal energy sufficiency and economic growth on tribal lands by providing financial and technical assistance for renewable energy resources, and provides education and training to support sustainable energy projects.

The study team surveyed more than 240 tribal nations that had received Program funding. The responses reflect a range of preferences that can help DOE tailor communications approaches. For example, most of the tribal nation contacts in Alaska prefer to be contacted via fax and letters due to low Internet connectivity, while most in the southwestern region of the United States prefer email.

In addition to identifying their communication preferences, tribal responders recommended further improvements:

- develop a DOE collaboration protocol
- establish a working group to track and improve communication between tribal nations and DOE
- expand the communication survey to all Federally- and state-recognized tribal nations
- provide training to the tribal members on use of FedConnect (*www.fedconnect.net*), a website for those seeking government contracts, grants, and assistance funding.

The Office of Energy Efficiency and Renewable Energy intends to further improve communication practices with tribal nations to promote inclusivity and responsiveness, including in NEPA activities, reports Othalene Lawrence, NEPA Compliance Officer.

The findings were prepared by Tiara Cunningham, a junior at Spelman College in Atlanta, and a Summer 2010 participant in DOE's Minority Educational Institution Student Partnership Program. Information is available from othalene.lawrence@hq.doe.gov; many related resources are available through DOE's Tribal Energy Program website, *http://apps1.eere.energy.gov/tribalenergy*.

e-NEPA: NNSA Unveils Online NEPA Reading Room

The National Nuclear Security Administration (NNSA) has established an online reading room for past and current NEPA reviews. The NNSA Office of Public Affairs developed this website to inform the public on current NNSA NEPA actions and documents. "We're very glad to have this site up and running with support from NNSA NEPA Compliance Officer Mary Martin, Ralph Barr of the Office of NEPA Policy and Compliance, and the NNSA NEPA Document Managers. We feel that it will be a great new tool for the public to become aware of the major NEPA actions going on at NNSA," said Jennifer Wagner, Deputy Director of Public Affairs for NNSA.

What are the specifics?

The website is very easy to navigate. The home screen has projects listed under individual site offices. If you'd like information on a particular NEPA project, just click on the link to that project. A new window will appear on your computer screen with information about the general proposal and NEPA action that is followed by a more detailed discussion about the project. The detailed discussion is followed by a list of links to relevant documents (such as notices of intent, fact sheets, and posters that have been displayed at public scoping meetings). At the bottom of the screen, there is contact information for the NEPA Compliance Officer and NEPA Document Manager.

On the right side of the home screen are related links (e.g., to DOE NEPA information, terminology, and press releases) and recent headlines for NNSA activities. There is also information on NNSA's history, career opportunities with NNSA, and general contact information. In addition, on the top right of all screens on the website, there are links to NNSA sites listed on Facebook, Flickr, RSS Feeds, Twitter, and YouTube.

Two EISs are currently listed – *Surplus Plutonium Disposition Supplemental Environmental Impact Statement*, and *Supplemental Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project*. Additional NEPA actions will be added.

How do I access the site?

The URL for this site is *nnsa.energy.gov/nepa*.

Plain Writing Act of 2010 Promotes Clear Communication

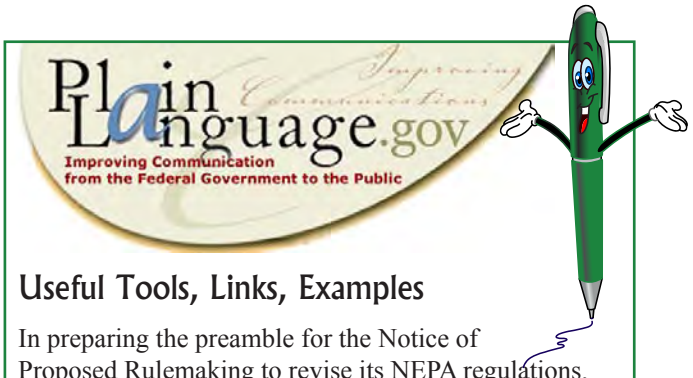
A new Plain Writing Act (Public Law 111-274, October 13, 2010) is intended to "improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use." While the Act does not explicitly apply to EAs and EISs, the Council on Environmental Quality Regulations (40 CFR 1502.8) express a similar goal: "Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them."

The term "plain writing" means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.

— Plain Writing Act of 2010

Beginning not later than one year after the date of enactment of this Act, each agency shall use plain writing in every "covered document" that the agency issues or substantially revises. A covered document is one that is necessary for obtaining any Federal government benefit or service or filing taxes; provides information about any Federal benefit or service; or explains to the public how to comply with a requirement that the Federal government administers or enforces. It may be printed or electronic, and may be a letter, publication, form, notice, or instruction. (The Act states that it does not apply to regulations.)

The Act assigns responsibilities to Federal agencies to prepare to implement plain writing requirements.



Useful Tools, Links, Examples

In preparing the preamble for the Notice of Proposed Rulemaking to revise its NEPA regulations, DOE consulted the resources of the **P**lain **L**anguage **A**ction and **I**nformation **N**etwork website, such as the linked *Federal Register* webpage "Making Regulations Readable." Two recommendations are to use questions and answers to structure text, and to use personal pronouns – "we" for the agency and "you" for the other party, such as a commentor, member of the public, or entity that must comply with the regulation.

Requirements include designating one or more senior officials to oversee implementation, training employees, and creating a plain writing section of the agency's website that is accessible from the homepage.

The Office of Management and Budget (OMB) is charged with developing implementation guidance not later than 6 months after the enactment of the Plain Writing Act. (OMB issued preliminary guidance for the Act on November 22, 2010.) Until the guidance is issued, agencies should follow the writing guidelines developed by the Plain Language Action and Information Network (*www.plainlanguage.gov*) or existing agency guidance that is consistent with the Act. The Act also requires each agency to report (on its website) on its compliance with plain writing requirements. LL

Collaboration and Public Outreach Featured at DOE Environmental Attorneys' Training

Many environmental professionals participated in DOE's annual Environmental Attorneys' Training, October 19–20, 2010, at DOE Headquarters in Washington, DC, and online via audio and video links. The training was jointly sponsored by DOE's Headquarters, Field, and contractor environmental attorneys and the Office of Health, Safety and Security. Highlights of particular interest to NEPA practitioners are presented below; additional information on speakers, presentations, and other materials is available at *www.ch.doe.gov/eatc-2010*.

Environmental Conflict Resolution through Collaboration

The context of an environmental conflict must be understood to assess the potential for environmental conflict resolution (ECR) to address the dispute, emphasized Suzanne Orenstein, Director of the new Washington, DC, office of the U.S. Institute for Environmental Conflict Resolution (*www.ecr.gov*). She described the collaborative nature of ECR as a decisionmaking approach, which goes beyond simply providing information to and seeking advice from members of the public, but instead provides a neutral forum where an agency and members of the public work together towards a common end and share in decisions. Two-way communication is key to increasing the chances for the success of collaboration, Ms. Orenstein said.

For ECR to be successful, the parties must believe:

- they can achieve better outcomes by working together
- there is sufficient time, resources and attention to support full participation by all parties involved
- available alternatives can meet multiple needs
- the parties are likely to have continuing relations.

Ms. Orenstein provided a "scorecard" with these and other elements that she used in leading participants in ECR exercises.

Transparency and Public Participation in the NEPA Process

Noting the importance of Field and Contractor counsel and other professionals at the frontlines of DOE actions, and the critical role that environmental issues play in DOE's success, Scott Blake Harris, General Counsel, emphasized that DOE's continued success rests with open communication among Headquarters and Field staffs and a commitment to process changes that enhance the transparency of DOE decisionmaking. Mr. Harris highlighted important strides that the Office of the General Counsel has made to improve transparency and efficiency in the DOE NEPA process – among others, posting DOE categorical exclusions (CXs) and draft EAs online; providing a searchable CX database for public use; ongoing work to update DOE CXs to reflect new renewable energy technology; establishing an "open door" policy for DOE staff and external interests from any side of an environmental issue; and building on environmental work done by states. We are interested in increased efficiency, Mr. Harris said, not in cutting out essential steps, and added that he is always looking for good ideas.

Carol Borgstrom, Director, DOE Office of NEPA Policy and Compliance, reflected on the statement in the Proclamation issued by President Obama on the 40th Anniversary of NEPA (*LLQR*, March 2010, page 7) that the American Recovery and Reinvestment Act "reaffirmed NEPA's role . . . in ensuring transparency, accountability, and public involvement in our Government."

Referring to a provision of the DOE NEPA Regulations (10 CFR 1021.101) that DOE act according to the letter and spirit of NEPA, she offered her five principles to meet the spirit of NEPA:

- full disclosure, with public input and scrutiny
- rigorous, objective evaluation of all reasonable alternatives as the heart of NEPA
- assessment of environmental impacts commensurate with significance
- consideration of mitigation to reduce and avoid impacts
- explanation of options weighed in making decisions.

Ms. Borgstrom emphasized that NEPA practice supports open, collaborative decisionmaking. LL

Training Opportunities

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

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

  Facilitation Fundamentals*
  Washington, DC: January 26-27
  $500

  Collaboration Skills*
  Washington, DC: February 15-17
  $750

  Introduction to Managing Environmental Conflict
  Denver, CO: March 1-2
  $500

  Advanced Multi-Party Negotiation of Environmental Disputes*
  Washington, DC: March 22-24
  $750

  Negotiating Environmental Solutions
  Denver, CO: April 19-20
  $500

- Environmental Protection Agency
  Office of Federal Activities
  312-886-2910
  westlake.kenneth@epa.gov
  www.netionline.com

  NEPA and Clean Air Act, Section 309 Review
  Chicago, IL: December 14-16 (FED103)
  No Fee

- Continuing Legal Education
  800-873-7130
  www.cle.com

  NEPA: Climate Change, Renewable Energy, and More
  San Francisco, CA: January 20-21
  $795 ($695 Federal employees)
  Los Angeles, CA: February 10-11
  $795 ($695 Federal employees)

- International Association for Public Participation
  800-644-4273
  training@iap2.org
  www.iap2.org

  Planning for Effective Public Participation
  Milwaukee, WI: January 11-12
  Orlando, FL: February 28-March 1
  St. Louis, MO: March 14-15
  $700

  Communications for Effective Public Participation
  Milwaukee, WI: January 13
  Orlando, FL: March 2
  St. Louis, MO: March 16
  $350

  Techniques for Effective Public Participation
  Milwaukee, WI: February 9-10
  Orlando, FL: March 3-4
  St. Louis, MO: March 17-18
  $700

- Nicholas School of the Environment and Earth Sciences, Duke University
  919-613-8082
  del@nicholas.duke.edu
  www.nicholas.duke.edu/del

  Current and Emerging Issues in NEPA *and* Climate Change under NEPA
  Durham, NC: February 14-18
  $1,665 until 1/18/11

  Implementation of NEPA
  Durham, NC: March 21-25
  $925

  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.

(continued on next page)

** Hosted by the DOE Office of Conflict Prevention and Resolution.*

Training Opportunities

(continued from previous page)

- The Shipley Group
  888-270-2157 or 801-447-5977
  shipley@shipleygroup.com
  www.shipleygroup.com

  NEPA Climate Change Analysis and Documentation
  San Francisco, CA: January 27-28
  $745 (GSA contract: $655) until 12/15/10

  NEPA Cumulative Effects Analysis and Documentation *and* NEPA Climate Change Analysis and Documentation
  New Orleans, LA: February 8-11
  $1,145 (GSA contract: $1,055) until 1/30/11

  Applying the NEPA Process *and* Writing Effective NEPA Documents
  Atlanta, GA: February 15-18
  $1,145 (GSA contract: $1,055) until 1/4/11
  Dallas/Fort Worth, TX: April 19-22
  $1,145 (GSA contract: $1,055) until 3/8/11

  Core Principles: Telling the NEPA Story, Keeping Documents Brief, and Meeting Legal Requirements
  San Francisco, CA: February 23-25
  $945 (GSA contract: $855) until 1/12/11
  Washington, DC: March 22-24
  $945 (GSA contract: $855) until 2/8/11

  Clear Writing for NEPA Specialists
  Missoula, MT: March 1-3
  $945 (GSA contract: $855) until 1/19/11

  Applying the NEPA Process: Emphasis on Native American Issues
  Albuquerque, NM: March 8-10
  $945 (GSA contract: $855) until 1/26/11

  Applying the NEPA Process *and* Reviewing NEPA Documents
  Denver, CO: March 14-18
  $1,345 (GSA contract: $1,255) until 1/3/11

  Overview of the NEPA Process
  San Diego, CA: April 5
  $345 (GSA contract: $255) until 2/22/11
  Orlando, FL: April 26
  $345 (GSA contract: $255) until 3/15/11

  NEPA Certificate Program
  Requires successful completion of eight courses offered by The Shipley Group.
  $5,450
  Contact: NEPA Certificate Program, Utah State University; 435-797-0922
  judy.kurtzman@usu.edu
  www.cnr.usu.edu/htm/students/grad-degrees/nepa

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

  Effective NEPA Writing
  Phoenix, AZ: March 7-8
  $695

Customized NEPA Training

- Environmental Impact Training
  512-963-1962
  info@eiatraining.com
  www.eiatraining.com
- Environmental Planning Strategies, Inc.
  563-332-6870
  jleeeps@mchsi.com
  www.jlee-eps.com/workshops.php
- Environmental Training & Consulting International, Inc.
  503-274-1790
  info@envirotrain.com
  www.envirotrain.com
- ICF International
  703-934-3603 or 800-532-4783
  info@icfi.com
  www.icfi.com/newsroom/educational-opportunities.asp
- International Institute for Indigenous Resource Management
  303-733-0481
  iiirm@iiirm.org
  www.iiirm.org

EAs and EISs Completed July 1 to September 30, 2010

EAs[1]

Berkeley Site Office/Office of Science
DOE/EA-1634 (8/4/10)
The Lawrence Berkeley National Laboratory Seismic Life-Safety, Modernization and Replacement of General Purpose Buildings, Phase 2B, Berkeley and Oakland, California
Cost: $263,000
Time: 23 months

Chicago Site Office/Office of Science
DOE/EA-1684 (9/16/10)
Construction and Operation of the Facility for Rare Isotope Beams, Michigan State University, East Lansing, Michigan
Cost: $450,000
Time: 14 months

Golden Field Office/ Office of Energy Efficiency and Renewable Energy
DOE/EA-1761* (9/23/10)
Clemson University Wind Turbine Drivetrain Test Facility, North Charleston, South Carolina
Cost: $85,000
Time: 10 months

DOE/EA-1762* (9/30/10)
Wellford Landfill Methane and Greenhouse Gas to Energy Project, Spartanburg County, South Carolina
Cost: $130,000
Time: 6 months

DOE/EA-1777* (8/4/10)
Financial Assistance to Ohio for Lincoln Electric's Wind Energy Project, Euclid, Cuyahoga County, Ohio
Cost: $125,000
Time: 5 months

DOE/EA-1788* (8/4/10)
Sapphire Energy Inc.'s Integrated Algal Biorefinery (IABR) Facility in Columbus, New Mexico
DOE adopted this EA on 8/4/10; therefore cost and time data are not applicable. [Department of Agriculture, the lead agency, issued a finding of no significant impact on 9/21/09.]

DOE/EA-1790* (9/30/10)
Construction and Operation of a Heterogeneous Feed Biorefinery, Enerkem Corporation, Pontotoc County, Mississippi
Cost: $100,000
Time: 4 months

DOE/EA-1832 (9/30/10)
Rainer Biogas LLC Community Anaerobic Manure Digester, Enumclaw, King County, Washington
DOE adopted this EA on 9/30/10; therefore, cost and time data are not applicable. [Department of Agriculture, the lead agency, issued a finding of no significant impact on 9/1/10.]

Idaho Operations Office/ Office of Nuclear Energy, Science, and Technology
DOE/EA-1772* (8/4/10)
Multipurpose Haul Road within the Idaho National Laboratory Site, Butte County, Idaho
Cost: $238,000
Time: 5 months

Los Alamos Site Office/ National Nuclear Security Administration
DOE/EA-1736 (8/24/10)
Expansion of the Sanitary Effluent Reclamation Facility and Environmental Restoration of Reach S-2 of Sandia Canyon at Los Alamos National Laboratory, Los Alamos, New Mexico
Cost: $175,000
Time: 7 months

National Energy and Technology Laboratory/ Office of Electricity Delivery and Energy Reliability
DOE/EA-1754* (9/17/10)
Public Service Company of New Mexico, Photovoltaic Plus Battery for Simultaneous Voltage Smoothing and Peak Shifting Project, Bernalillo County, New Mexico
Cost: $26,000
Time: 6 months

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[1] EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

** Recovery Act project*

EAs and EISs Completed July 1 to September 30, 2010

(continued from previous page)

DOE/EA-1756* (9/8/10)
Battelle Memorial Institute's Smart Grid Project at the City of Ellensburg's Renewable Energy Park, Kittitas County, Washington
Cost: $26,000
Time: 6 months

National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy
DOE/EA-1715* (9/22/10)
Chemetall Foote Corporation, Electric Drive Vehicle Battery and Component Manufacturing Initiative, Kings Mountain, North Carolina and Silver Peak, Nevada
Cost: $48,000
Time: 10 months

DOE/EA-1716* (9/13/10)
Honeywell International, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Massac County, Illinois
Cost: $41,000
Time: 10 months

DOE/EA-1740* (7/23/10)
Thermal Energy Corporation Combined Heat and Power Project, Houston, Texas
Cost: $27,000
Time: 6 months

DOE/EA-1742* (8/26/10)
Rhode Island LFG Genco, LLC Combined Cycle Electricity Generation Plant Fueled by Landfill Gas, Johnston, Rhode Island
Cost: $27,000
Time: 7 months

DOE/EA-1743* (7/13/10)
Air Products and Chemicals, Inc., Waste Energy Project at the AK Steel Corporation Middletown Works, Middletown, Ohio
Cost: $27,000
Time: 6 months

DOE/EA-1745* (8/9/10)
Blast Furnace Gas Flare Capture Project at the ArcelorMittal USA, Inc., Indiana Harbor Steel Mill, East Chicago, Indiana
Cost: $27,000
Time: 7 months

DOE/EA-1760* (8/26/10)
FutureFuel Chemical Company Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Batesville, Arkansas
Cost: $37,000
Time: 5 months

DOE/EA-1767* (9/13/10)
Virginia State Energy Program's Cephas C&D Wastes Biomass Project, Richmond, Virginia
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 6 months

DOE/EA-1773* (9/13/10)
INEOS New Planet BioEnergy, LLC, Commercial Scale Integrated Demonstration Bioenergy Center, Vero Beach, Florida
Cost: $150,000
Time: 6 months

DOE/EA-1775* (9/7/10)
Texas A&M University Combined Heat and Power Project, College Station, Texas
Cost: $27,000
Time: 5 months

Pantex Site Office/ National Nuclear Security Administration
DOE/EA-1696 (7/30/10)
Pantex Renewable Energy Project, Amarillo, Texas
Cost: $257,000
Time: 11 months
[Department of the Interior's Fish and Wildlife Service was a cooperating agency.]

Sandia Site Office/ National Nuclear Security Administration
DOE/EA-1729 (8/25/10, FONSI 8/27/10)
Removal Actions at the Technical Area III Classified Waste Landfill, Sandia National Laboratories, Albuquerque, New Mexico
Cost: $32,000
Time: 9 months

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** Recovery Act project*

EAs and EISs Completed July 1 to September 30, 2010

(continued from previous page)

Western Area Power Administration
DOE/EA-1539** (6/15/10)
North Area Right-of-Way Maintenance, California
[For Official Use Only; EA not publicly available]
Finding of No Significant Impact (available online)
Cost: $352,000
Time: 9 months

DOE/EA-1685** (6/15/10)
Parker-Planet Tap 69-kV Transmission Line Rebuild, Upgrade and Right-of-Way Action, San Bernardino County, California and Mohave and La Paz Counties, Arizona
Cost: $147,000
Time: 11 months
[Department of the Interior's Bureau of Land Management and Fish and Wildlife Service were cooperating agencies.]

DOE/EA-1698 (7/28/10, FONSI 7/29/10)
Baldwin Wind Energy Center, Burleigh County, Baldwin, North Dakota
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 10 months

EISs

Office of Energy Efficiency and Renewable Energy/ Golden Field Office
DOE/EIS-0407* (75 FR 51458, 8/20/10)
(EPA Rating: EC-2)
Abengoa Biorefinery Project near Hugoton, Stevens County, Kansas
Cost: $2,550,000
Time: 24 months
[Department of Agriculture was a cooperating agency.]

Western Area Power Administration
DOE/EIS-0418 (75 FR 44951, 7/30/10)
(EPA Rating: EC-2)
South Dakota Prairie Winds Project, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota
The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 15 months
[Co-lead: Department of Agriculture, Rural Utilities Service. Department of the Interior's Fish and Wildlife Service was a cooperating 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*.)

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 23 EAs for which cost data were applicable was $85,000; the average cost was $122,000.
- Cumulatively, for the 12 months that ended September 30, 2010, the median cost for the preparation of 53 EAs for which cost data were applicable was $45,000; the average was $91,000.
- For this quarter, the median completion time for 25 EAs for which time data were applicable was 6 months; the average was 8 months.
- Cumulatively, for the 12 months that ended September 30, 2010, the median completion time for 63 EAs for which time data were applicable was 6 months; the average was 9 months.

EIS Cost and Completion Times

- For this quarter, the cost for completion of one EIS for which cost data were applicable was $2.5 million.
- Cumulatively, for the 12 months that ended September 30, 2010, the median cost for the preparation of 4 EISs for which cost data were applicable was $2.0 million; the average cost was $8.8 million.
- For this quarter, the completion times for 2 EISs were 15 and 24 months.
- Cumulatively, for the 12 months that ended September 30, 2010, the median completion time for 7 EIS for which time data were applicable was 24 months; the average was 37 months.

Recent EIS-Related Milestones September 1 to November 30, 2010

Notices of Intent

Bonneville Power Administration
DOE/EIS-0457
Albany-Eugene Transmission Line Rebuild Project, Lane and Linn Counties, Oregon
October 2010 (75 FR 66750, 10/29/10)

Office of Loan Programs
DOE/EIS-0458
Loan Guarantee to Support Construction of Topaz Solar Farm in San Luis Obispo County, California
October 2010 (75 FR 65306, 10/25/10)

National Nuclear Security Administration
DOE/EIS-0350-S1
Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico
October 2010 (75 FR 60745, 10/1/10; extension of scoping period, 75 FR 67711, 11/3/10)

Western Area Power Administration
DOE/EIS-0461
Hyde County Wind Energy Center Project,
Hyde and Buffalo Counties, South Dakota
November 2010 (75 FR 74040, 11/30/10)

DOE/EIS-0462
Crowned Ridge Wind Energy Center Project,
Grant and Codington Counties, South Dakota
November 2010 (75 FR 74042, 11/30/10)

Draft EISs

Office of Electricity Delivery and Energy Reliability
DOE/EIS-0414
Energia Sierra Juarez U.S. Transmission Line Project, San Diego County, California
September 2010 (75 FR 57018, 9/17/10)

Western Area Power Administration
DOE/EIS-0439
Solar Reserve LLC Rice Valley Solar Energy Project,
Riverside County, California
October 2010 (75 FR 65320, 10/22/10)
[Co-lead: Department of the Interior's Bureau of Land Management]

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** Recovery Act project*
***Not previously reported in LLQR*

Recent EIS-Related Milestones September 1 to November 30, 2010

(continued from previous page)

Final EISs

Office of Energy Efficiency and Renewable Energy
DOE/EIS-0456
Cushman Hydroelectric Project,
Mason County, Washington
October 2010 (75 FR 62386, 10/8/10)
[DOE adopted this FEIS from the Federal Energy Regulatory Commission.]

Office of Loan Programs
DOE/EIS-0416*
California Desert Conservation Area Plan Amendment/Final Environmental Impact Statement for Ivanpah Solar Electric Generating System,
San Bernardino County, California
October 2010 (75 FR 65320, 10/22/10)
[DOE adopted this FEIS from the Department of the Interior's Bureau of Land Management.]

Records of Decision

Office of Energy Efficiency and Renewable Energy
DOE/EIS-0456
Cushman Hydroelectric Project, Mason County, Washington
November 2010 (75 FR 73059, 11/29/10)

Office of Loan Programs
DOE/EIS-0443*
Project Financing for Southwest Intertie Project-South, Clark, Lincoln, Nye, and White Pine Counties, Nevada
October 2010 (75 FR 65615, 10/26/10)

Western Area Power Administration
DOE/EIS-0398
Delta-Mendota Canal/California Aqueduct Intertie,
Central Valley Project, California
September 2010 (75 FR 56094, 9/15/10)

DOE/EIS-0418
South Dakota Prairie Winds Project, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota
September 2010 (75 FR 60102, 9/29/10)

Revised Record of Decision

Bonneville Power Administration
DOE/EIS-0183
Bonneville Power Administration's Business Plan Environmental Impact Statement
October 2010 (75 FR 64296, 10/19/10)

Supplement Analyses

Bonneville Power Administration

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

DOE/EIS-0285-SA-432
Coyote Business Park FEIS - Roundup - LaGrande Wood Pole Replacement, Umatilla County, Oregon
(Decision: No further NEPA review required)
September 2010

DOE/EIS-0285-SA-433
Vegetation Management along the Tanner Tap to Snoqualmie-Lake Tradition No.1, 115-kV Transmission Line Corridor, King County, Washington
(Decision: No further NEPA review required)
October 2010

DOE/EIS-0285-SA-434
Vegetation Management along the Satsop-Aberdeen No.2 230-kV and Satsop Park-Cosmopolis No.1, 115-kV Transmission Line Corridor Right-of-Way,
Grays Harbor County, Washington
(Decision: No further NEPA review required)
October 2010

DOE/EIS-0285-SA-435
Vegetation Management along the Marion-Alvey No.1 500-kV, and the Marion-Lane No.1, 500-kV Transmission Line Corridor Right-of-Way,
Linn and Lane Counties, Oregon
(Decision: No further NEPA review required)
October 2010

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Recent EIS-Related Milestones September 1 to November 30, 2010

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DOE/EIS-0285-SA-436
Vegetation Management along the Chief Joseph-Monroe No.1, 500-kV, Transmission Line Corridor Right-of-Way, Chelan, King, and Snohomish Counties, Washington
(Decision: No further NEPA review required)
October 2010

DOE/EIS-0285-SA-437
Vegetation Management and Access Road Maintenance Activities along the Entire Right-of-Way Corridors and Associated Access Roads of the Tacoma-Raver No.1 500-kV Transmission Line, King and Pierce Counties, Washington
(Decision: No further NEPA review required)
October 2010

Office of Environmental Management

Waste Isolation Pilot Plant
(DOE/EIS-0026)

DOE/EIS-0026-SA-08
Packaging and Handling of Remote-Handled Transuranic Waste in Shielded Containers, Carlsbad, New Mexico
(Decision: No further NEPA review required)
September 2010

DOE-wide Contracting Update

Monique Hunter now serves as the Contact Specialist supporting the DOE-wide NEPA contracts. Ms. Hunter joined DOE 2 years ago as a Budget Analyst and last June graduated from the National Nuclear Security Administration's Future Leaders Program. Information and resources for potential users of these contracts are available on the DOE NEPA Website. For additional information, contact Ms. Hunter at monique.hunter@nnsa.doe.gov or 202-586-7651.

On behalf of the DOE NEPA Community, we would like to thank Aneesah Vaughn, the most recent DOE-wide NEPA Contracts Administrator, for her contributions in administering the contracts. She now works for the National Aeronautics and Space Administration in Houston. We wish her well in her future endeavors. LL

** Recovery Act project*

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports.

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

Scoping

What Worked

- *Early stakeholder input.* Early public meetings with tribes and other stakeholders allowed many of their perspectives to be incorporated, minimizing the amount of substantive change between the draft and the final EA.
- *Productive scoping meeting.* Public scoping was conducted for this EA due to project visibility and community interest, which turned out to be productive.
- *Focus on purpose and need.* After extensive discussion on the purpose and need, the alternatives fell into place.
- *Scoping meetings.* Public scoping meetings were effective and enabled us to gather useful information.

What Didn't Work

- *Late scoping change.* Modifying project scope mid-way through the NEPA process was problematic.
- *Early site selection.* A frequent problem is that project advocates determine their desired location early, which inhibits the selection and evaluation of site alternatives.

Data Collection/Analysis

What Worked

- *Using available data.* Data gathering time for the draft EA was lessened by using pre-existing information to identify controls to minimize the impacts to sage grouse populations. A sage grouse survey in affected areas was then conducted so that the results could be included in the final EA.
- *Proven approach.* Impact analysis/methodology was consistent with previous approaches.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Comment resolution meetings.* Holding meetings with all DOE and contractor reviewers allowed timely completion of responses to public comments.
- *Management support.* Management support facilitated the timely completion of the EA.
- *Conference calls and management involvement.* Weekly conference calls and the support of both the DOE project director and the applicant's project manager facilitated completion of the EA process.
- *Action items.* The weekly review of actions associated with the schedule helped maintain everyone's awareness of what tasks needed to be completed.
- *Project proponent.* Having a very active project advocate kept pressure on the contractor to produce documents in a professional and timely matter.
- *Coordination.* Constant communication and coordination among the NEPA Document Manager, the project advocate, and the document preparation contractor helped maintain the document schedule.
- *Pre-existing environmental information.* Creative use of existing data kept the project on schedule.
- *Resource organization support.* Support for the project from the cultural and ecological resources organizations was very helpful. Their proactive approach alleviated schedule constraints and enabled timely compliance with NEPA requirements.
- *Document management experience.* The NEPA Document Manager had a great deal of experience in project management. The dual function of having NEPA and project management experience was very beneficial to timely EA completion.

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What Worked and Didn't Work

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- *Weekly calls.* Weekly calls were helpful in keeping the EIS on schedule.
- *Teamwork.* Team commitment to completing the EIS and constant communication among all team members facilitated the timely completion of the project.

Factors that Inhibited Timely Completion of Documents

- *High comment volume.* The volume of public comments received inhibited timely completion of the EA process.
- *Extensive revisions.* EA completion ended up on the critical path due to the number of revisions needed.
- *Document control.* Difficulty in maintaining document control while tracking and resolving comments during revisions of the EA affected the schedule.
- *Coordinating environmental review and construction schedules.* The ecological operational controls needed and the project's construction schedule required close coordination with contracting and technical requirements to meet the established milestones.
- *Excessive communication.* A very active project proponent called too often and pressured DOE staff to quickly finish the EA, inhibiting its timely completion.
- *Staff resources.* Limited legal and NEPA specialists were available due to multiple projects going on at the same time, delaying the EA somewhat.
- *Staff conflict.* Staff disagreement about the need to include two actions in the EA and staff personnel issues were circumstances that caused schedule delays.
- *Vacation schedules.* Vacation schedules of the concurring parties made timely completion of the EA difficult.

Teamwork

Factors that Facilitated Effective Teamwork

- *Utilization of past data.* Inclusion of information from the ecological impacts reference report helped assure that the EA presented the actual analysis as opposed to a summary.
- *Single point of contact.* Maintaining a single management and operating contractor point of contact with extensive NEPA experience, and who reported directly to its upper management on document progress, significantly improved this project.
- *Project manager oversight.* The NEPA Document Manager became the main point of contact for the early phases of the EA.
- *Weekly conference calls.* Weekly conference calls and active participation of management benefitted the EA team.
- *Team equality.* All team members, DOE and contractors, were treated as valuable contributors.
- *Communication.* Regular communication and feedback facilitated the needed teamwork.

Factors that Inhibited Effective Teamwork

- *Territorial team members.* "Territory" issues inhibited effective teamwork in the preparation of the EA.

Process

Successful Aspects of the Public Participation Process

- *Public acceptance.* The public participation process proceeded normally and no issues were identified.
- *Stakeholders outreach.* The availability of a proposed finding of no significant impact and meetings with local and state government officials greatly increased the public's confidence in both DOE and the project.
- *Public approval.* Public reaction to outreach efforts was very positive.
- *Early stakeholder review and media exposure.* In addition to normal EA public notices, affected neighboring land-owners were invited at the onset of the project to review the project scope and discuss their concerns. Also helpful were several stories on local TV news broadcasts about the project.
- *Meeting notification.* The public was complimentary of the public process, including notification of meetings.
- *Additional scoping meetings.* A major change in the scope of the project occurred and a second EA scoping meeting was held, which led to more public comment and participation.

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What Worked and Didn't Work

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Unsuccessful Aspects of the Public Participation Process

- *Meeting not predictive of comments written later.* A public information session was held during the draft EA public review period. Although no comments were received during the public meeting, many written comments on the draft EA were later submitted.
- *Minor public reaction.* The public provided very little input or reaction to the EA process.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Successful planning.* The NEPA process was an important routine aspect of the program office's planning effort, and it ensured the prevention of significant impacts.
- *Environmental expertise.* NEPA staff provided immediate feedback on several environmental aspects of the project during the planning meetings, resulting in informed decisions. The decision on project siting was directly related to the NEPA process due to floodplain and Conservation Reserve Program land issues.
- *State decisionmaking.* The NEPA process informed State decisionmaking.
- *Broad scope.* Numerous attempts by the management team to modify the scope of the project could have caused a need to prepare a new or a second EA. Fortunately, the final project scope is broad enough that no additional NEPA coverage should be required.

What Didn't Work

- *Existing regulations.* Existing regulations mandate the allowance of certain projects limiting the influence of NEPA in decisionmaking.

Enhancement/Protection of the Environment

- *Project relocated.* A better location for the project was selected as a result of the NEPA process.
- *Controls identified.* Normal operational controls were clearly identified as a part of the NEPA process to allow for protection of environmental resources.
- *Environmental focus.* The NEPA process kept project attention on the environmental aspects that will require continued attention and active management.
- *Potential impacts averted.* The environment was protected by preventing impacts to floodplain areas.
- *Mitigation measures employed.* The environment was protected as mitigation measures were devised and implemented that may not have otherwise been created without the EIS process.
- *Mitigation measure agreement.* The environment was protected as a consequence of the NEPA process due mainly to mitigation measures that the project advocate agreed to through the Biological Assessment process, which were incorporated into the finding of no significant impact.

Other Issues

Guidance Needs Identified

- *Environmental critiques.* Guidance on the preparation of environmental critiques/synopses (per 10 CFR 1021.216) would be useful.
- *Differing agency viewpoints.* Guidance on how to meld two agencies' viewpoints on significance would be useful.

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What Worked and Didn't Work

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Effectiveness of the NEPA Process

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

For this quarter, in which 6 questionnaire responses were received for EAs and 1 response was received for an EIS, 5 respondents rated the NEPA process "effective."

- A respondent who rated the process as "5" stated that the applicant's state regulators were interested in, involved with, and highly complimentary of the EA process.
- A respondent who rated the process as "4" stated that the NEPA process was useful in clearly identifying the operational controls needed for environmental preservation. The impacts analysis clearly identified the environmentally preferable alternative, which was chosen by management.
- A respondent who rated the process as "4" stated that the EA process was influential in the decisions made regarding the siting of the project.
- A respondent who rated the process as "4" stated that the applicant was open to using NEPA to help identify measures that would protect the environment.
- A respondent who rated the process as "3" stated that the NEPA process was more valuable to the state as planned actions were not changed by the EA process.
- A respondent who rated the process as "2" nevertheless stated that environmental concerns influenced the design and siting of the building.
- A respondent who rated the process as "2" stated that NEPA was only minimally considered in decisionmaking due to existing regulations that mandated the project.

A NEPA Practitioner's New Year's Resolutions for 2011

– Anonymous

- ✓ **I will aim to complete an EIS in 15 months or less.**
- ✓ **I will aim to prepare an EIS that is not longer than 150 pages.**
- ✓ **I will use plain language in all my writing.**
- ✓ **I will reinforce concepts using clear and focused figures, charts, and tables.**
- ✓ **I will submit electronic files, questionnaires, and associated cost and time data in a timely manner.**
- ✓ **I will submit EA and EIS contractor evaluations to the Contracting Officer.**
- ✓ **I will support my management's submittal of an Annual NEPA Planning Summary to the DOE General Counsel by January 31, 2011, and make it available to the public.**

Happy New Year!

2011