

LESSONS LEARNED

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DOE Proposes Revisions to Its NEPA Rule To Modernize Categorical Exclusions

DOE's publication of a Notice of Proposed Rulemaking for the Department's NEPA regulations marks a major milestone in updating its categorical exclusions (CXs). Since DOE last revised the "classes of actions" in its NEPA regulations (10 CFR Part 1021) in 1996, Departmental missions and activities have changed, and new technologies have emerged. To align DOE's NEPA practices with current activities, DOE proposes new and modified CXs and associated changes to other parts of the regulations (76 FR 214; January 3, 2011). DOE is accepting public comments on the proposed changes through March 7, 2011.



A CX is a class of actions that DOE has determined do not individually or cumulatively have a significant impact on the human environment, absent extraordinary circumstances, and, therefore, normally do not require an environmental impact statement (EIS) or an environmental assessment (EA). CXs are powerful tools for efficiently meeting the obligation to consider the environmental impacts of proposed agency actions. They are not NEPA exemptions.¹

In its Notice of Proposed Rulemaking, DOE proposes to add 20 CXs, modify many existing ones, and make conforming changes to the classes of actions that normally

require an EA or EIS. In addition, DOE proposes to delete one EA category and two EIS categories. The Notice summarizes the proposed changes and their rationale, invites public comment during a 45-day comment period, and announces a public hearing to receive comments. The public hearing was held on February 4 at DOE Headquarters in Washington, DC, during which one attendee presented an oral comment in support of the Department's rulemaking effort. In response to a request from the National Wildlife Federation on behalf of 10 non-governmental organizations, DOE extended the comment period, originally scheduled to end February 17, through March 7.

Benefits of Updating DOE's CXs

More Efficient Environmental Review and Protection: Reducing the resources spent analyzing the environmental impacts of proposals without potentially significant environmental impacts will allow DOE to focus its resources on environmentally significant proposals. DOE expects that updating CXs will expedite proposed projects that experience has demonstrated will not have significant environmental impacts, absent extraordinary circumstances.

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The proposed rule includes new CXs for (left to right) lead paint removal, stormwater runoff controls, renewable energy technologies (such as small photovoltaic systems), and electric vehicle charging stations (photo, inhabitat.com).

¹ See "Is a Categorical Exclusion Determination a NEPA Review or a NEPA Exemption?" (LLQR, September 2010, page 9).

Inside **LESSONS LEARNED**

Welcome to the 66th quarterly report on lessons learned in the NEPA process. This issue focuses on the Administration's new NEPA guidance and related initiatives – on scientific integrity, regulatory improvement, mitigation and monitoring, and filing EISs – and DOE's proposal to modernize its NEPA regulations. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

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Carol Bergstrom

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Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 2, 2011. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov.

Quarterly Questionnaires Due May 2, 2011


Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2011 (January 1 through March 31, 2011) should be submitted by May 2, 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 Conferences

National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) 2011 conference will take place April 26–29 in Denver. The theme this year is *Seventh Generation Thinking: Learning from the Past – Planning for the Future*. Topics to be covered include NEPA, energy, public involvement, sustainability, and career development. As part of its annual conference, NAEP will also hold two concurrent symposia discussing NEPA and national energy issues on Tuesday, April 26. The preliminary schedule, track descriptions, and event registration are now available at www.naep.org.



State of Environmental Justice in America

 DOE, the National Small Town Alliance, Howard University School of Law, the Environmental Protection Agency, and the Department of Agriculture are jointly sponsoring a conference on the State of Environmental Justice in America. The event will cover a variety of emerging issues in environmental justice, including climate change, green jobs, and clean energy. The conference will take place in Washington, DC, on April 27–29. Contact Melinda Downing, DOE Environmental Justice Program Manager, at melinda.downing@hq.doe.gov or John Rosenthal, Conference Coordinator, at ejinamerica@hotmail.com for further details.





EPA Amends EIS Filing Guidance; Reduces Paper Copy Requirements

The Environmental Protection Agency (EPA) has amended its guidance for filing EISs to change the number and format of documents to be filed, address the adoption of EISs, and add guidelines for EIS filing during Continuity of Operations Plan (COOP) events (76 FR 2681; January 14, 2011). These changes pertain to EPA's EIS Filing System Guidelines, previously issued in 1989, and address procedures for filing draft, final, and supplemental EISs, as required by Council on Environmental Quality regulations (40 CFR 1506.9). In addition, EPA solicited input on a series of questions that it will use to make future modifications to the EIS filing process.



Key Changes to EIS Filing Guidelines

- ✓ **Four** (previously five) complete copies of the EIS (including appendices) are to be filed.
- ✓ At least **one complete paper copy** must be filed; **the other three can be on electronic media** (e.g., compact disc) (previously all paper).
- ✓ Agencies are encouraged to make EISs available online and report the URL to EPA by email, concurrent with filing the EIS.
- ✓ More detailed guidance is provided on notifying EPA of adoption of an EIS, with specific provisions depending on cooperating agency status of the adopting agency.
- ✓ A new section of the guidance addresses EIS filing procedures during COOP events.

EPA's Filing Responsibilities

In accordance with 40 CFR 1506.9 and 1506.10, EPA is responsible for administering the EIS filing process and issuing guidelines to implement those responsibilities. EPA's role in the EIS filing process includes:

- receiving and recording EISs
- establishing the beginning and ending dates for comment and review periods for draft and final EISs, respectively
- publishing these dates in a weekly notice of availability (NOA) in the *Federal Register*
- retaining the EISs in a central repository
- determining whether time periods can be lengthened or shortened for "compelling reasons of national policy."

Lead agencies are responsible for distributing their EISs to the interested public for review.

Filing an EIS – The Details

Federal agencies may file a draft, final, or supplemental EIS with EPA no earlier than the agencies provide it to commenting agencies and the public. An EIS may be filed by mailing or delivering four copies of the complete EIS, including the appendices. At least one copy of the entire EIS must be a paper copy; the remaining three copies can be on electronic storage devices (e.g., compact discs, USB flash drives, or memory cards). If an agency prepares an abbreviated final EIS (40 CFR 1503.4(c)), the agency should include copies of the draft EIS when filing the final version. To file an EIS using U.S. Postal Service (including express mail), copies of an EIS should be delivered to:

U.S. EPA, Office of Federal Activities
EIS Filing Section, Mail Code 2252A
South Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If sending an EIS through a private delivery service, or if filing in person, use the following address:

U.S. EPA, Office of Federal Activities
EIS Filing Section, Room 7220
South Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20004

(For the telephone number required for some private delivery services, provide the EPA security desk number: 202-564-5400.)

Other important filing information includes:

- *EPA review copy.* The four EISs submitted to EPA are for filing purposes; agencies need to send a copy(s) of the EIS directly to the appropriate EPA regional office(s) for review and comment in accordance with EPA's responsibilities under Section 309 of the Clean Air Act.
- *Internet availability.* EPA encourages Federal agencies to make their EISs available on the Internet **and to email a copy of the web address (URL) for the document to EIS-Filing@epa.gov, concurrent with filing the EIS.**
- *Review periods.* Agencies should notify EPA of any decision to withdraw, delay, extend, or reopen a review period on an EIS. EPA will reflect these in its published weekly NOAs. When reopening EIS review periods, the lead agency should also notify

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Executive Order Seeks To Improve Regulations

President Barack Obama committed the Federal government to improving the regulatory landscape in [Executive Order \(E.O.\) 13563, *Improving Regulation and Regulatory Review*](#). The new E.O. outlines the general principles of regulation and calls on agencies to:



- promote public participation
- apply the concepts of integration and innovation
- discover flexible approaches
- ensure scientific integrity
- conduct retrospective analyses of existing rules.

The E.O. aims to incorporate into the Federal regulatory process considerations that are already central to the NEPA process, namely identification of impacts, engagement with stakeholders, transparency and accessibility of documentation, continuous improvement of tools and techniques, and using science to inform decisionmaking.

Building on a Solid Base = Good Regulation

E.O. 13563 sets the stage for regulatory improvement by outlining general principles of good regulation (text box). The E.O. affirms and supplements the plan to reform the regulatory process established in E.O. 12866, *Regulatory Planning and Review*, in 1993. That E.O. requires agencies to adopt only those regulations whose benefits justify the costs, tailor regulations to impose the least burden on society, select approaches that maximize net benefits, specify performance objectives rather than prescribe methods of compliance, and use alternatives to direct regulation where possible. The new E.O. calls on agencies to use the best available techniques to quantify present and future benefits and costs as accurately as possible and to also consider values that can only be expressed in qualitative terms.

As noted in E.O. 13563, one aspect of good regulation is public participation and the open exchange of ideas among government officials at all levels, subject matter experts, private-sector stakeholders, and the public. Agencies should offer opportunities to comment via the Internet on

any proposed regulation for at least 60 days, and should post proposed and final rules and supporting documents, including scientific information, for search, download, and comment. Before issuing a notice of proposed rulemaking, an agency should seek the views of those likely to be affected, both those who would benefit and those who would be subject to its requirements.

The President also called for regulatory integration and innovation, recognizing that some industries face many regulatory requirements that may be redundant, overlapping, or inconsistent. Agencies should coordinate among themselves to simplify and harmonize regulations. They should seek innovative means to achieve their regulatory goals and identify flexible approaches.


Reiterating the [President's Memorandum on Scientific Integrity](#), issued March 9, 2009, the E.O. (related article, page 6) told agencies to ensure the objectivity of any scientific and technological information and process used to support their regulatory actions.



Finally, agencies should periodically review existing significant regulations to identify rules that are “outmoded, ineffective, insufficient, or excessively burdensome,” and then modify or repeal them. The E.O. directed agencies to develop and submit a preliminary plan for conducting such reviews within 120 days of the date of the E.O.

DOE Solicits Public Input

To implement the E.O., DOE is taking two immediate steps. First, to engage the public in a transparent review process, the Department issued a [request for information](#) in the *Federal Register* (76 FR 6123; February 3, 2011) to solicit input on how best to streamline existing regulations and to identify rules that are “obsolete, unnecessary, unjustified, or simply no longer make sense.” Comments are due by March 21, 2011.

DOE is also soliciting views on such rules via a link on the Office of the General Counsel's webpage (www.gc.energy.gov, select *Submit Views on DOE Regulations* under the *Action Center*) or by sending a message directly to regulatory.review@hq.doe.gov. 



General Principles of Regulation from E.O. 13563, January 18, 2011

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.



CEQ Issues Guidance on Mitigation and Monitoring, Mitigated FONSI

“When agencies base their environmental analysis on a commitment to mitigate the environmental impacts of a proposed action, they should adhere to those commitments, monitor how they are implemented, and monitor the effectiveness of the mitigation,” according to recent guidance from the Council on Environmental Quality (CEQ) to Heads of Federal Agencies and Departments. CEQ’s guidance, *Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated FONSI*s, was published in the *Federal Register* on January 21, 2011 (76 FR 3843). The guidance outlines best management practices for agencies when making mitigation commitments, addresses mitigated findings of no significant impact (FONSI)s, and encourages agencies to inform and involve the public in these efforts. It also states that agencies may use adaptive management in cases where commitments made in the NEPA process fail to achieve projected environmental outcomes.



When the Federal government commits to actions to protect the environment, it should be able to show it is following through on those commitments for the American people. This guidance will help agencies ensure their environmental reviews are credible, thorough and open to the public.

– Nancy Sutley, CEQ Chair

Mitigation, Monitoring, and Adaptive Management

The guidance describes mitigation, monitoring, and adaptive management as related components of a process for achieving “environmentally preferable outcomes” under NEPA. Monitoring and adaptive management may not be necessary for every action that involves mitigation, and “agencies are expected to apply professional judgment and the rule of reason when identifying cases that warrant monitoring,” according to CEQ.

Offsetting Impacts

CEQ reminds agencies that the CEQ regulations require that “when an agency prepares an EIS, it must include mitigation measures (not already included in the proposed action or alternatives) among the alternatives compared in the EIS” (40 CFR 1502.14(f) and 1508.25(b)(3)).

Three categories of mitigation are addressed:

(1) mitigation that is an integral part of an agency’s project design (e.g., construction layout and timing, and best management practices), (2) mitigation commitments developed through the NEPA process, and (3) mitigation to support a mitigated FONSI.

The guidance states that agencies should not commit to mitigation measures considered in an EIS or EA absent the authority or expectation of resources to ensure that the mitigation is performed. In the decision documents concluding their environmental reviews, agencies should clearly identify any mitigation measures adopted as agency commitments or otherwise relied upon so as to ensure the integrity of the NEPA process and allow for greater transparency. The “decision document following the EA should – and a Record of Decision (ROD) must [40 CFR 1505.2(c)] – identify those mitigation measures that the agency is adopting and committing to implement, including any monitoring and enforcement program applicable to such mitigation commitments.”

“Mitigation” is defined in the CEQ regulations at 40 CFR 1508.20, as:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Keeping Watch

“Monitoring is fundamental for ensuring the implementation and effectiveness of mitigation commitments, [and for] meeting legal and permitting requirements . . . ,” according to CEQ. The guidance refers to the CEQ regulations, stating that “For agency decisions based on an EIS, the CEQ Regulations explicitly require that ‘a monitoring and enforcement program shall be adopted . . . where applicable for any mitigation’” (40 CFR 1505.2(c)).

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White House Guidance on Scientific Integrity

The White House Office of Science and Technology Policy (OSTP) issued guidance on the implementation of the Administration's policies on scientific integrity, in a [memorandum](#) dated December 17, 2010. The guidance is relevant to NEPA practitioners because principles of scientific integrity are reflected in several provisions of the Council on Environmental Quality (CEQ) regulations for implementing NEPA (text box), to ensure that high-quality, objective environmental information is provided to decisionmakers and the public.


- foundations of scientific integrity in Government
- public communications
- use of Federal Advisory Committees
- professional development of Government scientists and engineers.

OSTP asks agencies to develop policies implementing the Administration's directives on scientific integrity for each category, and states that policies should have the following outcomes:

In the memorandum, OSTP Director John Holdren referred to President Obama's March 9, 2009, [memorandum](#) on scientific integrity, which assigned to the Director the responsibility "for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes."

- a culture of scientific integrity and credibility, with a free flow of scientific information both within the Government and with the public, providing expanded online access to scientific and technological information
- the promotion of agency openness and transparency with the media and the public regarding technological matters, including interviews with agency scientists, when appropriate
- a transparent process for the creation of Federal Advisory Committees that is focused on the recruitment of qualified experts and results in a balance of points of view
- the promotion and facilitation of the professional development of Government scientists and engineers.

"The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking," said President Obama in his March 2009 memorandum.

Agencies have 120 days to report back to OSTP on actions taken to develop and implement these new policies. Questions regarding the OSTP memorandum can be directed to integrity@ostp.gov. 

The President directed OSTP to develop recommendations to guarantee scientific integrity throughout the executive branch. In response, OSTP created an interagency panel with representatives from all of the major science offices and agencies (including DOE), and launched an open, web-based process to accept detailed input from stakeholders inside and outside Government. Based on the Panel's recommendations, OSTP provides guidance in four broad categories:

CEQ NEPA Regulations: Provisions Related to Scientific Integrity

"NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." [40 CFR 1500.1(b)]

"Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." [§1502.24]

"If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement The agency shall independently evaluate the information submitted and shall be responsible for its accuracy." [§1506.5(a)]

"If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment." [§1506.5(b)]

"It is the intent of these regulations that the [EIS preparation] contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project." [§1506.5(c)]

DOE NEPA Rule Revisions *(continued from page 1)*

Consistency: A number of DOE’s proposed new and modified CXs are expressed with greater specificity than existing CXs. For example, renewable energy projects that previously might have been categorically excluded under a general category of “actions to conserve energy” would be eligible for consideration under new proposed CXs for specific technologies (e.g., small-scale wind turbines). Because many proposed CXs have more specific scope and limitations on actions, the proposed rule will promote more uniform CX determinations throughout DOE.

Enhanced Transparency: DOE’s draft rule proposes to incorporate the requirement established last year to document and post online determinations based on CXs listed in Appendix B to Subpart D of the rule.

Proposed Rule Based on Research, Collaboration, and Consultation


DOE’s Notice of Proposed Rulemaking represents the culmination of more than a year of work by a team from the Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment, with support from the Office of the Assistant General Counsel for Legislation, Regulation and Energy Efficiency. The effort began with a memorandum from the General Counsel soliciting input from DOE Program and Field Offices through NEPA Compliance Officers, who provided extensive suggestions, collected supporting information, and helped resolve challenging issues. DOE also issued a Request for Information (74 FR 68720; December 29, 2009) that invited interested parties to propose subjects for consideration as CXs.

In parallel, DOE NEPA Office staff identified additional candidates for new or expanded CXs by reviewing the archive of DOE EAs that led to findings of no significant impact, researching the existing CXs promulgated by approximately 50 Federal agencies, and reviewing existing DOE CXs to identify potential improvements.

In developing the proposed revisions, the team followed best practices for establishing CXs from the recent Council on Environmental Quality’s (CEQ’s) [guidance](#) on CXs (November 2010).

The team documented the basis for DOE’s proposed changes in the Preamble discussion of the Notice, and created a Technical Support Document that supplements the Preamble. (See [nepa.energy.gov/1601.htm](#) and [Regulations.gov](#), Docket ID: DOE-HQ-2010-0002.)

DOE consulted with CEQ early in the development of the proposed rule. After reviewing DOE’s draft Notice in September 2010, CEQ advised that the proposal was ready for public review and comment. DOE then coordinated with the Office of Management and Budget (OMB), which provided the proposed rule to agencies with likely interest, whose comments were addressed before DOE published the Notice of Proposed Rulemaking.

DOE is now evaluating the public comments received so far (14 as of February 28). The NEPA Office plans to develop a final rule in coordination with the NEPA Compliance Officers and in consultation with CEQ and OMB, then publish the final rule in the *Federal Register*. Questions on DOE’s NEPA rulemaking may be addressed to askNEPA@hq.doe.gov. 



Proposed Additional Categorical Exclusions

For renewable energy, carbon sequestration, and conservation

- Experimental wells for injection of small quantities of carbon dioxide
- Combined heat and power or cogeneration systems
- Small-scale solar photovoltaic systems
- Small-scale solar thermal systems
- Small-scale wind turbines
- Small-scale ground source heat pumps
- Small-scale biomass power plants
- Methane recovery and utilization systems
- Alternative fuel vehicle fueling stations
- Electric vehicle charging stations
- Small-scale drop-in hydroelectric systems

For research and development

- Small-scale educational facilities
- Small-scale indoor research and development (R&D) projects using nanoscale materials
- Research in salt water and freshwater environments
- Small-scale renewable energy R&D and pilot projects
- Small-scale renewable energy R&D and pilot projects in salt water and freshwater environments

For environmental improvement/other

- Stormwater runoff control
- Lead-based paint removal
- Recycling stations
- Determinations of excess real property

EIS Filing Guidance (continued from page 3)


EPA of the measures that will be taken to ensure that the EIS is available to all interested parties. To ensure adequate review time, agencies should ensure that any “comment by” dates they use in public notices are based on the date of publication of EPA’s NOA in the *Federal Register*.

- *EIS adoption.* Agencies must notify EPA (by letter or email) when they adopt an EIS so that the appropriate comment or review period may commence. If an agency adopts another agency’s EIS and it was not a cooperating agency, the EIS must be recirculated and filed with EPA in accordance with 40 CFR 1506.3(b). EPA will publish an NOA in the *Federal Register* announcing the appropriate comment or review period. Adopting agencies that served as a cooperating agency need not circulate the document for public comment or review, but they should notify EPA of the adoption to ensure that the official EIS record is accurate. In this situation, to complete the public record, EPA will publish an amended NOA in the *Federal Register* that states that an adoption has occurred.
- *Filing EISs during COOP events.* If an EIS cannot be physically delivered to EPA, agencies will need to email a copy of the EIS cover sheet to EIS-Filing@epa.gov and EPA will use that information to publish its weekly NOA. Once the COOP event is over, filing agencies will have

14 days to submit the four copies of all EISs filed during the event. If EPA does not receive them within 14 days, it will formally retract the NOA for that EIS.

EPA also stated that it is considering additional modifications to the EIS filing procedures that could lead to an electronic EIS filing process, and requested comments from Federal agencies and from stakeholders and the public on certain questions:

- EPA asked Federal agencies about their current practices for posting and retaining EISs online. The NEPA Office responded for DOE, expressing appreciation for EPA’s efforts to modernize the EIS filing procedures and encouraging EPA to develop an electronic filing system. The NEPA Office also advised EPA that DOE posts draft and final EISs online for public review and intends to maintain indefinitely an electronic EIS archive on the DOE NEPA Website.
- EPA asked stakeholders and the public about their preferences regarding publishing the weekly EPA NOAs online instead of in the *Federal Register*, and making EISs available online (e.g., EPA’s website).

The Office of NEPA Policy and Compliance will incorporate the new filing procedures into the DOE NEPA *Stakeholders Directory* (issued annually in July) and a future revision of the DOE *EIS Distribution* guidance. For more information, see EPA’s [website](#). 




Most DOE EISs Prepared with Cooperating Agencies

More than three-quarters of the 46 EISs listed in DOE’s 2010 Cooperating Agency Report to the Council on Environmental Quality (CEQ) were or are being prepared with cooperating agencies. This continues the high level of cooperating agency participation in DOE EISs seen in prior years. The required annual report covers EISs for which DOE issued a notice of intent on or after October 1, 2005, and that were completed during Fiscal Year 2010 or were still ongoing as of September 30, 2010.

Three of the 62 EAs that DOE completed as the lead agency during Fiscal Year 2010 (and therefore counted in the report) were prepared with cooperating agencies. This statistic is highly variable from year to year, depending on the extent to which the proposals evaluated in the EAs involve other agencies and the extent that consulting or commenting suffices to address their concerns.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating agency status or for terminating an established cooperating

agency relationship before completion of a NEPA review. The reasons most frequently cited by NEPA Document Managers for DOE EISs without cooperating agencies are that no candidates were identified with special expertise or jurisdiction by law (40 CFR 1501.6) and that the agencies invited as potential cooperating agencies preferred other ways to participate in the NEPA process, such as informal consultation under Section 106 of the National Historic Preservation Act.

The annual reporting requirement is part of CEQ’s ongoing efforts to encourage Federal agencies to involve other Federal, state, tribal, and local governmental organizations as cooperating agencies in NEPA reviews, promote early involvement of cooperating agencies, and track such involvement. The CEQ memoranda relating to cooperating agencies may be found on the DOE NEPA Website, at nepa.energy.gov under Guidance. For further information, contact Yarden Mansoor at yarden.mansoor@hq.doe.gov or 202-586-9326. See cooperating agency winners, next page. 

Mitigation and Monitoring Guidance *(continued from page 5)*

Two forms of monitoring are addressed in the guidance:

- (1) *implementation monitoring*, which ensures that mitigation commitments are implemented, and
- (2) *effectiveness monitoring*, which allows agencies to determine if mitigation is achieving its intended environmental outcome.

Making Adjustments

Adaptive management, when included in the NEPA analysis, allows an agency to take alternate mitigation actions if mitigation commitments fail to achieve projected environmental outcomes. The guidance states that “a Federal agency has a continuing duty to ensure that new information about the environmental impact of its proposed actions is taken into account, and that the NEPA review is supplemented when significant new circumstances or information arise that are relevant to environmental concerns and bear on the proposed action or its impacts.”

Mitigated FONSI

When conducting an environmental review, CEQ notes that an agency may find that a proposed action has the potential for significant environmental impacts, but that those impacts may be mitigated so that they would no longer be significant. “CEQ recognizes the appropriateness, value, and efficacy of providing for mitigation to reduce the significance of environmental impacts” and clarifies that agencies may adopt a mitigated FONSI based on an EA that includes sufficient mitigation to avoid significant environmental impacts. When the FONSI depends on successful mitigation, however, such mitigation requirements should be made public and accompanied by monitoring and reporting. “An agency should not commit to mitigation measures necessary for a

CEQ guidance affirms that agencies should:

- commit to mitigation in decision documents when the EA or EIS environmental analysis is based upon such mitigation (by including appropriate conditions in grants, permits, or other agency approvals, and making funding or approvals for implementing the proposed action contingent on implementation of the mitigation commitments)
- monitor the implementation and effectiveness of mitigation commitments
- make information on mitigation monitoring available to the public, preferably through agency websites
- remedy ineffective mitigation through adaptive management measures.

mitigated FONSI if there are insufficient legal authorities, or it is not reasonable to foresee the availability of sufficient resources, to perform or ensure the performance of the mitigation.”

The Role of the Public

The guidance encourages agencies to consider including public involvement in their mitigation monitoring programs. This can include public access to mitigation monitoring reports and public assistance with actual monitoring, through public-private partnerships. Agencies’ expertise and professional judgment are key to determining the appropriate level of public involvement. In some cases, agencies may need to balance competing privacy or confidentiality concerns (e.g., protecting confidential business information or the location of sacred sites) with the benefits of public disclosure. **LL**

And the 2010 Cooperating Agency Winners Are . . .



Eleven of Western Area Power Administration’s 13 EISs were prepared with a co-lead or cooperating agencies – the highest in absolute and relative terms. Bonneville Power Administration comes in second, with cooperating agencies for 6 of its 8 EISs.

The U.S. Army Corps of Engineers is our most popular cooperating agency, involved in 10 DOE EISs. In second place is the Bureau of Land Management with 7 EISs, and there is a three-way tie for third – the Forest Service, the Fish and Wildlife Service, and the Environmental Protection Agency – each cooperating in 5 EISs.

The Solar Programmatic EIS (related article, page 12), being prepared jointly by the Bureau of Land Management and DOE, is the champion EIS for signing up cooperating agencies: 6 Federal agencies, 6 state organizations, and 7 counties.

DOE Receives the ACHP Chairman's Award for Streamlining Historic Preservation Reviews of Recovery Act Projects



The Advisory Council on Historic Preservation (ACHP) honored DOE and the National Conference of State Historic Preservation Officers (NCSHPO) with the ACHP Chairman's Award for Achievement in Historic Preservation at a ceremony in Washington, DC, on February 17, 2011.

"This award recognizes the creation of a Prototype Programmatic Agreement

[Agreement] that assists State Historic Preservation Officers (SHPOs), DOE, and others to more efficiently and quickly administer Section 106 of the National Historic Preservation Act in some circumstances relating to the Energy Efficiency and Conservation Block Grant, State Energy Plan, and the Weatherization Assistance Programs," said ACHP Chairman Milford Wayne Donaldson in a letter to Secretary of Energy Steven Chu, notifying him of the Award.


Thanks to the proactive work of SHPOs and Federal agencies, . . . we found appropriate ways to get essential projects underway while considering the importance of historic places.

– Milford Wayne Donaldson, ACHP Chairman



LeAnn Oliver, Weatherization and Intergovernmental Programs Manager, Office of Energy Efficiency and Renewable Energy, accepted the Award from ACHP Chairman Milford Wayne Donaldson on DOE's behalf.

"This action was essential considering the impacts of the American Recovery and Reinvestment Act of 2009 on the historic preservation review process, and the need to streamline review processes while safeguarding the nation's physical heritage. Together, DOE and NCSHPO met this challenge in a proactive manner that expedited preservation reviews and improved coordination among state energy agencies and SHPOs representing 57 states and territories," he said.

A key feature of the Agreement is the categorical approach to streamline Section 106 reviews. The type of activities exempted under the Agreement from Section 106 review also commonly qualify for categorical exclusion determinations under DOE's NEPA regulations (10 CFR Part 1021). (See [LLQR, March 2010, page 21.](#)) 

Legacy Management NCO Accepts Energy Award

On behalf of DOE's Office of Legacy Management (LM), NEPA Compliance Officer and Environmental Program Manager Tracy Ribeiro and a contractor were recognized at the 2010 Department of Energy Management Awards ceremony for LM's System Operation and Analysis at Remote Sites (SOARS) project.

LM was one of five DOE organizations to receive such an award at the ceremony on October 6, 2010. DOE Management Awards acknowledge outstanding contributions to energy, water, and vehicle fleet management and associated cost savings at DOE facilities and field organizations.

The LM SOARS project collects and transmits real-time data from 16 sites in nine states to allow users to evaluate remediation progress. SOARS permits remote monitoring and operation of pumps and valves at some sites, reducing the energy used for travel while allowing personnel to respond rapidly to changing conditions. In Fiscal Year 2009, this amounted to a reduction in travel to sites of 37,000 miles and a savings of about 1,900 gallons of fuel. In addition, LM is often able to use photovoltaic solar energy to power the SOARS instruments and communications equipment, further reducing greenhouse gas emissions.

For more information, contact Tracy Ribeiro at tracy.ribeiro@lm.doe.gov or 970-248-6621. 



SOARS equipment remotely monitors environmental conditions at the Shiprock Disposal Site, a former uranium and vanadium ore-processing facility in New Mexico.



Recovery Act Reports Focus on Pending NEPA Reviews

Almost 600 NEPA reviews for projects and activities (projects) funded by the American Recovery and Reinvestment Act (Recovery Act) were pending as of December 31, 2010, the Council on Environmental Quality (CEQ) said in its latest quarterly report to Congress. The report, mandated by Section 1609(c) of the Recovery Act, identified the status of NEPA reviews for more than 272,000 Recovery Act projects across 24 Federal agencies. Approximately 190 categorical exclusion (CX) determinations, 360 EAs, and 35 EISs were pending. This includes 45 EAs and 20 EISs for DOE Recovery Act projects; DOE reported no pending CX determinations.

“The ARRA NEPA reporting is focused on ensuring that the appropriate NEPA environmental reviews are completed in a timely manner,” noted Horst Greczmiel, Associate Director for NEPA Oversight at CEQ. “As we wind down the reporting, attention is focusing on those projects and activities where the NEPA reviews have not been completed for one or more quarters; consequently, we want to accurately report the reasons those NEPA reviews remain pending and when we project they will be completed.”

Over the course of the last two years, the Departments and Agencies . . . have consistently shown that economic recovery and environmental stewardship can go hand in hand.

– Horst Greczmiel, CEQ

CEQ has asked that agencies provide more detail about pending NEPA reviews for use in future reports. Pursuant to CEQ guidance issued in November 2009, DOE has provided explanations for why NEPA reviews are pending for two or more quarters. These explanations have included an update on where an EA or EIS is in the preparation process, a statement that the applicant has requested that the NEPA review be placed on hold, or a statement that DOE is coordinating with other agencies. CEQ has asked agencies

to provide in future reports more details showing how long NEPA reviews have been pending.

Trends Highlight EAs for 2011

During the quarter ending December 31, 2010, Federal agencies completed more than 1,600 NEPA reviews for Recovery Act projects. More than 600 (about 38 percent) of these were completed by DOE.

Cumulatively, Federal agencies completed more than 180,000 CX determinations and 6,600 EAs, and analyzed more than 830 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 \$287 billion funded under Division A of the Recovery Act.

DOE had completed more than 8,700 NEPA reviews supporting the obligation of more than \$33.4 billion for projects receiving Recovery Act funding, an increase of almost \$400 million since September 30, 2010 (*LLQR*, December 2010, page 9).

Based on the eight reports submitted to Congress to date, CEQ identified three overall trends: the number of new CX determinations has decreased, the number of new EAs has increased, and the number of pending NEPA reviews has significantly decreased.

Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through March 31, 2011. Federal agency reports are due to CEQ by April 15, 2011, and CEQ will submit the next report to Congress in early May.

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

Keeping the “Non-Federal” Out of the *Federal Register*

By assisting other DOE offices in reviewing *Federal Register* documents such as a notice of intent (NOI) to prepare an EIS or a record of decision, the Office of NEPA Policy and Compliance is sometimes uniquely positioned to share the lessons learned from that task. Last year, *LLQR* noted ([June 2010, page 12](#)) that a *Federal Register* notice issued jointly must include all agencies’ signatures. Recently, we learned that only Federal agencies may jointly issue such a notice in the *Federal Register*. For an EIS that DOE and a state will prepare as joint lead agencies, an NOI signed by both parties was rejected by the Government Printing Office. The DOE program was able to promptly resubmit the NOI without the state signature, and thus avoid jeopardizing timely public notice of the scoping meetings.

DOE and BLM Jointly Issue Draft Programmatic EIS for Solar Energy Development in Six Southwestern States

Following consideration of more than 19,000 comments received during two scoping periods (summers of 2008 and 2009) and coordination with 19 cooperating agencies at Federal, state, and county levels, DOE and the Department of the Interior's Bureau of Land Management (BLM) jointly issued the *Draft Programmatic EIS (PEIS) for Solar Energy Development in Six Southwestern States* (DOE/EIS-0403) for public review in December 2010. A 90-day public comment period on the Draft PEIS will conclude March 17, 2011. DOE and BLM are in the process of hosting 14 public meetings (in Washington, DC, and the six southwestern states) to receive comments on the Draft PEIS.

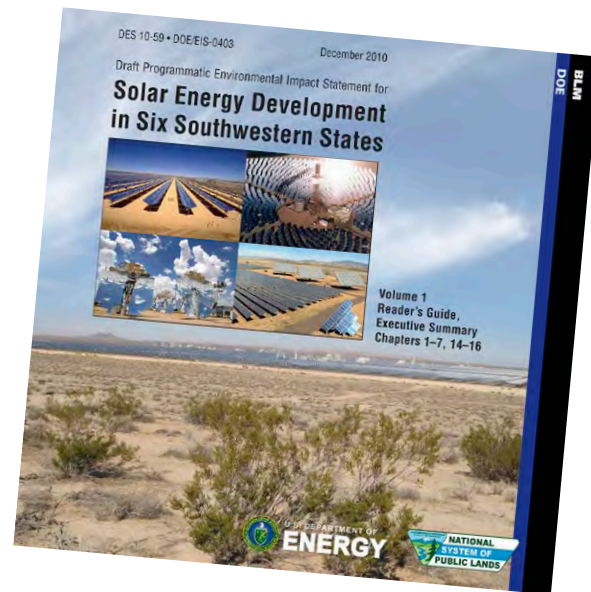
The joint DOE/BLM Solar Energy PEIS evaluates the impacts of potential utility-scale¹ solar energy development in Arizona, California, Colorado, Nevada, New Mexico, and Utah. The PEIS assesses the impacts of technologies considered to be viable for deployment over the next 20 years – concentrating solar technologies (parabolic trough, power tower, and dish engine) and photovoltaic solar technologies. Through the PEIS, DOE is evaluating whether to develop new guidance relevant to DOE-supported solar projects on Federal, state, tribal, or private lands; BLM is evaluating a new solar energy program that would prioritize solar energy development on specific BLM-administered lands in the six states.

DOE and BLM Alternatives Differ

The PEIS includes separate alternatives for DOE and BLM. DOE would develop programmatic guidance with explicit environmental practices and mitigation recommendations to further integrate environmental considerations into the analysis and selection of solar projects that it may support. The PEIS states that such programmatic guidance would:

- give DOE the tools with which to make more informed, environmentally sound decisions
- help streamline future environmental analysis and documentation for DOE-supported solar projects
- support DOE's efforts to comprehensively determine where to make technology and resource investments to minimize the environmental impacts of solar technologies, and establish environmental mitigation recommendations for financial assistance recipients to consider in project plans when applying for DOE funding.

¹ Utility-scale projects are those that generate electricity for delivery into the electricity transmission grid. They generally have capacities greater than 20 megawatts.



BLM analyzed two action alternatives in the Draft PEIS. Both alternatives would establish a new solar energy program involving exclusion areas (categories of BLM-administered land excluded from solar energy development) and required design features (mitigation measures). BLM analyzed a Solar Energy Development Program Alternative (identified as preferred in the Draft PEIS) that would open 22 million acres of BLM-administered land in the six states to right-of-way application for solar energy development, but would prioritize development in a subset of these lands – referred to as Solar Energy Zones (SEZs). BLM proposed a total of 24 SEZs of varying sizes in the six states. BLM also analyzed an action alternative referred to as the Solar Energy Zone Program Alternative that would open BLM-administered lands only within the proposed SEZs for solar energy development (approximately 677,000 acres).

Reasonably Foreseeable Development Scenario Defined for Analysis

To help define the potential magnitude of solar energy development that could occur within the six-state study area over the next 20 years and analyze the potential impacts of that development, DOE and BLM established a reasonably foreseeable development scenario. The agencies examined two methodologies for calculating the scenario's megawatt and acreage estimates.

(continued on next page)

Solar PEIS Grew in Size and Scope

In March 2009, the Secretary of the Interior announced a policy goal of identifying and prioritizing *specific* locations best suited for large-scale production of solar energy. In June 2009, BLM announced that the Solar PEIS would include in-depth environmental analyses for 24 proposed solar energy study areas (74 FR 31308; June 30, 2009). Inclusion of these study areas drastically expanded BLM's scope and the broad, programmatic nature of the joint DOE/BLM Solar PEIS, adding a second layer of analyses.

With this expanded scope, the Draft PEIS grew to about 11,000 pages: 16 chapters and 14 appendices. To aid the public's review of the document, DOE and BLM included a Reader's Guide, which explains how information in the Draft PEIS is organized.

Due to the size of the document, DOE and BLM minimized distribution costs by limiting the number of printed copies. The agencies negotiated with EPA (in advance) to submit only two complete hard copies for filing of the Draft PEIS (more recently, EPA revised its EIS filing guidance (see related article, page 3)). In addition, with the exception of affected Federal, state, and local government agencies and applicable tribal governments that specifically requested a full or partial hard copy, the rest of the distribution list received the PEIS Summary and Reader's Guide with a DVD (or CD) that included the entire Draft PEIS. Subscribers to the PEIS [website](#) received notification of the Draft PEIS's availability on the project website and the opportunity to request the PEIS Summary and Reader's Guide with DVD or CD.



DOE and BLM carried forth the methodology that provided the maximum estimated development in the Draft PEIS, which was based on requirements for electricity generation from renewable energy resources established in Renewable Portfolio Standards in each of the six states.

DOE and BLM used the amount of power projected to be generated in the reasonably foreseeable development scenario to analyze the potential environmental impacts of solar energy development on both BLM-administered and non-BLM-administrated lands within the study area. The reasonably foreseeable development scenario projected 32,000 megawatts on 285,000 acres for *all* land in the six-state study area, including BLM-administered lands.

Next Steps

DOE and BLM will consider the comments received on the Draft PEIS in preparing the Final PEIS, which is expected to be issued later this year.

For information on the Solar PEIS, contact Jane Summerson, NEPA Document Manager, Office of Energy Efficiency and Renewable Energy, at jane.summerson@ee.doe.gov. Additional information is also available on the Solar PEIS website at <http://solareis.anl.gov>. (See also *LLQR*, September 2008, page 18.) For further information on DOE's Solar Energy Technology Program, contact Frank "Tex" Wilkins, Office of Solar Energy Technology, at frank.wilkins@ee.doe.gov. LL

2011 NEPA Planning Summaries Forecast Continuing High DOE NEPA Activity

NEPA Annual Planning Summaries recently issued by DOE Program and Field Offices indicate that DOE foresees a large NEPA workload for 2011, but not the exceptional levels of 2010. Annual Planning Summaries, prepared each January, identify the ongoing and new EISs projected to be prepared during the next 24 months, and the EAs to be prepared during the next 12 months.

Environmental Impact Statements


The January 2010 Planning Summaries projected 95 EISs to be in preparation or initiated in the 24-month planning window, a one-third increase over the previous projection, mostly because of anticipated increases in NEPA reviews for Recovery Act activities by the Golden Field Office and the National Energy Technology Laboratory. In this year's Planning Summaries, DOE organizations anticipate slightly fewer, 87 EISs, of which 24 are new and 8 (including both ongoing and new) are related to Recovery Act projects. The Western Area Power Administration and Loan Programs Office anticipate the largest EIS workloads, with 27 and 14 EISs, respectively. Both organizations report that for some EISs, DOE will serve as a cooperating agency and adopt EISs prepared by other Federal agencies.

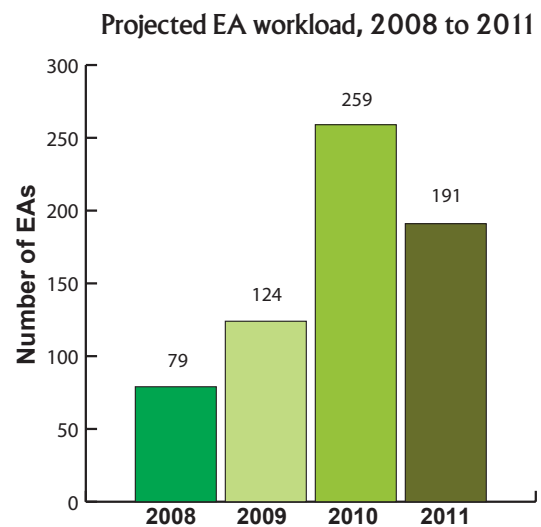
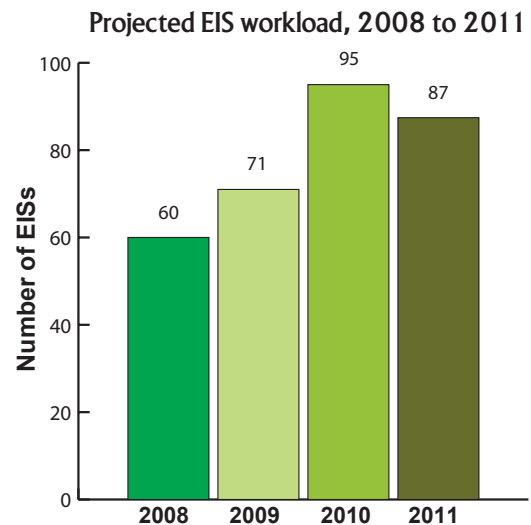
Environmental Assessments

One year ago, DOE Offices projected 259 EAs to be prepared in 2010, more than twice the number of EAs projected for the previous year, largely to meet NEPA obligations arising from DOE funding of Recovery Act projects. In 2010, DOE actually completed 77 EAs, more than twice DOE's prior baseline completion rate of about 35 EAs per year, but much less than the number of EAs projected to be in preparation. Factors accounting for the difference may include: (1) categorical exclusion determinations ultimately were made for some actions for which an EA originally was projected based on incomplete information, and (2) a number of EAs either started late in 2010 and are ongoing in 2011, were not started until 2011, or were not started at all.

In the most recent January 2011 Planning Summaries, DOE Offices identified 191 EAs to be prepared during 2011, including 110 ongoing documents and up to 81 new EAs. The 2011 Planning Summaries identify 35 ongoing EAs and 12 new ones that are related to Recovery Act projects. The Golden Field Office and National Energy Technology Laboratory continue to be the offices projecting the heaviest EA workloads, as in 2010, but both anticipate a decline from last year's peak levels.

"DOE made tremendous progress completing NEPA reviews for Recovery Act projects in 2010, and completion of the remaining EAs and EISs continues to be one of DOE's highest priorities with regard to NEPA compliance in 2011," observed Scott Blake Harris, DOE General Counsel, in a December 8, 2010, letter to Secretarial Officers and Heads of Field Organizations. The Office of NEPA Policy and Compliance will continue to work with the Program and Field Office NEPA Compliance Officers to manage this workload as efficiently as possible.

DOE NEPA Annual Planning Summaries, guidance, and templates are posted on the DOE NEPA website, nepa.energy.gov, under Planning Summaries. Recent trends in NEPA workload are discussed in [LLQR, March 2010, page 15](#), and [December 2010, page 9](#). 



DOE and Hawaii To Prepare Programmatic EIS for Interisland Wind Energy Development

DOE and Hawaii's Department of Business, Economic Development and Tourism (DBEDT) hosted four public scoping meetings for the Hawaii Interisland Renewable Energy Program: Wind Programmatic EIS (HIREP Wind EIS; DOE/EIS-0459), from February 1–5, 2011. These meetings were held on the islands of Oahu, Molokai, Lanai, and Maui – the four islands that could be affected by the development of a proposed interisland transmission cable system, wind generation facilities, and the necessary improvements to the electrical grid. DOE and Hawaii issued a Notice of Intent for the project on December 14, 2010 (75 FR 77859), and a Notice of Public Scoping Meetings for the HIREP Wind EIS on January 12, 2011 (76 FR 2095).



EIS Facts

- The HIREP Wind EIS is funded by the Recovery Act through a DOE State Energy Program grant.
- This programmatic EIS may lead to one or more subsequent, project-specific Federal actions and related NEPA reviews, such as development of wind generation facilities or an undersea interisland cable.
- The Hawaii Department of Business, Economic Development and Tourism is a co-lead agency in the preparation of the EIS.

Hawaii's Renewable Energy Standard

Because Hawaii derives nearly 90 percent of its primary energy resources from oil, the state is vulnerable to supply disruptions and high energy prices – electricity prices are more than twice the U.S. average. To address this issue, the Hawaii legislature recently mandated that 70 percent of Hawaii's energy needs be met with clean energy by 2030, including 40 percent from renewable energy and 30 percent from energy efficiency. The Hawaii statute establishes a timetable with interim goals, and requires full achievement of the "40/30 standard" by 2030 (Hawaii Revised Statutes, Chapters 269-91 through 269-95).

DOE and the State of Hawaii signed a Memorandum of Understanding in early 2008 forming a partnership to help achieve the 40/30 standard and reduce the state's high energy prices. DOE entered into this partnership, in part, because Section 355 of the Energy Policy Act of 2005 (EPA 2005) required the Secretary of Energy to assess the economic implications of the dependence of Hawaii on oil, including the technical and economic feasibility of increasing the contribution of renewable energy resources for the generation of electricity on an island by island basis. DOE has conducted or funded a number of studies and workshops, prior to and since passage of the EPA 2005, to help Hawaii achieve its goal of lower energy prices through improved efficiency and increased use of renewables.



A Brighter Energy Future

The proposed action in the HIREP Wind EIS envisions a program that would develop up to 400 megawatts of wind energy on the islands of Maui, Lanai, and Molokai, transmission of that energy to Oahu, via undersea power cables, and transmission system upgrades on Oahu. The island of Oahu, with 80 percent of the state's population, is the island with the greatest energy demand; however, Oahu does not have adequate identified potential renewable energy sites of its own to be self-sufficient. Maui, Lanai, and Molokai have the most abundant and viable wind resources of those islands closest to Oahu.

The scoping meetings were well attended, with representatives from native Hawaiian groups, environmental groups, the general public, and local, state, and Federal governments. Each meeting included a "workshop" session where attendees could inspect poster boards, collect handouts, and talk with DOE and DBEDT representatives. The workshops were approximately one hour long, followed by formal sessions during which comments were transcribed. Stakeholders raised a broad range of issues during the scoping meetings, such as the potential effects on:

- cultural and religious sites and practices
- sensitive fish and wildlife species and their habitats
- the visual character of Molokai and Lanai
- necessary infrastructure upgrades on Molokai and Lanai
- access to subsistence hunting and fishing areas on Molokai and Lanai
- availability of water resources on Molokai and Lanai for concrete to produce wind turbine foundations.

Stakeholders also asked whether other renewable resources could be addressed in the alternatives analysis, and about post-operational restoration planning.

DOE and DBEDT will consider scoping comments in preparing the draft EIS, which is expected to be issued for public review later this year.

Transitions

One of NEPA's Finest – Carolyn Osborne – Retires

After more than 30 years of service with the Federal government, Carolyn Osborne, Unit Leader, Office of NEPA Policy and Compliance, retired at the end of 2010. An ecologist by training, she served in DOE's NEPA Office for the past 24 years. Ms. Osborne primarily assisted the Offices of Electricity Delivery and Energy Reliability, Environmental Management, Fossil Energy, and Loan Programs, and the Power Marketing Administrations. Before joining DOE, she spent 6 years at the Food and Drug Administration working on NEPA compliance.

Along with her knowledge of NEPA, Ms. Osborne was noted for her expertise on floodplains and wetlands, environmental justice, DOE-wide NEPA contracting, and NEPA/CERCLA/RCRA. Most recently, she was part of the team that prepared DOE's Notice of Proposed Rulemaking for updating the Department's categorical exclusion provisions.

Before her retirement on December 30, 2010, NEPA Office staff interviewed Ms. Osborne for lessons learned, recommendations, and stories from her long NEPA career.

Remember Past Lessons

It is important to remember and learn from DOE's past experiences, said Ms. Osborne. She expressed concern that the lessons from DOE's past are not known by today's NEPA community, and encouraged NEPA Office staff to use *LLQR* to fix this – suggesting that NEPA staff put together a compilation of case studies from past issues of *LLQR*, highlighting NEPA “nuggets” and themes, identifying those experiences relevant to today's issues. Ms. Osborne recalled, for example, the quality assurance pyramid, which encourages “building analyses from the data up” (*LLQR*, June 2006, page 4). “Such a compilation would be especially useful for people starting out in DOE's NEPA Program – they could look to things we've done previously, rather than starting from scratch,” Ms. Osborne noted.

Striking the right balance between efficient project implementation and sufficient environmental review time to ensure adequate mitigation of environmental impacts is one of the Department's primary challenges.

– Carolyn Osborne, Ph.D.

Do It Right the First Time

Quoting the theme of a past DOE-wide NEPA contracting workshop, Ms. Osborne recommended that NEPA practitioners, “do it right the first time” and advised NEPA practitioners to “begin with the end in mind.” “We need to get into the habit of trying to think of everything early so we aren't scrambling at the last minute,” she said.



Carolyn received a t-shirt from Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, that reads, “NEPA is a four letter word . . . like LOVE.”

Use DOE's NEPA Tools to Your Benefit

In her time at DOE, Ms. Osborne was instrumental in the development of a number of key DOE NEPA guidance documents, including (but not limited to) the “brief guide” to DOE-wide NEPA contracts (1997), guidance on categorical exclusion determinations (1998), guidance on Clean Air Act Conformity and NEPA (2000), guidance on application of NEPA to CERCLA and RCRA cleanup actions (2002), EIS comment-response process guidance (2004), EIS distribution guidance (2006), and *LLQR*. In fact, Carolyn was here when *LLQR* was born! She supported development of *LLQR*'s first 65 issues from 1994–2010. “I've seen *LLQR* grow, become more user friendly and comprehensive,” she remarked.

Ms. Osborne recalled some challenges in developing NEPA guidance documents. In particular, she acknowledged tradeoffs between offering a standard template for folks to follow and developing and incorporating multiple strategies to handle different situations. “It is important to develop options for different

(continued on next page)

NEPA's Carolyn Osborne Retires *(continued from previous page)*



DOE NEPA "old timers" came from far and wide to celebrate Carolyn and her retirement. Left to right, Carol Borgstrom, Bob Strickler (former Director of the Project Activities Division in the DOE NEPA Office), Carolyn Osborne, Jim Daniel, and Bill Dennison (former Assistant General Counsel for Environment).

circumstances," said Ms. Osborne. When queried about future DOE NEPA guidance needs, she suggested that the NEPA Office develop guidance on preparing notices of intent and records of decision and consider developing "Qs and As" for floodplain issues. "Read all the guidance," Ms. Osborne recommended. She also praised *The*



Environmental Style: Writing Environmental Assessments and Impact Statements (2005) and suggested that NEPA practitioners take it to heart.

Bring DOE's NEPA Community Together

Recalling that the last NCO meeting was in the spring of 2009 and the last NEPA Community meeting was in the fall of 2008, Ms. Osborne urged the NEPA Office to bring DOE's NEPA Community together soon. "Bringing the NEPA Community together more frequently would be a

good thing," she said. When asked whether she would attend future NEPA meetings, Ms. Osborne smiled and said, "I will come to the happy hour, and you may add me to the distribution for future issues of *LLQR*."

Concluding the interview, NEPA Office staff asked Ms. Osborne to recall her fondest NEPA memory. Laughing in response to this question, she answered "getting out of the office." "Some of my fondest memories were attending the public meetings, outside of the Office and the four walls of DOE," she said. "I enjoyed going to the scoping meetings and hearings, interacting with people – also seeing the potentially affected environment. . . . Going to public meetings makes things real," she explained.

Farewell, Carolyn!

Despite the snow that fell on the Washington, DC, area the night before, more than 40 associates, colleagues, and friends of Carolyn Osborne gathered on January 27, 2011, in the Forrestal Building, to celebrate her career. Scott Blake Harris, DOE General Counsel, presented Carolyn with a Distinguished Career Service Award (text box). Carolyn also received several tributes, both prose and poetry.

Ms. Osborne will continue to live in the Washington, DC, area. She plans to continue volunteering at the Washington National Zoo's Invertebrate Exhibit, relearn French, and is looking forward to traveling to Paris and Sweden. Friends may contact her at carosborne@msn.com.

On behalf of DOE's NEPA Community, the Office of NEPA Policy and Compliance thanks Carolyn for her significant contributions to DOE's NEPA Program and wishes her a long and fulfilling retirement. Bon voyage and best wishes!



DISTINGUISHED CAREER SERVICE AWARD

Carolyn M. Osborne is hereby awarded the Distinguished Career Service Award in recognition of her extraordinary contributions to the Department of Energy during a Federal career spanning more than three decades. As a Unit Leader, Office of NEPA Policy and Compliance, in the Office of General Counsel and the former Office of Environment, Safety and Health, she excelled in all of her duties, earning the respect and admiration of her colleagues. She reviewed key environmental impact statements for the Offices of Environmental Management and Fossil Energy, and drafted guidance documents to promote effective and efficient NEPA compliance. Among her many accomplishments, she led the development of the

1992 DOE NEPA regulations and coordinated the team supporting establishment of DOE-wide NEPA contracts. She contributed many articles for *Lessons Learned Quarterly Reports* and exercised a high level of quality control. Through her work on these and many other NEPA-related matters, she leaves a legacy of singular professional excellence. Finally, as both a NEPA specialist and a manager, she earned the genuine affection of her associates. Because of her pragmatic, analytically-sound advice, her intelligence, her strength of character, her no-nonsense approach, and her dedication to the public interest, Carolyn M. Osborne embodies the highest traditions and ideals of public service. — **Scott Blake Harris, General Counsel – January 2011**

Carolyn's Retirement ROD

By: Andy Lawrence

Goodbye to the maze of EISs
To the "significant" or not debate
Farewell to the reading of dreary tomes
Hello to sleeping late

For Carolyn has certainly earned
The right to sit back and relax
To leave the piñata of NEPA behind
And let others take their whacks

And to NEPA's elaborate lingo
Which cryptographers can't decode
Carolyn says "no more" to that
Lest her head explode

From FONSI's to ARRA to GHGs
From SEISs to CXs
NEPA's vernacular can hit you hard
Right in your solar plexus

For the *things* that pass for "final drafts"
Can leave you gasping hard for breath
And then there're preferred alternatives
That scare you half to death

And for obtuse text and far-fetched facts
On which if forced to make a decision
You would recommend the issuance of
A Record of Derision

So Carolyn is finally embracing
The top NEPA lesson to be learned
Leave while you're still lucid
And enjoy the rest you've earned

But she'll need to work at R&R
As she suddenly detects
That decades' worth of NEPA work
Have cumulative effects

Like the inability to enjoy a book
And give the author credit
For giving her pages full of prose
That she doesn't need to edit

But through her diligence and her care
She has shown one can
Create a bit of harmony
Between the environment and man

And that has sustained her all these years
And earned her veneration
For her key role as trustee for
The succeeding generation

So we wish her well in all her pursuits
And hope she takes the time to tell us
About travels near and travels far
That will make us all quite jealous



So three cheers and all the best
To you from one and all
And remember you will always have
Friends here in Forrestal

Andy Lawrence, a long-time colleague and currently Director, Office of Nuclear Safety, Quality Assurance and Environment, Office of Health, Safety and Security, read this poem at Carolyn's retirement celebration.


Office of the General Counsel

A number of key personnel changes within the Office of the General Counsel and the National Nuclear Security Administration (NNSA) have recently been made or will take place soon. As announced by the Secretary of Energy on February 22, 2011, **Scott Blake Harris**, DOE General Counsel, will be leaving the Department in early March, and **Sean Lev**, currently the Deputy General Counsel for Environment and Nuclear Programs, will become the Acting General Counsel. **Bruce Diamond**, formerly Assistant General Counsel for Environment, is now the NNSA General Counsel responsible for overall legal matters within NNSA, including NEPA compliance activities. Mr. Diamond replaced **Dave Jonas**, who now serves as Director of Legal Strategy and Analysis, DOE Office of General Counsel. **Richard Ahern** is currently the Acting Assistant General Counsel for Environment and responsible for DOE NEPA compliance activities. LL

Litigation Updates



DOE NEPA Litigation in Brief

 *Save Strawberry Canyon v. DOE* (N.D. Calif.): In this case, a local citizens' group challenged the EA for the Berkeley Lab Laser Accelerator Laser Acquisition, Installation, and Use for Research and Development at the Lawrence Berkeley National Laboratory ([DOE/EA-1655](#), September 2009) and associated finding of no significant impact. The plaintiff has appealed a ruling by the U.S. District Court for the Northern District of California granting the Government's motion for summary judgment. A briefing schedule has not yet been set. (Case No.: [10-0797](#))

Other Agency NEPA Litigation in Brief

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

- *In Forest Service Employees, the district court found that the EA and finding of no significant impact (FONSI) revealed significant impacts to endangered and threatened species and therefore an EIS must be prepared.*
- *In Skull Valley, the district court found that an agency could not disapprove a lease agreement or right-of-way application based on the inadequacy of its own EIS.*

Forest Service Employees for Environmental Ethics v. U.S. Forest Service

- **Agency Action:** Under a court order requiring NEPA review for the use of chemical fire retardants to fight wildfires on Forest Service lands, the U.S. Forest Service (USFS) prepared an EA and issued a FONSI that accepted alternatives contained in the Biological Opinions of the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries).
- **NEPA Issue:** First, the court rejected the plaintiff's argument that USFS should have analyzed all types of fire suppression activities as connected actions. Rather, it explained that, although fire suppression activities are related, the choice of one activity is not dependent on the choice of another, and thus such activities are not connected actions. Next, the court rejected the plaintiff's argument that the analyses contained in the EA were inadequate, finding instead that the analyses were brief but sufficient. Last, the court agreed with the plaintiff that USFS's use of chemical fire retardant would have significant impacts to listed species because the mitigation measures suggested by USFWS and NOAA Fisheries were non-binding and thus potential impacts remained significant.

USFS based its FONSI in part on USFWS's and NOAA Fisheries' biological opinions, which indicated that fire retardant use could impose significant impacts upon flora and fauna on the endangered species list and contained mitigation measures in the form of reasonable and prudent alternatives to avoid jeopardy and negative impacts. The court found that these mitigation measures "fail[ed] to impose any binding restrictions on the use of fire retardant" and therefore "failed to alleviate the risk of jeopardy to listed species," leaving a "likely" chance of significant impacts to listed species. The court granted summary judgment in favor of the plaintiff, concluding that **"the Forest Service's failure to prepare [an EIS] under these circumstances is a violation of NEPA."**

- **Other Issues:** The plaintiff argued that NOAA Fisheries and USFWS violated the Endangered Species Act in a series of claims challenging the agencies' biological opinions. The district court granted summary judgment for all but one of the plaintiff's claims and remanded the biological opinions, mandating as well "the preparation of an incidental take statement as required by statute."

-  • U.S. District Court for the District of Montana. Case No.: 08-00043; July 27, 2010.

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



Skull Valley Band of Goshute Indians v. Department of the Interior

- **Agency Action:** The Department of the Interior (DOI), speaking for both the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA), issued two records of decision (RODs) (1) denying the Private Fuel Storage, LLC (PFS) right-of-way application to build and operate a transfer facility for spent nuclear fuel (SNF) on Federal land, and (2) disapproving the Skull Valley Band of Goshute Indians' (Skull Valley Band) lease agreement with PFS to build an SNF storage facility on tribal land. PFS is a consortium of utility companies formed in order to seek temporary storage options for SNF until the Federal government begins accepting SNF for "permanent storage."
- **NEPA Issue:** DOI based both decisions on a final EIS (FEIS) prepared by the Nuclear Regulatory Commission (NRC), for which BIA and BLM served as cooperating agencies. In the first ROD (71 FR 57005; September 28, 2006), DOI decided against issuing the right-of-way to PFS, concluding that the FEIS did not sufficiently analyze impacts relating to the removal of SNF from the facility as well as the risks from terrorism. DOI also raised concerns about the adequacy of existing roads and potential impacts to the Cedar Mountain Wilderness Area (designated after issuance of the FEIS).

In the second ROD (71 FR 58629; October 4, 2006), DOI disapproved Skull Valley Band's proposed lease of tribal trust lands to PFS, relying on many of the same reasons given for rejecting PFS's application for a right-of-way and also concluding there was too much risk that the SNF could remain at the site indefinitely. The Skull Valley Band and PFS filed a Federal lawsuit to overturn these decisions.

The court determined that DOI's decision to deny PFS the right-of-way "because its own FEIS was not adequate. . . . was arbitrary and capricious." The court concluded that DOI did not use "readily available mechanisms," such as a supplemental EIS, "which it could have invoked to obtain the information it found lacking in the FEIS."


Regarding DOI's ROD disapproving the lease agreement, the court stated that, as in its decision in the right-of-way ROD, DOI disapproved the lease in part after concluding that "its own FEIS inadequately addressed a possible terrorist attack and failed to consider fully the process by which the SNF would be removed from the Skull Valley facility after the NRC license expires and the lease ends." The court determined that it was "arbitrary and capricious, and an abuse of discretion" for the ROD to justify disapproving the lease because the record before the agency was deficient. The court thus vacated both RODs and remanded both applications for further agency consideration.

- **Other Issues:** Regarding the lease disapproval, the court stated that "DOI did not comply" with BIA regulations, which provide that the agency "defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible."

Following completion of the EIS, the lead agency, NRC, issued a decision to grant PFS a license to operate the storage facility; that decision is being challenged in litigation in the U.S. Court of Appeals for the District of Columbia Circuit (*Ohngo Gaudadeh Devia v. NRC*).



- U.S. District Court for the District of Utah. Case No.: 07-0526; July 26, 2010.

DOE LLQR readers may be interested to note that the origin of the Skull Valley Project was the response of the Skull Valley Band of Goshute Indians to DOE's invitation to communities, in the early 1990s, to consider hosting a monitored retrievable storage facility for the interim storage of SNF. More than a dozen tribes applied. 

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
 - Advanced Multi-Party Negotiation of Environmental Disputes***
Washington, DC: March 22-24
\$750
 - Collaboration Skills for Environmental Professionals**
Sausalito, CA: April 19-21
\$928
 - Negotiating Environmental Solutions**
Denver, CO: April 19-20
\$500
 - Laying the Groundwork for Effective Government to Government Consultation***
Washington, DC: May 3-5
\$750
- EOS Alliance
425-270-3274
pt@nwetc.org
www.eosalliance.org/schedule/calendar/courses-eos
 - NEPA: Writing the Perfect EA/FONSI or EIS**
Kansas City, MO: March 29-30
Sacramento, CA: April 5-6
Baton Rouge, LA: May 11-12
\$545 (GSA contract: \$445)
- ICF International
949-333-6625
cbeckstrom@icfi.com
www.icfi.com/newsroom/educational-opportunities.asp
 - NEPA: A Step-by-Step Approach**
Riverside, CA: April 21-22
\$335
- International Association for Public Participation
800-644-4273
training@iap2.org
www.iap2.org
 - Planning for Effective Public Participation**
San Antonio, TX: April 4-5
Arlington, VA: May 2-3
Denver, CO: May 10-11
\$700
 - Communications for Effective Public Participation**
San Antonio, TX: April 6
Arlington, VA: May 4
Denver, CO: May 16
\$350
 - Techniques for Effective Public Participation**
San Antonio, TX: April 7-8
Arlington, VA: May 5-6
Denver, CO: May 19-20
\$700
- Nicholas School of the Environment and Earth Sciences, Duke University
919-613-8082
del@nicholas.duke.edu
www.nicholas.duke.edu/del/executiveeed/courses
 - Implementation of NEPA**
Durham, NC: March 21-25
\$1,375
 - Current and Emerging Issues in NEPA and Preparing and Documenting Environmental Impact Analyses (with writing workshop)**
Durham, NC: May 16-20
\$2,272 until 4/18/11
 - 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)

- International Institute for Indigenous Resource Management
303-744-9686
jeannerubin@iirm.org
www.iirm.org

Workshop on the Strategic Application of NEPA in Indian Country
Denver, CO: March 15-16
\$450

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

Applying the NEPA Process: Emphasis on Native American Issues
Albuquerque, NM: March 8-10
\$985 (GSA contract: \$895)

Applying the NEPA Process and Reviewing NEPA Documents
Denver, CO: March 14-18
\$1,385 (GSA contract: \$1,295)

Core Principles: Telling the NEPA Story, Keeping Documents Brief, and Meeting Legal Requirements
Nashville, TN: March 22-24
\$985 (GSA contract: \$895)

Overview of the NEPA Process
San Diego, CA: April 5
\$395 (GSA contract: \$305)
Orlando, FL: April 26
\$345 (GSA contract: \$255) until 3/15/11

Applying the NEPA Process and Writing Effective NEPA Documents
Dallas/Fort Worth, TX: April 19-22
\$1,145 (GSA contract: \$1,055) until 3/8/11

Collaboration in the NEPA Process
Phoenix, AZ: May 5-6
\$745 (GSA contract: \$655) until 4/1/11

Overview of the NEPA Process and Managing NEPA Projects and Teams
Salt Lake City, UT: May 10-13
\$1,145 (GSA contract: \$1,055) until 3/29/11

NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation
San Francisco, CA: May 24-27
\$1,145 (GSA contract: \$1,055) until 4/29/11

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/html/students/grad-degrees/nepa

- USDA Graduate School
888-744-4723
customersupport@graduateschool.edu
www.graduateschool.edu/course_details.php?cid=ENVS4435E

NEPA: Policy, Procedure, Science, and Art
Washington, DC: Tuesdays, April 12 – June 14
\$375

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
916-737-3000
info@icfi.com
www.icfi.com/newsroom/educational-opportunities.asp
- International Institute for Indigenous Resource Management
303-733-0481
iirm@iirm.org
www.iirm.org

EAs and EISs Completed October 1 to December 31, 2010

EAs¹

Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1656](#) (10/7/10)
MARET Center at Crowder College,
Neosho, Missouri
Cost: \$56,000
Time: 19 months

[DOE/EA-1763*](#) (12/23/10)
Geothermal Expansion to Boise State University,
Boise, Idaho
Cost: \$50,000
Time: 10 months

[DOE/EA-1782](#) (12/2/10)
The University of Delaware Lewes Campus Onsite Wind Energy Project, Lewes, Delaware
Cost: \$85,000
Time: 8 months

[DOE/EA-1786*](#) (12/28/10)
Algenol Integrated Biorefinery for Producing Ethanol from Hybrid Algae, Freeport, Texas and Fort Myers, Florida
Cost: \$175,000
Time: 7 months

[DOE/EA-1787*](#) (12/3/10)
Myriant Succinic Acid Biorefinery (MYSAB), Lake Providence, Louisiana
Cost: \$69,000
Time: 7 months

[DOE/EA-1789*](#) (10/7/10)
Construction and Operation of a Proposed Cellulosic Biorefinery, Alpena Prototype Biorefinery, Alpena, Michigan
Cost: \$53,000
Time: 5 months

[DOE/EA-1810](#) (12/17/10)
San Emidio Geothermal Exploration Project, Washoe County, Nevada
[DOE adopted this EA](#) on 12/17/10; therefore, cost and time data are not applicable. [Department of the Interior's Bureau of Land Management, the lead agency, issued a [finding of no significant impact](#) on 10/29/10.]

Idaho Operations Office/ Office of Nuclear Energy

[DOE/EA-1776](#) (10/13/10)
Idaho National Laboratory Radiological Response Training Range, Idaho Falls, Idaho
Cost: \$243,000
Time: 6 months

Office of Loan Programs

[DOE/EA-1727*](#) (11/19/10)
Loan Guarantee to AE Polysilicon Corporation for Construction, Startup of their Phase 2 Polysilicon Production Facility, Fairless Hills, Pennsylvania
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 12 months

[DOE/EA-1784*](#) (10/1/10)
Loan Guarantee for Fotowatio Nevada Solar, LLC's APEX Solar Power Project, Clark County, Nevada
[DOE adopted this EA](#) on 10/1/10; therefore, cost and time data are not applicable. [Department of the Interior's Bureau of Land Management, the lead agency, issued a [finding of no significant impact](#) on 8/25/10.]

[DOE/EA-1797*](#) (11/24/10)
Loan Guarantee for the Agua Caliente Solar Project, Yuma County, Arizona
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 5 months

[DOE/EA-1827*](#) (10/5/10)
Suniva Solar Project Site Community Development Block Grant, Thomas Township, Saginaw County, Michigan
[DOE adopted this EA](#) on 10/5/10; therefore, cost and time data are not applicable. [Department of Housing and Urban Development, the lead agency, issued a [finding of no significant impact](#) on 1/31/10.]

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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 October 1 to December 31, 2010

(continued from previous page)

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

[DOE/EA-1719*](#) (11/29/10)

Novolyte Technologies, Inc. Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Zachary, Louisiana

Cost: \$44,000

Time: 12 months

[DOE/EA-1744*](#) (10/22/10)

Brea Power II, LLC's Olinda Combined Cycle Electric Generating Plant Fueled by Waste Landfill Gas, Brea, California

Cost: \$31,000

Time: 9 months

EISs

Office of Energy Efficiency and Renewable Energy/ Golden Field Office

[DOE/EIS-0456](#) (75 FR 62386, 10/8/10)

(EPA Rating: EU-3, 3/29/96)

Cushman Hydroelectric Project, Mason County, Washington

EIS was adopted; therefore cost and time data are not applicable. [DOE adopted the Federal Energy Regulatory Commission (FERC) 1996 Final EIS and 2010 Order as DOE's Final EIS. DOE recirculated the documents before filing its Final EIS with EPA because DOE was not a cooperating agency on the FERC EIS. EPA rated FERC's 1996 Draft EIS as EU-3, but did not provide a rating for DOE's Final EIS.]

Office of Loan Programs

[DOE/EIS-0416*](#) (75 FR 65320, 10/22/10)

(EPA Rating: EC-2)

California Desert Conservation Area Plan Amendment/Final Environmental Impact Statement for Ivanpah Solar Electric Generating System, San Bernardino County, California

EIS was adopted; therefore cost and time data are not applicable. [Department of the Interior's Bureau of Land Management was the lead agency; DOE was a cooperating agency.]

[DOE/EIS-0449*](#) (75 FR 76981, 12/10/10)

(EPA Rating: EC-2)

Loan Guarantee for the Blythe Solar Power Project, Palm Springs, California

EIS was adopted; therefore cost and time data are not applicable. [Department of the Interior's Bureau of Land Management was the lead agency; DOE 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.)

* Recovery Act project

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 9 EAs for which cost data were applicable was \$56,000; the average cost was \$90,000.
- Cumulatively, for the 12 months that ended December 31, 2010, the median cost for the preparation of 59 EAs for which cost data were applicable was \$45,000; the average was \$89,000.
- For this quarter, the median completion time of 11 EAs for which time data were applicable was 9 months; the average was 10 months.
- Cumulatively, for the 12 months that ended December 31, 2010, the median completion time for 68 EAs was 6 months; the average was 9 months.

EIS Cost and Completion Times

- For this quarter there were no EISs completed for which cost and time data were applicable.
- Cumulatively, for the 12 months that ended December 31, 2010, the median and average costs for the preparation of 2 EISs for which cost data were applicable were \$17 million.
- Cumulatively, for the 12 months that ended December 31, 2010, the median completion time for 5 EISs was 20 months; the average was 31 months. (These data do not include adopted EISs, for which time data are not applicable.)

Recent EIS-Related Milestones December 1, 2010, to February 28, 2011

Notices of Intent

Office of Electricity Delivery and Energy Reliability

[DOE/EIS-0459](#)

*Hawaii Interisland Renewable Energy Program:
Wind Programmatic Environmental Impact
Statement, Hawaii*

December 2010 ([75 FR 77859](#), 12/14/10;
[76 FR 2095](#), 1/12/11, Notice of scoping)
[Co-Lead: State of Hawaii]

DOE/EIS-0463

*Presidential Permit Application for Northern Pass
Transmission, New Hampshire*
February 2011 ([76 FR 7828](#), 2/11/11)

Western Area Power Administration

[DOE/EIS-0450*](#)

*TransWest Express 600 kV Direct Current
Transmission Project, Wyoming, Colorado,
Utah, and Nevada*

January 2011 ([76 FR 379](#), 1/4/11)

[Co-Lead: Department of the Interior's Bureau
of Land Management]

Extensions of Scoping Period

Western Area Power Administration

[DOE/EIS-0461](#)

*Hyde County Wind Energy Center Project,
Hyde and Buffalo Counties, South Dakota*
January 2011 ([76 FR 2903](#), 1/18/11)

[DOE/EIS-0462](#)

*Crowned Ridge Wind Energy Center Project,
Grant and Codington Counties, South Dakota*
January 2011 ([76 FR 2903](#), 1/18/11)

Notice of Cancellation

Western Area Power Administration

[DOE/EIS-0401](#)

NextGen Project, Walworth County, South Dakota
December 2010 ([75 FR 80488](#), 12/22/10)

(continued on next page)

* Recovery Act project

Recent EIS-Related Milestones

December 1, 2010, to February 28, 2011 (continued from previous page)

Draft EISs

Bonneville Power Administration

[DOE/EIS-0421*](#)

Big Eddy-Knight Transmission Project, Oregon and Washington
December 2010 ([75 FR 76981](#), 12/10/10)

Office of Energy Efficiency and Renewable Energy

[DOE/EIS-0403](#)

Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States
December 2010 ([75 FR 78992](#), 12/17/10)
[Co-lead: Department of the Interior's Bureau of Land Management]

Office of Environmental Management

[DOE/EIS-0375](#)

Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste
February 2011 ([76 FR 10583](#), 2/25/11)

Final EISs

Bonneville Power Administration

[DOE/EIS-0422*](#)

Central Ferry-Lower Monumental 500-kilovolt Transmission Line Project, Garfield, Columbia, and Walla Walla Counties, Washington
February 2011 ([76 FR 9575](#), 2/18/2011)

Office of Environmental Management

[DOE/EIS-0423](#)

Long-Term Management and Storage of Elemental Mercury, Colorado, Idaho, Missouri, Nevada, South Carolina, Texas, and Washington
January 2011 ([76 FR 5156](#), 1/28/11)

Office of Loan Programs

[DOE/EIS-0454*](#)

Loan Guarantee for Tonopah Solar Energy, LLC, Crescent Dunes Solar Energy Project, Tonopah, Nevada
February 2011 ([76 FR 7844](#), 2/11/11)
[DOE adopted this FEIS from the Department of the Interior's Bureau of Land Management.]

Record of Decision

Office of Energy Efficiency and Renewable Energy

[DOE/EIS-0407*](#)

Abengoa Biorefinery Project near Hugoton, Stevens County, Kansas
January 2011 ([76 FR 2096](#), 1/12/11)

Supplement Analyses

Bonneville Power Administration

Transmission System Vegetation Management Program

(DOE/EIS-0285)

[DOE/EIS-0285-SA-440](#)

Vegetation Management along the Covington-Maple Valley No. 2, 230-kV Transmission Line Corridor, King County, Washington
(Decision: No further NEPA review required)
January 2011

[DOE/EIS-0285-SA-441](#)

Vegetation Management along the Fairview-Rogue No. 1 230-kV, the Bandon-Rogue No. 1 115-kV, the Rogue-Gold Beach No. 1 and No. 2 115-kV Transmission Line Corridor Rights of Way from Bandon Substation to Gold Beach Substation, Coos and Curry Counties, Oregon
(Decision: No further NEPA review required)
February 2011

McNary-John Day Transmission Line Project

(DOE/EIS-0332)

[DOE/EIS-0332-SA-03](#)

McNary-John Day Transmission Line Project – Existing Tower Pad Access and Road Expansion near McNary Dam, Umatilla and Sherman Counties, Oregon; Benton and Klickitat Counties, Washington
(Decision: No further NEPA review required)
January 2011

* Recovery Act project

Questionnaire Results

What Worked and Didn't Work in the NEPA Process

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

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

Scoping

What Worked

- *Cooperative scoping.* Since DOE anticipated adopting this EA, DOE worked with the lead agency (as a cooperating agency) to ensure that DOE's proposed action was evaluated as part of the proposed action and reflected in the cumulative impacts section.
- *Early internal scoping.* Holding an early comprehensive internal scoping meeting with an extensive list of participants was helpful.

What Didn't Work

- *Unclear scope.* Not having a clear understanding of the full scope of the project at the start affected the development of all viable alternatives.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Frequent communication.* Frequent conference calls with the EA contractor and applicant ensured coordination and facilitated timely completion of the document.
- *Agency collaboration and meeting deadlines.* A good alliance between the lead and cooperating agencies, and maintaining review and comment period deadlines, helped ensure timely completion of the document.
- *Early scoping meetings.* Holding early scoping meetings, including defining everyone's role and responsibilities, allowed the EA preparation to remain close to the schedule.
- *Weekly status meetings.* Holding weekly status meetings helped to keep the EA as close to the schedule as possible.

Factors that Inhibited Timely Completion of Document

- *Acquiring comments.* Difficulty acquiring public comments from the lead agency negatively affected the document schedule.
- *Site selection.* The amount of time it took for the applicant to complete its site selection process negatively affected the document schedule.

Teamwork

Factors that Facilitated Effective Teamwork

- *General Counsel consultation.* Teamwork between the DOE NEPA and legal teams assisted with interpretation of cooperating agency status and document adoption requirements.
- *Good communication.* Proactive communication and upfront coordination with respect to internal reviews facilitated effective teamwork.
- *Effective coordination.* Holding internal and public scoping meetings, weekly status meetings, reviewing the schedule weekly, and stating expectations and deliverables at every meeting was very effective.
- *Proactive approach.* Pre-briefing legal counsel on the project and EA approach allowed for effective DOE teamwork. An initial site visit and scheduled conference calls facilitated teamwork between DOE and contractor staff.
- *Direct contractor contact.* The ability to work directly with the contractor, in addition to having access to their expertise, helped reduce the amount of time needed for revisions.

Factors that Inhibited Effective Teamwork

- *Schedule.* Teamwork was hindered by a tight EA preparation schedule. It was difficult to schedule enough time for adequate written reviews, especially for reviews by personnel who had other responsibilities.

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

Process

Successful Aspects of the Public Participation Process

- *Public participation guidance.* The lead agency's NEPA public participation process was well defined in their handbook and easy to follow.
- *Planning.* Having a public participation plan up front and holding stakeholder briefings ensured transparency and was responsive to project inquiries.
- *Public approval.* The public response to the NEPA process was positive; they were appreciative of the opportunity to participate.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Agency agreements.* A memorandum of understanding between DOE and the lead agency was created prior to commencing work on the EA to define roles and responsibilities.
- *Project knowledge.* A thorough understanding of the impacts facilitated sound and informed decisionmaking.
- *Successful decisionmaking.* The NEPA process disclosed the impacts of the project and helped staff make an informed and sound decision on the issuance of the project's loan guarantee.
- *Environmental stewardship.* The NEPA process allowed the lead agency to develop mitigative plans to protect resources and the project was able to proceed in a responsible manner.

Enhancement/Protection of the Environment

- *Controls identified.* The NEPA process helped identify aspects of the project that could be adjusted to reduce impacts to important biological and cultural resources. It also identified certain controls to reduce impacts to workers and the public.

- *Existing regulations.* The environment was protected not as a consequence of the NEPA process, but by normal permitting requirements associated with a project of this nature. The EA demonstrated that the environment was protected.

Other Issues

Guidance Needs Identified

- *Concise NEPA preparation guide.* A simple consolidated DOE NEPA document preparation guide directed to NEPA document contractors would be valuable.

Effectiveness of the NEPA Process

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

For the past quarter, in which 4 questionnaire responses were received for EAs, all respondents rated the NEPA process as "effective."

- A respondent who rated the process as "3" stated that the NEPA process garnered support and stakeholder advocacy for the project.
- A respondent who rated the process as "3" stated that NEPA was a necessary step towards the issuance of a loan guarantee; however, NEPA did not play a role as an important planning tool.
- A respondent who rated the process as "3" stated that the NEPA process disclosed the impacts of the project and allowed for informed decisionmaking.
- A respondent who rated the process as "5" stated that it was important for DOE to play a role in the lead agency's decisionmaking process while funding a project in the lead agency's jurisdiction.