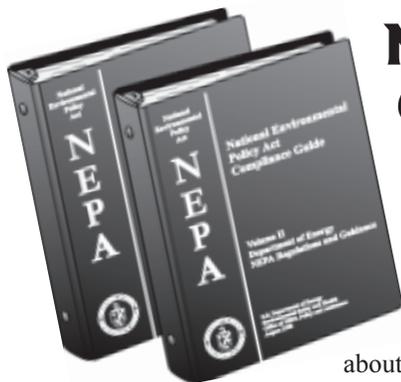


LESSONS LEARNED

December 1, 1998, Issue No. 17

For Fourth Quarter FY 1998



New and Improved NEPA Compliance Guide Issued in 2 Volumes

A new and improved DOE NEPA Compliance Guide, issued by the Office of Environment, Safety and Health, has been distributed to

about 750 members of the DOE NEPA Community. Intended to

foster sound and efficient NEPA compliance, the Compliance Guide is a collection of resources and references to aid in NEPA document preparation and other aspects of the NEPA process.

Volume I, *General NEPA References*, contains the statute, and regulations and guidance from the Council on Environmental Quality, the Department of State, and the Environmental Protection Agency. Volume II, *Department of Energy NEPA Regulations and Guidance*, contains DOE references related to compliance with NEPA. The format is easy to use and will accommodate future guidance supplements. The contents of the Compliance Guide were complete as of August 1998. Supplementary updates, including any new DOE regulations and guidance (see below), will be mailed to people on the distribution list.

More Recently Issued Tools

After the Compliance Guide was prepared for publication, the Office of Environment, Safety and Health issued additional NEPA guidance documents.

- ✓ **Environmental Impact Statement Summary (September 1998):** Helps in the preparation of an informative, concise, and readable summary. For many readers, the summary forms the first and lasting impression of the EIS and bears a greater than normal obligation to communicate clearly.

- ✓ **Glossary of Terms Used in DOE NEPA Documents (September 1998):** Provides authoritative definitions to foster efficiency and consistency in the preparation of NEPA documents.
- ✓ **NEPA Document Electronic Publishing Standards (October 1998):** Describes requirements, standards, and guidelines for Web publication of DOE NEPA documents to provide comprehensive NEPA information promptly and cost-effectively.
- ✓ **Designating and Supporting NEPA Document Managers (November 1998):** Emphasizes the importance of the NEPA Document Managers to the success of DOE's NEPA program, the knowledge and skills required, and resources available.

Additional Guidance Tools in Preparation

The Office of NEPA Policy and Assistance is developing additional tools for the NEPA process. Guidance scheduled for the near future will address:

- ✓ NEPA in the Context of Privatization,
- ✓ Accident Analysis,
- ✓ Clean Air Act Conformity and NEPA, and
- ✓ Environmental Justice Considerations in the NEPA Process.

Additional guidance topics under development include supplement analyses and transboundary impact analysis.



continued on page 2

Inside *LESSONS LEARNED*

Welcome to the fourth quarter FY 1998 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

- NEPA Community Meeting in Las Vegas 3
- Managing Baseline Environmental Information for the Sandia Site-wide EIS 7
- Tiered NEPA Strategy for UMTRA Ground Water Project 8
- Mini-guidance
 - Regulatory Compliance and NEPA 9
 - Procedures for an Environmental Critique and Synopsis, and a Supplement Analysis 10
- EPA Broadens Voluntary EIS Policy 11
- Historic Preservation Proposed Regulatory Revision Withdrawn 11
- Acting Chair at CEQ 11
- Training Opportunities 12
- Environmental Lessons Learned Seminars 12
- Litigation Updates 13
- DOE NEPA Community Members in Transition 14
- Annual NEPA Planning Summaries 14
- Performance-based Statements of Work 15
- NEPA Documents Completed 16
- Fourth Quarter FY 1998 Questionnaire Results 17
- Effectiveness of the NEPA Process 19
- EA Completion Times and Costs 20
- EIS Completion Times and Costs 21
- Other EIS-related Documents 22
- Recent EIS Milestones 23

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

New Compliance Guide *(continued from page 1)*

The DOE NEPA Compliance Guide and other guidance documents are available on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under NEPA Tools.

Acknowledgment

The Office of NEPA Policy and Assistance wishes to acknowledge the dedication and creativity of Barbara Grimm-Crawford, Special Assistant to the Deputy Assistant Secretary for the Environment, in overcoming many content and production challenges for the new Compliance Guide. Without her, the new Guide would still be “in process.” 

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report*. Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone 202-586-9326. Draft articles for the next issue are requested by January 29, 1999.

First Quarter Questionnaires Due January 29

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 1999 (October 1 to December 31, 1998) should be submitted as soon as possible after document completion, but no later than January 29, 1999. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

For Lessons Learned Questionnaire issues, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov, phone 202-586-0750, or fax 202-586-7031.

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback on the *Lessons Learned Quarterly Report* to Hitesh Nigam at hitesh.nigam@eh.doe.gov, phone 202-586-0750, or fax 202-586-7031.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

LLQR Index

A cumulative index of the LLQR is provided in the September issue each year.

Looking Forward from Nevada

DOE NEPA Community Meets on Theme of “Improving Performance/Getting Results”

By: Yardena Mansoor, Office of NEPA Policy and Assistance

About 150 members of the DOE NEPA Community — NEPA Compliance Officers and Document Managers, Counsel, the Office of NEPA Policy and Assistance, and NEPA support contractors — met at the Nevada Operations Office’s new facilities in North Las Vegas on October 14 and 15, 1998.



Gerry Johnson, Manager, Nevada Operations Office, welcomes participants to the DOE NEPA Community Meeting.

In his welcome, Gerry Johnson, Nevada Operations Office Manager, praised the site-wide environmental impact statement for the Nevada Test Site (completed in 1996) as a high quality document that meets NEPA compliance requirements and promotes efficiency and flexibility in undertaking new site missions. His remarks presaged the meeting’s theme of “Improving Performance/Getting Results,” introduced by Carol Borgstrom, Director, Office of NEPA Policy and Assistance. She emphasized that now that DOE has made progress in reducing the time and cost of preparing environmental assessments and environmental impact statements, the NEPA community needs to pursue further improvements to make NEPA documents more useful to decision makers and the public.

The NEPA Document Manager: How to Be a Winner

The NEPA Document Manager — a key player in improving the performance of the DOE NEPA process — was a major topic of discussion. Stan Lichtman, Division Director, Office of NEPA Policy and Assistance, led a

discussion on how to be a successful NEPA Document Manager, assisted by panelists Jay Rose of Defense Programs, Julianne Levings of the Albuquerque Operations Office, and Mike Skougard of the Nevada Operations Office. A function established by the Secretary of Energy in 1994 as part of a continuing series of reforms, the NEPA Document Manager is accountable for planning and executing the NEPA process for a proposed action. The NEPA Document Manager function requires knowledge of NEPA requirements, adequate authority, and management skills that include effective communication. One of the panel’s key recommendations is that NEPA Document Managers should engage the decision maker, not just take direction and report environmental results.

Many Resources Available to Assist DOE NEPA Document Managers

Draft guidance on the role of the NEPA Document Manager was circulated for comment before the Nevada meeting. The guidance, issued in final form on November 24, 1998, identifies resources available to support NEPA Document Managers:

People: Experienced NEPA Document Managers, NEPA Compliance Officers in every Program and Field Office, the Office of NEPA Policy and Assistance, and DOE’s environmental attorneys in Headquarters and the Field.

Training: Offered by NEPA Compliance Officers, the Office of NEPA Policy and Assistance, DOE’s National Environmental Training Office (www.em.doe.gov/neto/), and commercial sources.

continued on page 4



Panel members Jay Rose, Julianne Levings, and Mike Skougard discuss how to be a successful NEPA Document Manager.

(continued from page 3)

Guidance: Office of NEPA Policy and Assistance guidance documents available in its NEPA Compliance Guide, the DOE NEPA Web (<http://tis.eh.doe.gov/nepa/>), and the NEPA *Lessons Learned Quarterly Reports*.

NEPA Tools

Discussion of new NEPA guidance, intended as tools to assist the NEPA Document Manager, highlighted the meeting. Carolyn Osborne, assisted by Eric Cohen and Yardena Mansoor of the NEPA Office, provided detailed information on the range of DOE NEPA guidance tools now available or in preparation. Four new guidance documents have recently been completed, and guidance on additional topics is under development. (See related article on page 1.)

Coordinating Environmental Review with Procurement

DOE increasingly is exploring contracting arrangements that shift greater performance and financial risk to the private sector. Stan Lichtman discussed provisions of DOE's NEPA regulations (10 CFR 1021.216) concerning environmental review for such "privatization" procurements. Apparently unique to DOE, these requirements are intended to make NEPA and the procurement process work smoothly together when DOE will make a source selection related to implementing a proposed action before completing a required EA or EIS.

NAPA Evaluation of DOE NEPA Reforms

A special guest speaker, Richard Minard, Associate Director of the National Academy of Public Administration's (NAPA) Center for the Economy and the Environment, reported on the Academy's July 1998 study of the DOE NEPA program. (See *Lessons Learned Quarterly Report*, September 1998, page 3. The NAPA report is available at <http://www.napawash.org>.) Mr. Minard summarized the findings of the NAPA report, including that "DOE has made substantial progress in improving the management of its responsibilities under NEPA." Further, "DOE's efforts to manage the NEPA process as efficiently as possible should help make it more credible, stable, and useful," he said. Mr. Minard enthusiastically endorsed DOE's use of NEPA Document Managers, noting the active and critical role they play in designing and directing the environmental review process and the excellent management training the role provides. He also said that "establishing effective working relationships among the headquarters and field components involved in the NEPA process is an important challenge" for the NEPA Document Manager. Mr. Minard

observed that "staff commitment to openness, quality and honesty will gradually erode" any remaining cynicism regarding NEPA at DOE.

DOE-wide Contracts, Performance-based Contracting Emphasized

The DOE-wide NEPA support contracts issued in June 1997 are time-efficient and have provided cost savings, reported Dawn Knepper, Albuquerque Operations' Contracting Officer. (See *Lessons Learned Quarterly Report*, September 1998, page 7.) Over a period of 15 months, 12 different offices have issued 27 tasks for a total of about \$18 million. Of this total, almost \$15 million was awarded on a competitive basis. Ms. Knepper urged the DOE NEPA community to issue tasks on a performance basis — that is, to structure all aspects of an acquisition around the purpose of the work to be performed. "Ask for what you want: define the results, not the process," she said.

Legal Lessons

Ben Underwood, formerly of DOE and now an attorney in private practice, spoke on the strategic importance of the administrative record in preventing or prevailing in NEPA litigation. The administrative record consists of all materials that DOE considered in making its decision under NEPA (including information with which DOE disagrees and the reasons for disagreeing). In NEPA litigation, the court normally reviews only the administrative record. (See, for example, the first case in "Other Cases of Interest," page 13.) If the court finds that the record does not demonstrate a reasoned basis for DOE's decision, the court can delay the proposed action until DOE completes an adequate NEPA review. Steve Ferguson, Office of General Counsel, reviewed the status of DOE NEPA litigation and invited the DOE NEPA Community to review General Counsel's draft guidance on the administrative record for the NEPA process. (Comments were due November 13.)

Yucca Mountain Repository EIS Cross-cutting Issues

Before the meeting opened, many attendees took the optional tour of Yucca Mountain, currently under study as a potential disposal site for spent nuclear fuel and high-level radioactive waste. Wendy Dixon, Repository Environmental Impact Statement Project Manager, discussed the potential connections to other DOE environmental review issues, including wastes at various DOE sites and accident analysis.

continued on page 6

Highlights from the Breakout Sessions

Clean Air Act (CAA) Conformity

The CAA Amendments of 1990 require Federal actions to conform to state implementation plans for achieving and maintaining ambient air quality standards. EPA issued implementing regulations in 1993, and compliance is normally achieved via the NEPA process. DOE has had little experience with this rule, largely because few proposed actions are subject to the full conformity requirements. Planned DOE NEPA guidance will describe when the CAA conformity requirements apply, how general conformity should be addressed within NEPA documents, and how to coordinate the conformity process with the NEPA process.

Environmental Justice

This session explored approaches to identifying minority and economically disadvantaged populations, applying a sliding scale approach so that issues with higher expected intensity of impacts and public interest receive more detailed analysis. The session also covered tailoring public participation opportunities to environmental justice issues and technical approaches for environmental justice impact analysis.

Accident Analysis

The NEPA Office is working on guidance on accident analysis in DOE NEPA documents to improve consistency among NEPA reviews and achieve efficiency. The challenge is to be conservative (so that risks are not minimized through optimistic assumptions about uncertainties) while being realistic (so that dramatic risks with very low probabilities do not unduly influence the choice among alternatives). The breakout participants agreed that considering a range of potential accidents is part of evaluating the overall impacts of a proposal.

Transboundary Impacts

This breakout session discussed recent CEQ guidance on NEPA analyses for transboundary impacts — that is, the impacts of U.S. actions on the Canadian and Mexican environments. Challenges in incorporating

transboundary analysis into NEPA reviews include: data availability, timeliness, completing environmental review before making a decision, and differences in the stringency of the various nations' environmental regulations.

EIS Summary

Breakout session participants examined impact comparison tables from various EIS summaries to identify strengths and weaknesses in the approaches used. All of the tables examined contained some inappropriate or insufficient statements, such as “the impacts would increase” or “the emissions would meet regulatory standards.” (See the related article on page 9 of this issue.)

Supplement Analysis

This session addressed procedural questions: Who approves a supplement analysis? What documentation is appropriate for a determination that a new or supplemental EIS is not needed? Should a supplement analysis just be made available to the public (as specified in the DOE NEPA regulations) or issued for public review and comment? What factors should be considered in a supplement analysis for a site-wide EIS? (See the related article on page 10 of this issue.)

Clear and Concise Writing

Participants noted the tradeoff between “clear and concise” writing and “complete” analysis. It is necessary to incorporate both values, with “clear and concise” writing emphasized in the EIS and its summary, and “completeness” in the supporting material and appendices.

Integrated Safety Management and NEPA

This session explored the connections, conceptual similarities, and complementary aspects of NEPA, Integrated Safety Management Systems, and Environmental Management Systems. Participants recommended integrating a site's good existing safety and environmental review processes into the new systems.

(continued from page 4)

Land Divestitures and Future Land Use

Andrew Duran, Office of Field Management, discussed DOE's program for evaluating land needs and planning for future land use. DOE now owns or manages about 100 sites, many of which are currently classified as excess and may be sold or divested under the Federal Real Property Management Regulations. DOE will undertake appropriate NEPA reviews for these actions.

A panel consisting of Paul Dunigan, NEPA Compliance Officer, Richland Operations Office; Beth Osheim, Chief Counsel, Ohio Field Office; and Elizabeth Withers, NEPA Document Manager, Los Alamos Area Office, discussed approaches being used in NEPA reviews for divestiture and future land use decisions at their sites.

Clear and Concise Writing

Clear and concise writing—an essential quality for NEPA documents—was the subject of an entertaining lunchtime presentation by Stan Stenersen, a professional writing instructor. He used brief courtroom scenes from two popular comedy films, "What's Up, Doc?" and "My Cousin Vinny," to illustrate bad and good techniques for narrating a complicated story. The more effective approach uses a "top-down" logical structure, in which the main point is presented first and supporting details follow. In contrast, presenting details before the conclusion fails because there is no context for understanding the significance of the details.

Breakout Sessions and Demonstrations

In addition to speakers and panels, meeting attendees chose from among eight breakout topics for informal group discussions. Topics included: Integrated Safety Management and NEPA, transboundary environmental impacts, environmental justice, supplement analyses, accident analyses, Clean Air Act conformity, the environmental impact statement summary, and clear and concise writing. (See highlights on page 5.)

Additional demonstrations and displays addressed the DOE NEPA Web (<http://tis.eh.doe.gov/nepa/>) and NEPA training opportunities.

Follow-up Activities

Carol Borgstrom asked attendees to follow up on the meeting by providing feedback on the draft guidance documents as well as their needs for support and assistance, disseminating the NEPA document preparation and other information in the meeting notebooks, and engaging decision makers throughout the NEPA process. 



Participants assembled in the Nevada Operations Office's new facilities in North Las Vegas for the October NEPA Community Meeting.

Managing Baseline Environmental Information for the Sandia Site-wide EIS

By: Frederic March, *Sandia National Laboratories—New Mexico*, and
Julianne Levings, *NEPA Document Manager, Albuquerque Operations Office*

“So far, so good” may be the best way to characterize early progress on the site-wide EIS for Sandia National Laboratories—New Mexico. After a preliminary draft in September and a concurrence review draft in November, we expect to be able to meet our commitment to issue the draft EIS by January 31, 1999. In this article, we share some lessons learned regarding our approach to the effective collection and management of environmental information as a means to help achieve the Department’s goal of a better, faster, and cheaper NEPA process.

Sandia initiated work on the environmental baseline information before the EIS notice of intent was issued. This early start on data collection and analysis meant that, in the request for EIS preparation contractor proposals, DOE could advertise the availability of draft information documents — an approach which, we believe, resulted in lower bids for the site-wide EIS. The early start also meant that the draft information documents were completed only six weeks after EIS contractor selection.

Information Documents Support EIS Preparation

Working within DOE’s project management framework, and after developing detailed scopes, milestones, and budgets, Sandia produced the following information documents:

Facility and Safety Information Document —

a comprehensive technical compendium of the work of the Laboratory, including its environment, safety and health (ES&H) activities. The final version of this document will also include in-depth information on 10 selected facilities and facility groupings whose operations are analyzed in detail in the site-wide EIS.

Environmental Information Document —

a comprehensive technical compendium of the results of ongoing Sandia ES&H programs involving regulatory compliance, monitoring, and record keeping.

Geographic Atlas —

a large-format, bound collection of maps showing all relevant facilities, infrastructure, and environmental features at and near Sandia, including those on non-DOE federal properties. The EIS contractor used data from the Geographic Information System that

produced these maps to generate maps for the site-wide EIS.

Internal Web Tool Used to Collect Data

To coordinate additional data needs, Sandia National Laboratories designed an innovative, internal web tool to gather detailed operational data from a large number of persons spread across the Laboratory. Personal meetings were held with all persons providing data to overcome ambiguities in instructions and to motivate careful responses. The web tool, called the “Facility Information Manager,” was composed of:

- A database covering 34 lab facilities considered essential to NEPA analysis. For current baseline and five future scenarios of operations, data included hazard descriptions; levels of emissions; inventories of radioactive and hazardous chemicals; radioactive, mixed, and hazardous wastes generated; major resource consumption; and many other variables.
- A user-friendly questionnaire requesting data in all of the above areas, with user help screens to explain exactly what was required and why.

For information about the Sandia National Laboratories—New Mexico Site-wide EIS, contact Julianne Levings, NEPA Document Manager, at jlevings@doeal.gov, phone 505-845-6201, or fax 505-845-6392; for information about the Sandia’s Facility Information Manager, contact Richard Schetnan at 505-844-0954. 

Data Analysis Forum Planned for January

The DOE Office of Operating Experience Analysis and Feedback (EH-33) will sponsor a three-day Data Analysis Forum on January 26 to 28, 1999, in Las Vegas, Nevada. The purpose of the forum is to share innovative techniques for: collecting meaningful data, analyzing data to reveal useful insights, and presenting clear, concise results so that decision makers can act and the public can be informed. The forum will consist of presentations, panel discussions, and displays. For a full description of the forum, including a list of topics of interest, see the sponsoring office’s Web Site at <http://tis.eh.doe.gov/web/oeaf/>. For more information, contact Richard Day at richard.day@eh.doe.gov, or phone 301-903-8371. 

Tiered NEPA Strategy for UMTRA Ground Water Project is Paying Off

By: Donald Metzler, DOE Grand Junction Project Office

The Uranium Mill Tailings Remedial Action (UMTRA) Ground Water Project is finding that a tiered NEPA documentation strategy is paying off in terms of reduced time and cost for site-specific NEPA reviews.

The UMTRA Ground Water Project, which started in 1991, is the second phase of the DOE Title I UMTRA program. The purpose of the project is to eliminate, reduce, or otherwise address to acceptable levels the potential health and environmental consequences of uranium milling activities by meeting the Environmental Protection Agency ground water cleanup standards. The UMTRA Ground Water Project is selecting one of three compliance strategies — No Further Remediation, Natural Flushing with Monitoring, and Active Remediation — at 22 former uranium processing sites.

PEIS Provides Overall Framework

One of the first steps in the UMTRA Ground Water Project was to prepare a programmatic EIS¹ — a different approach from how NEPA was applied to the earlier UMTRA Surface Project. In the earlier project, DOE met its NEPA compliance requirements on a site-by-site basis by preparing EAs or EISs, the latter typically consisting of hundreds of pages in multiple volumes. Even though the PEIS took almost six years from genesis to completion, it now serves as the overall planning document, providing an objective and consistent framework for determining site-specific ground water compliance strategies.

That six-year process — which involved scoping meetings, public hearings across the country, and a Record of Decision — is now paying valuable dividends to the affected communities, regulatory representatives, and DOE. Data and analyses from the PEIS are used to prepare site-specific environmental impact analysis more efficiently. The UMTRA Ground Water Project is developing tiered NEPA documents that are concise, focused, and cost-effective. An EA is about 25 pages long,

generally costs less than \$30,000 from start to finish, and can be completed within six to nine months, including public scoping meetings and stakeholder reviews.

The PEIS put the UMTRA Ground Water Project's "right foot forward" from the very start. The planning accomplished during the development of the PEIS forced DOE to think out the entire project in detail — before making decisions. Further, letting the affected public, interested parties, and regulatory representatives take some early ownership of the decision making process helps ensure that important project aspects that could have negative outcomes to the environment or affected public are not overlooked.

Giving Stakeholders What They Want

Because the PEIS settled the programmatic issues early, the tiered EAs can focus on the site-specific issues that are often so important to the affected communities. Through community meetings, UMTRA Ground Water Project's stakeholders know they can obtain technical documents and data packages such as Baseline Risk Assessments and monitoring data at their local libraries or by calling a DOE toll-free number. This generally obviates including all the technical information in the tiered EA, resulting in a concise, comprehensible document. A user-friendly EA is what the stakeholders tell us they want.

For further information, contact Don Metzler at dmetzler@doegjpo.com, phone 970-248-7612, or fax 970-248-6023. 

¹ Uranium Mill Tailings Remedial Action Ground Water Project Programmatic EIS, DOE/EIS-0198, approved October 1996, \$1.0 M (EIS preparation cost).

Regulatory Compliance ≠ No Environmental Impacts ≠ Insignificant Impacts

It's an issue that comes up frequently in NEPA reviews: "The Alpha Project will comply with the x, y, z standards. Therefore, no significant impacts are anticipated." As the song goes, "it ain't necessarily so." And such an approach does not necessarily comply with NEPA. Every DOE project is required to comply with all applicable environment, safety, and health standards and regulatory requirements. Nevertheless, we still do NEPA reviews. Why is that?

Even Compliant Projects Have Impacts

Stating in a NEPA document that a proposed action "would be carried out in compliance with applicable regulatory requirements" does not mean that there would be *no* environmental impacts or that the impacts would be *insignificant*. There would be impacts from taking action, and even fully compliant actions may have significant environmental impacts. These points are discussed in "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements" (also known as the Green Book, DOE/EH, May 1993, pages 29 to 30).

That regulatory compliance demonstrates neither absence nor insignificance of environmental impacts is clearly illustrated by considering a major project — such as a dam, highway, or airport — that is *intended* to significantly change the human environment. Such projects must satisfy many types of environmental regulatory requirements, yet they impose large, significant, and permanent environmental impacts.

Early Court Case on NEPA and Regulatory Standards

One of the first cases to interpret NEPA, *Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission*,¹ considered whether regulatory compliance relieves an agency of any NEPA obligations. In this case, the Atomic Energy Commission, in considering a license application for a nuclear power plant, indicated that, with regard to water quality impacts of the plant, it would defer to water quality standards established and administered by state agencies and approved by the Federal government under the Federal Water Pollution Control Act. The most the Commission indicated it would do was to include a condition in all construction permits and operating licenses that would require compliance with the water quality and other standards set by the agencies.

In rejecting the Commission's view of the connection between regulatory requirements and NEPA compliance,

the court noted that NEPA requires a Federal agency proposing an action to undertake a "case-by-case balancing judgment" of the particular economic and technical benefits weighed against the environmental costs. The water quality standards in effect established a minimum condition for the granting of a license, but the Commission was not precluded from demanding more strict water pollution controls than those demanded by the applicable water quality standards. The court recognized that in some circumstances there may be significant environmental damage, although not quite enough to violate applicable standards.

Relation to "Significance"

The *significance* of impacts of a proposal that complies with regulatory requirements depends on context and intensity (40 CFR 1508.27). For example:

- A proposal to construct and operate an industrial facility in an already disturbed area may conform to all applicable regulations, but could result in cumulatively significant environmental impacts.
- A facility constructed in a pristine area may be able to obtain all necessary permits, but could impose burdens on natural resources that did not previously exist.
- A small facility and a very large one of the same type (for example, coal-fired power plants) must each meet all applicable environmental requirements (perhaps the same requirements), but may have impacts that differ greatly in significance.

Further, the CEQ regulations direct that a proposal's *threatened* violation of Federal, state, or local environmental laws or requirements is one of ten factors to consider in determining whether the impacts of the proposal are significant. (See 40 CFR 1508.27(b)(10) and 10 CFR Part 1021, Appendix B to Subpart D, Conditions that are integral elements of the classes of action in Appendix B, subsection (1)). In this light, using up the remaining allowable increment under air emissions standards would be compliant, but the proposal nevertheless may have significant impacts.

Recommendations

- ✓ Do not use compliance with regulatory standards or permits as justification for not analyzing the impacts or as evidence that a proposed action or alternative lacks potential for significant environmental impacts.
- ✓ Address potential or threatened violation of laws, regulations, and standards in evaluating significance of impacts. 

¹ 449 F.2d 1109 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 942 (1972).

Procedures for an Environmental Critique and Synopsis, and a Supplement Analysis

Environmental Critique

When DOE will not complete a required EA or EIS for a proposed action before making a source selection related to implementing the action, the DOE NEPA Regulations (10 CFR 1021.216) provide an environmental review process synchronized with the DOE procurement process. DOE specifies in its solicitation documents that offerors shall submit reasonably available environmental data and assessments, and the part evaluation of those materials would play in the source selection. For offers in the competitive range, DOE prepares and considers a confidential “environmental critique” before making a selection in the procurement. The critique discusses the salient characteristics of each offer and how the offers differ in their potential environmental impacts.

Q: *Who prepares, and who approves, an environmental critique?*

A: The environmental critique supplements the procurement process. The procurement team may include staff with the qualifications to assess the environmental information (including independently evaluating and verifying the offerors’ submittals) and prepare the critique.

Environmental Synopsis

In the interest of public disclosure, DOE will prepare an “environmental synopsis” based on the environmental critique (10 CFR 1021.216(h)). The synopsis documents DOE’s consideration of environmental factors in the selection process, yet excludes from disclosure and protects information regarding the offers that DOE is not authorized to disclose. After making a selection in the procurement, DOE (with the assistance of the Office of NEPA Policy and Assistance) files the synopsis with the Environmental Protection Agency and makes it publicly available. The synopsis is incorporated into any NEPA review that may be prepared for the action.

Q: *Who prepares the environmental synopsis? Who approves it?*

A: The environmental synopsis must be prepared by people who are privy to the (confidential) environmental critique. The synopsis should be acceptable to the NEPA document preparation team, including counsel and (for an EIS) the Office of NEPA Policy and Assistance. The approval authority, however, rests with the appropriate supervising manager in the organization that is primarily responsible for preparing the EIS or EA.

For further discussion of environmental critiques and synopses, refer to the (currently draft) Guidance on the NEPA Process in the Privatization Context. Questions may be addressed to Stan Lichtman, at stanley.lichtman@eh.doe.gov, phone 202-586-4610, or fax 202-586-7031.

Supplement Analysis

Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1502.9(c)) specify that an agency shall prepare a supplemental (draft or final) EIS if there are substantial changes to a proposal or significant new circumstances or information relevant to environmental concerns. *When it is unclear whether an EIS supplement is required*, DOE NEPA regulations require preparation of a supplement analysis that discusses the pertinent circumstances (10 CFR 1021.314(c)). The supplement analysis serves as the basis of a DOE determination that an existing EIS should be supplemented, a new EIS should be prepared, or that no further NEPA documentation is required.

Q: *Which DOE official has authority to approve a supplement analysis and make the associated determination?*

A: Under the DOE NEPA Order (DOE O 451.1A, paragraph 5a(11)), a Secretarial Officer or Head of a Field Organization, for matters under the office’s purview and when required by the DOE NEPA regulations,

continued on page 11

Mini-guidance (continued from page 10)

prepares a supplement analysis and, with the concurrence of DOE counsel, makes a determination based on the analysis. The responsibility for preparing a supplement analysis includes the obligation to assure its accuracy and adequacy. Preparing a supplement analysis and using it to determine the need for further NEPA review (that is, are the changes “substantial,” are the new circumstances or information “significant”?) is parallel to the authorities in paragraph 5a(9) to issue an EA and determine that impacts of a proposed action are significant and an EIS is required, or that impacts are not significant and an EIS is not required.

Q: *Does a supplement analysis need a NEPA Document Manager?*

A: Although the DOE NEPA Order does not explicitly require it, designating a NEPA Document Manager for a supplement analysis makes good management sense. Preparation of a supplement analysis is more likely to be efficient, timely, and technically correct when someone has clear responsibility, especially when more than one organization is involved. **LL**

Historic Preservation Proposed Regulatory Revision Withdrawn

On November 6, 1998, the Advisory Council on Historic Preservation withdrew proposed regulatory revisions to Section 106 of the National Historic Preservation Act (16 USC 470) and abandoned its effort to amend the regulations.

The Advisory Council directed its Task Force on Regulations to develop guidance that will meet requirements of the 1992 amendments to the Act, promote streamlining and reduction of regulatory burdens, and improve the operations of the existing Section 106 regulations.

The Act is one of several that DOE implements through the NEPA process to avoid duplication, as is encouraged under the CEQ NEPA regulations. For more information, contact Katherine Nakata at katherine.nakata@eh.doe.gov or phone 202-586-0801. **LL**

EPA Broadens Voluntary EIS Policy



The Environmental Protection Agency (EPA) has withdrawn its 1974 Policy for Voluntary Environmental Impact Statements and instituted a broader Voluntary NEPA Compliance Policy.

Proposed changes to the policy were published November 28, 1997 (62 FR 63334) (*Lessons Learned Quarterly Report*, March 1998, page 8). Under the new policy, EPA “will prepare an EA or, if appropriate, an EIS on a case-by-case basis in connection with Agency decisions where the Agency determines that such an analysis would be beneficial.” In making such a determination, EPA would consider the potential for: improving coordination with other Federal agencies; using an EA or EIS to comprehensively address large-scale ecological impacts, particularly cumulative effects; facilitating analysis of environmental justice issues; expanding public involvement and addressing controversial issues; and addressing potential impacts on special resources or public health.

For more information, see the EPA’s Office of Federal Activities’ Web Site at www.epa.gov/oeca/ofa or contact Joseph Montgomery at montgomery.joseph@epamail.epa.gov or phone 202-260-2090. **LL**

George Frampton Serving as Acting Chair at CEQ

In a statement of October 30, 1998, the President appointed George Frampton as acting Chair of the Council on Environmental Quality and announced the intent to nominate him as Chair. Mr. Frampton replaces Katie McGinty, who resigned after almost six years of service as the administration’s principal environmental policy adviser.

Mr. Frampton served as Assistant Secretary of the Interior for Fish and Wildlife and Parks from 1993 to 1997 and before that was president of the Wilderness Society. In addition, he was a law clerk for Supreme Court Justice Harry Blackmun, Deputy Director of the Nuclear Regulatory Commission’s inquiry into the nuclear accident at Three Mile Island, and a visiting lecturer in constitutional law at Duke University Law School. **LL**



Training Opportunities

The NEPA Toolbox: EAs with FOCUS

Environmental Training & Consulting International, Inc.
Dec. 7-8, 1998, Denver, CO
Fee: Regular \$750; Early \$695
Phone: 303-321-3575 Fax: 303-321-4569

The NEPA Toolbox: Cumulative Impacts Analysis

Environmental Training & Consulting International, Inc.
Dec. 9-10, 1998, Denver, CO
Fee: Regular \$750; Early \$695
Phone: 303-321-3575 Fax: 303-321-4569

Environmental Impact Assessment: NEPA and Related Requirements

American Law Institute–American Bar Association
(ALI-ABA)
Dec. 10-11, 1998, Washington, D.C.
Fee: \$695
Phone: 215-243-1630 or 800-253-6397, ext. 1630
www.ali-aba.org

Applying the NEPA Process/ Writing Effective NEPA Documents

Shiple Environmental, Inc.
Feb. 9-12, 1999, San Diego, CA, or
Aug. 14-17, 1999, San Francisco, CA
Fee: \$995
Phone: 888-270-2157 Fax: 888-270-2158
www.shipleenviro.com

Environmental Law

American Law Institute–American Bar Association
(ALI-ABA)
Feb. 10-12, 1999, Washington, D.C. (Bethesda, MD)
Fee: \$695
Phone: 215-243-1630 or 800-253-6397, ext. 1630
www.ali-aba.org

Overview of the NEPA Process

Shiple Environmental, Inc.
March 2, 1999, Las Vegas, NV
Fee: \$195
Phone: 888-270-2157 Fax: 888-270-2158
www.shipleenviro.com

Writing Effective NEPA Documents

Shiple Environmental, Inc.
March 3-5, 1999, Las Vegas, NV
Fee: \$795
Phone: 888-270-2157 Fax: 888-270-2158
www.shipleenviro.com

The Endangered Species Act

CLE International
March 12-13, 1998, Washington, D.C.
Fee: \$495
Phone: 800-873-7130 Fax: 303-321-6320
www.cle.com

Environmental Lessons Learned Seminars

The DOE National Environmental Training Office (NETO) is sponsoring a series of seminars on environmental lessons learned that are broadcast live via satellite across the country. NETO coordinates the overall effort and partners with subject matter experts to produce these programs. The one- to two-hour broadcasts are television productions that promote the sharing of lessons learned on specific environmental activities and provide answers to questions submitted by the viewing audience through toll-free telephone and fax lines.

The seminars also provide references and resource material on each topic to enhance information exchange. Written support material for each broadcast may be downloaded from NETO's web site. Following each seminar, videotapes of each satellite broadcast are sent to lessons learned coordinators throughout the DOE complex. Additional copies of the videos are also available from NETO on request (while supplies last).

To date, NETO has sponsored lessons learned seminars on the following topics:

- Lessons Learned through Implementation of Environmental Management Systems
- Lessons Learned through Privatization of Federal Facilities.

DOE organizations are encouraged to suggest topics and to volunteer to participate in future lessons learned broadcasts with experts from other sites who have similar experiences. For more information on this environmental lessons learned initiative, see NETO's web site at www.em.doe.gov/neto/lessons/ or call David Hoel at 803-725-0818. 



Litigation Updates

Developments in *NRDC v. Peña*: Notice of Intent Issued to Prepare Supplemental EIS for National Ignition Facility

As agreed to in a Joint Stipulation and Order, (October 1997), DOE has issued a Notice of Intent to prepare a supplemental EIS for the National Ignition Facility (NIF) at Lawrence Livermore National Laboratory (63 FR 51341, September 25, 1998). The project-specific EIS for the facility was an appendix to the Stockpile Stewardship and Management Programmatic EIS, and DOE's December 1996 programmatic record of decision included a decision to construct and operate NIF. In September 1997, site excavation uncovered capacitors that had leaked polychlorinated biphenyls into the surrounding soils. In partial settlement of a lawsuit opposing the programmatic EIS (*NRDC v. Peña*), DOE agreed in the October 1997 Joint Stipulation and Order to prepare a supplemental EIS whose scope would be "reasonably foreseeable significant adverse environmental impacts of continuing to construct and operating the NIF at Lawrence Livermore National

Laboratory, with respect to any potential or confirmed contamination in the area by hazardous, toxic, and/or radioactive materials." (See *Lessons Learned Quarterly Report*, December 1997, page 17.) Characterization activities at the site are now complete, and results, now available in the public reading room at Lawrence Livermore National Laboratory, will be analyzed in the supplemental EIS.

Trial Scheduled on Contempt Charge

Unless the parties settle, a trial is scheduled to begin on December 7, 1998, on the charge brought by the National Resource Defense Council (NRDC) that DOE is in contempt of a 1990 Stipulation and Order by having failed to prepare a programmatic EIS that addresses environmental restoration.

Other Cases of Interest

Assumptions Without Factual Support Render EA Inadequate

Homeowners challenged, on NEPA grounds, the U.S. Army Corps of Engineers' issuance of a permit under Section 404 of the Clean Water Act for the proposed construction of a reservoir and dam in Georgia. The plaintiffs alleged that the EA prepared for the permit decision did not adequately consider the potential adverse environmental impacts of an existing liquid petroleum pipeline that would cross under the proposed reservoir. In making its finding of no significant impact and thus deciding not to prepare an EIS, the Corps had assumed that the pipeline would be relocated, but it did not make relocation a condition of the Section 404 permit.

The court found that the administrative record did not support the Corps' assumption that the pipeline would be relocated and that the agency failed to consider the environmental impacts of the pipeline remaining under the proposed reservoir. The court remanded the case to the

Corps to consider whether the pipeline would remain and, if so, whether the presence of such a pipeline necessitates the preparation of an EIS for the project. *Hill v. Boy*, 1998 U.S. App. LEXIS 14899 (11th Cir. 1998).

EIS Not Invalidated by Violation of Contractor Disclosure Provision

In this case, plaintiffs challenged a Department of Transportation EIS for a proposed highway interchange, arguing, among other things, that the agency failed to comply with NEPA by allowing a private contractor with a conflict of interest to assist in the preparation of the EIS for the proposed project. Specifically, plaintiffs contended that the EIS should be invalidated because the contractor had an expectation of future work based on the agency's unvarying practice of awarding the final design contract to the company that prepared the EIS, and because the contractor failed to execute the required conflict of

continued on page 14

“Litigation Updates” (continued from page 13)

interest disclosure statement until after the final EIS had been issued.

The U.S. Court of Appeals for the 10th Circuit concluded that the contractor had no contractual agreement or guarantee of future work on the project at the time it prepared the EIS. Further, even “accepting for the sake of argument that the Contractor’s heightened expectation” for future design work amounted to a conflict, the court found that the degree of oversight exercised by the agency “is sufficient to cure any defect arising from that expectation,” and that the ultimate question on a conflict of interest issue is whether the alleged breach compromised the objectivity and integrity of the NEPA

process. The court held that the record demonstrated that the agency performed all management activities and only used the contractor personnel for technical expertise, prepared many sections of the EIS without the contractor’s assistance, and independently and extensively reviewed all of the contractor’s data and analyses. Although the court agreed that the contractor’s belated filing of the required disclosure statement violated NEPA regulations, it refused to invalidate the EIS on that ground “given the extensive supervision” by the agency. *Associations Working for Aurora’s Residential Environment v. Colorado Department of Transportation*, 1998 U.S. App. LEXIS 1705 (10th Cir. 1998). 

DOE NEPA Community Members in Transition

Ted Hinds to Retire

After more than eight years in Federal service, Warren (Ted) Hinds, environmental protection specialist with the Office of NEPA Policy and Assistance, plans to retire at the end of the year. As he puts it, “I’m trying to get my boots off, shut down Windows, and head back to the rural kind of life I started from 60-plus years ago.” He and his family will be moving to Georgia to enjoy “the good life.”

Ted served in the NEPA Office for the past seven years, primarily assisting the Offices of Defense Programs and Fissile Materials Disposition. His Federal career also included a year with the Office of Energy Research in 1976, when he worked on the Nationwide Programmatic EIS for Surface Mining of Coal. In between, Ted worked in the private sector for 25 years, mostly for Battelle Pacific Northwest Laboratory at the

Hanford Reservation. While at Battelle, he also provided technical assistance to the Environmental Protection Agency on acid deposition issues and global climate change. We wish Ted and his family health and happiness.

Shane Collins Goes West(ern)

“They don’t have mountains or sky like this back East.” In September, Shane Collins, after seven years with the Office of NEPA Policy and Assistance, relocated to the Western Area Power Administration’s Colorado River Storage Project Customer Service Center in Salt Lake City, Utah. She is working on the Colorado River Recovery Program, including Endangered Species Act and NEPA activities. We are pleased that she will remain part of DOE’s NEPA community in her new duties. Shane may be reached at collins@wapa.gov or 801-524-5587. 

Annual NEPA Planning Summaries Due in January

Members of the DOE NEPA Community are reminded to support the preparation of their organization’s Annual NEPA Planning Summary. DOE Order 451.1A requires each Secretarial Officer and Head of a Field Organization to submit an Annual NEPA Planning Summary to EH-1 by January 31 of each year. The Annual NEPA Planning Summary also must be made available to the public. The Summary is to include: (1) the status of ongoing NEPA compliance activities, (2) any environmental assessments expected to be prepared in the next 12 months, (3) any environmental impact statements expected to be prepared in the next 24 months, (4) the planned cost and schedule for completion of each NEPA document identified, and (5) an evaluation of whether a site-wide environmental impact statement would facilitate future NEPA compliance efforts (required every three years, starting in 1995 [but not in 1999]). Annual planning for NEPA reviews promotes efficient resource management and scheduling. Questions may be addressed to Jim Daniel, Office of NEPA Policy and Assistance, at james.daniel@eh.doe.gov, phone 202-586-9760, or fax 202-586-7031. 

Performance-based Statements of Work

By: Harold Johnson, NEPA Compliance Officer, Carlsbad Area Office

To prepare for the upcoming competition of the Waste Isolation Pilot Plant (WIPP) Management and Operating (M&O) contract, the Carlsbad Area Office sponsored training for technical managers on performance-based statements of work (SOWs). After completing the training, I applied the performance-based approach to the SOW for M&O NEPA activities at the WIPP site. This article shares some of what I learned from the training and from rewriting the SOW.

A performance-based SOW tells the contractor what result or product is desired, rather than prescribe how to perform the work. While the concept is simple, it is often difficult to describe the end product in sufficient detail to ensure that the final result will meet your expectations. To demonstrate this point during our training, we were asked to rewrite existing WIPP SOWs for areas we did not manage. In all instances, the rewritten statement of work described something radically different from what was actually being accomplished under that SOW.

The training on “Performance-Based Statements of Work” and “Monitoring Performance-Based Contracts” highlighted several ways to improve the description of the desired outcome.

- ✓ **Use the introductory section of the SOW to describe the Department’s viewpoint and get the contractor thinking in the same manner.** In revising the WIPP SOW, I added an introduction on the importance of conducting an appropriate NEPA review and clarified that NEPA compliance is the responsibility of the Federal government, thus emphasizing that the contractor’s role is limited to providing assistance.
- ✓ **List the information that should be contained in a particular deliverable.** This can be done by including a list of items in the SOW, by referring to a checklist attached to the SOW, or by referring to DOE NEPA guidance or checklists available on the NEPA Web at <http://tis.eh.gov/nepa/> under NEPA tools. In my rewritten SOW, I described the information to be contained in a NEPA database maintained by the contractor and referred to EH guidance in describing the expectations for preparing environmental assessments.

- ✓ **Attach a good example of the expected product to the SOW and refer to it in the SOW.** I chose not to provide an example yet; however, I am considering adding an attachment to the SOW before the contract is competed. The intent — and the challenge — of providing examples is to establish minimum expectations without discouraging innovation on the part of a prospective contractor.

What you *omit* from a performance-based SOW can be just as important as what you include. For example, specifying minimum staffing levels or expertise that must be maintained, how or how often a particular activity should be done, or other similar requirements should be avoided unless absolutely necessary. Such provisions may inhibit innovative management strategies that would reduce the cost of services to the government. In rewriting the WIPP NEPA SOW, I deleted a provision of the old SOW that required updating the contractor’s NEPA procedures once a year. Keeping the procedures current might require updating more than once in a particular year (and perhaps not at all in another year), and the specified one-year interval might not produce the desired result.

I also deleted an old SOW provision that required the contractor to use the NEPA process to identify other regulatory concerns. This change would enable the contractor to use other, perhaps more effective processes.

My revised, fixed price SOW is available electronically to DOE employees upon request. The SOW is a “work in progress,” and I would appreciate suggestions for improvement. Please feel free to contact me at johnsoh@wipp.carlsbad.nm.us, phone 505-234-7349, or fax 505-887-6970. 

For More Information

For information regarding the training courses mentioned in this article, contact the Center for Acquisition Research, Technology, and Education (CARTE), Inc., a subsidiary of Atlantic Management Center, Inc., at CARTE’s Web Site at www.carTEinc.com, or call 703-256-0509.

Fourth Quarter FY 1998 Questionnaire Results

NEPA Documents Completed Between July 1 and September 30, 1998

EAs

Albuquerque Operations Office/Environmental Management

Ground Water Compliance at the Riverton, Wyoming Uranium Mill Tailings Site

DOE/EA-1261

Cost: \$28,000

Time: 9 months

Bonneville Power Administration

Bonneville-Hood River Transmission Line Corridor Vegetation Management, Hood River County, Oregon

DOE/EA-1257

Cost: \$61,000

Time: 5 months

Chicago Operations Office/Office of Science (Formerly Energy Research)

Proposed Decontamination and Disassembly of the Argonne Thermal Source Reactor (ATSR) at Argonne National Laboratory—East, Argonne, Illinois

DOE/EA-1266

Cost: \$13,000

Time: 2 months

Fissile Materials Disposition

Pit Disassembly and Conversion Demonstration at Los Alamos National Laboratory, Los Alamos, New Mexico

DOE/EA-1207

Cost: \$423,000

Time: 15 months

Nonproliferation and National Security

Project Partnership—Transportation of Foreign-Owned Enriched Uranium from the Republic of Georgia (completed in April 1998 and not previously reported in *Lessons Learned*)

DOE/EA-1255

Cost: \$60,000

Time: 1 month

Oakland Operations Office/Environmental Management

Upgrade and Operation of Stanford Positron-Electron Asymmetric Ring (SPEAR3) Facility, Stanford Linear Accelerator Center, Menlo Park, California (completed in June 1998 and not previously reported in *Lessons Learned*)

DOE/EA-1243

Cost: \$25,000

Time: 9 months

Richland Operations Office/Environmental Management

Solid Low-Level Mixed Waste Non-Thermal Treatment, Hanford Site, Richland, Washington

DOE/EA-1189

Time: 23 months

[Note: The costs of this EA were not available.]

Transfer of 1100 Area, Southern Rail Connection and Rolling Stock, Hanford Site, Richland, Washington

DOE/EA-1260

Cost: \$48,000

Time: 7 months

Rocky Flats Office /Environmental Management

McKay Bypass Canal Extension at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado

DOE/EA-1262

Cost: \$19,000

Time: 6 months

Savannah River Site/Environmental Management

Reuse of TNX as a Multi-Purpose Pilot Plant Campus at the Savannah River Site, Aiken, South Carolina

DOE/EA-1231

Cost: \$26,000

Time: 11 months

Strategic Petroleum Reserve/Fossil Energy

Bayou Choctaw Pipeline Extension to Placid Refinery, Iberville Parish and West Baton Rouge Parishes, Louisiana

DOE/EA-1251

Cost: \$105,000

Time: 7 months

EISs

Rocky Flats Office/Environmental Management

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado

DOE/EIS-0277; EPA Rating: EC-2

Cost: \$4.5 Million

Time: 21 months

Fourth Quarter FY 1998 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 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 1998. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

Some of 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 Environment, Safety and Health.

Scoping

What Worked

- Joint scoping with cooperating agency. *DOE integrated the U.S. Army Corps of Engineers' Section 404 wetlands process into the DOE NEPA process. DOE coordinated joint scoping with the private party, the Corps, and the host State's resource agencies, which resulted in early identification of a preferred alternative. The Corps, in turn, adopted DOE's EA.*

Data Collection/Analysis

What Worked

- Availability of previous technical document. *An up-to-date technical background study proved to be a useful source of information; it also helped address related regulatory (RCRA, CERCLA, TSCA) issues.*
- An Environmental Baseline Survey. *Preparation of an Environmental Baseline Survey before EA preparation saved both time and cost in preparing the EA.*

What Didn't Work

- Adding marginally relevant information. *Adding information on various research and development projects increased EA completion time and cost of data collection. The information was generally available, but a fair amount of time was consumed in keeping it current.*

Schedule

Factors that Facilitated Timely Completion of Documents

- A master schedule. *We developed a Government/Support Contractor master schedule early in the process, which we formalized only after the scope of the EA had been agreed upon by other DOE team members.*

Factors that Inhibited Timely Completion of Documents

- Not getting it right the first time. *Because the Document Manager initially was complacent due to consistently good prior experience with the support contractor, he failed to provide sufficient structure for what turned out to be an inexperienced team. The subsequent rewriting to bring the document up to DOE standards resulted in a four-week slip in schedule.*
- Legal and contractual considerations for privatization issues. *These included necessary consistency of EA with the Request for Proposal and lack of common agreement on privatization issues and contractual processes. Care had to be taken to ensure that the NEPA documents and the program solicitation document contained the same information.*

Factors that Facilitated Effective Teamwork

- Standing agenda item. *The NEPA review was maintained as a line item to address in weekly project meetings.*

Process

Successful Aspects of the Public Participation Process

- Addressing local job loss. *The public was primarily concerned that existing positions would be eliminated; however, the NEPA process provided a forum to explain that this would not occur.*
- Web notification. *Notice of the availability of the EA was posted on our Web Site for the benefit of potentially affected and interested parties.*
- Use of local publications. *Notifications in our "Environmental Bulletin" appeared to have been successful.*

continued on page 18

Fourth Quarter FY 1998 Questionnaire Results

(continued from page 17)

- Piggybacking on another agency's procedures. *Integration of another Federal agency's permit notification procedures into DOE's NEPA process effectively made more comprehensive information available to a larger set of stakeholders.*
- Effective identification of stakeholders. *The Area Office provided excellent assistance in assistance for preparing a complete listing of the stakeholders who should receive the draft EA for comment.*

Usefulness

Agency Planning and Decision Making — What Worked

- Combining processes with another agency. *Integrating the U.S. Army Corps of Engineers' Section 404 wetlands process into the DOE NEPA process provided more comprehensive environmental analysis to the public than would typically occur in the 404 process. Conversely, the 404 process enabled resolution of wetlands mitigation concerns upon which a mitigated FONSI could be based. The synergism of the combined processes was real; NEPA facilitated the 404 permit and vice versa. The result was an expedited project approval by the host State and by the Corps.*
- Maximizing the use of EA in project planning and decision making. *The environmental assessment was a good document upon which to base a decision regarding whether to prepare an environmental impact statement. The NEPA process was also very useful in deciding how several aspects of the project would be conducted. It also increased awareness of the need to complete several hazard analyses on time.*
- Incorporating NEPA into privatization process. *The NEPA process forced us to render consistent decisions related to site privatization and reuse processes and corresponding contractual requirements.*

Agency Planning and Decision Making—What Didn't Work

- Underestimating the need for DOE staff involvement. *Support contractor effort would have been much more efficient if Chapter 1, "Purpose and Need for Action," and Chapter 2, "Proposed Action and Alternatives,"*

had been prepared by Federal staff as part of internal scoping and if Federal staff had been more actively involved in structuring the initial draft of Chapter 4, Environmental Impacts. NEPA Document Managers must keep in mind that no EA is so simple or brief that they can drop their guard in overseeing the contractor.

- Disagreement between program offices. *A related site-wide EIS was being prepared at the same time as our EA, and several coordination meetings were required to define how the environmental impacts would be analyzed in each document. After we thought this issue had been resolved, the site-wide EIS program office indicated a change of position, which delayed obtaining concurrence from the site-wide program office near the end of the EA process.*

Enhancement/Protection of the Environment

- Historical resources protected. *The NEPA process facilitated the appropriate relocation of historic artifacts.*

Cost

What Didn't Work

- Adding extraneous information. *The addition of unconnected information on all of the program's research and development projects to the assessment probably doubled the cost of the EA.*

Effectiveness of the NEPA Process

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

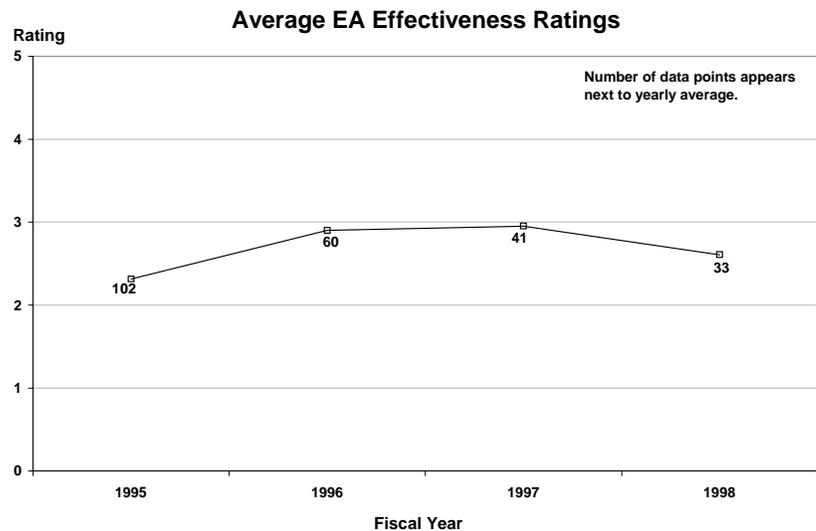
For this quarter, in which 11 EAs and one EIS were completed, nine respondents provided effectiveness ratings for five of the documents (multiple responses were received for three of the EAs). Of these nine respondents, seven rated the NEPA process as "effective." 

Effectiveness of the NEPA Process

The charts and text below summarize four years of questionnaire data on the effectiveness of the DOE NEPA process. In the questionnaire, respondents are asked to rate the effectiveness of the NEPA process on a scale of 0 to 5, where 0 means “not effective at all” and 5 means “highly effective.” The charts present the annual average of these effectiveness ratings. The accompanying text summarizes common explanations given by respondents for their ratings.

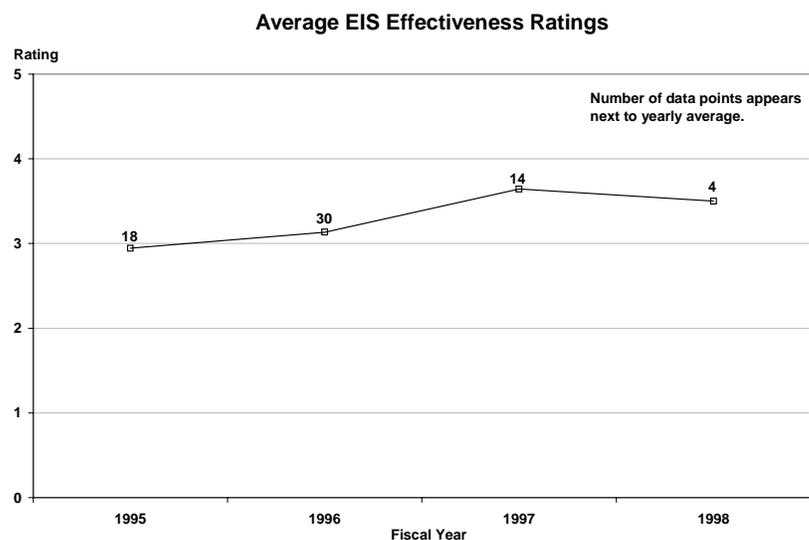
Effective Measures

- Having an experienced document manager — one who provides leadership and maintains “constant vigilance” over the process.
- Early application of NEPA, including a well-defined statement of purpose and need and a full description of the proposed action and alternatives.
- Good teamwork with frequent and open communication among all involved and affected parties.
- Delegation of NEPA document authority to field organizations.
- A well-conceived management plan and a realistic schedule.



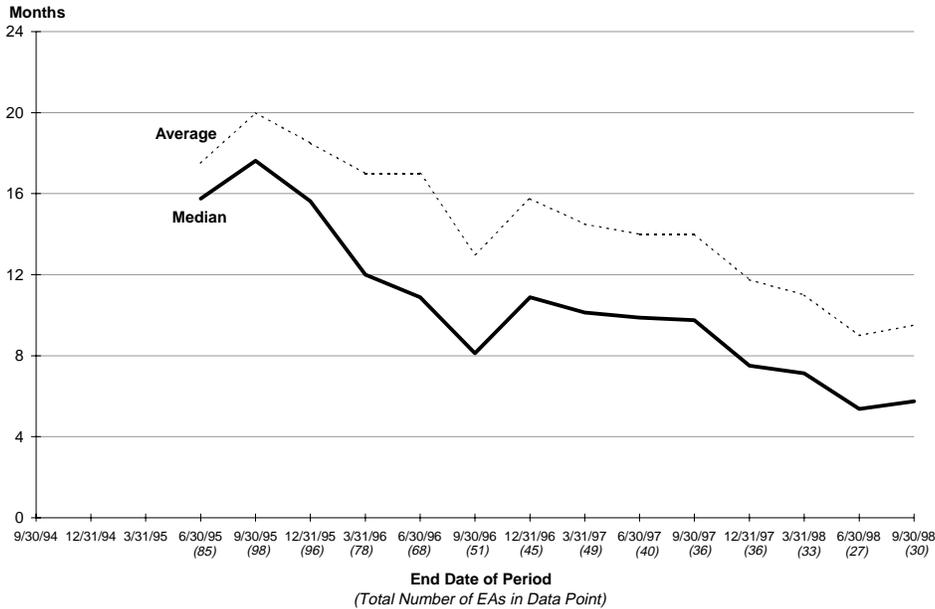
Non-effective Measures

- Viewing NEPA as just another part of project paperwork, not as a planning tool.
- Inexperienced document managers and authors.
- Late changes in project scope or design, or incomplete design information.
- Lack of communication among team members.



EA Completion Times and Costs

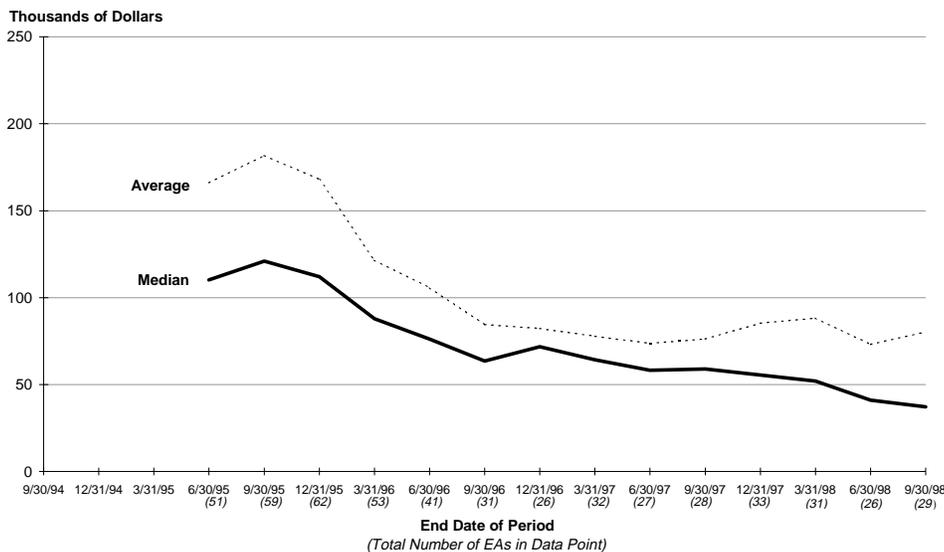
EA Completion Times
12-month moving trendline, revised quarterly*



Completion Time Data

- For this quarter, the median completion time of nine EAs was 7 months; the average completion time was 8 months.
- For FY 1998, the median completion time of 31 EAs was 7 months; the average completion time was 10 months.

Total EA Costs
12-month moving trendline, revised quarterly*



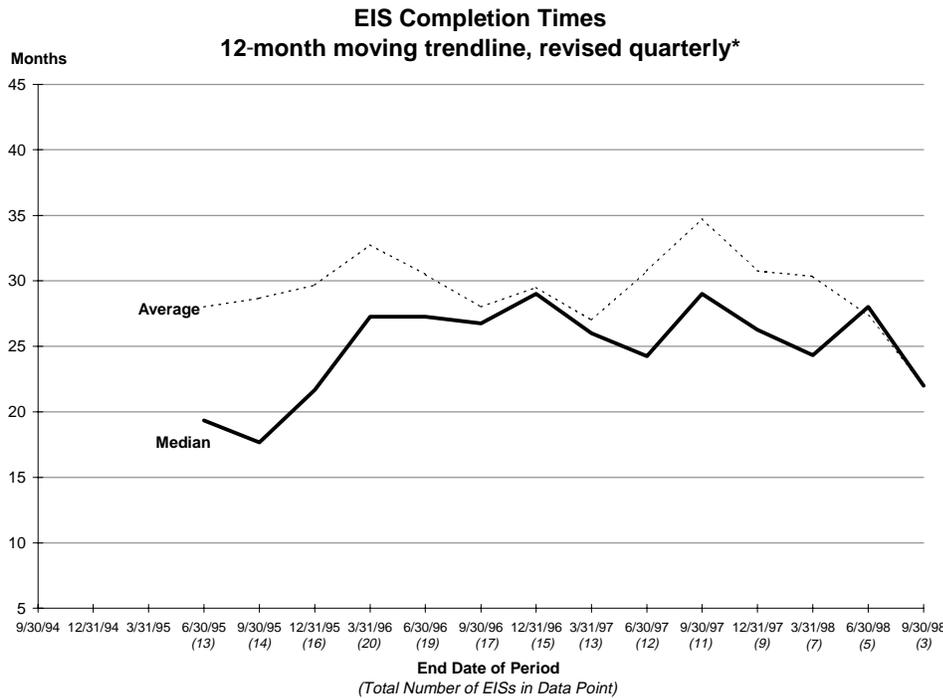
Cost Data

- For this quarter, the median cost of eight EAs was \$38,000; the average cost was \$90,000.
- For FY 1998, the median cost for the preparation of 30 EAs was \$28,000; the average cost was \$84,000.

* Each data point represents EAs completed within the 12-month period ending on the indicated date. This technique tends to smooth out quarterly changes. Therefore, each EA is counted in up to four data points.

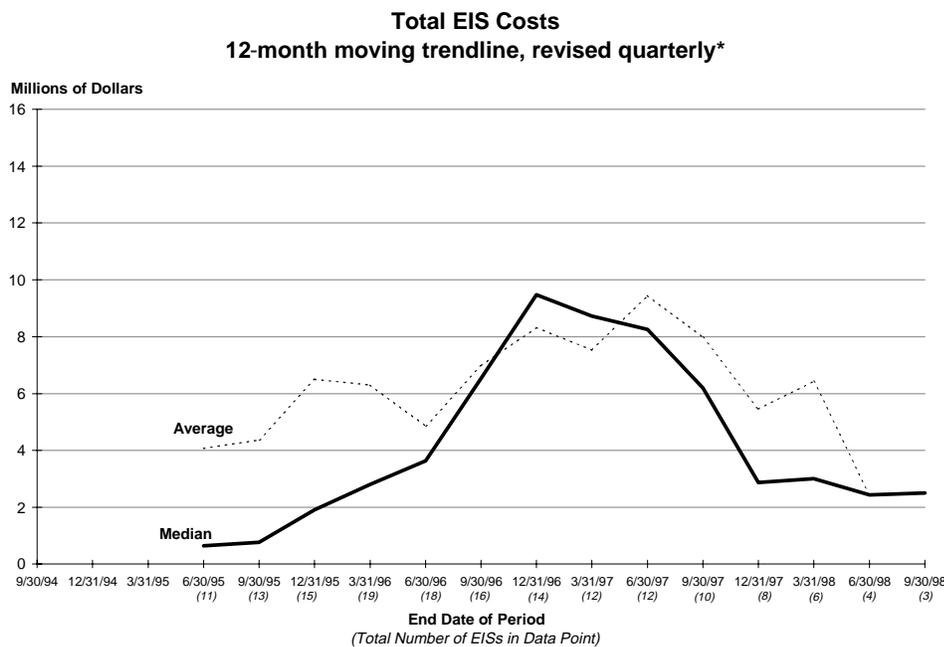
EIS Completion Times and Costs

All of the three EISs completed in FY 1998 were project-specific; no programmatic or site-wide EISs were completed.



Completion Time Data

- For FY 1998, the median completion time of three EISs was 21 months; the average completion time was 22 months.



Cost Data

- For FY 1998, the median cost for the preparation of three EISs was \$2.4 million; the average cost was \$2.5 million.

* Each data point represents EISs completed within the 12-month period ending on the indicated date. This technique tends to smooth out quarterly changes. Therefore, each EIS is counted in up to four data points.

Other EIS-related Documents

(July 1 to September 30, 1998)

Notice of Intent	DOE/EIS#	Date
Supplemental EIS for the National Ignition Facility Portion of the Programmatic EIS for Stockpile Stewardship and Management	DOE/EIS-0236-S	9/25/98 (63 FR 51341)
Draft EISs		
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory	DOE/EIS-0290	July 1998
Production of Tritium in a Commercial Light Water Reactor	DOE/EIS-0288	August 1998
Records of Decision		
Waste Management Programmatic EIS, Treatment of Non-Wastewater Hazardous Waste	DOE/EIS-0200	8/5/98 (63 FR 41813)
Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS, amended	DOE/EIS-0229	8/13/98 (63 FR 43386)
Bonneville Power Administration/Lower Valley Power and Light Transmission Project, Wyoming	DOE/EIS-0267	8/21/98 (63 FR 44853)
Supplement Analyses		
Acceptance of Foreign Research Reactor Spent Nuclear Fuel Under Scenarios Not Specifically Mentioned in the EIS, Foreign Research Reactor Spent Nuclear Fuel Programmatic EIS (<i>No further NEPA review required</i>)	DOE/EIS-0218-SA-02	August 1998
AL-R8 Sealed Insert Container for the Pit Repackaging Program, EIS for the Continued Operation of the Pantex Plant (<i>No further NEPA review required</i>)	DOE/EIS-0225-SA-02	August 1998
Storing Plutonium in the Actinide Packaging and Storage Facility and Building 105-K at the Savannah River Site, Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS (amended DOE/EIS-0229 Record of Decision) (<i>No further NEPA review required</i>)	DOE/EIS-0229-SA-02	August 1998
Environmental Effects of Changes in DOE's Preferred Alternative for Management of SNF from the K-Basins (<i>No further NEPA review required</i>)	DOE/EIS-0245-SA-01	August 1998

Recent EIS Milestones (October 1 to December 1, 1998)

Notices of Intent	DOE/EIS#	Date
Transfer of the Heat Source/Radioisotope Thermoelectric Generator Assembly and Test Operations from the Mound Site	DOE/EIS-0302	10/02/98 (63 FR 53031)
Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Space Missions	DOE/EIS-0299	10/05/98 (63 FR 53398)
Minnesota Agri-Power Project: Biomass for Rural Development, Granite Falls, Minnesota	DOE/EIS-0300	10/07/98 (63 FR 53885)
NRG Energy Services, Inc., Arizona-Baja California 500 kV Transmission Line	DOE/EIS-0301	10/26/98 (63 FR 57109)
Draft EISs		
Sutter Power Plant and Transmission Line Project, California	DOE/EIS-0294	October 1998
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona	DOE/EIS-0297	October 1998
Record of Decision		
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado	DOE/EIS-0277	12/01/98 (63 FR 66136)



Office of NEPA Policy and Assistance, EH-42
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0119