

LESSONS LEARNED

Putting the Web to Work for NEPA

“What’s your e-mail address? Do you have a Web site?”

These are common questions in meetings about DOE actions, including the NEPA process. Harder questions to answer are the ones we should ask ourselves: “Are we using these tools effectively to enhance the NEPA process? Are we getting all we can out of the Internet?”

“We’ve repeatedly advocated use of the Internet to improve NEPA implementation,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance, “and we’re seeing results. Nearly all DOE NEPA documents completed since 1998 are available on the Web, and DOE often uses Web sites as an integral part of the NEPA process. In many areas, DOE is ahead of other agencies in making use of the Internet.”

“We can do even better,” Ms. Borgstrom continued. “I challenge everyone in DOE’s NEPA Community to become more Web savvy. Learn what makes a Web site effective.”

EISs on the Web

The NEPA Office maintains a comprehensive collection of DOE NEPA documents on the DOE NEPA Web site (www.oh.doe.gov/NEPA under DOE NEPA Documents). Although many people first check the DOE NEPA Web site for NEPA information, a dedicated Web site for a specific environmental impact statement (EIS) or, in some cases, an environmental assessment (EA), can supplement the DOE NEPA Web site by providing more detailed information.

If you don’t have a Web site for your EIS, consider creating one. If you do have a Web site, take a second look at it. How can it be improved?

– Carol Borgstrom
Director, Office of NEPA
Policy and Compliance

Many DOE Program and Field Offices provide links on their corporate Web sites to their NEPA-related documents or to EIS-specific Web sites. Doing so allows Program and Field Offices to present NEPA information within the context of their broader activities and may provide easier access to people accustomed to using program or project Web sites.

An example of this is the Richland Operations Office’s archive of EISs and EAs, which is available by selecting Public Documents from that Office’s home page (www.hanford.gov/rl).

Archiving NEPA documents and making them available via the Internet is one way to use this powerful tool. Recently at DOE NEPA Community Meetings and in

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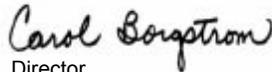
DOE maintains Web sites for more than half its ongoing EISs, three of which are illustrated here.

The EIS Comment-Response Process Guidance Issued; see page 9

Inside *LESSONS LEARNED*

The National Environmental Policy Act turns 35 on January 1, 2005! This landmark legislation altered the Federal decisionmaking process. In this issue of *LLQR*, Ray Berube, retired Deputy Assistant Secretary for Environment, looks back at how NEPA compliance procedures have evolved at DOE. Our lead article looks at how the Internet is becoming an increasingly useful NEPA tool. We hope you will find helpful suggestions throughout *LLQR* on how we can continue to improve and modernize NEPA implementation, and, as always, we welcome your suggestions for continuous improvement.

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Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2005. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2005

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2005 (October 1 through December 31, 2004) should be submitted by February 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web site at www.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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Case Studies Address NEPA Section 101

The National Environmental Conflict Resolution Advisory Committee, established by the U.S. Institute for Environmental Conflict Resolution, submitted a draft report to the Institute in August 2004 that addresses the intersection between NEPA Section 101 objectives and environmental conflict resolution practices. This section of NEPA focuses on the goals of the environmental review process, while Section 102 addresses procedures.

The draft report draws from information that Federal agencies provided in response to the Institute's inquiry in late 2003 on agency implementation of NEPA Section 101. DOE responded that although it does not always refer to Section 101 as the driver for its actions, the Department does in fact promote and meet the goals expressed in Section 101 through the NEPA process and other environmental activities.

The draft report presents 20 case studies of projects that used environmental conflict resolution practices to further the goals of NEPA. Two DOE EISs are featured: *Final Hanford Comprehensive Land Use Plan EIS* (DOE/EIS-0222, September 1999) and *Bonneville Power*

Administration Watershed Management Program Final EIS (DOE/EIS-0265, July 1997). Other case studies include:

- **Corridor H** – A linear transportation project EIS (Federal Highway Administration) with interagency and stakeholder disputes concerning adverse impacts and economic development.
- **Everglades** – An EIS (U.S. Army Corps of Engineers) for a water management program with interagency disagreements on the preferred alternative and interpretation of modeling results.
- **Glen Canyon** – A dam operations EIS (Bureau of Reclamation) with unavailable information addressed through an adaptive management approach.

For more information, see the Web site of the Advisory Committee, www.ecr.gov/necrac, which contains the draft report under "Reports & Recommendations." DOE's contributions to the NEPA Section 101 study are discussed in *LLQR*, December 2003, page 12, and included in the draft report's Appendix F, "Report on NEPA 101 Survey of Federal Agency NEPA Liaisons." 

Milestones Marking the Evolution of DOE's NEPA Program



By: Ray Berube, Retired Deputy Assistant Secretary for Environment

On January 1, 1970, NEPA was signed into law by then-President Richard Nixon. In anticipation of the 35th anniversary of NEPA, LLQR asked Ray Berube, DOE's honorary NEPA historian, to reflect on the evolution of NEPA compliance at DOE. Mr. Berube joined DOE in 1978 and served as DOE's Deputy Assistant Secretary for Environment from 1987 until his retirement in 2003. Since January 2004, he has been a Senior Advisor at Dade Moeller & Associates.

DOE's NEPA compliance program has evolved continuously since the Department's founding in 1977. I worked directly with DOE's NEPA program throughout my 25 years at the Department. I would like to share with you my perspective on several major changes that stand out in my memory – milestones marking a journey from strong resistance to NEPA in the early years to a DOE that now accepts NEPA as a valuable decisionmaking tool.

DOE's First NEPA Procedures

In the early 1970s – prior to the establishment of DOE – there were many problems implementing NEPA across the Federal government, numerous NEPA lawsuits, and a wide diversity of management approaches to NEPA compliance. Some agencies adopted totally centralized approaches with approval authority retained at headquarters. Other agencies opted for totally decentralized approaches with approval authority fully delegated to field elements.



Ray Berube reviews his comprehensive notes on DOE's NEPA compliance history.

The congressional committees drafting the DOE Organization Act were cognizant of these problems and differences in management approaches. The creation of DOE involved the merger of dozens of Federal agencies or parts of Federal agencies. To avoid the chaos that could be caused by different approaches to NEPA compliance by the various elements of the new Department, Congress addressed the need for a single, centralized NEPA compliance program covering all parts of the new DOE in its reports on the DOE Organization Act. In response, DOE's first procedures for complying with NEPA established a single, centralized NEPA compliance program with the Assistant Secretary for

Environment (a predecessor of the Assistant Secretary for Environment, Safety and Health) responsible for the approval of everything from memoranda-to-file to EAs and EISs.

This arrangement was fraught with problems, the most serious of which was the lack of ownership of NEPA reviews by line organizations. Within DOE, NEPA compliance was widely viewed by line management as a responsibility of the Office of Environment and as a paperwork exercise that did not add value or influence decisionmaking. This view trickled down through the Department and influenced the preparation of all-too-often inadequate NEPA documents, which extended review and revision cycles thus adding delays and increased costs for the Department's priority programs and projects.

Delegating Authority

In the early 1980s, national security often trumped environmental compliance within DOE. In an attempt to avoid the "NEPA problems" that were viewed as compromising DOE's national security mission, the Department's management moved to a more decentralized NEPA compliance program. Approval authority for two types of NEPA decisions was delegated to heads of line organizations and Operations Office Managers:

- NEPA Determinations – whether, under Section D of the DOE NEPA Guidelines in effect at that time, a proposed action qualifies for a categorical exclusion (CX), or requires preparation of an EA or EIS.
- Memoranda-to-file – for actions not covered by CXs in Section D of the DOE NEPA Guidelines, but for which on a case-by-case basis the environmental impacts of the proposed action are "clearly insignificant" and therefore do not warrant preparation of an EA or EIS.

Unfortunately, this delegation of authority exacerbated NEPA compliance problems instead of solving them. Too often delegated approval authority was used to attempt to avoid proper NEPA compliance. Perhaps the most egregious example of this was an obviously inappropriate use of a memorandum-to-file for a new \$100 million nuclear facility, for which a court ultimately ordered DOE to prepare an EIS.

(continued on page 14)

Putting the Web to Work (continued from page 1)

LLQR, the NEPA Office also has encouraged use of Web sites to facilitate document preparation and public participation. Other Federal agencies have invested in the development of Web-based tools to achieve these purposes. (See *LLQR*, September 2004, page 8.)

The NEPA Office recently reviewed EIS-specific Web sites established by DOE and other Federal agencies to better understand how the Web is being used to further NEPA implementation. We focused on Web sites that provide more than a simple link to NEPA documents. These Web sites also provide information on the proposal under review, the NEPA process, and ways for the public to participate. This approach uses the Web to convey essential information about the EIS, and it better engages the public – encouraging participation – than a link to a NEPA document.

(The Web site for the Bureau of Land Management’s Wind Energy Programmatic EIS at windeis.anl.gov is an example of this more effective use of the Web; see *LLQR*, March 2004, page 3. Also see the DOE EIS-specific Web sites listed in the text box on page 6 and the sample screen shots from the Web site for a National Park Service study and EIS on page 7.)

Make Your Web Site Useful

In our review of EIS-specific Web sites created by DOE and other Federal agencies, the NEPA Office noted many factors that influence the usefulness of a Web site: how the page is found (e.g., from where it is linked), what information it contains, how current the information is, and other factors. Also, we consulted a resource on Web site usability and accessibility – *Usability.gov*. Based on this review, we identified several suggestions and examples to improve DOE’s use of the Web for its NEPA implementation.

Learn More at *Usability.gov*

There is a wealth of experience and research on Web site usability and accessibility, much of which is captured at usability.gov, a Web site maintained by the Department of Health and Human Services. From assessing the purpose of and the prospective audience for a new Web site to overhauling an existing Web site, usability.gov has suggestions based on experience in the Federal government and the private sector.

Make Your Web Site Easy to Find

How would someone find your Web site? Some people know an EIS is being prepared, and they set out to find information about it on the Web. These people have the

The DOE NEPA Web Site www.eh.doe.gov/nepa

The DOE NEPA Web site alerts people of NEPA milestones and public participation opportunities. For example, notices of intent and notices of availability, and associated public meetings are posted under “What’s New,” a Web page that links to a dedicated Web site for a NEPA document, if one exists. On a separate Web page, the DOE NEPA Web site contains a “NEPA public participation calendar.”

In addition, the DOE NEPA Web site contains recently-issued draft EISs, an archive of completed NEPA documents, NEPA and related requirements and guidance, and other NEPA-related resources and information.

Nevertheless, the DOE NEPA Web site is not intended to provide all of the information about a specific proposal that an interested party might want. Dedicated Web sites can provide such information, and we are working to create a new, separate page on the DOE NEPA Web site to provide links to EIS-specific Web sites. (See related article, page 20.)

advantage of knowing a specific topic, and possibly even a document title. They might have been notified of the Web address in a DOE mailing or *Federal Register* notice. If not, they can use one of the Internet search engines or the search feature built into a DOE Web site to find a link to information on the EIS. An example of the latter is the search box atop every page on the Hanford Web site (www.hanford.gov).

Other people may begin at the home page of a DOE Program or Field Office, but based on our review, this is often not effective. Some EISs can be found by following links to public participation or environmental documents from these home pages, but none of the home pages we reviewed highlighted NEPA documents, even for ongoing NEPA reviews.

For example, the Office of Fossil Energy’s (FE’s) Web site (www.fe.doe.gov) has a prominent link to information about carbon sequestration. During our review, we discovered that there was no link to the Web site for the ongoing programmatic EIS on *Implementation of the Office of Fossil Energy’s Carbon Sequestration Program* (DOE/EIS-0366) from FE’s home page or from the first page of the carbon sequestration section of FE’s Web site. Using the search box and correct choice of keywords, a person could find comprehensive information about the EIS, which is maintained on the National Energy Technology Laboratory’s Web site (www.netl.doe.gov/coal/Carbon%20Sequestration/eis).

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Putting the Web to Work *(continued from previous page)*

Similarly, the Office of Nuclear Energy, Science and Technology (NE) maintains a Web site for its *EIS for the Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems* (DOE/EIS-0373, *consolidationeis.doe.gov*), but did not link to the Web site from the Program Office's home page (*nuclear.gov*).

In response to this review, NE revised its Web site to provide a direct link from its home page to the EIS Web site. Also, FE is in the process of providing a link from its Web site to the carbon sequestration programmatic EIS Web site.

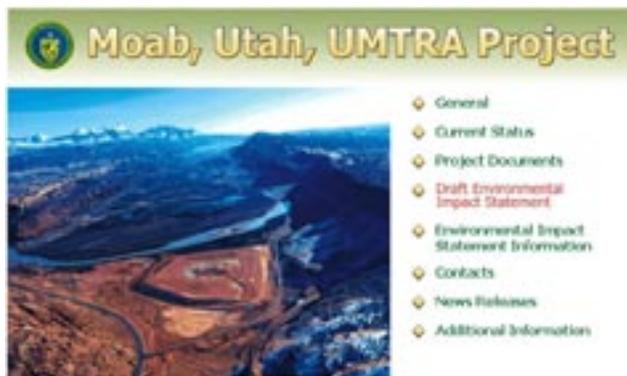
Establish a One-Stop Web Site

A Web site can be a tool for informing interested persons about an ongoing NEPA process and the program or project under review. The Grand Junction Office designed its Web site for the Moab, Utah, mill tailings remediation project and related EIS (DOE/EIS-0355; *gj.em.doe.gov/moab*) to serve this purpose.

Our stakeholders have come to expect timely availability of project documents on the Web site.

– Don Metzler, NEPA Document Manager

and regulations, the EIS schedule, opportunities for public participation, and a copy of the draft EIS and related NEPA documents.



The Grand Junction Office's Web site for the Moab EIS provides project and NEPA documents, information on public participation, and a list of contacts.

The National Park Service maintains a dedicated Web site for its North Shore Road EIS (*www.northshoreroad.info*). It has published summaries of scoping comments by topic, information on the purpose and need for agency action as well as goals and objectives of the proposed project itself, and reports that are related to the EIS. The Park Service also has published a timeline that shows current and planned activities for collecting and analyzing data, involving the public, and conducting other aspects of the NEPA process.

Among documents to consider posting on a Web site are:

- Notice of intent
- Notices of availability of the draft and final EIS
- News releases
- Key correspondence
- Schedules and other NEPA process information
- Public involvement opportunities
- Presentation materials from public meetings
- Transcripts of scoping meetings and hearings on the draft EIS
- Other public comments
- Frequently asked questions and answers
- Documents referenced in the EIS
- Maps, photographs, and diagrams

Also, consider organizing public comments to make it possible to search them by commentator or subject, much as they often are indexed in a final EIS.

Keep Your Web Site Up-to-Date

A great benefit of the Web is the immediacy of information. If a Web site is not updated regularly, however, information may get stale. To keep a Web site current, make documents available on the Web as soon as possible after they are issued and continue to post information on upcoming meetings and other timely scheduling details.

After the scoping period has ended, for example, it is time to update the Web site to reflect that the EIS has moved into the next phase of the NEPA process. This could be as simple as changing sentences about the scoping period to past tense so readers are not given the impression that the scoping period is ongoing, and posting meeting transcripts and other scoping comments.

Our review of DOE EIS Web sites revealed that this is not being done as well as it could be. For example, the Web sites for two DOE EISs had not been updated in many months to reflect the significant delays in the EIS schedules. In response to this review, both of these Web sites are being updated.

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Putting the Web to Work (continued from previous page)

Let the Public Have Its Say

Most DOE EIS Web sites provide information about submitting comments during the scoping period or on the draft EIS. The Web sites typically list the mailing address, telephone and fax numbers, and an e-mail address for such comments.

Web sites can be made more interactive, however. For example, through a Web site people can submit questions or comments, respond to questionnaires, and request to be added to a mailing list. These and other techniques can enhance public participation in the NEPA process. For example, the Web site for *Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line EIS* (DOE/EIS-0336; www.ttclients.com/tep) provides an online comment form.

An Effective Web Site Furthers NEPA's Goals

"A Web site can provide easy access to an EA or EIS and supporting documentation, and information about the public participation and decisionmaking processes," said Ms. Borgstrom. "We should be as thoughtful in our development of a Web site for a NEPA document as we are in the preparation of the document itself. Increasingly, people will go to the Web to learn about and participate in our NEPA activities," said Ms. Borgstrom. "Let's keep raising the bar on excellent NEPA implementation." 

DOE EIS-Specific Web Sites

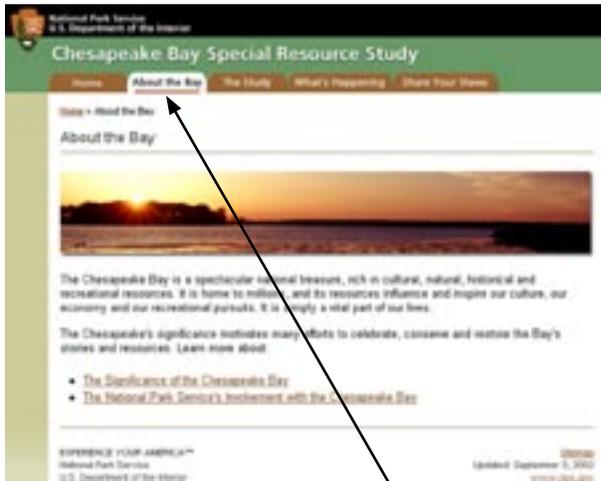
DOE Program and Field Offices have established Web sites for more than half of the ongoing DOE EISs to promote public participation. We use the term Web site to refer to any number of Web pages related to the same EIS, so long as those pages contain more than links to the EIS and related documents.

These Web sites provide helpful information, such as background on the proposed project, illustrations and maps, and timelines or schedules. Some also include information on the NEPA process and describe how to participate by commenting during the scoping period and on the draft EIS. DOE Web sites sometimes include forms through which interested people may submit comments online or provide their e-mail address to receive updates on the EIS.

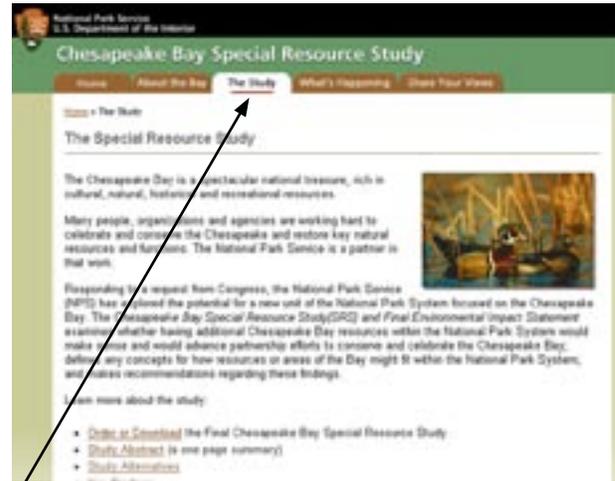
- *EIS for the Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems* (DOE/EIS-0373), consolidationeis.doe.gov
- *Northeast Reliability Interconnect EIS* (DOE/EIS-0372), web.ead.anl.gov/interconnecteis
- *EIS for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0369), www.ocrwm.doe.gov/wat/eis.shtml
- *Implementation of the Office of Fossil Energy's Carbon Sequestration Program EIS* (DOE/EIS-0366), www.netl.doe.gov/coal/Carbon%20Sequestration/eis
- *EIS for the Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365), web.ead.anl.gov/bajatermoeis
- *Remediation of the Moab Uranium Mill Tailings EIS* (DOE/EIS-0355), gj.em.doe.gov/moab
- *West Valley Demonstration Project (WVDP) Waste Management EIS* (DOE/EIS-0337) and *Decommissioning and/or Long-Term Stewardship EIS* (DOE/EIS-0226-R), www.wv.doe.gov/LinkingPages/insidewestvalley.htm under Environmental Impact Statement
- *Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line EIS* (DOE/EIS-0336), www.ttclients.com/tep
- *Programmatic EIS on the Disposition of Scrap Metals* (DOE/EIS-0327), www.em.doe.gov under Hot Topics
- *Modern Pit Facility EIS* (DOE/EIS-0236-S2), www.mpfeis.com
- *Bonneville Power Administration Project-Specific EISs*, www.efw.bpa.gov under Environmental Planning/Analysis, then Active Projects, Completed Projects, or Deferred Projects
- *Western Area Power Administration Project-Specific EISs*, www.wapa.gov/cso/officefun/env/envplann.htm under Current & Ongoing NEPA Projects and Upcoming NEPA Projects

National Park Service's Effective Web Site for the Chesapeake Bay Study/EIS

www.chesapeakestudy.org



Overview of the Project Area



Comprehensive Information on the Study/EIS

Home Page:
Clear Navigation and
Helpful Information
Invites Public Participation



Upcoming Meetings, Schedules, and Publications



Convenient Links Encourage Public Participation

Effective Communication During EA Process Benefits All

By: Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office

If a NEPA document team communicates effectively, then the NEPA process will likely be successful – that is, it can achieve real environmental protection rather than mere completion of the required NEPA document.

A Savannah River team learned this lesson as construction began for

The problem with communication is the illusion that it has occurred.

– George Bernard Shaw

the second Glass Waste Storage Building, which will store canisters filled with vitrified high-level radioactive waste pending shipment to a repository. In evaluating the environmental impacts of constructing and operating this building (*Defense Waste Processing Facility Supplemental Environmental Impact Statement*, DOE/EIS-0082-S, 1994), DOE identified a need for large volumes of soil that would meet the American Society for Testing and Materials criteria for use as structural and general fill material. By the start of construction of the storage building, however, the Site's existing sources of structural fill material were depleted, dedicated to other projects, or did not meet the requirements for this project. A new source of structural fill needed to be developed.

Internal Scoping Defines EA Data Needs

Engineers identified a general location at the Savannah River Site with an adequate amount of soil that would meet the structural criteria. Using the Site's Environmental Evaluation Checklist process, DOE determined that an EA would be appropriate to evaluate the significance of the environmental impacts of constructing and operating a new borrow pit.

The EA process was initiated at the earliest opportunity with an internal scoping meeting that brought together the Site borrow pit project team and the DOE NEPA staff. Because the proposed project location was undeveloped, the NEPA staff informed the project team that DOE would have to determine whether protected species or cultural resources were present. The NEPA staff was assured by the project team that the appropriate onsite organizations, the U.S. Forest Service and the Savannah River Archaeological Research Program (affiliated with the University of South Carolina), had already been contacted and that all field investigations would be completed within the needed time period.

Interagency Teamwork Prevents Delays

When the NEPA Document Manager contacted the Forest Service and the Archaeological Research Program during EA preparation, however, he learned that these investigations were scheduled to be completed after the proposed project start date. Although relevant conversations had taken place, due to miscommunications, neither organization had scheduled field work to support the aggressive schedule for the proposed project. The NEPA Document Manager brought all parties together again, this time resulting in agreement on a schedule that would support the timely completion of the EA and proposed start of borrow pit construction.

The Forest Service then relocated a South Carolina state-listed species of concern, the sandhill lily (*Nolina georgiana*), and accelerated a planned timber harvest from the borrow pit location.

The Archaeological Research Program defined areas to be avoided so as not to disturb an area of potential archaeological resources near one end of the project site. The borrow pit project team provided extra support for EA review and comment response to prevent the NEPA process from delaying the project. That effort would have been a success story in and of itself. Once the miscommunication among agencies was resolved, the EA (*Construction, Operation, and Closure of the Burma Road II Borrow Pit at the Savannah River Site*, DOE/EA-1501; July 2004) was completed ahead of schedule and under budget, and a finding of no significant impact was issued.



The Forest Service relocated plants from several colonies of sandhill lily, a state-listed species of concern, from the proposed borrow pit area to adjacent suitable habitat.

Environment Wins in the End

This EA resulted in real protection of the environment rather than simply “checking the NEPA box” on the project schedule. The Forest Service was able to preserve

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By Popular Demand: Comment-Response Guidance Issued

Soliciting and responding to public comments is a critical – and often challenging – phase of the NEPA process. Not surprisingly, DOE’s NEPA Compliance Officers and NEPA Document Managers identified comment-response guidance as a priority need. In response, to assist those involved in the preparation and review of a final EIS, the Office of NEPA Policy and Compliance recently prepared *The EIS Comment-Response Process* (October 2004) with the assistance of the DOE NEPA Community.

The guidance addresses both the substance and mechanics of the process and gives advice on tracking and categorizing comments, considering comments and preparing responses, and presenting responses and corresponding changes in a final EIS. It also provides excerpts from relevant regulations, policy, and guidance issued by the Council on Environmental Quality and DOE, examples from comment-response sections of final EISs, and a flow chart of the comment-response process. (Elements of this guidance also will be helpful in responding to comments received on environmental assessments or other NEPA documents.)

The guidance advises NEPA Document Managers to brief program and project managers as soon as possible on issues raised in public comments and to obtain early agreement on proposed responses. It recommends involving policy and subject matter experts as needed throughout the comment-response process.

In issuing the guidance, John Spitaleri Shaw, Acting Assistant Secretary for Environment, Safety and Health, said, “We expect this guidance to promote efficiency, effectiveness, and consistency in responding to public comments.” He urged Assistant Secretaries and Heads of Field Organizations to promote the guidance to those in their organizations who prepare or assist in preparing NEPA documents.

The recommendations in this guidance will help DOE demonstrate that it has considered all environmental factors important to decisionmaking and build credibility with stakeholders, which can increase the likelihood of successful implementation of a proposal. The guidance presents successful techniques from DOE’s recent experience with EISs that elicited large numbers of comments and should help reduce vulnerability to legal challenges that could result from inadequate consideration of stakeholder comments.

The guidance is posted on the DOE NEPA Web site at www.eh.doe.gov/nepa under Guidance, then Document Preparation. Also see the article introducing the guidance development effort (*LLQR*, June 2003, page 1) and the summary of the July 2004 NEPA Community Meeting case study discussions on responding to comments (*LLQR*, September 2004, page 9). For more information contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Effective Communication *(continued from previous page)*

colonies of a state-listed species of concern and the Archaeological Research Program was able to preserve areas of potential value for contributing to knowledge of the pre-history of the Savannah River Site.

The NEPA Document Manager needs to make sure that all the participants in the NEPA process, including the advocates of the proposed action, are talking to each other and have a common understanding of the path forward. The significance of effective communication in the NEPA process cannot be overstated. Never assume that effective communication is occurring among the parties supporting preparation of an EA. Such effective communication will make the project, the NEPA process, and the environment winners in the end.

For additional information, contact Drew Grainger at drew.grainger@srs.gov or 803-952-8001, or Steve Danker, the NEPA Document Manager, at stephen.danker@srs.gov or 803-952-8603. 



Following timely completion of the EA and FONSI, site clearing began at the borrow pit site.

Corps of Engineers Issues Draft EIS for First Offshore Wind Farm in U.S.

By: Eric Cohen, *Unit Leader, Office of NEPA Policy and Compliance*



After 34 months of intensive research and analysis, the U.S. Army Corps of Engineers (COE) in November 2004 issued a Draft EIS/Environmental Impact Report (EIR) for a large wind energy project proposed to be constructed in Nantucket Sound, between Cape Cod and Nantucket Island. Members of the DOE NEPA Community may be interested in this EIS, not only because of the unprecedented nature of the proposal – this would be the first offshore wind energy project in U.S. territorial waters – but also because of the way the EIS process is serving to integrate multiple Federal, state, and regional environmental review processes for a relatively controversial proposal.

The Draft EIS/EIR addresses the most relevant potential impacts and public interest factors identified by the scoping process, and is intended to fulfill the regional, state and Federal environmental assessment requirements.

***– Karen K. Adams
Cape Wind Energy Project EIS Manager***

Combined Agency Review Processes

COE prepared the four-volume, 3,800-page document to fulfill its NEPA review responsibilities in response to a permit application. The document also is intended to fulfill the requirements of the Massachusetts Environmental Policy Act (MEPA) as an EIR, and address issues relevant to the Cape Cod Commission (CCC) review of the applicant's proposal as a Development of Regional Impact under the Cape Cod Commission Act. Thus, the information in the document would satisfy three different laws requiring environmental review.

The draft document describes how the combined NEPA/MEPA/CCC review processes have been coordinated to enable joint agency and public review of the proposed project. The combined processes include the conduct of joint public hearings that serve to fully inform the public of the multiple jurisdictional reviews and enable the receipt of public comments on the three processes at one time.

Also of note is the participation of 17 cooperating agencies, including Federal, state, and local agencies, and a Native American tribe. Many of the agencies have jurisdiction over aspects of the project, and their participation in the combined EIS/EIR fosters efficiency

in the project review process. Other agencies, including DOE's Office of Energy Efficiency and Renewable Energy through its Northeast (Boston) Regional Office, agreed to participate as a cooperating agency to provide technical expertise. COE is the lead agency because of its jurisdiction under Section 10 of the Rivers and Harbor Act of 1899, which provides for Federal regulation of any work in, or affecting, navigable waters of the United States. This authority was extended under the Outer Continental Shelf Lands Act of 1953.

The Proposed Action

The applicant, Cape Wind Associates, LLC, proposes to construct and operate a wind-powered electrical generating facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. The facility would include 130 wind turbine generators, an electrical service platform, and a submarine and upland cable system to transmit a maximum electrical output of 454 megawatts (MW) to the New England regional power grid, including users on Cape Cod and the Islands of Martha's Vineyard and Nantucket. The average annual output would be about 170 MW.

The wind turbines would be up to 420 feet high (to rotor tip) above the ocean, with the hub (shown in photo) about 260 feet above the water surface. The turbine array (wind farm) would occupy about 24 square miles between Nantucket Island and the Cape Cod mainland. Collectively, the project structures would occupy only about one acre. The closest distance from any turbine to the mainland would be about 4.7 miles; the distance to Nantucket Island would be about 11 miles and to Martha's Vineyard about 5.5 miles. The turbines could be visible from these locations. A wide spacing between the

(continued on next page)



Computer-generated image of typical offshore wind turbines.

Draft EIS for First Offshore Wind Farm in U.S. *(continued from previous page)*

turbines (minimum of about 2,060 feet) and a grid pattern arrangement, among other design features, is intended to reduce potential for bird collisions and enable safe marine transportation.

Although there are onshore (upland) wind farm projects in the United States, including New England, and offshore wind farms in Europe, there are no offshore wind farms in the United States.

Document Scope

In addition to the applicant's proposal, the Draft EIS/EIR includes the No Action alternative, an assessment of alternative energy generating technologies including renewable and non-renewable energy technologies, alternative submarine and upland cable routes, and a comparison of upland and offshore wind farm locations. COE worked with the cooperating agencies and the public to identify an initial list of 17 alternative upland and offshore wind farm locations. Subsequently, after listening to the public and consulting renewable energy and wind power experts, COE developed and applied screening criteria to narrow the range of reasonable wind farm locations to four.

The four alternative locations developed for detailed comparative review in the EIS/EIR are:

- A terrestrial alternative (Massachusetts Military Reservation)
- An offshore shallow water alternative (the applicant's proposal and two other sub-sites)
- An offshore deeper water alternative
- An offshore combination alternative with reduced footprint in Horseshoe Shoal

The document describes COE's use of a "representative sample" analytical approach to determine and compare the relative merits of the alternatives.

Through the scoping process, COE identified the following key areas of potential environmental impact for detailed evaluation: Geology and Sediment Conditions, Physical Oceanographic Conditions, Benthic and Shellfish Resources, Finfish, Protected Marine Species, Terrestrial Ecology, Birds, Coastal and Freshwater Resources, Water Quality, Cultural/Recreational/Visual Resources, Noise, Transportation, Electrical and Magnetic Fields, Telecommunication Systems, Air and Climate, and Socioeconomics.

Potential Beneficial and Adverse Impacts

The Draft EIS/EIR describes the potential adverse and beneficial impacts on these resources, and lists proposed mitigation.

Among the benefits identified would be the creation of jobs and a reduction in the need to construct additional fossil fuel electric generation facilities, which would benefit the region's air quality while providing for economic growth.

The document indicates that, overall, the proposal would have very small adverse impacts. Among the potential adverse environmental impacts identified are those related to aesthetics. The document states that "recreational boaters would experience open views of the above water components" and "the project would add a built element to existing daytime views of the seascape.... flashing lights would create a visual change to the existing relatively unbroken nighttime view under clear sky conditions." A visual impact assessment conducted by an architectural historian resulted in an adverse effect finding for several national register-listed properties (including the Kennedy Compound) because project structures could be visible from them. Mitigation measures proposed to address these impacts include the use of marine gray paint for structures to reduce contrast with the sea and sky, and the lowest

(continued on next page)



These computer-simulations, prepared by the applicant, Cape Wind Associates, LLC, project that from Nantucket Island (left), 13.8 miles away, the proposed wind farm would appear as little more than a row of white dots along the horizon. The wind farm is more visible from Cotuit (right), on lower Cape Cod about 6 miles from the proposed site.

Draft EIS for First Offshore Wind Farm in U.S. *(continued from previous page)*

intensity daytime and nighttime lighting considered safe by the Federal Aviation Administration and the Coast Guard.

The document also states that, although some bird mortality is expected, collisions with turbine blades are unlikely to cause bird population declines. Mitigation measures proposed to reduce potential impacts on birds include:

- Use of larger, slower-turning rotors that would not come within 75 feet of the ocean surface (most birds have been observed flying below 20 feet above the ocean)
- Lighting features that are not known to attract birds
- Avoidance of guide wires
- Tubular construction and other design features that discourage perching and nesting
- Post-construction monitoring

In public comments received so far, project supporters, including some national environmental organizations, have cited the benefits identified in the Draft EIS/EIR, including those from fostering the use of clean, renewable energy sources. Supporters also noted the small estimated environmental impacts. Opponents, however, including some prominent Massachusetts political representatives, have stated objections to industrial development in a pristine area and expressed concerns about potential adverse effects on tourism. Some opponents have stated that the project should not go forward and that a more systematic Federal review process for offshore projects of all kinds is needed.

EIS Process/Next Steps

In response to Cape Wind Associates, LLC's permit application in November 2001, COE issued a Notice of Intent to prepare the EIS in January 2002, and conducted

public scoping meetings later in 2002. COE worked closely with the Federal, state, and local cooperating agencies in scoping and preparing the document. The Environmental Protection Agency issued a notice of availability of the Draft EIS on November 19, 2004, starting a 105-day public comment period. (In response to public requests, COE extended the originally-planned 60-day comment period by 45 days.) COE plans to conduct four public hearings on the Draft EIS/EIR in Massachusetts in December, carefully consider public comments, and issue a Final EIS/EIR in mid-2005. COE would then issue a Record of Decision no sooner than 30 days later stating its permit decision.

Under its Section 10 authority, COE considers the positive and negative aspects of a proposal, including environmental and other factors, in evaluating permit applications before deciding whether or not the project is in the public interest (i.e., whether or not the benefits outweigh the detriments). COE can: (1) issue the permit for the proposed site; (2) issue the permit with special conditions; or (3) deny the permit.

For More Information

The Draft EIS is available at www.nae.usace.army.mil under Projects, then Cape Wind Permit Application. Written comments will be accepted until February 24, 2005. Comments or requests for a compact disk copy of the Draft EIS should be sent to:

Karen K. Adams
Corps of Engineers
696 Virginia Road
Concord, MA 01742
978-318-8335
email: wind.energy@usace.army.mil 

Correction to CEQ's 2003 Printing of Its NEPA Regulations

Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), recently advised that the 2003 printing of CEQ's pamphlet titled "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR Parts 1500-1508) has an **incorrect mail code** for the Environmental Protection Agency's Office of Federal Activities. The affected section of the regulations and correct mail code are:

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (**MC 2252-A**), 1200 Pennsylvania Ave., NW, Washington, DC 20460....

(The July 2004 Directory of Potential Stakeholders for DOE Actions under NEPA provides the correct mail code for the Office of Federal Activities. The Stakeholders Directory is available on the DOE NEPA Web site at www.eh.doe.gov/nepa_under_Guidance, then Public Participation.)

DOE Submits Fifth Cooperating Agency Report; CEQ Proposes New Procedures

The Office of NEPA Policy and Compliance responded in October to the Council on Environmental Quality (CEQ) request for Federal agencies to report biannually on cooperating agency activities in NEPA reviews. This fifth report covers DOE EISs and EAs initiated between March 1 and August 31, 2004: three EISs, including one with two cooperating agencies, and nine EAs, none of which has cooperating agencies. The report also updates document milestones and changes in cooperating agency status of EISs and EAs covered in the previous four biannual reports.

CEQ has recently proposed major changes to its system for cooperating agency reporting:

- Changing the reporting period from 6 to 12 months
- Aligning the reporting period with the fiscal year
- Decreasing the amount of information to be reported
- Simplifying the identification of challenges or barriers to establishing cooperating agency status
- Reporting on EAs completed rather than initiated during the reporting period

CEQ also proposes to end the use of a Web-based reporting system in favor of a word-processed report. In an October 29, 2004, memorandum, the Acting Assistant Secretary for Environment, Safety and Health expressed DOE's support for these proposed changes. CEQ is expected to soon issue the revised procedures for cooperating agency reporting and to make them effective for the January 2006 report that will cover fiscal year 2005.



To enable the Office of NEPA Policy and Compliance to prepare the DOE cooperating agency report efficiently, NEPA Document Managers should inform the Office of cooperating agency involvement as soon as it is known. Of particular interest to

CEQ are EISs and EAs for which a lead agency identifies a potential cooperating agency – one with jurisdiction by law or special expertise relating to some part of the proposal – and that agency is not invited to participate, is invited but declines, or initially accepts but then the lead or cooperator terminates the relationship before the NEPA review is completed.

DOE NEPA document preparation teams are encouraged to consider potential cooperating agencies early in their NEPA process and to consult with their NEPA Compliance Officer if questions arise on this subject. The benefits of cooperating agency participation in NEPA reviews and CEQ's initiatives to promote cooperating agency relationships are described in *LLQR*, March 2002, page 1, and CEQ guidance is posted at ceq.eh.doe.gov/nepa/regs/guidance.html. For information on cooperating agency reporting, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. LL

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting. LL

Description	DOE Contact	Date Awarded	Contract Team
EIS for Decommissioning of the Rare Isotope Accelerator	Katatra Day 865-576-0835 daykc@oro.doe.gov	7/20/2004	SAIC
EA for Conveyance of Parcel ED-6 to City of Oak Ridge	Katatra Day 865-576-0835 daykc@oro.doe.gov	9/30/2004	SAIC
EIS for Consolidation of Operations Related to Production of Radioisotope Power Systems	Raj Sharma 301-903-2899 rajendra.sharma@nuclear.energy.gov	10/29/2004	SAIC

Milestones of DOE's NEPA Program *(continued from page 3)*

SEN-15-90

During the mid- and late-1980s, newspapers published stories almost every day about environmental and safety problems at DOE sites across the country. Shortly after taking office in 1989, the new Secretary of Energy, Admiral James Watkins, launched a 10-point initiative to address these problems. One of these initiatives was a thorough review of the Department's NEPA procedures and past practices, including the DOE NEPA Order, the DOE NEPA Guidelines, and relevant Departmental guidance memoranda. That review resulted in a Secretary of Energy Notice (SEN-15-90) directing major revisions in the Department's NEPA compliance procedures. In my opinion, the most significant revisions were:

- To eliminate both the "catch-all" CX and memorandum-to-file.
- To require each Headquarters Office having NEPA responsibilities and each Field Office to designate a NEPA Compliance Officer (NCO).

The catch-all CX was as follows: "Actions that are substantially the same as other actions for which the environmental impacts have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is still valid." Although well-intended, the catch-all CX was subject to inappropriate use. The memorandum-to-file was a device for case-by-case application of the CX concept. The memorandum-to-file, like the catch-all-categorical exclusion, also was susceptible to inappropriate use.

The role of an NCO was not described in SEN-15-90 and, as a result, the first cadre of NCO's had and met the added challenge of defining and establishing a role for themselves. That role is now well-established, and the NCO system has become an effective and absolutely essential component of DOE's NEPA compliance program.

1994 Secretarial Policy on NEPA

NEPA compliance improved significantly with the implementation of SEN-15-90. However, the number of NEPA documents, particularly the greatly increased number of EAs caused by the elimination of the catch-all CX and the memorandum-to-file, overwhelmed the NEPA document preparation and approval process at field offices and in headquarters. This resulted in lengthy delays, excessive preparation costs, and other inefficiencies.

In response to complaints about these problems from within DOE, on June 13, 1994, then-Secretary of Energy Hazel O'Leary issued a Secretarial Policy on NEPA. The cover memorandum for this Policy Statement states in part that: "We must approach NEPA as a team – ensuring quality and improving efficiency and thereby making NEPA work better and cost less. Accordingly, with the attached Policy Statement, I am directing a number of actions to streamline the NEPA process, minimize the cost and time for document preparation and review, emphasize teamwork, and make the process more useful to decision makers and the public."

In my opinion, the most significant changes made by the 1994 Policy Statement were:

- Delegation of approval authority for EAs, which unclogged the overwhelmed review process and fostered ownership of the EAs by the line organizations preparing and approving them.
- The requirement for a NEPA document manager from the line organization for all projects requiring NEPA review, which also fostered ownership of EAs and EISs by line organizations. In addition, this requirement has significantly increased the number of line organization employees who have direct experience with NEPA compliance and, thereby, enhances and facilitates NEPA implementation.
- The requirement for a "quarterly summary" of lessons learned in the process of preparing EAs and EISs. The LLQR has become a very successful driver and vehicle for continuing improvement in DOE's NEPA compliance program.

CONCLUSION

In retrospect, it is clear to me that although the problems that led to SEN-15-90 and the 1994 Secretarial Policy Statement were almost direct opposites, the goal of both sets of revisions was the same – improved NEPA compliance by DOE. I believe that goal is being achieved through the combination of these revisions, which created a NEPA process that both produces quality NEPA documents and often significantly influences decisionmaking. In addition, I believe, that for continued success, the evolutionary process of improving DOE's NEPA compliance program must continue as it has, with the many significant improvements since 1994. **LL**

Transitions

Carl Sykes Moves to NNSA

The bad news is that Carl Sykes has left the DOE NEPA Office. The good news is that Carl got a promotion and will continue doing some NEPA work. In September, Carl moved to the National Nuclear Security Administration (NNSA) as the Pantex Site lead for the Office of Operations and Construction Management (NA-124). His new responsibilities focus on providing project and operations oversight to facilitate the site's readiness to perform mission work.

After four years with the NEPA Office, Carl said he will miss working in the Office but he will still be working *with us*, as resolving NEPA issues that require NNSA headquarters assistance will be part of his duties. Carl said, "When I first visited my new office one of the things I noticed was a complete collection of site-wide EISs, programmatic, and project-specific EISs; several sets of NEPA Compliance Guides; and even a copy of a document some folks refer to as the Green Book."* Thus, you can take the employee out of the NEPA Office, but you can't take the employee out of NEPA, Carl said. We wish Carl well and look forward to continued collaboration with him.

* *Carl Sykes became the "adoptive father" of the basic NEPA guidebook, Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements (also known as the Green Book), when he took the lead of a NEPA Office team to revise the 1993 guidance. The revised Green Book will be issued soon. (See LLQR, March 2004 page 1.)*

Court Sends Whales Back to the Oceans; Cetaceans Have No Standing to Sue

The U.S. Court of Appeals for the Ninth Circuit ruled on October 20, 2004, that Cetaceans do not have statutory standing to sue. The "self-appointed attorney," in the words of the court, of The Cetacean Community (whales, porpoises, and dolphins) challenged the Navy's use of Surveillance Towed Array Sensor System Low Frequency Active Sonar during wartime or heightened threat conditions. The Cetaceans alleged that use of this sonar system violates the Endangered Species Act, the Marine Mammal Protection Act, and NEPA.

In a separate case, the U.S. District Court for the Northern District of California issued a permanent injunction in August 2003 restricting the Navy's routine peacetime use of the sonar system "in areas that are particularly rich in marine life." (See *LLQR*, March 2004, page 17, and December 2002, page 23.)

New NCOs

Idaho Operations Office: Jack Depperschmidt

Jack Depperschmidt has been designated as the NEPA Compliance Officer (NCO) for the Idaho Operations Office following the retirement of Roger Twitchell. Mr. Depperschmidt began his Federal career working for the U.S. Fish and Wildlife Service as a research technician. His earliest experience in the DOE complex was as a regulatory specialist with Westinghouse Idaho Nuclear Company, Inc., where he served as the lead for NEPA compliance. In 1991 he joined DOE as an environmental specialist working on regulatory and natural resource issues in the Idaho Operations Office, Environmental Compliance Division, and in 1998 was named Deputy NEPA Compliance Officer. Mr. Depperschmidt can be reached at depperjd@id.doe.gov or 208-526-5053.

Livermore Site Office: Tom Grim

Tom Grim was recently designated NCO for NNSA's Livermore Site Office. Tom served in the U.S. Air Force and worked for the Department of the Navy before joining DOE's Livermore Site Office in 1995. He has served as a project manager for nuclear nonproliferation projects in North Korea and Kazakhstan and now serves as the NEPA Document Manager for the *Site-wide EIS for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS*. Mr. Grim can be reached at tom.grim@doeal.gov or 925-422-0704.

Y-12 Site Office: Bob Hamby

Bob Hamby has been designated the NCO for NNSA's Y-12 Site Office, replacing Susan Dyer-Morris. Since joining the Department in 1991, Mr. Hamby has served as NEPA Document Manager for numerous EAs and contributed to several major EISs, including the site-wide EISs for Los Alamos National Laboratory and Lawrence Livermore National Laboratory, and the EIS for the Dual Axis Radiographic Hydrodynamic Test Facility. Before joining DOE, Mr. Hamby served as program manager at the Tennessee Valley Authority for 10 years. Mr. Hamby can be reached at hambyre@yso.doe.gov or 865-576-9281. 



Litigation Updates

Appeals Court Dismisses Challenge to DOE Order 435.1

The U.S. Court of Appeals for the Ninth Circuit on November 5, 2004, vacated a district court decision that declared invalid a key provision of the Manual for DOE Order 435.1, Radioactive Waste Management. (See *LLQR*, September 2003, page 23.) That provision allows waste resulting from reprocessing spent nuclear fuel that is determined to be incidental to reprocessing to be managed as low-level radioactive waste if certain conditions are met.

The appeals court ruled that the challenge brought by the Natural Resources Defense Council (NRDC) and other groups was not ripe for judicial review. The appeals court held that any challenge to DOE's waste incidental to reprocessing criteria and process should be framed as a challenge to an actual application of those criteria and that process, not in the abstract. The appeals court disagreed that under the language of the Manual DOE will or might simply call high-level waste something else, and then dispose of it improperly. "DOE assures us that what it does do will be documented and will be publicly available. It does not plan a *camisado* [archaic Spanish: night attack]."

While the litigation regarding DOE Order 435.1 proceeded, Congress also considered the issue of how certain wastes from reprocessing should be classified. Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 sets conditions through which the Secretary of Energy, in consultation with the Nuclear Regulatory Commission, may determine that, for those wastes in South Carolina and Idaho, "the term 'high-level radioactive waste' does not include radioactive waste resulting from the reprocessing of spent nuclear fuel." The President signed the bill into law on October 28, 2004. The full text of the law is available at thomas.loc.gov/bss/d108/d108laws.html, then search for Public Law 108-375.

Groups Allege EIS Required for ETEC Cleanup

The Natural Resources Defense Council, Committee to Bridge the Gap, and the City of Los Angeles filed a lawsuit on October 21, 2004, alleging that DOE's cleanup activities at the Energy Technology Engineering Center (ETEC) are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Endangered Species Act. The lawsuit challenges the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and associated finding of no significant impact. The EA sets forth a path to remediate and close ETEC.

Plaintiffs contend that the EA is based on inadequate characterization of contamination, does not consider all

"The district court felt that there was no particular reason to wait until DOE had actually applied the Order and its contemplated processes to some particular situation existing at some particular site and, in so doing, had actually come into conflict with [the Nuclear Waste Policy Act]. We differ from that view," the appeals court wrote.

[Case No.: 03-35711]

***"We must adopt a wait and see attitude
There might be some danger in waiting, but that
is not a greater hardship for NRDC and the rest
of our society than the one already imposed by
our high-level-waste-Frankenstein."***

***– Ferdinand F. Fernandez, Judge
U.S. Court of Appeals for the Ninth Circuit***

reasonable alternatives, and does not consider cumulative impacts, including impacts associated with chemical contamination.

Plaintiffs ask the court to prevent DOE from relinquishing any control over the site prior to completing an EIS, issuing a record of decision, and taking steps to comply with CERCLA and the Endangered Species Act.

The lawsuit, *Natural Resources Defense Council et al. v. Department of Energy et al.*, was filed in U.S. District Court, Northern District of California.

[Case No.: 04-CV-04448]

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Litigation Updates (continued from previous page)

Nevada Challenges Rail Plan for Yucca Mountain Repository

The State of Nevada filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on September 7, 2004, challenging DOE's *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Waste Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Repository FEIS, DOE/EIS-0250, February 2002) and the ongoing *Environmental Impact Statement for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (Rail Alignment EIS, DOE/EIS-0369). The petition alleges that DOE did not comply with NEPA in making decisions regarding the transportation mode and route for a new rail line to carry spent nuclear fuel and high-level radioactive waste to the proposed Yucca Mountain repository in Nevada.

The Repository FEIS identified "mostly rail" (i.e., rail transport supplemented by truck transport) as DOE's preferred alternative transportation mode. The FEIS did not identify a preference among the five alternative rail corridors in Nevada. DOE later issued a Notice of Preferred Nevada Rail Corridor (68 FR 74951; December 29, 2003), identifying the Caliente corridor as DOE's preferred corridor in which to construct a rail line in Nevada. Subsequently, DOE completed a Supplement Analysis (DOE/EIS-0250-SA1, March 2004) and, in a Record of Decision (ROD; 69 FR 18557; April 8, 2004), selected (1) the mostly-rail transportation mode and (2) the

Caliente corridor in which to examine potential rail alignments. The same day it published the ROD, DOE also published a Notice of Intent for the Rail Alignment EIS (69 FR 18565). (See *LLQR*, June 2004, page 13).

Nevada claims that the mostly-rail transportation mode was not analyzed in the Repository FEIS and that it "is a composite of several transportation phases that the FEIS never proposed combining." Nevada also claims that elements of the mostly-rail transportation mode had been dismissed from detailed analysis in the FEIS and that the supplement analysis provided no additional impact analysis about them. In addition, Nevada claims that DOE erred by not identifying the Caliente corridor as its preferred alternative in the Repository FEIS.

Nevada also claims that DOE is in violation of the Interstate Commerce Act because of "DOE's unilateral assumption of lead agency status in proposing to construct and evaluate the impacts of the nation's longest new rail project in decades." Nevada claims that, under the Interstate Commerce Act, the Surface Transportation Board has exclusive regulatory jurisdiction "over rail transportation, and any rail project broadly affecting national rail transportation and commerce." (The Surface Transportation Board is participating as a cooperating agency in preparing the Rail Alignment EIS.)

[Case No.: 04-1082]

Other DOE NEPA Litigation in Brief

Border Power Plant Working Group v. Abraham et al. (S.D. Calif.): DOE issued Presidential Permits and is now preparing an EIS for the construction, operation, and maintenance of two electric transmission lines that cross the U.S.-Mexico border. The court agreed in November to DOE's request for an extension to file a brief by February 1, 2005, showing cause why the permits should not be set aside on March 15, 2005. (See *LLQR*, June 2004, page 16; December 2003, page 7; and September 2003, page 22.)

[Case No.: 02-CV-513]

Columbia Riverkeeper and State of Washington et al. v. Abraham et al. (E.D. Wash.): Plaintiffs amended their complaint in August 2004 to ask the court to bar shipments of low-level radioactive and low-level mixed waste to the Hanford site. DOE currently is operating under a May 2003 court-ordered preliminary injunction that bars the shipment of transuranic waste to the Hanford site. At issue is the adequacy of DOE's NEPA reviews

related to waste management and disposal at Hanford, including the recently completed *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and ROD (69 FR 39449; June 30, 2004).

The court will hear oral arguments on February 3, 2005, on Plaintiffs' request for a preliminary injunction barring shipment of low-level and mixed low-level waste and a motion by DOE to lift the existing preliminary injunction concerning transuranic waste. In the interim, DOE has agreed not to accept the shipment of off-site-generated low-level and mixed low-level waste at Hanford. (A hearing is scheduled for January 11, 2005, on the State's claim that storage of mixed transuranic waste violates the Resource Conservation and Recovery Act and the State's Hazardous Waste Management Act.)

[Case Nos: 03-CT-5018 and 03-CT-5044]

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Litigation Updates (continued from previous page)

Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al. (N.D. Cal.): The court ruled on September 10, 2004, that DOE's EA is sufficient for a proposed Biosafety Level 3 ("BSL-3") facility at Lawrence Livermore National Laboratory and that DOE is not required to prepare a programmatic EIS on its Chemical and Biological National Security Program. The plaintiffs appealed the ruling on November 11, 2004, to the U.S. District Court of Appeals for the Ninth Circuit (Case No.: 04-17232). Briefing is scheduled to end in April 2005; no hearing date has been set.

The plaintiffs had argued that the *Environmental Assessment for The Proposed Construction and Operation*

of a Biosafety Level 3 Facility at Lawrence Livermore National Laboratory (DOE/EA-1442, December 2002) inadequately addresses threats associated with the proposed BSL-3 facility, precedential effects of the proposed facility, public controversy surrounding the proposed facility, and cumulative effects of the proposed facility. The plaintiffs also had argued that the Chemical and Biological National Security Program entails a series of connected actions subject to a programmatic review under NEPA. The District Court found in DOE's favor on each of these points. (See *LLQR*, March 2004, pages 2 and 16; and September 2003, page 23.)

[Case No.: CV-03-3926-SBA]

Other Agency NEPA Cases

The Lands Council et al. v. Powell et al. (9th Cir.): The Lands Council successfully appealed a district court decision that upheld a Forest Service timber harvest plan in the Idaho Panhandle National Forest. Reversing a lower court decision, the appeals court found that the Forest Service had violated both NEPA and the National Forest Management Act, and left in place a stay that prevents the Forest Service from implementing its timber harvest plan before complying with both Acts.

The appeals court cited three violations of NEPA. First, the cumulative effects analysis in the Forest Service's final EIS "acknowledged broad environmental harms from prior harvesting." The court concluded, however, that for "the public and agency personnel to adequately evaluate the cumulative effects of past timber harvests, the Final [EIS] should have provided adequate data of the time, type, place, and scale of past timber harvests and should have explained in sufficient detail how different project plans and harvest methods affected the environment."

Second, the appeals court concluded that the Forest Service relied on "stale" habitat data for assessing cumulative effects on the Westslope Cutthroat Trout. "Evidence of current habitat conditions, and any degradation or improvement in the last thirteen years" is relevant to assessing cumulative effects, the court wrote.

Third, the court found that the Forest Service had not adequately disclosed in the final EIS certain shortcomings of one model used in its analysis. "We hold that this withholding of information violated NEPA, which requires up-front disclosures of relevant shortcomings in the data or models," the court concluded.

[Case No.: 03-35640]

Pennaco Energy, Inc. v. United States Department of the Interior (10th Cir.): At issue is whether the Department of the Interior's (DOI's) Bureau of Land Management (BLM) complied with NEPA before auctioning three oil and gas leases in the Powder River Basin of Wyoming in 2000. The Interior Board of Land Appeals (IBLA), an entity within DOI, ruled in 2002 that BLM had not complied with NEPA and directed BLM to undertake appropriate action to come into compliance.

BLM had relied on two existing EISs to satisfy NEPA requirements with regard to issuance of the leases. The Board later determined, however, that these EISs did not constitute a hard look at water discharges or air quality issues particular to the leases in question. One of the EISs did not evaluate the type of gas development (coal bed methane) that would occur under the leases. The second EIS did evaluate impacts associated with this type of gas development, but it was a post-leasing analysis and therefore "did not consider pre-leasing alternatives, such as not issuing leases at all."

The U.S. District Court for the District of Wyoming reversed the Board's decision. The appeals court then, on August 10, 2004, reinstated the Board's decision. The appeals court wrote that "the administrative record contains substantial evidence to support IBLA's conclusion that the proposed action raised significant new environmental concerns that had not been addressed by existing NEPA documents."

[Case No.: 03-8062] 

See also text box on whale litigation, page 15.



Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement.

- **Introduction to NEPA/309 Review (FED103: NEPA/309 Review)**
Washington, DC: April 12-14

Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
 - **How to Manage the NEPA Process and Write Effective NEPA Documents**
Las Vegas, NV: January 25-28
Fee: \$1,110 (GSA contract: \$995)
Logan, UT: February 14-16
Fee: \$885 (GSA contract: \$795)

Clear Writing for NEPA Specialists
Reno, NV: February 8-10
Fee: \$835 (GSA contract: \$745)
until December 8
Logan, UT: March 7-9
Fee: \$835 (GSA contract: \$755)
until December 7

Team Building for NEPA Specialists
Logan, UT: February 17-18
Fee: \$660 (GSA contract: \$595)

How to Manage the NEPA/CEQA Process and Write Effective NEPA Documents
Palm Springs, CA: March 1-4
Fee: \$1,060 (GSA contract: \$945)
until January 1

The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
 - **NEPA Certificate Program**
Conducted through Utah State University.
Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later may be applied toward the certificate. Also requires completion of course exams and a final project.

Fee: \$4,955 (includes tuition, course fees, and all materials)

Natural Resources and
Environmental Policy Program
Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/policy/nepa.html
 - **NEPA: Turning Complexities into Strategies**
Denver, CO: February 3-4
Fee: \$595 (\$495 if multiple registrants)

NEPA: Your Definitive and Practical Guide
Los Angeles, CA: February 28
San Francisco, CA: March 11
Austin, TX: April 8
Fee: \$395 (\$350 if multiple registrants)

CLE International
800-873-7130
registrar@cle.com
www.cle.com/dev
 - **Implementation of the National Environmental Policy Act**
Durham, NC: January 24-28
Fee: \$1,050

Socioeconomic Impact Analysis Under NEPA
Durham, NC: February 16-18
Fee: \$695

Accounting for Cumulative Impacts in the NEPA Process
Durham, NC: March 14-16
Fee: \$695

Making the NEPA Process More Efficient: Scoping and Public Participation
Durham, NC: March 16-18
Fee: \$695

Nicholas School of the Environment
and Earth Sciences
Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/shortcourses/courses/upcoming.html
- NEPA Certificate Program**
Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate.

Fee: Included in registration for constituent courses.

del@env.duke.edu
www.env.duke.edu/del/certificates/certificates.html

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Training Opportunities

(continued from previous page)

- **NEPA and Related Requirements**

Washington, DC: December 8-10
Fee: \$995 (\$495 for lawyers who are full-time government employees)

- **Environmental Law**

Washington, DC: February 16-18
Fee: \$895

- **Species Protection and the Law: Endangered Species Act, Biodiversity Protection, and Invasive Species Control**

Washington, DC: April 6-8
Fee: \$895

American Law Institute-American Bar Association
800-CLE-NEWS
www.ali-aba.org

- **NEPA Toolbox™ Training**

Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including those from other agencies. Services are available through a GSA contract.

Environmental Training & Consulting International, Inc.
720-859-0380
info@envirotrain.com
www.envirotrain.com

e-NEPA: Revised Document Submittal Procedures

The Office of NEPA Policy and Compliance has revised the procedures for submitting NEPA documents for posting on the DOE NEPA Web Site. The NEPA Office notified the DOE NEPA Community of these procedures by a memorandum dated November 5, 2004. The revised procedures are intended to avoid potential loss of data and delays that may result from security screening of mail or transmission of large electronic files via e-mail.

For an EIS, send the following as soon as available (preferably when the document is sent to the printer) **by overnight delivery service:**

- One printed copy
- Web-formatted electronic files (CD, floppy disk, zip disk)*
- A completed DOE NEPA Document Certification and Transmittal Form (available at: www.eh.doe.gov/nepa/docs/certificationformupdate2004.pdf)

To: GTI Federal
125 South Carroll Street, Suite 200
Frederick, MD 21701
ATTN: Marian Carter – DOE/EH-33
(301-668-7280 – verification)

Also, send two printed copies of the EIS as soon as available to the Office of NEPA Policy and Compliance (address at right).

Please address any comments or questions about Web publication or other matters regarding the DOE NEPA Web site to Denise C. Freeman at denise.freeman@eh.doe.gov or 202-586-7879. 

For an EA, finding of no significant impact, supplement analysis, or other NEPA document, send the following within two weeks of their availability **by overnight delivery service:**

- Three printed copies
- Web-formatted electronic files*
- A completed DOE NEPA Document Certification and Transmittal Form (available at: www.eh.doe.gov/nepa/docs/certificationformupdate2004.pdf)

To: Ms. Carol Borgstrom
Office of NEPA Policy and Compliance, EH-42
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585-0119

* We recommend using a CD envelope labeled: “**CD enclosed, Do Not Scan.**” Please do not send electronic files by e-mail.

EAs and EISs Completed July 1 to September 30, 2004

EAs

Savannah River Operations Office

DOE/EA-1501 (7/20/04)

Construction, Operation, and Closure of the Burma Road II Borrow Pit at the Savannah River Site, South Carolina

Cost: \$19,000

Time: 2 months

Strategic Petroleum Reserve

Project Management Office

DOE/EA-1497 (9/3/04)

Strategic Petroleum Reserve West Hackberry Facility Raw Water Intake Pipeline Replacement Project, Cameron and Calcasieu Parishes, Louisiana

Cost: \$158,000

Time: 6 months

DOE/EIS-0343 (69 FR 41476, 7/9/04)

(EPA Rating: EC-2)

COB Energy Facility, Klamath County, Oregon

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

Time: 30 months

DOE/EIS-0349 (69 FR 52668, 8/27/04) (Amended

FEIS NOA to correct date - 69 FR 53916, 9/3/04)

(EPA Rating: EC-2)

BP Cherry Point Cogeneration Project, Whatcom County, Washington

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

Time: 26 months

EISs

Bonneville Power Administration

DOE/EIS-0340 (69 FR 45707, 7/30/04)

(EPA Rating: LO)

Northeast Oregon Hatchery Program Grande Ronde - Imnaha Spring Chinook Hatchery Project, Oregon

Cost: \$750,000

Time: 32 months

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 Web site at: www.epa.gov/compliance/nepa/comments/ratings.html.)

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median and average cost of two EAs for which cost data were applicable was \$88,500.
- Cumulatively, for the 12 months that ended September 30, 2004, the median cost for the preparation of 10 EAs for which cost data were applicable was \$41,439; the average was \$87,408.
- For this quarter, the median and average completion time of two EAs was four months.
- Cumulatively, for the 12 months that ended September 30, 2004, the median completion time for 14 EAs was 8 months; the average was 10 months.

EIS Costs and Completion Times

- For this quarter, the cost of one EIS for which cost data was applicable was \$750,000.
- Cumulatively, for the 12 months that ended September 30, 2004, the median cost for the preparation of six EISs for which cost data were applicable was \$1,560,250; the average was \$2,627,500.
- For this quarter, the median completion time for three EISs was 30 months; the average was 29 months.
- Cumulatively, for the 12 months that ended September 30, 2004, the median completion time for eight EISs was 31 months; the average was 34 months.

Recent EIS-Related Milestones (September 1 to November 30, 2004)

Notices of Intent

Office of Fossil Energy

DOE/EIS-0372

The Northeast Reliability Interconnect, Hancock, Penobscot, and Washington Counties, Maine
November 2004 (69 FR 63514, 11/2/04)

Office of Nuclear Energy, Science and Technology

DOE/EIS-0373

Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems, Idaho
November 2004 (69 FR 67139, 11/16/04)

Draft EISs

Bonneville Power Administration

DOE/EIS-0346

Salmon Creek Project, Okanogan County, Washington
September 2004 (69 FR 53916, 9/3/04)

Office of Environmental Management/ Grand Junction Office

DOE/EIS-0355

Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah
November 2004 (69 FR 65426, 11/12/04)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Revised Record of Decision for the Electrical Interconnection of the Summit/Westward Project, Columbia and Clatsop Counties, Oregon
October 2004 (69 FR 63145, 10/29/04)

DOE/EIS-0349

BP Cherry Point Cogeneration Project, Whatcom County, Washington
November 2004 (69 FR 68139, 11/23/04)

Notices of Cancellation

Bonneville Power Administration

DOE/EIS-0367

Transmission Policy-Level, Oregon
November 2004 (69 FR 68138, 11/23/04)

National Energy Technology Laboratory

DOE/EIS-0280

Clean Power from Integrated Coal/Ore Reduction (CPICOR) Project, Vineyard, Utah
October 2004 (69 FR 62440, 10/26/04)

DOE/EIS-0304 (previously DOE/EIS-0282)

McIntosh Unit 4 Pressurized Circulating Fluidized Bed Demonstration Project, Lakeland, Florida
October 2004 (69 FR 62440, 10/26/04)

DOE/EIS-0362

Next-Generation Circulating Fluidized Bed (CFB) Coal Generating Unit, Fountain, Colorado
October 2004 (69 FR 62440, 10/26/04)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program

Environmental Impact Statement

(DOE/EIS-0246)

DOE/EIS-0246-SA-41*

Willamette Basin Mitigation - Green Island Conservation Easement Acquisition, Lane County, Oregon
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0246-SA-42

Blue Creek Winter Range - Spokane Reservation (Acquisition of Lantzy West and Rajewski (Allotment 1052) Properties), Spokane Indian Reservation, Washington
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0246-SA-43

Amazon Basin (Willow Creek - Eugene Wetlands) - Cuddeback Land Acquisition, Lane County, Oregon
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0246-SA-44

Hellsgate Big Game Winter Range - Wildlife Mitigation Project, Okanogan and Ferry Counties, Oregon
(Decision: No further NEPA review required)
September 2004

* Not previously reported in LLQR

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Recent EIS-Related Milestones (September 1 to November 30, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0246-SA-45

Protect & Restore Wildlife Habitat Coeur d'Alene Tribe - Hangman Acquisition (1 parcel, 910 acres), Benewah County, Idaho

(Decision: No further NEPA review required)

October 2004

Watershed Management Program Environmental Impact Statement

(DOE/EIS-0265)

DOE/EIS-0265-SA-170*

Tapteal Bend Riparian Corridor Restoration Project, Benton County, Washington

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-174*

Blue Creek Site Restoration Project, Walla Walla County, Washington

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-175*

Malarkey Ranch Culvert Replacement Project, Columbia County, Oregon

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-176*

Gravel Push-Up Dam Removal, Lower North Fork John Day River, Murphy Cottonwood Creek Diversion, Grant County, Oregon

(Decision: No further NEPA review required)

August 2004

DOE/EIS-0265-SA-177

Klickitat Watershed Enhancement Project - Klickitat Meadows Restoration, Yakima County, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-178

Yakima Tributary Access and Habitat Program - Pellicer Barrier Removal, Yakima County, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-179

Joseph Creek Steelhead Restoration Project, Wallowa County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-180

Hood River Fish Habitat - East Fork Irrigation District, Hood River County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-181

Swamp Creek Hardwood and Wetland Restoration Project, Wallowa County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-182

Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-183

Bear Creek Road Work, Wallowa County, Oregon

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-184

Idaho Model Watershed Habitat Projects - L-3AO Irrigation Diversion Modification, Lemhi County, Idaho

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-185

Grays Bay Estuary Habitat Rehabilitation Project, Wahkiakum County, Washington

(Decision: No further NEPA review required)

September 2004

DOE/EIS-0265-SA-186

Habitat Projects Lake Roosevelt Tributaries - Roaring Creek Culvert Replacement, Ferry County, Washington

(Decision: No further NEPA review required)

October 2004

DOE/EIS-0265-SA-187

Yakima Tributary Access and Habitat Program - East Branch Wilson Creek, Sorensen Properties, Kittitas County, Washington

(Decision: No further NEPA review required)

October 2004

* Not previously reported in LLQR

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Recent EIS-Related Milestones (September 1 to November 30, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-188

Umatilla Habitat Improvements/Sears Creek Culvert Replacement, Umatilla County, Oregon
(Decision: No further NEPA review required)
October 2004

DOE/EIS-0265-SA-189

Tucannon River Model Watershed - Howard Irrigation Efficiency Project, Garfield County, Washington
(Decision: No further NEPA review required)
October 2004

**Vegetation Management Program
Environmental Impact Statement
(DOE/EIS-0285)**

DOE/EIS-0285-SA-225*

Vegetation Management for Echo Lake - Monroe # 1, 500 kV Transmission Line Corridor, King and Snohomish Counties, Washington
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0285-SA-226*

Vegetation Management and Danger Tree Removal along Swan Valley - Teton No. 1 & 2 Transmission Line Corridor, Bonneville and Teton Counties, Idaho, and Teton County, Wyoming
(Decision: No further NEPA review required)
August 2004

DOE/EIS-0285-SA-227

Vegetation Management along the Tanner Tap to Snoqualmie Lake Traditional No. 1, from Structure 1/1 to 5/21, King County, Washington
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0285-SA-228

Removal of Unwanted Vegetation along the Right-of-Way of the Reston-Fairview #2 230 kV Transmission Line Corridor, Douglas and Coos Counties, Oregon
(Decision: No further NEPA review required)
September 2004

DOE/EIS-0285-SA-229

Vegetation Management along Santiam - Alvey, Marion - Alvey and Lookout Point - Alvey Transmission Line Corridors, Lane County, Oregon
(Decision: No further NEPA review required)
October 2004

DOE/EIS-0285-SA-230

Removal of Unwanted Vegetation along the Right-of-Way (ROW) of the 115 kV Lane - Wendson # 1 and 230 kV Lane - Wendson # 2 Transmission Lines, Lane County, Oregon
(Decision: No further NEPA review required)
October 2004

DOE/EIS-0285-SA-231

Vegetation Management along the Roundup - La Grande Transmission Line Corridor, Umatilla County, Oregon
(Decision: No further NEPA review required)
October 2004 

* Not previously reported in LLQR

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. This Quarterly Report covers documents completed between July 1 and September 30, 2004.

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

- *Internal scoping meeting.* The internal scoping meeting was an effective tool to ensure that the EA contained clear, concise information that accurately reflected the proposed action.
- *Multi-pronged approach.* The use of mailings, public open-house meetings, the Web site, and meetings by special request followed by secondary scoping, made the scoping process successful. Secondary scoping included follow-up meetings during project development/analysis and a briefing for a project management team composed of several partner entities (Federal, state, and tribal) to recognize issues and respond consistently through common talking points.
- *Preliminary design review.* The scoping process was facilitated by focusing on reasonable alternatives during a preliminary design review process.
- *Joint public meetings.* Public meetings and notices were used for the NEPA scoping process and for the state energy facility site certification process, which was an effective dual-purpose use of time.

What Didn't Work

- *Incomplete scoping of project details.* The project details had not been fully scoped when the NEPA review began.

Data Collection/Analysis

What Worked

- *Feedback from landowners.* Performing site visits with concerned landowners to gather information on issues and meaningful analysis measures was useful to understanding and addressing their specific issues.

- *Monitoring trends.* Groundwater flow monitoring and well testing over several years provided useful data.
- *Computer-generated visual simulations.* Computer-generated visual simulations of before and after shots of project sites were useful for data collection and analysis.
- *Use of tables.* A table summarizing impacts from all alternatives was useful for quick reference during the EA review process.

What Didn't Work

- *Accelerated schedule.* The archaeological and protected species surveys had to be completed on an accelerated schedule to support the document schedule.
- *Alternative interpretation of Wild and Scenic Rivers Act.* An impact analysis/methodology problem occurred when the U.S. Forest Service, the agency ultimately responsible for making an effects determination pursuant to the Wild and Scenic Rivers Act, had a different interpretation of how to analyze impacts on Wild and Scenic River values.
- *Duplicative work.* Using existing NEPA documentation would have reduced duplication of work and accelerated completion time during data collection.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Concurrent document review.* Concurrent review of the draft document by contractor and DOE staff facilitated completion of the EA on schedule.
- *Close project teamwork and rapid responses.* The project team worked closely together and responded quickly to issues.
- *Regular meetings.* Regular meetings of the EIS team during the development of the EIS were very effective.

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What Worked and Didn't Work

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- *Experienced and dedicated NEPA staff.* The NEPA staff was experienced and dedicated. They provided rapid responses to questions and requests for information. This facilitated the timely completion of the document.
- *Document review timelines.* Closely monitoring timelines for review of document parts by team members as parts were developed was very effective in keeping the document on schedule.
- *Good relationships.* Cooperative relationships with the state and other stakeholders facilitated timely document completion.

Factors that Inhibited Timely Completion of Documents

- *Accelerated project schedule.* The accelerated project schedule made timely completion of the NEPA review challenging.
- *Project design changes and staff turnover.* Changes in the proposed action and the project management team made timely completion of the document challenging.
- *Arbitrary timelines.* Establishing timelines based on external budgetary or process issues and not environmental compliance was ineffective in keeping the document on schedule.
- *Resource commitment from other agencies.* The lack of resources from another agency caused delays in the project.
- *Geographic locations.* The distance between the contractor and the NEPA Document Manager required additional time to schedule the mailing of documents, such as the administrative record, at the end of the NEPA process.

Teamwork

Factors that Facilitated Effective Teamwork

- *Communication between DOE and contractor.* A good working relationship and constant communication between the contractor and DOE facilitated effective teamwork.

- *Clear statement of work.* Teamwork between DOE and the contractor was facilitated by having a clear statement of work for the contractor and an understanding of deliverables, document format, and writing style.
- *Accessibility of data.* Accessibility of data facilitated effective teamwork.

Factors that Inhibited Effective Teamwork

- *Shifting project managers.* Having the same project manager throughout the draft document review process would have created a more efficient process.
- *Availability of General Counsel.* The limited time available to the (overworked) General Counsel caused minor delays.

Process

Successful Aspects of the Public Participation Process

- *Announcements published in an Environmental Bulletin.* Publishing the notice of intent to prepare the document, availability of the draft document for review, and notice of availability of the finding of no significant impact in a site's Environmental Bulletin was beneficial to the public participation process.
- *Draft EIS hearings.* A highly attended draft EIS hearing was beneficial to the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *Mailing list errors.* A separate agency department managing the mailing list for the public participation process made several mailing errors, including omissions and unnecessary and duplicate mailings.
- *Lack of participation from special interest groups.* Representatives of special interest groups, including fishermen who may be affected, were unresponsive to our attempts to involve them throughout the EA process. Input from these groups would have been valuable.

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What Worked and Didn't Work

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Usefulness

Agency Planning and Decisionmaking: What Worked

- *Timely decisionmaking.* Management decided that a new source for structural fill was needed for site projects, and the NEPA review was completed to ensure minimal impact to the environment.
- *Project scope definition.* The NEPA review caused the project sponsor to define the project scope and locate the project components to minimize potential environmental impacts.
- *Evaluation of alternatives.* The EA process facilitated informed and sound decisionmaking in the evaluation of alternatives.
- *Regional agency review.* The NEPA analysis was the basis for Northwest Power Planning Council review.
- *Interagency satisfaction.* Agencies were satisfied with the processes involving NEPA, the Endangered Species Act, cultural resources, and coordination requirements.
- *Addressed impacts and costs.* The NEPA process informed decisionmaking by addressing impacts and costs to determine appropriate courses of action and potential mitigations.

Enhancement/Protection of the Environment

- The environment was protected as a result of the NEPA process.
- The environment was protected and enhanced by incorporating mitigation at the front end of the project, as discussions with the state's department of wildlife occurred during the NEPA process. This will result in additional protection of some natural resources and enhance the success of restoration/enhancement efforts following completion of the project.
- The NEPA process ensured protection of the environment by the conservation and recovery of endangered species of fish. Wild and scenic river values were also protected by design and mitigation.

Effectiveness of the NEPA Process

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

For the past quarter, in which 4 questionnaire responses were received for EAs and 3 responses were received for EISs, 7 out of 7 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process allowed for advance planning of mitigation and responsiveness to public safety and environmental concerns expressed by agencies.
- A respondent who rated the process as "4" stated that the NEPA review was a useful planning tool in making decisions during project planning stages and useful for environmental protection.
- Another respondent who rated the process as "4" stated that the NEPA review aided in better defining and planning the project scope.
- A respondent who rated the process as "3" stated that the NEPA process ensured that all alternative sites were evaluated for suitability, and the equipment used for the excavation was reviewed for impacts on the environment.
- Another respondent who rated the process as "3" stated that the NEPA process helped non-Federal partners recognize the Federal government's responsibility to study ways to protect special resources, even though the proposed project itself had "white hat" intentions.
- Two respondents who rated the process as "3" stated that the NEPA process was useful for public information, however, environmental protection was assured through the state energy facility siting process. DOE's role was relatively limited. LL