

**LESSONS
LEARNED**

June 1, 2005; Issue No. 43

Second Quarter FY 2005

Who Has More Than 500 Years of NEPA Experience? A Closer Look at the DOE NEPA Compliance Officers



NCO (ĕn-sē-ō) *abbr.* NEPA Compliance Officer.

1. One of a cohort of 47 Department of Energy employees assigned NEPA compliance responsibilities for a Program Office or Field Organization.
2. A busy, high-achiever who encourages “productive harmony” among Federal actions, human populations, and the natural environment.
3. An individual practiced in the fine arts of stress management, negotiation, and communication.

Who are these 47 individuals? What inspires their commitment to the environment? How do they carry out their NCO responsibilities? What challenges do they face?

On the occasion of the 35th anniversary of NEPA, the DOE Office of NEPA Policy and Compliance distributed a questionnaire to gather data and elicit wisdom on the NCO experience. We analyzed the quantitative data and looked for themes in the narratives. From this information, we drew five conclusions about the NCO cohort.

Finding #1: NCOs Know NEPA

The DOE NCOs are widely diverse in their training and professional experience – but in aggregate they represent an immense resource of environmental knowledge relevant to NEPA responsibilities.

Some respondents became NCOs less than a year ago – one just started in May; two have served for 15 years,

since the position was instituted. The average NCO has served in that capacity for seven years, and, collectively, the 37 NCO respondents to the survey have dedicated 245 years to leading DOE’s NEPA compliance efforts.

These measures, however, understate their NEPA experience. Taking into account their environmental work for DOE, other agencies (including state and local governments), contractors, and universities, NCOs have an average of 15 years and an aggregate of over 500 years of experience related to NEPA!

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1970 **35** NEPA 2005 Spotlight on Environmental Excellence

DOE Plans November NEPA Conference

In recognition of the 35th anniversary of NEPA, the Office of Environment, Safety and Health, with the support of DOE Program Offices and in partnership with the Council on Environmental Quality, is pleased to announce a conference with the theme of *NEPA 35: Spotlight on Environmental Excellence*. The two days of training and presentations will take place in the historic Hotel Washington in Washington, DC, on November 2 and 3, 2005, with optional meetings to be scheduled on November 4.

Members of DOE’s NEPA Community are urged to “save the dates.” Further details, including registration procedures, will be provided by the Office of NEPA Policy and Compliance.

Inside *LESSONS LEARNED*

Welcome to the 43rd quarterly report on lessons learned in the NEPA process. In this issue we take a look at our hard-working NEPA Compliance Officers, who share bits of wisdom (and a little humor) gained from their lessons learned implementing NEPA. Countless thanks to all NCOs for their dedication, flexibility, and perseverance. As always, we welcome your suggestions for continuous improvement.

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Carol Bongstrom
Director

Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

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

Quarterly Questionnaires Due August 1, 2005

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2005 (April 1 through June 30, 2005) should be submitted by August 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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CEQ Asks Federal Agencies to Lead NEPA Modernization

With the objective to make “concrete progress,” James L. Connaughton, Chair, Council on Environmental Quality (CEQ), recently asked the Heads of Federal Agencies to designate a senior official to meet with him to begin implementing the work of the CEQ NEPA Task Force. CEQ selected 21 recommendations from over 50 in the Task Force report, *Modernizing NEPA Implementation* (September 2001; *LLQR*, December 2003, page 1) for Federal agency leadership or support in developing guidance or conducting demonstration projects.

“Fully recognizing the value that NEPA provides, the CEQ NEPA Task Force examined the concern that the NEPA process is losing its focus to help federal agencies make better informed decisions,” said Mr. Connaughton. “The task force looked closely at current, often out-dated, practices to develop recommendations for making the NEPA process more effective, efficient and timely.”


The recommendations, “designed to improve and reinvigorate agency NEPA practice,” fall under seven broad areas – Adaptive Management and Environmental Management Systems, Aligning NEPA and Other Laws,

I look forward to working with you in modernizing the NEPA process to help us all make better informed and environmentally sound decisions.

– James L. Connaughton
May 2, 2005, Memorandum
to Heads of Federal Agencies



Categorical Exclusions, Collaboration, Environmental Assessments, Programmatic Analyses, and Training. John Spitaleri Shaw, Assistant Secretary for Environment, Safety and Health, will represent DOE at the upcoming meeting on June 7, 2005, to express agency interest, based in part on consultation by the Office of NEPA Policy and Compliance with DOE’s NEPA Compliance Officers, some of whom volunteered to participate in work groups.

Additional information on the CEQ NEPA Task Force, including a copy of its report, is available on the Task Force’s Web site at <http://ceq.eh.doe.gov/ntf>. 

Congressional NEPA Task Force Begins Regional Hearings

Seeking a comprehensive Congressional review of NEPA implementation, Representative Richard Pombo (R-CA), Chairman of the House of Representatives Committee on Resources, established a bipartisan Task Force in April 2005 on Improving the National Environmental Policy Act, led by Representative Cathy McMorris (R-WA). Representative Tom Udall (D-NM) is the Ranking Member on the Task Force.

“Like any major policy put in place decades ago, it is time to examine this 35-year-old law and find ways in which we can improve its efficacy and efficiency,” said Task Force member Representative Greg Walden (R-OR). “I look forward to working with colleagues from both sides of the aisle to accomplish this goal.”

The Task Force is charged with making recommendations for improvement. Its purpose is to promote the intent of NEPA – that Federal decisions be made in an appropriate, environmentally sound manner, rather than being driven by litigation.

“One of the trademarks of NEPA is to take into account public comment,” said Representative McMorris,* so the Task Force will hold six public regional hearings covering 23 states “to hear testimony from our farmers, our ranchers, developers, the environmental community and others on how NEPA impacts their community, the economy and our quality of life.”



Rep. Cathy McMorris, Chair, Congressional NEPA Task Force, has raised concerns regarding delays, costs, and litigation.

Diverse Views Expressed at Northwest Hearing

The Task Force held its first hearing, “The Role of NEPA in the States of Washington, Oregon, Idaho, Montana, and Alaska,” on April 23, 2005, in Spokane, Washington. Twelve invited witnesses expressed their views on NEPA implementation (excerpted below). Some speakers expressed support for preserving the NEPA process as a framework for sound decisionmaking while others urged making significant changes to the NEPA process to

alleviate cost, delay, and litigation. The complete written testimony of the hearing speakers is available on the Task Force Web site (resourcescommittee.house.gov/nepataskforce.htm under Schedule). The Task Force plans to conduct the five remaining hearings (not yet scheduled) and issue a report on findings and recommendations, and invites additional input via e-mail to nepataskforce@mail.house.gov.

Excerpts from Written Testimony at the Spokane Hearing

Editor’s note: In selecting excerpts, we have tried to illustrate the variety of opinions presented in the testimony of the hearing witnesses. We have not captured all of the topics and complexity of views expressed.

NEPA Is a Suitable Tool for Country’s Needs:

The public perception of impending environmental crisis was probably more acute and widespread in 1969 than it is today, when many environmental problems tend to be harder to see. A declining species or gradual change in ocean or atmospheric chemistry is not as apparent to the average person as a belching smokestack or burning river. . . . It may be fair to say that the law was written in a simpler era, at least to the extent that the polarities of good and bad, dirty and clean, were in sharper contrast. But it badly shortchanges . . . NEPA itself to say that the law was written for a simpler era and, as such, is not a good fit for today. . . .

NEPA is inspired, forward looking, valuable, and entirely suitable as written to our country’s contemporary needs. The risk of poorly informed government action is a non-partisan, 50-state, enduring problem, and NEPA is a vital tool in limiting that risk. . . .

The real problem with NEPA is not that it is too green or not green enough. Most of the criticism of NEPA, whether the critic recognizes it or not, is rooted in the way the law is implemented, not in the fact that the law seeks [to] protect the quality of the human environment. The problem is that parties with different values compete for primacy in agency decision-making and agencies sometimes do not administer or manage the competition effectively.

Thomas C. Jensen, Esq., Sonnenschein, Nath & Rosenthal, LLP
Chairman, National Environmental Conflict Resolution Advisory Committee
U.S. Institute for Environmental Conflict Resolution

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* Issue paper, “Taskforce to Improve the National Environmental Policy Act will highlight its economic impacts on Eastern Washington,” April 8, 2005; www.house.gov/apps/list/speech/wa05_mcmorris/issue_050408_nepa.html.

A Closer Look at NCOs (continued from page 1)

Three-quarters of the responding NCOs chose undergraduate majors in the natural sciences or engineering; others majored in fields such as law enforcement, political science, sociology, anthropology, and management. More than 80 percent of responding NCOs have one or more graduate degrees, in fields of study spanning the natural sciences and engineering, mathematics, business administration, public administration, education, and law.

This diversity of educational backgrounds and professional experience among the NCOs supports NEPA's emphasis on interdisciplinary analysis.

NCO Wisdom

The NEPA process isn't always environmental and certainly is not the panacea, but it is a good place to begin a dialog with the public about environmental issues.

The process and the documentation, therefore, need integrity and honesty and need to be done correctly the first time, every time.



Finding #2: NCOs Believe in NEPA

NCOs share an appreciation for the environment and a belief in the values represented in NEPA. Their environmental commitment stems from experiences in their childhood, education, and careers.

Many respondents described how their childhood experiences inspired their respect for the environment. One NCO explained, "I grew up on a peninsula on Narragansett Bay in Rhode Island and spent hours exploring the woods, the bay, and the salt marshes. My grandparents had a summer home on the Delaware River in southern New Jersey – which gave me access to the river, the ocean, and the Pine Barrens. I was always comparing and contrasting the different environments and dreamed of pursuing a career related to the outdoors." Another NCO grew up on a farm and "saw the importance of balancing the needs of people and protecting our environment." Another NCO attributed his environmental inspiration to birding since the age of 14 – and noticing the decline in habitat and species numbers and diversity since 1968.

One-quarter of the respondents explained that their interest in the environment resulted from their education: "As an undergraduate, the instructor for my first environmental

regulations class was very knowledgeable, helpful, and a good mentor."

One-third of the responding NCOs reported that their early work experiences strongly influenced their interest in pursuing an environmental career. One NCO explained, "My decision to pursue an environmental career probably started during my first Government job. I spent two summers while in high school working for the Youth Conservation Corps in Allegheny National Forest in Pennsylvania . . . trying to remediate abandoned oil wells with straw and seed. I saw the desperate need for up-front planning, and I saw how futile my job was in the absence of that."

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I am

- ✓ *the "NEPA Concierge" – bring your NEPA baggage here; come here for NEPA directions (but without tips).*
- ✓ *the NEPA counselor and psychologist, without either couch or license.*
- ✓ *the NEPA coach, advisor, consultant, and quasi-legal counselor (without license again).*
- ✓ *the NEPA Field Judge (or more appropriately the line judge) who watches for NEPA infractions and then throws the flag, sometimes inflicting a penalty by sending the NEPA ball back for more work; sometimes resulting in a total rework of project design and location, and then a new NEPA document.*
- ✓ *the NEPA referee between opposing points of view in the implementation of NEPA.*
- ✓ *the NEPA news anchor; bringing both good and bad news to the organization.*
- ✓ *the NEPA facilitator, arbitrator, and corporate communicator.*
- ✓ *the NEPA educator and explainer.*

I'm the one who looks out for the program and organization in terms of NEPA timing, cost, and project impact. I am supposed to keep the office out of NEPA trouble, which is best done when I am involved in the earliest stages or phases of new projects and research programs. . . . How do I handle it? I endeavor to have "NEPA authority." That is not the "authority" that is influence coming from or with position, place in the organization, high salary, large office, or for whom I work. It is the authority that is influence based on trust.

– NCO Respondent

A Closer Look at NCOs (continued from previous page)

Today, these NCOs bring their appreciation and knowledge of environmental issues to the DOE table. They have accepted responsibility for NEPA compliance and environmental stewardship at their sites and programs. But their answers suggest that NEPA is not just a “day job” for them – they truly believe in NEPA. “NEPA is an effective planning tool to prevent environmental impacts at the conceptual stage of a project,” said one NCO. Another explained, “Compliance with NEPA has made DOE aware of its responsibilities to the American people for the natural environment and the safety and health of populations at and near its sites.”

Many NCOs have established goals for themselves to make sure that NEPA is upheld. For example, one NCO has the goal to “ensure all projects/programs have taken NEPA into consideration.” Another said, “My goal is to provide our field offices with the environmental support they need to ensure that the Agency’s actions are in compliance with NEPA.”

Many NCOs reported that they strive to take their responsibilities even further – “to achieve NEPA compliance while raising the NEPA bar,” as one NCO expressed it. For example, they reported goals to “streamline the NEPA process,” “produce quality analysis for the decisions to be made,” and “make sure that everyone involved understands and supports the NEPA process.”

Finding #3: NCOs Wear Many Hats

Our hard-working NCOs have long “to-do” lists. Some reported that NEPA responsibilities are a full time job, demanding “90 to 150” percent of their time. Others, at sites with minimal NEPA-related activity, spend much less time: “My Office typically has very few NEPA actions. Of these, almost all are categorical exclusions.” A few reported that their NCO activities ebb and flow with the project tide. The respondents reported spending, on average, about one-third of their time on NCO duties.

About half of the respondents write all or portions of EAs, and almost all participate in reviewing them. EISs are also on most

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Birth of the NEPA Compliance Officer

Former Secretary of Energy Admiral James Watkins established the DOE NEPA Compliance Officer position in each Program and Field Office with NEPA responsibilities through Secretary of Energy Notice 15-90 (February 2, 1990). The specific responsibilities of the NCO were first enumerated in the 1991 revision of the DOE NEPA Order, *National Environmental Policy Act Compliance Program*, (DOE O 5440.1D). (The current DOE NEPA Order, DOE O 451.1B, is available on the DOE NEPA Web site, www.eh.doe.gov/nepa, under NEPA and Related Requirements.)

NCO Responsibilities under DOE O 451.1B, NEPA Compliance Program

(Paragraph 5.d – Abridged)

A NEPA Compliance Officer shall:

- (1) Develop office NEPA procedures.
- (2) Make categorical exclusion determinations and issue associated floodplain and wetland documents.
- (3) Report to the DOE NEPA Office on lessons learned after completing each EIS and EA.
- (4) Coordinate office NEPA compliance strategies.
- (5) Advise on NEPA-related matters.
- (6) Recommend to the Head of the Office whether an EA or EIS is appropriate or required.
- (7) Assist with the NEPA process and document preparation.
- (8) Advise on the adequacy of NEPA documents.
- (9) Participate in periodic NEPA meetings and workshops; provide NEPA training and disseminate NEPA guidance and information.
- (10) Notify the DOE NEPA Office promptly – generally, within two weeks of:
 - (a) The designation of a NEPA Document Manager.
 - (b) A determination to prepare an EA.
 - (c) A transmittal of an EA to states, tribes and, when applicable, members of the public, other Federal agencies, and local governments for preapproval review.
 - (d) A determination to prepare an EIS.
- (11) Provide NEPA Office promptly – generally, within two weeks:
 - (a) An approved EA and finding of no significant impact.
 - (b) A proposed finding of no significant impact.
 - (c) [Removed and reserved]
 - (d) An approved draft or final EIS.
 - (e) An EIS record of decision.
 - (f) A mitigation action plan and corresponding annual mitigation report.
 - (g) An EIS supplement analysis and any determination based on it.

A Closer Look at NCOs (continued from previous page)

NCOs' to-do lists, with one-quarter of the respondents participating in writing them and three-quarters involved in their review. Eighteen NCOs are currently NEPA Document Managers, and an additional 12 have recently been a NEPA Document Manager. Almost half of the respondents provide NEPA training as part of their duties, either as formal classes or informal guidance.

Almost all of the respondents (92 percent) reported that they have diverse responsibilities in addition to those of the NCO. They are responsible for "contract management," "maintaining and updating project results with the office data management system," "Endangered Species Act compliance," "employee concerns," "emergency management," "environmental research," "acting in the absence of the director," "Environment, Safety, and Health-related activities," and "other duties as assigned, including digital photographer and webmaster."

In addition, DOE's NCOs take the time to serve others. "I also chair the Department's Holocaust Remembrance Committee and co-chair the Native American Heritage Committee," said one NCO. Another NCO was in Vietnam assisting Electricity Vietnam with its PCB (polychlorinated biphenyl) program when the NCO questionnaire arrived.

Finding #4: NCOs Are "Troopers"

Several respondents indicated that life as an NCO is not always easy. Many explained that it can be difficult to be a voice of in-depth environmental deliberation when others are focused on tight deadlines and budgets. One NCO stated that the biggest challenge of being an NCO is "getting project managers to understand when they need to consider NEPA. Engineers like to get from the desk-and-drawing phase to the 'let's go build it' phase as quickly as possible, and anything that hinders that is not viewed favorably." Another NCO agrees: "The biggest challenge is always telling a project manager, who has come to the table late, that the NEPA process is going to take time and, by the way, the public will have an opportunity to comment."


Speaking of public comment, our research demonstrates that many NCOs have developed a unique skill set to cope with challenges in this area. Half of the respondents recounted unusual experiences at public meetings that necessitated on-the-spot, tactful, and creative communication skills. One NCO explained, "Many people have come to public meetings just to confront 'the government.' Reading an EIS comment that involves lizards from Mars, or trying to end stream-of-consciousness public meeting expositions that bear no relationship to NEPA, or DOE for that matter, are certainly bizarre experiences." Several respondents suggested

that, on the basis of such experiences at public meetings, "extra-terrestrial outreach" should be considered for addition to the list of NCO responsibilities.

Finding #5: NCOs Help Each Other

Seventy-five percent of the respondents said that they consult with other NCOs while performing their duties, and many reported frequent consultations. NCOs communicate with each other on a variety of project-specific challenges, such as to learn others' "experience with applying categorical exclusions." Many NCOs also reported coordinating with each other on inter-site issues, such as "coordination of reviews of their actions regarding my site and my site's actions regarding their sites."

Additionally, NCOs work together to ensure consistency across sites and projects. For example, one said, "We strategize on approach and try to have a uniform approach to 'odd' NEPA issues that arise." Consultations with fellow NCOs also foster innovation: "I have always consulted with my peers on any issue – for fresh ideas, tested approaches (not re-inventing the wheel), and their sites' expertise."

While most of these interactions are self-initiated, some are more structured. "I participate in a monthly conference call with the other NCOs at my Program's site offices." 

NEPA has come a long way, and DOE has come a long way. DOE is to be commended for the focus and vision it has developed for NEPA compliance.

– NCO Respondent

Acknowledgements

We sincerely appreciate the NCOs' efforts in support of NEPA and thank them for letting us take a closer look into their responsibilities, opinions, and backgrounds. In the NEPA Office, we consider it a privilege to work with such a diverse group of skilled and thoughtful people. Their efforts are the foundation for DOE's successful NEPA program.

NCO Wisdom

As NCO, if your management trusts that you are working for the best interests of the organization, you can accomplish a great deal.



Earth Day 2005: Greening DOE

“We at DOE should be proud of the progress we have made in protecting human health and safeguarding the natural environment around DOE sites since the first Earth Day 35 years ago,” said Assistant Secretary for Environment, Safety and Health John Spitaleri Shaw in his 2005 Earth Day Message. He led DOE’s Earth Day commemoration on April 22 by planting a tree and inaugurating the Environment, Safety and Health Pollution Prevention (P2) Star Awards Program to recognize exemplary performance in integrating pollution prevention to reduce risk, protect natural resources, and enhance site operations. The new P2 Star Awards Program is an extension of the DOE pollution prevention award program now in its 11th year.




Assistant Secretary Shaw planted a tree on Earth Day outside the DOE Forrestal Building in Washington, DC.

“Our goal at DOE is to ensure that environmental concerns are factored into all of our planning and decision making. To make this happen, we depend on environmental management systems and pollution prevention programs. . . . By building sound pollution prevention measures into our environmental management systems, we can attain ‘beyond compliance’ results that help reduce the environmental footprint as well as the life-cycle costs of our facilities and operations,” Mr. Shaw said.

Leaders in DOE Program Offices received P2 Star Awards at the Headquarters ceremony for pollution prevention activities under their Programs’ auspices, with parallel awards given to site representatives at the DOE/NNSA P2 Workshop, held May 25, 2005, in Las Vegas.

- **Lawrence Livermore National Laboratory:** General Ronald Haeckel, National Nuclear Security Administration, accepted the award for the Chemistry Environmental Services’ (an on-site environmental analytical laboratory) strategy for rigorous radioactive characterization and a program to identify and segregate hazardous materials. These activities reduced mixed waste generation by 44 percent and significantly reduced personnel exposure to hazardous waste streams.
- **National Renewable Energy Laboratory, National Energy Technology Laboratory, and Savannah River Site:** Doug Faulkner, Office of Energy Efficiency and Renewable Energy, received the award on behalf of the “Green Fleet Team” which has significantly reduced petroleum consumption through efficiency measures and alternative fuel use.
- **Strategic Petroleum Reserve:** John Shages, Office of Fossil Energy, accepted the award for the Strategic Petroleum Reserve environmental management system, which includes a project that applies oil degasification technology to maximize retention of valuable product while reducing waste and air emissions. This project also received a White House Closing the Circle Honorable Mention.
- **Office of Legacy Management:** Bob Baney accepted the award on behalf of the Office for a program for reusing laboratory equipment and supplies, which transferred \$3 million worth of instrumentation systems, precious metals, and analytical equipment to colleges, universities, and DOE laboratories
- **Office of Science:** Dr. Donald Erbschloe, Office of Science, received the award for the Pacific Northwest National Laboratory’s “environmentally preferable purchasing” requirements in the site environmental management system, which resulted in high volumes of recycled-content product purchases and redistribution and reuse of chemicals instead of disposal.
- **Savannah River Site:** The Office of Environmental Management was recognized for a Savannah River Site program that recycles unserviceable cargo containers for use as waste disposal containers, which has yielded an estimated \$12 million in savings over three years.

For more information on Earth Day or the P2 Star Awards, see www.eh.doe.gov/p2/earthday.html or contact Jane Powers, Office of Pollution Prevention and Resource Conservation Policy and Guidance, at jane.powers@eh.doe.gov or 202-586-7301. 

EPA Rates All Action Alternatives in Absence of Preferred Alternative

Moab EIS Cap-in-Place Alternative Rated “Environmentally Unsatisfactory”

Residents of Moab, Utah, disagree about the origin of their town’s name: Is it a Biblical reference to a Dead Sea locale or a Paiute word for “mosquito water?” Yet one thing is for sure – the uranium mill tailings site nearby is a source of soil and ground water contamination, and DOE is responsible for cleaning it up. As such, DOE is preparing an EIS to evaluate remediation strategies and their potential environmental impacts.

In its *Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Draft Environmental Impact Statement* (Draft EIS; DOE/EIS-0355D, November 2004), DOE analyzed four action alternatives but did not express a preference among them. As a result, the Environmental Protection Agency (EPA) rated each alternative separately and determined that one warranted a rating of Environmentally Unsatisfactory – Insufficient Information (EU-2). (EU is EPA’s most unfavorable rating for environmental impact; the 2 is a rating on a scale from 1 to 3 of the adequacy of the EIS. See text box for EPA rating definitions.) This experience offers an opportunity to better understand EPA’s rating practices and to consider possible consequences of not identifying a preferred alternative in a draft EIS. (After publication of the Draft EIS, DOE announced its selection of a preferred alternative; see below.)

Former Commercial Site Impacting River

The Moab site is the location of a former commercial uranium ore processing facility and approximately 11.9 million tons of mill tailings and tailings-contaminated



The Moab site is 750 feet from the west bank of the Colorado River, the principal surface water resource for the region. The uranium mill tailings pile covers approximately 130 acres of the 439-acre site.

soil being stored in an unlined pile. Located adjacent to the Colorado River, the tailings pile averages 94 feet above the floodplain.

Radioactive contaminants in ground water exceed EPA limits in *Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings* (40 CFR Part 192). Additionally, the EIS indicates that discharge of ground water containing toxic contaminants (primarily ammonia) may be affecting four Federally-endangered fish species in the river – the Colorado pikeminnow, razorback sucker, humpback chub, and bonytail chub.

Congress transferred responsibility for remediation of the site from the Nuclear Regulatory Commission to DOE in 2001. The Office of Environmental Management, through the Grand Junction Office in Colorado, is preparing the EIS and managing the remediation.

On-site or Off-site Disposal? No Preference Stated in Draft EIS

DOE proposes to remediate the surface contamination at the Moab site and vicinity properties and to implement a ground water compliance strategy. The EIS analyzes five alternatives: capping the pile on-site, disposing of the material at one of three off-site locations in Utah (Klondike Flats, Crescent Junction, or White Mesa Mill), and no action. Off-site transportation options include truck, rail, and slurry pipeline. DOE also proposes ground water remediation under each action alternative. Twelve Federal, state, local, and tribal agencies, including EPA, are cooperating in preparation of the EIS.

Council on Environmental Quality regulations implementing NEPA require an agency to identify a preferred alternative in a Draft EIS if one exists (40 CFR 1502.14(e)). For the Moab EIS, DOE did not state a preference in the Draft, saying that it “will be identified in the Final EIS after consideration of public comments, the information provided in this EIS, and other factors, including the costs of the alternative actions.”

EPA Rates Individual Alternatives

With no preferred alternative identified, EPA rated each of the four action alternatives separately. This practice is outlined in EPA’s policy and procedures: “If . . . a

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Moab EIS *(continued from previous page)*

preferred alternative is not identified, or if the preferred alternative has significant environmental problems that could be avoided by selection of another alternative, or if there is reason to believe that the preferred alternative may be changed at a later stage, the reviewer should rate individual alternatives.” (EPA’s *Policy and Procedures for the Review of Federal Actions Impacting the Environment* manual is available on the Web at www.epa.gov/compliance/resources/policies/nepa.)

The cap-in-place alternative received an EU-2 rating based on “the potential for prolonged environmental and public health risk that could result from the continued release of

toxic contaminants to ground and surface waters because of potential failure of the proposed remedy.” Referring to similarly constructed caps, EPA noted that DOE’s low water infiltration rate assumptions would be difficult to maintain and that even a small increase in the rate of infiltration would cause “much higher concentrations in ground water, which may adversely impact surface water after the projected 80-year operation period for the ground water remediation system.” Additionally, EPA commented, “Four flood events since the 1880s had a river stage high enough to inundate a portion of the tailings pile.”

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Summary of EPA Rating Definitions and Follow-up Action*

Environmental Impact of the Action

LO – Lack of Objections The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO – Environmental Objections The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1 – Adequate EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce the environmental impacts of the action. The identified additional information, data analyses, or discussion should be included in the final EIS.

Category 3 – Inadequate EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* Appendix to EPA’s *Policy and Procedures for the Review of Federal Actions Impacting with the Environment*, available on the Web at www.epa.gov/compliance/resources/policies/nepa.

Moab EIS *(continued from previous page)*

EPA rated the White Mesa Mill off-site alternative EO-2, Environmental Objections – Insufficient Information. Under this alternative, DOE would move the tailings 85 miles south to privately-owned land at an active uranium mill site. EPA stated a concern with the adequacy of ground water protection at the White Mesa Mill site and noted that this site “adversely affects ten or more Native American traditional cultural properties.”


The off-site alternatives at Klondike Flats and Crescent Junction each received ratings of EC-2, Environmental Concerns – Insufficient Information. Both alternatives involve moving the tailings north to land managed by the Bureau of Land Management. EPA found that neither site would cause adverse impacts to aquatic resources or

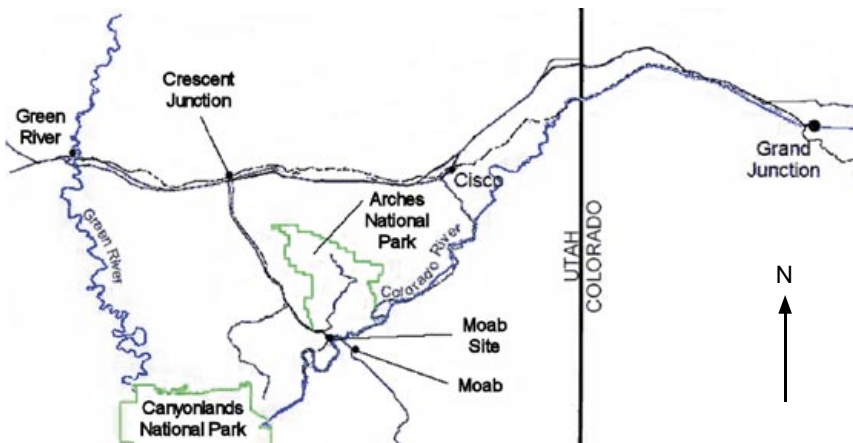
wetlands, but that truck and slurry transport could pose environmental concerns.

Based on its review, EPA recommended that “DOE fully consider the benefits of either the Klondike Flats site or the Crescent Junction site using rail transport in order to provide a secure geologic setting that offers the best opportunity for long-term public health and environmental protection.”

DOE Announces Crescent Junction Preference

DOE announced its preference for off-site disposal at the Crescent Junction site, and active ground water remediation at the Moab site, in an April 2005 news release, which stated that these preferences will be included in the Department’s Final EIS. DOE also announced a preference for rail as the primary mode of transportation.

The Office of Environmental Management, through the Grand Junction Office, is responding to approximately 1,600 public comments received on the Draft EIS and plans to issue the Final EIS this summer. Additional information on the Moab project can be found on the Web at <http://gj.em.doe.gov/moab> or by contacting Don Metzler, Moab Project Director and NEPA Document Manager, at dmetzler@gjo.doe.gov or 970-248-7612. 



The Moab site is located approximately three miles from the city of Moab, Utah. Arches National Park has a common property boundary with the site, and the park entrance is less than one mile northwest of the site. Canyonlands National Park is located about 12 miles to the southwest. Crescent Junction, DOE’s preferred off-site disposal location, is about 30 miles to the northwest.

Adverse EPA Ratings are Rare for DOE

An EPA rating of a draft EIS as “EU – Environmentally Unsatisfactory” or “Category 3 – Insufficient Information” is sometimes referred to as an “adverse” rating. An adverse EPA rating indicates that EPA may refer the proposal to the Council on Environmental Quality if EPA is unable to resolve the issues with the preparing agency. (See text box, page 9.)

Only four of the approximately 330 DOE EISs issued since 1978 received an adverse rating (two “EUs” and two “3s”), according to Office of NEPA Policy and Compliance records. Before the Moab EIS, the last adverse rating was for a draft EIS issued in 1987.

NCO Wisdom

Lesson 1: Trust but verify.

Lesson 2: If you demonstrate that you know what you are talking about, people will trust you, and if you follow lesson 1, you will know what you are talking about.



Update on Cape Wind Project

The U.S. Army Corps of Engineers' experience in its Cape Wind Energy Project Draft Environmental Impact Statement (DEIS) raises several questions related to determining the appropriate scope of NEPA reviews for applicant proposals and demonstrates the complexity of this issue. (See *LLQR*, December 2004, page 10, for more on the EIS.)



The applicant in this situation is Cape Wind Associates, LLC, who proposes to construct and operate a wind-powered electrical generating facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. The facility, which would be the United States' first offshore wind farm, 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 to the New England regional power grid, which includes users on Cape Cod and the islands of Martha's Vineyard and Nantucket.

The Environmental Protection Agency (EPA) rated the Corps' 3,800-page DEIS "Inadequate." (See text box, page 9.) "We do not believe that the DEIS provides enough information to fully characterize baseline environmental conditions, the substantial environmental impacts of the proposed project, and alternatives that avoid or minimize those impacts," wrote EPA Regional Administrator Robert Varney in a February 2005 letter to the Corps. "Without this information we do not believe an adequate mitigation and monitoring plan can be developed, nor can a decision be made as to whether the project is environmentally acceptable and in the public interest."

EPA found the DEIS inadequate in two principal areas – the range of alternatives considered and the supporting data provided – and recommended that the Corps prepare a supplemental DEIS for public review.

Purpose and Need/Range of Alternatives Questioned

In the DEIS, the Corps expressed its approach to defining the purpose and need as follows: "The [Corps] considers and expresses the proposed activity's underlying purpose and need from a public interest perspective when appropriate, but generally focuses on the Applicant's purpose and need statement. The [Corps] exercises independent judgment in defining the purpose and need for the project from both the Applicant's and the public's perspectives." For the Cape Wind proposal, the Corps stated: "The purpose and need as independently determined by the [Corps] is: to provide a utility-scale renewable energy facility providing power to the New England grid." In the DEIS, the Corps defined "utility-scale" facilities as those with generating capacities between 200 and 1,500 megawatts.

EPA concluded that "the 'utility-scale' component of the purpose and need definition, as it has been defined in the DEIS, prevents the consideration of smaller commercial energy projects that . . . could provide renewable energy for use in New England." EPA explained, "The applicant has asserted that projects smaller than the proposed project are not economically feasible because of the upfront infrastructure costs. To the best of our knowledge no independent review by the Corps of whether smaller scale projects . . . are economically feasible has been conducted. An examination of smaller scale alternatives with correspondingly smaller impacts . . . could sharpen the EIS's presentation of both benefits and tradeoffs associated with the Cape Wind proposal."

In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative.

– Letter from EPA Regional Administrator Varney

For the Cape Wind project, the Corps needs to decide whether or not to issue a permit. In the DEIS, the Corps stated: "A permit will be granted unless the district engineer determines, after weighing and balancing the public interest factors, that it would be contrary to the public interest (33 CFR 320.4(a)). Therefore, the District Engineer will grant the permit, grant the permit with modifications or conditions, or deny the permit."

The White House Task Force on Energy Project Streamlining has considered the Cape Wind project. (See article page 13.) In its January 2005 *Summary of Major Accomplishments*, the Task Force notes that the Cape Wind project came to the attention of the Task Force because "Stakeholders requested that the EIS consider alternative energy sources at other locations." The *Summary* further stated, "Because this would be the first offshore wind project in the U.S., novel cross-agency technical and policy issues have been raised . . . The Task Force was able to bring the various federal agencies together to coordinate their individual efforts."

(continued on next page)

NCO Wisdom

Be Patient

. . . NEPA Works.



Cape Wind Draft EIS *(continued from previous page)*

Subsequently, the Corps convened a peer review committee consisting of “six internationally recognized experts in wind energy” to review EIS issues, including the purpose and need and range of alternatives. The Corps summarized the committee’s comments in the DEIS.

Although the Corps’ potential decisions in this applicant situation are narrow, the Corps nevertheless analyzed, in addition to the applicant’s proposal, three location alternatives for a utility-scale wind farm. The Corps did not, however, analyze smaller-scale wind farm projects because it determined that such projects would not meet the underlying purpose and need.

Adequacy of Supporting Data Challenged

EPA found that the DEIS lacked an adequate baseline of environmental data and that conclusions about potential environmental impacts were not all supported. Areas of the DEIS that were affected include aquatic, air quality, and avian impacts. For example, EPA stated, “In general, we believe that the efforts to characterize avian baseline conditions, and subsequently impacts from the proposed project, fall short of the specific recommendations of the [U.S. Fish and Wildlife Service] and other recognized avian experts. This shortcoming . . . must be addressed with supplemental study. . . .”

What Now for the Corps?

The Corps also received nearly 5,000 comments on the DEIS from a wide range of interests, both supporting and opposing the project or wanting further study. Commentors included the Department of the Interior, National Marine Fisheries Service, Coast Guard, Massachusetts Governor Mitt Romney, Massachusetts Coastal Zone Management Office, Massachusetts Audubon Society, and many other organizations, units of


“As the first shallow water offshore project under review in the United States, utility-scale projects like Cape Wind are important to our national interest and a critical first step to building a domestic, globally competitive wind industry. Success in this project could also lay the foundation for a focused national investment to develop offshore wind technology in the coming years.

The Department has a strong interest in exploring our homeland energy resources to ensure that we continue to meet our Nation’s growing need for affordable and reliable energy. With over 900 gigawatts of potential power located in offshore areas adjacent to major demand load centers, we must work together to tap this resource in a responsible manner.”

“Projects like Cape Wind are responsive to the Administration’s policy to increase renewable energy development. . . .”

– David K. Garman, Assistant Secretary,
Energy Efficiency and Renewable Energy
Letter to the U.S. Army Corps of Engineers,
New England District, March 31, 2005

government, and individuals. The Corps is reviewing these comments to determine what additional information or analysis may be necessary to respond to the comments and whether a supplemental EIS is needed.

The DEIS is available on the Corps’ New England District Web site (www.nae.usace.army.mil) under Massachusetts, then Projects. Comments on the DEIS can be found at www.nae.usace.army.mil/projects/ma/ccwf/deiscomments.htm. 

NEPA Staff Position Open

Apply by June 20

The Office of NEPA Policy and Compliance is looking to hire one new Environmental Protection Specialist, GS-0028, at the GS-13 or -14 level. The person would work in the areas of nuclear energy, science, material disposition, nonproliferation and national security, defense activities, fossil energy, waste management, and energy efficiency and renewables.

The vacancy announcement was issued May 20, 2005, and will remain open until June 20, 2005. The position is open to qualified DOE and other Federal employees, as well as to qualified non-Federal employees. Applicants must apply on-line; paper (hardcopy) applications are no longer accepted. Additional information is available on the Web at <https://jobsonline.doe.gov>. The announcement numbers are HQ-05-EH-04-235 for the merit promotion (Federal employees) and PN-EH-04-235 for the public notice (non-Federal applicants).

If you’re looking for a challenging job, a headquarters position in Washington, DC, or a promotion within the NEPA field, we hope you will apply. Otherwise, please help us spread the word about this vacancy.

How to Streamline Without Cutting Corners

The White House Task Force on Energy Project Streamlining, working with diverse and competing interests, searched for ways to expedite Federal approvals of energy projects without cutting corners on environmental protection. Following more than three years of effort, the Task Force issued its *Summary of Major Accomplishments* (January 2005), highlighting its work.

Task Force Tackled Agencies' Conflicting Priorities

The Task Force most often facilitated energy projects where approval or permitting involved multiple Federal agencies and helped agencies identify and remove impediments to timely decisions. As the report acknowledges, "Because of statutory, regulatory, or public interest concerns, agency-specific responsibilities often have different review and analysis procedures and time frames. In many situations, the result is conflicting resource management responsibilities, repetition of similar review processes, unnecessary expenditure of resources, and time delays in permitting of energy projects."

The Task Force realized after its first year that "success in moving projects forward often resulted in other projects getting less attention and falling to the bottom of the pile." When the Task Force focused on systemic solutions, it found that "improvements in the overall coordination process among federal agencies can be achieved under existing laws" and identified common themes to improve Federal decisionmaking. (See text box.)

The intent of NEPA is to ensure that the Federal government has the necessary information for decisionmaking. We supported that by brokering interagency meetings that allowed early, face-to-face discussion on the issues.

– Bob Middleton, former White House Task Force Director

Task Force Engaged in the NEPA Process

Five of the 20 projects highlighted in the report involved ongoing EISs (i.e., two EISs prepared by DOE and one each by the National Park Service, Forest Service, and U.S. Army Corps of Engineers; all but the Corps of Engineers' EIS have since been completed). In a typical scenario described in its report, an interested party (e.g., a company seeking government approval of an energy project) contacted the Task Force for assistance moving past some perceived obstacle in the decisionmaking process. The Task Force, acting as a "one-stop shop" by providing a single point of contact and liaison for all stakeholders, responded to requests for assistance

Common Themes to Improve Federal Decisionmaking


- Need for early and effective interagency coordination, while respecting the primacy of key state and Federal permitting entities
- Need for more geographic consistency across regional and field offices
- Need for deadlines and improved coordination and efficiency of NEPA document preparation and review process
- Need to designate a lead agency with authority to coordinate multiple permitting processes
- Need for adequate resources or prioritization of resources within the Federal agencies
- Need for more emphasis on conservation and environmental protection

Source: *White House Task Force on Energy Project Streamlining Summary of Major Accomplishments*

by contacting the involved Federal agencies, hosting meetings between interested parties, or otherwise improving lines of communication. It used its influence to "keep things moving."

"My time on the Task Force was an exceptional experience for two reasons," reflected Mr. Middleton, Task Force Director, now Director of Indian Energy Resource Development, Department of the Interior. "First and foremost, I had the opportunity to work with over two dozen exceptionally dedicated and knowledgeable government experts who epitomized what is best about Federal service. And, second, our team worked on many interesting and complex issues and projects that are important to the future of the Nation. It doesn't get better than that."

The Task Force was established in 2001 by the Council on Environmental Quality (CEQ) at the direction of Executive Order 13212, *Actions to Expedite Energy-Related Projects*, with rotating membership from staff of the White House; CEQ; the Departments of Agriculture, Energy, Commerce, and the Interior; and the Environmental Protection Agency. (See *LLQR*, September 2001, page 16; March 2004, page 11; and September 2004, page 1.)

For more information, see the White House Task Force's Web site at www.etf.energy.gov or contact Brian Mills, Office of NEPA Policy and Compliance and former White House Task Force member, at brian.mills@eh.doe.gov or 202-586-8267. 

Excerpts from Written Testimony *(continued from page 3)*

Complex Documentation Hides NEPA's Message; Reviewer Bias Counters Local Prerogative:

NEPA's core messages were clear and simple These messages can still be found in NEPA but the trends of NEPA implementation can leave them deeply hidden by procedures that are too long and complicated and documents and reports that no ordinary citizen, much less a busy public official, would ever be able to understand.

So one of the innovations and changes we have urged is that the documents prepared under NEPA be simpler and clearer. . . .

[W]e believe that . . . [some EPA reviewers] have taken up substantive agendas that are not sanctioned in NEPA or any other federal law. The employees holding these "reviewer" responsibilities have great power, because they can grant or withhold ratings of [an] EIS that are very important in whether an EIS can survive public scrutiny.

[EPA] should be constrained . . . from participating . . . in ways that are contradictory to local land use judgments.

Douglas B. MacDonald, Secretary
Washington State Department of Transportation

NEPA Documents Should Address Consequences of Permit Conditions:

[The witness described a recent experience regarding licensing a hydroelectric project. The commentor said that the Federal Energy Regulatory Commission (FERC) prepared an EIS that did not include or "endorse" all conditions on the license set by the Department of the Interior and U.S. Forest Service. These two agencies, the commentor continued, did not prepare separate NEPA documentation for the conditions and instead relied on the FERC EIS, even though they "filed comments noting that they do not support the findings" in it.]

What is needed is better coordination between agencies. When one federal agency relies on another agency's NEPA document, then they should be bound to support the results, or at a minimum, prepare a separate NEPA document to support any decision in conflict with the other agency's conclusions. Clearly, the agencies should be working together for a better decision and not against each other and leave the public . . . empty handed.

One coordinated NEPA review by all involved agencies should be enough.

Bob Geddes
Public Utility District No. 1
of Pend Oreille County, Washington



Several speakers discussed excessive documentation. (Photo submitted to the Task Force by Abigail Kimbell, U.S. Forest Service.)

Commitments of Resources and Time Are Excessive:

The original [EIS] was a sizeable 592 pages with the appendices, but this seems paltry compared to over 15,000 pages now in the administrative record [shown in photo]. . . . As the required analysis and documentation increases, these limited resources must also be committed to re-assessing projects that have previously been initiated thus adding another level of delay.

Abigail R. Kimbell
Regional Forester, Region 1,
U.S. Forest Service

State Regulations Address Perceived NEPA Problems:

[The witness described how Montana's Environmental Policy Act addresses perceived NEPA problems. It requires, among other things, that state agencies:]

- Consult with the project sponsor regarding alternatives identification.
- [Set a] clear time limit and a time limit extension process for completing environmental review.
- Conduct a meaningful "no-action" alternative review, looking at all impacts of the project's non-completion.
- Consider regulatory impacts on private property.

Michael S. Kakuk, Kakuk Law Offices, P.C.

NEPA Promotes Broader Thinking, Protects the Public:

NEPA is also the law that not only requires federal agencies to "look before they leap," but also forces them to . . . think outside of the box. NEPA's requirement that decision makers prepare . . . an adequate range of alternatives . . . forces agencies to look beyond the "our way or the highway" approach. . . .

(continued on next page)

Excerpts from Written Testimony *(continued from previous page)*

The process is long and it involves listening to the public and sister agencies, but NEPA prevents many mistakes that would cost the public a lot more in the long run. . . . Rather than eliminate hundreds of single family homes along the . . . alternative routes, citizen input convinced the transportation planners to move the freeway to a railroad corridor, saving those homes and creating the potential for commercial development in another area of town.

John Roskelly
Eastern Washington
Growth Management Hearings Board

Excessive Documentation Creates Legal Risk:

When [EAs] were being successfully challenged in court, we were told that “bigger and better” [EISs] would get the process moving again. These “bigger and better” documents have only presented those who wish to stop all land management activities more procedural targets to challenge in court.

Duane Vaagen, President
Vaagen Brothers Lumber

NEPA Is Inappropriately Used as a Master Permitting Process:

Another reason for escalating time and costs to complete NEPA has been pressure on agencies to require all other permits and approvals be obtained before completing the NEPA process. This presents a catch 22 scenario. . . . NEPA was not intended to be the master approval of a project. . . .

Luke Russell, Director, Environmental Affairs
Coeur d’Alene Mines Corporation

Inconsistent Agency Administration Is a NEPA Problem:

NEPA – like so many federal laws and regulations – can be applied to any situation in a manner that is largely dependent on the demeanor of the agency staff that has jurisdiction in the manner. . . .

William Kennedy, Chairman
Board of Directors, Family Farm Alliance

NEPA Deters Regulatory Improvements:

The most inconsequential regulatory changes are delayed. . . . [O]ne fisherman who delivers fish to our company sought a minor regulatory change in the description of fishing gear. The current regulations were promulgated in the 1980’s; since that time, advances in technology and the desire to reduce bycatch and deploy environmentally friendly nets have led to significant modifications in how fishing gear is built and used. The request was to change the gear definitions in regulations to match what is commonly used so fishermen would not be cited for using illegal gear. The advice received from federal regulatory staff was to make the request next year because the time and effort required under NEPA to address this minor regulatory change was so great that it might not get done if handled separately, rather than as part of a larger regulatory package.

Craig Urness, General Counsel
Pacific Seafood Group

Public Participation Is Invaluable:

Citizens may end up disappointed in a result, but our organization has yet to encounter anyone who regretted participating or who did not feel empowered by NEPA. Americans want to be part of our government’s decisions. To alter this cornerstone of civic engagement would betray those who have already given of their time and energy and those who have yet to discover this priceless tool of democracy.

Janine Blaeloch, Director
Western Land Exchange Project

Provide Resources to Do NEPA Correctly:

NEPA’s promise of project review and public involvement must be safeguarded, not sacrificed in the name of expediency. Some would blame NEPA for delaying projects, but examining projects in detail and predicting outcomes and thereby providing good information for decisions is good business sense. Rather than amending or otherwise circumventing NEPA, I would urge you to ensure that the federal agencies responsible for implementing the law get the resources they need to do the job right and in a timely manner.

Paul Fish, President
Mountain Gear, Inc.



NCO Wisdom

We need to change the perception of NEPA and focus on marketing it as a useful management tool.



Avian Protection Plans Help Safeguard Birds from Electrocutions and Collisions

Electrocutions are a particular threat to birds with large wingspans, such as eagles, hawks, and owls, all species that are protected under the Migratory Bird Treaty Act. [Collisions] are a problem for many different bird species. Birds also can cause power outages and fires, resulting in increased costs and inconvenience for electric utilities and their customers.

U.S. Fish and Wildlife Service Press Release
April 18, 2005



New voluntary guidelines to help protect migratory birds from power line electrocutions and collisions should aid DOE in fulfilling its responsibilities under Executive Order 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds*, and the Migratory Bird Treaty Act. One such responsibility, under the Executive Order, is to ensure that potential impacts on migratory birds are considered in NEPA analyses. (See text box.)

The U.S. Fish and Wildlife Service and the Avian Power Line Interaction Committee (APLIC)* jointly prepared the voluntary *Avian Protection Plan Guidelines* (available at <http://migratorybirds.fws.gov>). The guidelines provide recommendations for developing plans to help protect and conserve migratory birds from electrocutions and collisions with electrical transmission lines. The guidelines are intended to serve as a “tool box” from which an organization can select and tailor components that best fit its specific needs while furthering bird conservation.

The guidelines, which will be periodically updated as new information and resources become available, reflect the latest technology and science, and include detailed recommendations on training, permit compliance, construction design standards, nest management, bird reporting systems, risk assessment methods, mortality reduction measures, bird enhancement options, and public awareness. The guidelines are intended to be used in conjunction with APLIC’s *Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996* and *Mitigating Bird Collisions with Power Lines: The State of the Art in 1994*, or future editions of those documents.

For more information on the Avian Protection Plan guidelines, contact Nicholas Throckmorton, U.S. Fish and Wildlife Service, at nicholas_throckmorton@fws.gov or 202-208-5636. For more information on DOE activities

with respect to migratory birds and their protection, contact Lee Banicki, DOE’s Office of Air, Water and Radiation Protection Policy and Guidance, at leroy.banicki@eh.doe.gov or 202-586-5193. **LL**

Implementing Avian Protection

Executive Order 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds*, (66 FR 3853; January 17, 2001) requires agencies to avoid or minimize the negative impact of their actions on migratory birds and to ensure that environmental analyses under NEPA evaluate the effects of proposed Federal actions on such species. (For additional information on the Executive Order, see *LLQR*, September 2001, page 11.)

The Migratory Bird Treaty Act protects migratory birds by governing the taking, killing, possession, transportation, and importation of such birds, their eggs, parts, and nests. The Act implements treaties for the protection of shared migratory bird resources that have been signed by the United States with Canada, Japan, Mexico, and Russia. (A summary of the Act is available at www.eh.doe.gov/oepa/laws/mbta.html.)

On March 15, 2005, the U.S. Fish and Wildlife Service published a list of 125 bird species (70 FR 12710; available at <http://migratorybirds.fws.gov>) that are not native to the United States and, therefore, are not protected under the Migratory Bird Treaty Act. These species may, however, be protected under other laws or treaties (e.g., the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Endangered Species Act, the Wild Bird Conservation Act). In addition, state and local governments may protect non-native, human-introduced species.


* APLIC (www.aplic.org) has 30 members including utility organizations, consumer- and investor-owned electric utilities, the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture Rural Utilities Service, and DOE’s Bonneville and Western Area Power Administrations.

University Students, Many Others Use DOE NEPA Web Site

The DOE NEPA Web site, initiated more than a decade ago to serve the needs of the Department's NEPA practitioners, is valuable to many others seeking NEPA guidance. Inquiries directed to the Office of NEPA Policy and Compliance reveal that Web-site visitors from other Federal agencies, state governments, consulting and law firms, and universities also read and use our Web resource.

Most recently, an instructor from the University of Maine requested copies of the "Green Book" (*Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition*, December 2004; *LLQR*, March 2005, page 5), which he had found on the DOE NEPA Web site. Senior Instructor and Undergraduate Coordinator Mark Anderson uses this cornerstone NEPA document preparation guidance, along with other DOE NEPA guidance, in his upper-level undergraduate course, Environmental Assessment and Management Techniques, which is offered as part of the Bachelor of Science Program in Ecology and

Environmental Sciences (www.umaine.edu/nrc). The purpose of this course is to build an understanding of the principles of environmental impact assessment and environmental management systems in both the public and private sectors, and to evaluate the practice of these techniques in government and private sector settings. The final assignment is an evaluation of a draft EIS of the student's choice. DOE's NEPA *Lessons Learned Quarterly Report* also is assigned reading in this course, Mr. Anderson reports.

The Office of NEPA Policy and Compliance recognizes that its Web site (www.eh.doe.gov/nepa) serves a broad and often anonymous public, not just the DOE NEPA Community and its stakeholders interested in DOE's proposed actions. We welcome inquiries and aim to provide assistance to all who request it. The DOE NEPA Webmaster is Denise Freeman, who can be reached at denise.freeman@eh.doe.gov or 202-586-7879. 


CEQ Reports Progress in Cooperating Agency Participation

The Council on Environmental Quality (CEQ) recently reported on progress made by Federal agencies in involving tribal, state, and local governments, as well as other Federal agencies, as formal cooperating agencies in their NEPA process. In a May 26, 2005, memorandum to Heads of Federal Agencies, CEQ Chair James L. Connaughton summarized information from Federal agencies' biannual reports to CEQ covering March 2002 through February 2004. He observed that, "Overall progress in providing formal cooperating agency status to federal, tribal, state and local agencies has been good. However, the effort is not yet fully realized."

As CEQ reports:

- Cooperating agencies were involved in approximately 40 percent of EISs and approximately eight percent of EAs.
- Lead Federal agencies are increasingly considering designating formal cooperating agencies when beginning their NEPA processes.
- Tribal, state, and local government agencies are becoming more aware of their roles and responsibilities as cooperating agencies.

- A lack of capacity or resources (e.g., training, time, personnel) is a major factor for not establishing formal cooperating agency status when agencies might otherwise wish to do so.
- Lead Federal agencies frequently engage Federal, tribal, state, and local agencies during the NEPA process without formal cooperating agency status. This occurs more often when Federal lead agencies are proposing regulatory actions or preparing an EA.

CEQ recently simplified its reporting requirements, including changing to an annual report conforming to the fiscal year. (See *LLQR*, March 2005, page 8.) The report will continue to provide an overview of how often cooperating agency status is used and the reasons that formal status is not employed, and help identify the challenges faced in increasing participation in Federal NEPA analyses and decisions. The report covering October 1, 2004, through September 30, 2005, is due in January 2006. For more information on DOE's cooperating agency reports to CEQ, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NCO Wisdom

The most valuable lesson is that you do make a difference. Often times it seems to be just paperwork, but when you get to use the planning process to influence the use of pollution control equipment or siting of a facility in a less environmental impacting area, you really do make a difference.



2005 NAEP Conference Focused on Bridging Competing Environmental Interests

by: Yardena Mansoor and Lee Jessee, *Office of NEPA Policy and Compliance*



The 30th annual conference of the National Association of Environmental Professionals (NAEP), in Alexandria, Virginia, April 16-19, 2005, offered more than 150 papers, panel discussions, and poster sessions on a broad range of topics, including a special “NEPA Symposium.” This year’s conference theme, “Inspiring Global Environmental Standards and Ethical Practices,” focused on balancing the needs of natural and human environments by identifying solutions that can bridge competing interests.

U.S. Representative Chris Van Hollen (D-MD), the keynote speaker, addressed the contribution of environmental professionals. He acknowledged the need for a strong code of professional ethics so that, as “stewards of expertise,” environmental professionals can provide scientifically valid analyses that are not subjugated to political positions. Streamlining and modernization, he warned, should not be used to undermine the protections offered by the NEPA process – alternatives analysis and public participation.

NEPA Symposium Surveys Issues and Developments in Current Practice

Twenty-five presentations on aspects of the NEPA process and a panel discussion on NEPA case law comprised the conference’s featured “NEPA Symposium.” (See case study.) The presentations explored many aspects of NEPA practice, NEPA case law, and innovative e-government approaches to conducting and managing the comment-response process and overall development of NEPA documents.

Eight Awards Recognized Environmental Excellence

NAEP presented eight Environmental Excellence Awards to recognize significant achievements in environmental practice. “The goal of the Environmental Excellence Awards is to recognize nationally significant proven environmental practice achievements from across the country,” said Awards Chairman Jim Melton. NAEP President Gary Kelman added, “This year’s national competition reflects outstanding and significant achievements, unique methodologies, and state-of-the-art environmental practice.”

The prestigious President’s Award for NEPA Excellence was presented to the EIS preparation team for the *Alaskan Way Viaduct and Seawall Replacement Project Environmental Impact Statement*: U.S. Department

of Transportation, Federal Highway Administration, Washington Division; Washington State Department of Transportation; Seattle Department of Transportation; and Parametrix. The EIS was recognized for outstanding application of two techniques:

- Reader-friendly “plain language” text organized in question-and-answer form, with all technical analysis contained in appendices.
- Highly explanatory, well-designed graphics that compare features or impacts of all the action alternatives on a single page or facing pages, and in a way that highlights the differences among them and deemphasizes their common elements.

The project Web page, www.wsdot.wa.gov/projects/viaduct, contains the draft EIS, over 4,500 public comments, a videosimulation of the preferred alternative, and many additional features.

The National Environmental Excellence Award for Best Available Environmental Technology recognized *Regional Pollution Prevention through Sustainable Product Stewardship: Degassing Crude Oil to Reduce Emissions from Customer Facilities*, a nomination submitted by DynMcDermott Petroleum Operations Company, DOE’s management and operating contractor for the U.S. Strategic Petroleum Reserve. (This project also received a Pollution Prevention Star Award; see page 7.)

Other awards (listed on the NAEP Web site) were presented for excellence in Environmental Management, Public Involvement/Partnership, Education, Planning Integration, Conservation, and Environmental Stewardship.

Call for Papers, Award Nominations for 2006 Conference in Albuquerque

“Global Perspectives on Regional Issues: The Future for Environmental Professionals,” is the theme for the 2006 NAEP Conference, which will be held April 23-26, in Albuquerque, New Mexico. Conference information is provided on the Association’s Web site (www.naep.org), including instructions for submitting an abstract for a paper or poster session (due September 30, 2005) or a nomination for an Environmental Excellence Award (due January 15, 2006). For additional information, contact Gary Kelman, Chair, NAEP Conference Committee, at gkelman@mde.state.md.us.

NAEP Case Study – Using the NEPA Process to Meet New Challenges

In a particularly interesting presentation at the NAEP meeting, Mark Prescott, U.S. Coast Guard, and Don Beckham and Alan Finio, Engineering-Environmental Management, Inc., described the challenges involved in the NEPA process for licensing the construction and operation of deepwater liquefied natural gas (LNG) terminals. The example illustrates the complexity of integrating NEPA with the requirements of other laws and regulations for a project that introduces new applications of complex technologies – all within a tight timetable.

Administrative Background: The Deepwater Port Act of 1974, initially applicable to offshore oil terminals on the Outer Continental Shelf, was amended in 2002 to allow the licensing of facilities for the importation of LNG. The Act contains strict timelines for review: Department of Transportation/Maritime Administration (the lead for financial review) and Department of Homeland Security/U.S. Coast Guard (the lead for environmental and safety review) must issue a notice of availability of a final EIS within 240 days of receiving a complete license application. License applicants must meet certain criteria, including demonstrating that the project will be constructed with the best technology to minimize adverse impacts on the marine environment and complying with the Clean Water Act; Federal Water Pollution Control Act; Coastal Zone Management Act; and Marine Protection, Research and Sanctuaries Act. In determining whether a proposed deepwater port serves the national interest, environmental impacts are balanced against delay in meeting a need and the costs of supplying the energy, as well as national security and other factors.

Technical Background: When natural gas is liquefied by cooling to -260° F, its volume is reduced to one six-hundredth of its volume at standard temperature and pressure. In this form, it is relatively safe to transport and store. A heat source is needed to warm the LNG to restore its original volume (revaporization); the three principal sources are heat exchange with ambient air or available water, and burning fossil fuel (e.g., some of the natural gas).

Early Experience: The first two deepwater LNG projects were licensed with only minor interruptions to the schedule established by the Deepwater Port Act. The projects did not draw significant public attention, probably because industry developments seemed familiar to local populations and no part of the projects took place onshore. The National Atmospheric and Oceanographic Administration's National Marine Fisheries Service (NOAA Fisheries Service), however, questioned the use of millions of gallons of ocean water per day for LNG revaporization, which would entrain billions of fish eggs and larvae each year. Yet, NOAA Fisheries Service did not object to the first two licenses, which were conditioned on the applicants monitoring water intakes to determine impacts.

By spring of 2004: Many additional deepwater port projects had been announced or proposed, including six in the Gulf of Mexico. Feedback from NOAA Fisheries Service and environmental organizations clearly established a need for better approaches to impact analysis, including cumulative analysis. As a result, after publication of the draft EIS for Shell's Gulf Landing Deepwater Port the review clock for several projects was stopped for up to three months to develop an agreed-upon methodology for assessing fisheries impacts and obtain additional data on other issues. Soon after the publication of the final EIS, NOAA Fisheries Service disagreed with the finding that adverse impacts were long-term and *minor*, and threatened to refer the issue to the Council on Environmental Quality. High-level deliberations among senior managers of the concerned Federal agencies resulted in Department of Commerce/NOAA agreeing to allow the project to proceed under assurances of a rigorous monitoring and mitigation plan. The spirit, if not the letter, of Congressional intent was met; integrating the NEPA process with the licensing process identified controversies early in the project and permitted the applicants and agencies to address them in a timely and efficient manner. Stopping the mandated timeline caused minor delay, a more attractive choice than basing NEPA review on inadequate information, which could lead to litigation or license denial.

NAEP Legal Session – Advice to Applicants from “Implementing NEPA”

“Participate fully in scoping to learn what others perceive the real issues to be, then deal with them. An applicant is better protected by a full rather than skimpy approach to inclusion in the EIS.”

“There is wisdom in NEPA's basic message – look before you leap environmentally so that you can prevent problems in the first place rather than having to repair or clean them up after they occur. Both the applicant and the agency, as well as the public, share an interest in ensuring that the requirements of the law and of its implementing regulations are followed.”

– Nicholas C. Yost
Sonnenschein, Nath & Rosenthal, LLP
(formerly General Counsel, Council on Environmental Quality)

Transitions

New NEPA Compliance Officers

Oak Ridge Operations Office: Gary Hartman

Gary Hartman, who was recently designated the NEPA Compliance Officer (NCO) for the Oak Ridge Operations Office, joined DOE in December 1989 from the Tennessee Valley Authority (TVA). Mr. Hartman has more than 25 years of NEPA experience at DOE and TVA combined. He has served as the NEPA Document Manager for the Y-12 Site-wide EIS, the Paducah and Portsmouth Depleted Uranium Hexafluoride Conversion Facility EISs, and several EAs. He can be reached at hartmangs@oro.doe.gov or 865-576-0273.

Science/Brookhaven Site Office: Caroline Polanish

Caroline Polanish has been designated NCO for the Brookhaven Site Office under the 2004 "OneSC" reorganization of the Office of Science. Ms. Polanish serves as the Subject Matter Expert for NEPA, Cultural Resources, Quality Assurance, and Waste Management in the Operations Management Division at Brookhaven, and has been making NEPA recommendations and coordinating the NEPA program for several years. She can be reached at polanish@bnl.gov or 631-344-5224.

(continued on next page)

Farewell to Longtime Bonneville NCO Tom McKinney

After more than 25 years with the Bonneville Power Administration (BPA), Tom McKinney has left government service. During that time, he was an important contributor to the continuous improvement of DOE's NEPA Program.

As NEPA Compliance Officer for the past decade, Mr. McKinney advised a large in-house NEPA

team within BPA's Office of Environmental Planning and Analysis. Preparing focused NEPA documents, he advised, makes the NEPA process more effective in meeting its purpose of fostering excellent action, not generating paperwork – even excellent paperwork – as expressed in the Council on Environmental Quality Regulations. "My goal is environmental protection, which I believe we can best achieve through efficient, concise, and timely documents presenting information relevant and useful to the decisions at issue."

During his tenure with BPA, Mr. McKinney contributed to revisions of DOE's NEPA regulations and guidance, including the "Green Book." Due to his interest in efficient environmental review processes, he specifically urged revision of the Department's original floodplain and wetland environmental review regulations (10 CFR Part 1022), which DOE reissued in August 2003.

I regard my NEPA Ninja button [from DOE's 1995 celebration of the 25th Anniversary of NEPA] as a campaign medal. With NEPA Section 101 in one's heart and Section 102 in one's head, a true NEPA Ninja protects our planet using the weapons of diligence, reason, and efficiency.

– Tom McKinney




"I'm pleased we were able to refine DOE's floodplain and wetlands regulations during my career. We ratcheted a review process down instead of up for a change, with no loss of environmental protection."

Mr. McKinney was a regular participant in DOE NEPA Community Meetings. Most recently, in June 2004, he described BPA's strategy for using

supplement analyses to efficiently undertake NEPA review for projects under three broad BPA programmatic EISs, and for merging NEPA review with environmental management systems to more effectively protect the environment during project implementation. (See *LLQR*, September 2004, page 11.)

Mr. McKinney, who can be reached at tcmckinney@coho.net or 503-805-1166, will continue his environmental career in consulting, offering support to BPA's new NCO as needed. Inquiries on BPA NEPA matters should be addressed to Kathy Pierce at kspierce@bpa.gov or 503-230-3962.


On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance thanks Tom for his many contributions and for being a great NEPA Ninja. 

Transitions

New NCOs *(continued from previous page)*

NNSA/Livermore Site Office: Dan Nakahara

The new NCO for the Livermore Site Office, National Nuclear Security Administration, is Dan Nakahara, Assistant Manager, Environmental Stewardship Division. He has been with the Livermore Site Office since 1999, and with DOE since 1985. He has more than 15 years experience in managing waste management and environmental restoration projects. Mr. Nakahara can be reached at daniel.nakahara@oak.doe.gov or 925-423-8394.

Tom Grim, the previous Livermore Site Office NCO, will continue to serve as NEPA Document Manager for the *Site-wide EIS for the Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS*. 

Welcome Marthea Rountree, EPA Office of Federal Activities


DOE has a new Federal Agency NEPA Liaison in the Environmental Protection Agency, NEPA Compliance Division of the Office of Federal Activities. Marthea Rountree is now the point of contact for DOE NEPA-related inquiries and the primary EPA reviewer of DOE's EISs at the national level. Ms. Rountree joined EPA in September 2004 after serving on the NEPA staff of the Office of the Chief of Naval Operations. She observed, "I believe that I can translate many aspects of my NEPA experience with the Navy to help DOE meet its challenges. I look forward to involvement in your EISs and continuing the collaborative relationship previously established between DOE and EPA." Ms. Rountree can be reached at rountree.marthea@epa.gov or 202-564-7141.

DOE-wide NEPA Contracts Update

Debra Keeling: DOE-wide NEPA Contract Administrator

As announced in the March 2005 issue of *LLQR*, Debra Keeling is the new DOE-wide NEPA Contract Administrator, assuming the responsibilities formerly carried out by David Gallegos. Ms. Keeling transitioned from the Air Force Research Laboratory, Space Vehicles Contracting Division, to the DOE/NNSA Acquisition Team in December 2004. Previously, she worked briefly with the contracting department of the General Services Administration's Public Building Service and in private industry, following a rewarding contracting career with the U.S. Air Force.

Ms. Keeling reminds NEPA Document Managers that, at the end of each task under the DOE-wide NEPA contracts, they should evaluate contractor performance as described in *A Brief Guide: DOE-Wide National Environmental Policy Act Contracts* (Part II, Step 8; available on the DOE NEPA Web site at www.oh.doe.gov/nepa under DOE-wide NEPA Contracting) and provide the completed evaluation to her.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded and assistance using these contracts, contact Debra Keeling at dkeeling@doeal.gov or 505-845-6249. Information and resources for potential users of these contracts, including how to issue a task order, are available on the DOE NEPA Web site at www.oh.doe.gov/nepa under DOE-wide NEPA Contracting. 

Description	DOE Contact	Date Awarded	Contract Team
EA for the Proposed Consolidation of Neutron Tritium Target Loading Production, New Mexico	Susan Lacy slacy@doeal.gov 505-845-5542	4/28/2005	AGEISS
EIS for the Mesaba Energy Clean Coal Power Initiative Project	Richard Hargis hargis@netl.doe.gov 412-386-6065	5/5/2005	Potomac-Hudson



DOE Litigation Updates

Court Allows Some Waste Shipments to Hanford while Halting Others

The United States District Court for the Eastern District of Washington on May 13, 2005, issued an order regarding the NEPA claims in *State of Washington v. Bodman et al.** The court (1) removed the preliminary injunction in place since May 2003 on shipping transuranic (TRU) waste from the Battelle West Jefferson site in Ohio to the Hanford site in Washington; (2) left in place a preliminary injunction against shipping TRU waste mixed with hazardous waste (an injunction related to the state's Hazardous Waste Management Act, not NEPA), and (3) issued a preliminary injunction against shipping low-level radioactive waste (LLW) and mixed LLW (MLLW) to Hanford for at least a 90-day discovery period on groundwater issues.

TRU Waste Shipments

The court issued a preliminary injunction in 2003 barring TRU waste shipments to Hanford because it concluded that DOE's *Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (Waste Management PEIS; DOE/EIS-0200, May 1997)* and subsequent record of decision (ROD; 63 FR 3629; January 23, 1998) committed the Department to prepare project-level NEPA review prior to shipment of TRU waste to Hanford. The court lifted this injunction in May 2005 after determining that DOE fulfilled its NEPA commitment through the *Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington (Hanford Solid Waste EIS; DOE/EIS-0286, January 2004)* and subsequent ROD (69 FR 39449; June 30, 2004), but left in place a preliminary injunction on shipping TRU-mixed waste until DOE establishes that additional such shipments would not violate the State of Washington Hazardous Waste Management Act or that other considerations warrant dissolving the injunction.

LLW and MLLW Shipments

Plaintiff had requested in August 2004 that the 2003 preliminary injunction be expanded to also include LLW and MLLW. Plaintiff contends that the *Waste Management PEIS* lacks sufficient site-specific detail for selecting Hanford as a regional disposal facility and that DOE's

selection of Hanford as a regional disposal facility occurred outside the NEPA process. Plaintiff also contends that DOE erred in declaring Hanford groundwater "irreversibly and irretrievably committed" and that the analysis of groundwater in the *Hanford Solid Waste EIS* is inadequate.

In regard to the selection of Hanford as a regional disposal facility for LLW and MLLW, the court affirmed DOE's decisionmaking process. The preferred alternative in the *Waste Management PEIS* stated DOE's intent to select two or three disposal sites from a list of six potential sites, including Hanford, after further consultation with stakeholders. After issuing the Final PEIS, DOE identified its preferred disposal sites in a *Federal Register* notice (64 FR 69241; December 10, 1999) and subsequently issued a ROD (65 FR 10061; February 25, 2000); the plaintiff challenged this procedure.

The court concluded that DOE had conducted a sufficiently detailed analysis in the *Waste Management PEIS* to support selection of Hanford as a regional disposal site for LLW and MLLW. In addition, the court concluded that "it is insignificant that the identification of specific site preferences did not occur until two and one half years after issuance of the PEIS. . . . There was adequate 'public participation.'"

The court agreed that a project-level NEPA analysis – the *Hanford Solid Waste EIS* – was needed to follow the programmatic review. Plaintiff challenged the adequacy of this EIS, most importantly in regard to its groundwater analyses.

In the *Hanford Solid Waste EIS*, DOE declares that "current contamination would preclude the beneficial use of groundwater underneath portions of the Hanford site for the foreseeable future" (i.e., portions of groundwater beneath Hanford are "irretrievably committed"). Plaintiff contends that DOE made this declaration in order to preclude future claims for natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act, which provides that the government is not liable where it demonstrates that damages to natural resources were specifically identified in an EIS as an irreversible and irretrievable commitment of natural resources.

(continued on next page)

* Formerly *State of Washington v. Abraham et al.*

DOE Litigation Updates (continued from previous page)

The court, however, agreed with DOE's claim that the statement in the EIS is an appropriate implementation of NEPA and Council on Environmental Quality requirements to identify any such commitment of resources. Moreover, the court referred to statements by DOE in the June 2004 ROD and during the litigation that the Department intends to continue meeting commitments to remediate groundwater at Hanford as "sufficient to preclude DOE from attempting to alter its position in the future" to avoid such remediation.

In response to one aspect of plaintiff's claims about groundwater analysis in the *Hanford Solid Waste EIS*, the court issued a preliminary injunction in May 2005 on the shipment of LLW and MLLW to Hanford. The EIS provided estimates of potential groundwater contamination

from iodine-129 and technetium-99. Plaintiff raised inconsistencies between these estimates and the estimates provided by DOE in other recent documents.

The court found the issues regarding iodine-129 estimates sufficiently compelling to conclude that plaintiff should be allowed 90 days in which to conduct discovery "to ascertain the basis for the apparent inconsistencies . . . and whether that affects the reasonableness of DOE's analysis." Plaintiff also can conduct discovery on the issues regarding technetium-99, though the court found those less compelling. After the discovery period, parties will submit additional motions to the court.

[Case No.: 03-CT-5018]

New Litigation Challenges DOE Categorical Exclusion for Rulemaking on Alternative Fuel Vehicles

Center for Biological Diversity et al. v. U.S. Department of Energy et al. (N.D. Calif.): The complaint in this suit claims that 15 Government agencies are not in compliance with various alternative fuel vehicles purchasing and reporting requirements contained in the Energy Policy Act of 1992. The litigation is related to an earlier case filed in 2002 in which plaintiffs successfully raised similar claims.

The complaint states that DOE violated NEPA when it promulgated a rule in which it determined not to adopt "a regulatory requirement that owners and operators of certain private and local government fleets acquire alternative fueled vehicles" (69 FR 4219; January 29, 2004). DOE based its decision on "findings that such a requirement would not appreciably increase the percentage of alternative fuel and replacement fuel used by motor vehicles" and "this would make no more than a negligible contribution to the achievement of the replacement fuel goals set forth in" the Energy Policy

Act. DOE determined that this rule "will not require any government entity or any member of the public to act or to refrain from acting" and, therefore, is covered under a categorical exclusion listed in 10 CFR Part 1021, Subpart D, Appendix A, paragraph A.5, which applies to rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being interpreted or amended.

The plaintiffs state that DOE's decision not to promulgate these requirements withholds "action that would reduce petroleum consumption and its attendant environmental damage. Given the huge number of vehicles in the U.S., even small percentage changes have significant environmental impacts." Thus, plaintiffs contend, DOE must prepare an EIS.

A case management conference on the two, related cases is scheduled for July 14, 2005.


[Case Nos.: 02-00027 and 05-01526]

Other DOE NEPA Litigation in Brief

State of Nevada v. Department of Energy et al. (D.C. Cir.): This case involves the State of Nevada's challenge to DOE's record of decision on the mode of transportation and selection of the Nevada rail corridor for disposal of spent nuclear fuel and high-level nuclear waste at Yucca Mountain. (See *LLQR*, December 2004, page 17.) Opening briefs have been filed, with final briefs due in July 2005.

[Case No.: 04-1082]

Tri-Valley Communities Against a Radioactive Environment et al. v. U.S. Department of Energy et al. (9th Cir.): This case is an appeal of a district court ruling on September 10, 2004, that DOE's EA is sufficient for a proposed Biosafety Level 3 (BSL-3) facility at Lawrence Livermore National Laboratory. Briefing is scheduled to end in June 2005; no hearing date has been set.

[Case No.: 04-17232] 

Training Opportunities

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

- **Cumulative Impacts Assessment (FED104: Cumulative Impacts Assessment)**
Washington, DC: June 21-23
No fee

Introduction to NEPA/309 Review (FED103: NEPA/309 Review)
Washington, DC: August 9-11
No fee

Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com
- **Cumulative Impacts Assessment (FED104: Cumulative Impacts Assessment)**
San Francisco, CA: July 26-28
No fee

Environmental Protection Agency
Office of Federal Activities
415-972-3847
allen.summer@epa.gov
www.netionline.com
- **Cumulative Impact Analysis and Documentation**
Atlanta, GA: June 22-24
Fee: \$885 (GSA contract: \$795) until June 8

Portland, OR: June 28-30
Fee: \$885 (GSA contract: \$795) until June 14

Las Vegas, NV: August 18-19
Fee: \$660 (GSA contract: \$595) until August 4

Clear Writing for NEPA Specialists
Las Vegas, NV: July 13-15
Fee: \$835 (GSA contract: \$795) until June 29

Salt Lake City, UT: October 17-19
Fee: \$835 (GSA contract: \$745) until July 17

Reviewing NEPA Documents
San Diego, CA: July 20-22
Fee: \$885 (GSA contract: \$795)
- **National Environmental Policy Act for Legal Professionals**
Salt Lake City, UT: September 8
Fee: \$395 (GSA contract: \$395)
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Salt Lake City, UT: September 26-28
Fee: \$835 (GSA contract: \$745) until June 26
- **Team Building for NEPA Specialists**
Salt Lake City, UT: September 29-30
Fee: \$630 (GSA contract: \$565) until June 29

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
- **Environmental Litigation**
Boulder, CO: June 22-25
Fee: \$995 (government: \$495)

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

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Training Opportunities

(continued from previous page)

- **Implementation of the National Environmental Policy Act**

Durham, NC: September 12-16
Fee: \$1,050

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

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

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. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses.

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

- **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.
503-274-1790
info@envirotrain.com
www.envirotrain.com

- **Environmental Impact Training**

Courses cover topics such as environmental impact assessment, cumulative effects, environmental justice, reviewing NEPA documents, computer-based models, and adaptive management. Topics from several courses can be "packaged together" to meet the specific training needs of clients.

Environmental Impact Training
830-596-8804
info@eiatraining.com
www.eiatraining.com

- **NEPA Workshop**

San Francisco, CA: August 16-18
San Francisco, CA: September 12-14
Fee: contact Tetra Tech

- **Assessing Cumulative Impacts**

San Francisco, CA: August 19 (half day)
San Francisco, CA: September 15 (half day)
Fee: contact Tetra Tech

Tetra Tech, Inc.
877-468-3872
fall2005@ttsfo.com
www.tetrattechNEPA.com

NCO Wisdom

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EAs and EISs Completed January 1 to March 31, 2005

EAs

Bonneville Power Administration

DOE/EA-1485 (2/7/05)

Nisqually Transmission Line Relocation Project, Washington

Cost: \$175,000

Time: 18 months

Office of Fossil Energy

DOE/EA-1490 (1/14/05)

Presidential Permit Application, Sharyland Utilities 138 kV DC Texas-Mexico Transmission Line, Texas
Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 15 months

DOE/EA-1503 (11/10/04)*

Vermont Electric Power Company Northern Loop Project, Vermont

Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: 15 months

Golden Field Office/

Office of Energy Efficiency and Renewable Energy

DOE/EA-1516 (1/14/05)

Proposed Clipper Windpower, Inc., Low Wind Speed Turbine Demonstration Project, Wyoming

Cost: \$41,000

Time: 3 months

Grand Junction Project Office/

Office of Legacy Management

DOE/EA-1313 (3/20/05)

Ground Water Compliance at the Monument Valley, Arizona, Uranium Mill Tailings Site, Arizona

Cost: \$40,000

Time: 69 months

Nevada Site Office/

National Nuclear Security Administration

DOE/EA-1494 (6/30/04)*

Activities Using Biological Simulants and Releases of Chemicals at the Nevada Test Site, Nevada

Cost: \$375,000

Time: 15 months

DOE/EA-1499 (9/2/04)*

Radiological/Nuclear Countermeasures Test and Evaluation Complex, Nevada Test Site, Nevada

Cost: \$15,000

Time: 5 months

DOE/EA-1512 (10/21/04)*

Aerial Operations Facility Modifications, Nevada Test Site, Nevada

Cost: \$50,000

Time: 7 months

Y-12 Site Office/

National Nuclear Security Administration

DOE/EA-1510 (2/1/05)

Alternate Financed Facility Modernization, Tennessee

Cost: \$100,000

Time: 14 months

EIS

Office of Fossil Energy

DOE/EIS-0336 (70 FR 15315, 3/25/05)

(EPA Rating: EC-2)

Tucson Electric Power Company Sahuarita - Nogales Transmission Line, Arizona

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

Time: 44 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 text box on page 9 and the EPA Web site at: www.epa.gov/compliance/nepa/comments/ratings.html.)

* Not previously reported in LLQR

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$50,000; the average was \$114,000.
- Cumulatively, for the 12 months that ended March 31, 2005, the median cost for the preparation of 15 EAs for which cost data were applicable was \$80,000; the average was \$109,000.
- For this quarter, the median completion time of 9 EAs was 15 months; the average was 18 months.
- Cumulatively, for the 12 months that ended March 31, 2005, the median completion time for 21 EAs was 11 months; the average was 14 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended March 31, 2005, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1,776,000; the average was \$1,434,000.
- For this quarter, the completion time for one EIS was 44 months.
- Cumulatively, for the 12 months that ended March 31, 2005, the median completion time for 7 EISs was 32 months; the average was 30 months.

Note: For the past six quarters, the median EIS completion time has exceeded the Department's 15-month goal. The Office of NEPA Policy and Compliance is studying the reasons for this trend.

Recent EIS-Related Milestones (March 1 to May 31, 2005)

Advance Notice of Intent

Office of Environmental Management
DOE/EIS-0375
Disposal of Greater-Than-Class-C Low-Level Waste Environmental Impact Statement
May 2005 (70 FR 24775, 5/11/05)

Western Area Power Administration
DOE/EIS-0377
Construction and Operation of the Proposed Big Stone II Power Plant and Transmission Project, South Dakota and Minnesota
May 2005 (70 FR 30716, 5/27/05)

Notices of Intent

Bonneville Power Administration and Office of Electricity Delivery and Energy Reliability
DOE/EIS-0378
Port Angeles - Juan de Fuca High Voltage Direct Current Transmission Project, Washington
May 2005 (70 FR 23855, 5/5/05)

Withdrawal of Notice of Intent

Office of Fossil Energy
DOE/EIS-0339
Presidential Permit Application, GenPower 500 kV Submarine Electric Transmission Cable from Nova Scotia to New York, New York
March 2005 (70 FR 10611, 3/4/05)

Bonneville Power Administration
DOE/EIS-0379
Rebuild of the Libby (FEC) to Troy Section of BPA's Libby to Bonners Ferry 115 kV Transmission Line, Montana
May 2005 (70 FR 23856, 5/5/05)

Final EIS

National Nuclear Security Administration/Oakland Operations Office
DOE/EIS-0348
Site-wide EIS for the Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS, Livermore, California
April 2005 (70 FR 22306, 4/29/05)

(continued on next page)

Recent EIS-Related Milestones (March 1 to May 31, 2005)

(continued from previous page)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Business Plan: Leaning Juniper Wind Project, Wasco, Gilliam, Sherman, and Morrow Counties, Oregon

March 2005 (70 FR 14662, 3/23/05)

DOE/EIS-0183

Business Plan: Big Horn Wind Energy Project, Klickitat County, Washington

April 2005 (70 FR 17078, 4/4/05)

DOE/EIS-0340

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

March 2005 (70 FR 14457, 3/22/05)

DOE/EIS-0342

Wanapa Energy Center Interconnection, Umatilla County, Oregon

March 2005 (70 FR 10612, 3/4/05)

Office of Fossil Energy

DOE/EIS-0365

Imperial-Mexicali 230-kV Transmission Lines, Imperial County, California

April 2005 (70 FR 21189, 4/25/05)

Supplement Analyses

Bonneville Power Administration

Yakima Fisheries Project Environmental Impact Statement (DOE/EIS-0169)

DOE/EIS-0169-SA-10*

Yakima Fisheries Project - Fall Chinook Research Program at Stiles & Edler Ponds, Kittitas County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0169-SA-11*

Yakima/Klickitat Fisheries Project - Lake Cle Elum Coho Acclimation Site, Cle Elum, Kittitas County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0169-SA-12*

Yakima/Klickitat Fisheries Project - Under the Operations and Maintenance Program (O&M), The Vegetation Management Plan Requires Herbicide Spraying for Weed Control in the Upper Yakima River in Kittitas County, Washington

(Decision: No further NEPA review required)

February 2005

Business Plan Environmental Impact Statement (DOE/EIS-0183)

DOE/EIS-0183-SA-06

Memorandum of Agreement between Bonneville Power Administration (BPA) and Bonneville Environmental Foundation (BEF) to Help Support BEF's Renewable Resources Activities

(Decision: No further NEPA review required)

May 2005

Hood River Fisheries Project Environmental Impact Statement (DOE/EIS-0241)

DOE/EIS-0241-SA-01

Hood River Production Program Activities, Hood River County, Oregon

(Decision: No further NEPA review required)

May 2005

Watershed Management Program Environmental Impact Statement (DOE/EIS-0265)

DOE/EIS-0265-SA-200

Asotin Model Watershed Program - George Creek Meander Reconstruction and Riparian Planting Project on Hagenah Property, Asotin County, Washington

(Decision: No further NEPA review required)

March 2005

DOE/EIS-0265-SA-204*

Kalispel Resident Fish Project, Pend Oreille County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0265-SA-205*

Restore McComas Meadows/Meadows Creek Watershed, Idaho County, Idaho

(Decision: No further NEPA review required)

February 2005

* Not previously reported in LLQR

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Recent EIS-Related Milestones (March 1 to May 31, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-206

Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington

(Decision: No further NEPA review required)

March 2005

DOE/EIS-0265-SA-207

Improvement of Anadromous Fish Habitat and Passage in Omak Creek - Culvert Replacement (2005 SOW Performance and Budget Period), Omak, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0265-SA-208

Final Toppenish Creek Watershed Restoration Project, Yakama Reservation, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0265-SA-210

Pine Hollow Watershed Enhancement - Jackknife Watershed Projects, Sherman County, Oregon

(Decision: No further NEPA review required)

May 2005

DOE/EIS-0265-SA-211

Upper Red River Restoration Project, Idaho County, Idaho

(Decision: No further NEPA review required)

May 2005

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

DOE/EIS-0285-SA-239*

Vegetation Management along the Port Angeles - Sappho No. 1, 115 kV Transmission Line Corridor, Clallam County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0285-SA-241*

Vegetation Management along the Ostrander - Troutdale No. 1, 500 kV Transmission Line Corridor, Clackamas and Multnomah County, Oregon

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0285-SA-242*

Vegetation Management along the Longview - Chehalis No. 1 230 kV Transmission Line Corridor, Cowlitz County, Washington

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0285-SA-243*

Pearl Substation Project, Clackamas County, Oregon

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0285-SA-244*

Vegetation Management along the John Day - Marion Transmission Line Corridor, Clackamas County, Oregon

(Decision: No further NEPA review required)

February 2005

DOE/EIS-0285-SA-245

Vegetation Management for Portion of the Big Eddy - Ostrander 230-500kV Transmission Line, Wasco and Hood River County, Oregon

(Decision: No further NEPA review required)

March 2005

DOE/EIS-0285-SA-246

Vegetation Management along the Satsop - Aberdeen No. 3, 230 kV (Reference line) Transmission Line Corridor, Grays Harbor County, Washington

(Decision: No further NEPA review required)

March 2005

DOE/EIS-0285-SA-247

Vegetation Management along the 230 kV Santima - Toledo #1 Transmission Line Corridor, Linn, Benton and Lincoln Counties, Oregon

(Decision: No further NEPA review required)

March 2005

DOE/EIS-0285-SA-248

Approval for the Use of Two New Herbicides: Flumioxazin and Sulfentrazone, Idaho, Montana, Oregon, Washington, and Wyoming

(Decision: No further NEPA review required)

March 2005

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* Not previously reported in LLQR

Recent EIS-Related Milestones (March 1 to May 31, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-249

Vegetation Management along the Albany and the Alderwood Tap Transmission Line Corridors, Lane and Linn County, Oregon

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-250

Vegetation Management for the McNary - Santiam No. 1 230 kV Transmission Line Corridor, Marion and Wasco County, Oregon

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-251

Vegetation Management along the Chehalis - Centralia No. 2, 115 kV Transmission Line Corridor, Lewis County, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-252

Vegetation Management along the Chehalis - Centralia No. 1, 69 kV Transmission Line Corridor, Lewis County, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-253

Vegetation Management along the Satsop Park - Cosmopolis No. 1, 115 kV Transmission Line Corridor, Grays Harbor County, Washington

(Decision: No further NEPA review required)

April 2005

DOE/EIS-0285-SA-254

Vegetation Management along the Dworshak - Taft Transmission Line Right of Way (ROW), Clearwater, Latah and Shoshone County, Idaho and Mineral County, Montana

(Decision: No further NEPA review required)

May 2005

DOE/EIS-0285-SA-255

Vegetation Management along the Franklin - Walla Walla 115 kV Transmission Line Corridor, Walla Walla County, Washington

(Decision: No further NEPA review required)

May 2005

DOE/EIS-0285-SA-257

Vegetation Management along the Kitsap - Bangor and Kitsap - Bremerton No. 1, 115 kV, Transmission Line Corridor, Kitsap County, Washington

(Decision: No further NEPA review required)

May 2005

Fish and Wildlife Implementation Plan Environmental Impact Statement

(DOE/EIS-0312)

DOE/EIS-0312-SA-02

Columbia Basin Riparian Conservation Easement Program, Washington

(Decision: No further NEPA review required)

March 2005

Lower Red River Meadow Stream Restoration Project Environmental Assessment

(DOE/EA-1027)

DOE/EA-1027-SA-01*

Red River Restoration Project O&M, Idaho County, Idaho

(Decision: No further NEPA review required)

January 2005

Avian Predation on Juvenile Salmonids in the Lower Columbia River Environmental Assessment

(DOE/EA-1374)

DOE/EA-1374-SA-04

Avian Predation on Juvenile Salmonids in the Lower Columbia River Research Project, Washington

(Decision: No further NEPA review required)

March 2005 **LL**

NCO Wisdom

Integrate the NEPA process with the rest of the decisionmaking process and, when in doubt, be more inclusive than exclusive.



* 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 January 1 and March 31, 2005.

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

- *Public comments.* The comment process was successful in obtaining public opinion. Comments were mostly positive, though some users wanted public meetings held on the EA.

What Didn't Work

- *Identification of radionuclides.* Initially, there were issues in identifying the number and quantity of radionuclides to be used as a bounding case for the EA.
- *Difficulty in meeting with potentially affected parties.* There were difficulties in setting up one-on-one meetings with elderly people who did not show up at the public meetings, but would potentially be affected.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Continuous communication.* A thorough internal scoping meeting along with constant and timely communication among the document manager, the contracted EA writer, and the EA review team established in the scoping meeting contributed to prompt attention to the document.
- *Use of data from other EAs.* The cost of the EA was kept very low (\$15,000) by using information from other relevant EAs. We were able to cut-and-paste complete sections from other documents.
- *Adherence to deadline.* A deadline was established for EA comments and strictly adhered to.

Factors that Inhibited Timely Completion of Documents

- *Complex issues.* Complicated issues regarding the project and the Endangered Species Act consultation took time to resolve with all the Federal agencies and tribal governments.
- *Stakeholder comments received after public issuance.* A pre-draft copy was forwarded to the major stakeholder for comments prior to issuing the EA for public comment. However, the stakeholder did not submit substantial comments until after issuance of the document, so the expectation that providing an advance copy would save time and effort did not prove true.

Teamwork

Factors that Facilitated Effective Teamwork

- *Matrix support.* Effective DOE teamwork resulted from excellent cooperation of the matrix of Environment, Safety and Health support staff.
- *Using Federal staff.* Using internal specialists rather than contractors was much easier and more cost effective.
- *Effective coordination.* The established EA review team consisting of the Document Manager, the contracted EA writer, the program NEPA Compliance Officer, the legal reviewer, and the project manager effectively coordinated the draft EA review and comment process to minimize the time and iterations needed for revisions of the draft EA.
- *Continuous communication.* Constant communications via phone and e-mail between the Document Manager and the contracted EA writer to ensure on-time deliverables exemplified effective teamwork.

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What Worked and Didn't Work

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- *Coordination of NEPA and technical issues.* Since the NEPA Compliance Officer co-manages the site, he considered the EA from both a NEPA and a technical perspective. He worked closely with the document manager to resolve technical issues. Their proximity and frequent contact helped them identify a major discrepancy between the EA and the proposed work plan, which was then easily resolved.

Process

Successful Aspects of the Public Participation Process

- *Sufficient time for state comments.* Though the state agencies took more time than anticipated to comment on the draft EA, this did not impact the project schedule. The state agencies appreciated the Department's efforts to involve them in the EA review process.

Unsuccessful Aspects of the Public Participation Process

- *Difficulty obtaining stakeholder cooperation.* No public comments were received on the draft EA. However, now that work has begun on a final EA and finding of no significant impact (FONSI), stakeholder buy-in to do the work has been difficult to obtain. We decided not to hold public meetings in this case because public meetings were held previously on the same work plans.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Timely decisions.* The NEPA process was useful in that it forced decisions to be made about the project in a timely fashion that eliminated procrastination on some important topics.
- *Defined project.* The NEPA process was a good tool that helped define the project and allowed agencies to understand and decide how to proceed.
- *Safety and environmental compliance requirements.* This EA established environmental compliance requirements and safety envelopes for the project.

Enhancement/Protection of the Environment

- The NEPA process drives the project team to an awareness about the environment that would not have occurred without it.
- There were environmental impacts due to the project, but mitigations, especially through Endangered Species Act consultation, helped lessen impacts.

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, 2 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the NEPA process resulted in mitigation to lessen impacts, helped neighbors understand the project, and helped agencies to agree on how to proceed.
- A respondent who rated the process as "3" stated that some decisions were already driven by other factors, but the NEPA process provided data for other decisions. The NEPA process also validated decisions.
- A respondent who rated the process as "2" stated that the project was pre-planned, but the NEPA process was useful in providing in-depth analysis in environmental and safety impacts of the project.
- A respondent who rated the process as "1" stated that the DOE Program Office "knows what needs to be done," and the EA in this case was to be used to help obtain "permission" to do the work. After issuing the EA and FONSI, problems surfaced regarding "stakeholder buy-in." 