

LESSONS LEARNED

March 1, 2006; Issue No. 46

First Quarter FY 2006

Collaboration Yields Win-Win Solution at Hanford

The Department of Energy (DOE) and the State of Washington have moved away from confrontation toward collaboration to constructively address environmental issues at the Hanford Site. Following focused discussions in late 2005, they resolved a legal dispute involving the Hanford Solid Waste EIS (DOE/EIS-0286, 2004) that had lasted more than two years.



The potential for groundwater contamination from the Hanford Site to reach the Columbia River is a major regional environmental concern.

below, the Agreement emphasizes transparency and quality assurance in the NEPA process.

Secretary Samuel W. Bodman, in announcing the Agreement on January 9, 2006, said both parties “will be able to shift their focus and resources away from litigation and toward partnership and our shared cleanup goals.”

Under a Settlement Agreement, the State will cooperate with DOE in the preparation of a new EIS that will provide an integrated evaluation of proposed waste management activities at Hanford and a comprehensive, site-wide reanalysis of groundwater impacts. As discussed

At the same time, Jay Manning, Director, Washington Department of Ecology (Ecology), said “the state will have meaningful input into developing the [new] EIS, which will enhance our ability to protect Hanford groundwater and make better waste-management decisions.”

(continued on page 4)

DOE Applies “Alternative NEPA Arrangements” After Ordering Coal Power Plant to Operate

Even though the action may result in significant environmental impacts under NEPA, the Secretary of Energy was able to issue an Emergency Order directing a coal-fired power plant near Washington, DC, to operate under certain limited conditions without preparing an environmental impact statement (EIS). Before issuing the Order on December 20, 2005, DOE consulted with the Council on Environmental Quality (CEQ) on “alternative arrangements” for compliance with NEPA, as provided in the CEQ regulations at 40 CFR 1506.11, *Emergencies*.

Under the Order, the Mirant power plant, located in Alexandria, Virginia, is required to maintain operations under specified conditions to meet electricity reliability needs in Washington, DC.

As agreed upon with CEQ, DOE will carry out fundamental components of the EIS process, as follows:

- Prepare a “Special Environmental Analysis” no later than August 2006;
- Continue consultations with the Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality (DEQ);
- Provide opportunities for public involvement, including soliciting comments and posting publicly available information on Web sites; and
- Identify possible further mitigation measures.

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Inside *LESSONS LEARNED*

Welcome to the 46th quarterly report on lessons learned in the NEPA process. DOE's senior managers play a vital role in NEPA implementation as evidenced by the settlement of Hanford NEPA litigation. Their participation in every EIS is important to ensure the scope and schedule support DOE's needs, as shown by an analysis of EIS metrics in this issue. As always, we welcome your suggestions for continuous improvement.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 1, 2006. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2006 (January 1 through March 31, 2006) should be submitted by May 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.

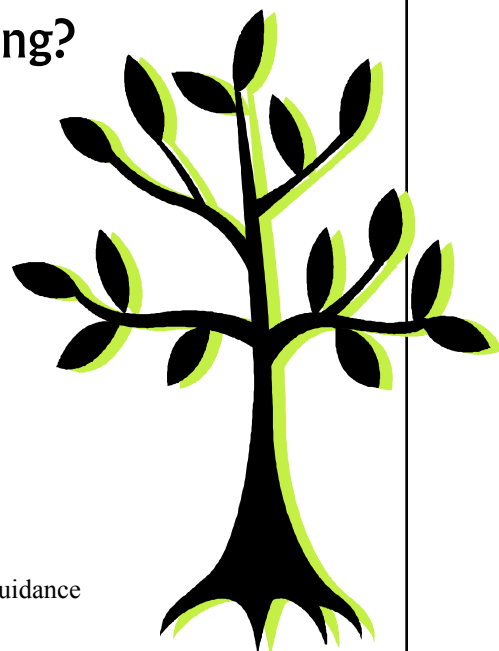
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Earth Day 2006: How Are You Celebrating?

In the June 2006 issue of *LLQR*, we would like to spotlight your organization's observance of Earth Day. Send a photo and caption, additional text (optional), and contact information to askNEPA@eh.doe.gov with subject: LLQR Earth Day 2006.

The DOE Office of Environment will sponsor displays in the DOE Forrestal Building (1000 Independence Ave., SW., Washington, DC) lower lobby from April 20–28:

- ✓ *Protection and Enhancement of Watersheds and Endangered Species*
Office of Air, Water, and Radiation Protection Policy and Guidance
(also in the Germantown Main Lobby)
- ✓ *DOE and NEPA Through the Years: 1970–2005*
Office of NEPA Policy and Compliance
- ✓ *Greening DOE*
Office of Pollution Prevention and Resource Conservation Policy and Guidance



Congressional NEPA Task Force Staff Issues Initial Report

The Task Force on Updating the National Environmental Policy Act of the Committee on Resources, U.S. House of Representatives, released a staff-prepared report titled *Initial Findings and Draft Recommendations* (Initial Report) for public comment on December 21, 2005. It has been reported that more than 200 substantive public comments were received by the February 6, 2006, deadline. The Administration determined not to provide comments on the draft staff report.

The Initial Report identifies nine groups of findings – regarding the provisions of the statute, agency implementation practices, and implications for stakeholders – and proposes 22 recommendations for improving NEPA.

NEPA is a valid and functional law in many respects. However, there are elements of NEPA that are causing enough uncertainty to warrant modest improvements and modifications to both the statute and its regulations. To do nothing would be a disservice to all stakeholders who participate in the NEPA process.

– Initial Report, page 30

Proposed Changes to NEPA

Thirteen of the draft recommendations propose to amend the NEPA statute. Recommended amendments would create a new definition of “major Federal action” and specify “unambiguous criteria” for when to prepare EISs, EAs, categorical exclusions, and supplemental NEPA documents. One amendment would require agencies to “pre-clear” projects with the Council on Environmental Quality (CEQ), which would monitor court and other decisions on NEPA procedures and advise Federal agencies of their applicability. Other recommendations would establish EIS page limits (150 pages for most projects) and time limits for completing EISs and EAs (18 and 9 months, respectively). The Initial Report also recommends NEPA amendments to limit the alternatives analyzed in an EIS to those that are economically and technically feasible and are “supported by feasibility and engineering studies”; require “extensive discussion” of the no action alternative; and clarify how agencies should evaluate the effects of past actions in cumulative impacts assessments.

The Initial Report further recommends amending NEPA to grant cooperating agency status to any tribal, state, local, or other political subdivision that requests it and to

incorporate parts of the CEQ regulations regarding the role of a lead agency (40 CFR 1501.5) when multiple agencies are involved in an action. To address litigation issues, a recommended amendment would add a citizen suit provision that would establish a time period for filing challenges and guidelines on who has standing to sue. This amendment also would limit settlement agreements that forbid or severely limit activities of businesses that were not part of the initial lawsuit. Another amendment would create a “NEPA Ombudsman” within CEQ to resolve conflicts in the NEPA process.


Expanding CEQ’s Regulations and Role

The Initial Report recommends new provisions for the CEQ regulations that would require agencies to give more weight to local comments, allow state environmental reviews to satisfy NEPA requirements in some cases, require binding commitments for mitigation proposals, and focus future impacts analysis on concrete rather than “reasonably foreseeable” actions. In addition, CEQ would be directed to require agencies to consult formally with interested parties throughout the NEPA process.

The Initial Report also recommends new responsibilities for CEQ: to assess NEPA compliance costs and recommend cost ceiling policies to Congress and to conduct three studies on NEPA. Two studies would examine the interactions and overlaps of NEPA with other environmental laws and state “mini-NEPAs.” A third study would focus on NEPA staff at Federal agencies, detailing their experience and suggesting staff recruitment and retention measures.

Next Steps: Final Recommendations after Comment Review

The Initial Report states that it is based on staff review of the testimony of 66 witnesses in seven nationwide hearings that the Task Force held between April and November of 2005 and more than 3,000 additional written comments submitted. For testimony excerpts, see *LLQR*, June 2005, page 3; September 2005, page 14; and December 2005, page 3. The full testimonies and complete Initial Report (30 pages) are available on the Task Force Web site (<http://resourcescommittee.house.gov/nepataskforce.htm>).

Although comments on the Initial Report have not been posted on the Task Force Web site as of this writing, several comment letters that may be of interest to our readers are available on other Web sites, e.g., Environmental Law Institute, www2.eli.org/pdf/eli_nepa_comments.pdf; National Association of Environmental Professionals, www.naep.org; and State of Nevada, www.state.nv.us/nucwaste/news2006/pdf/nv060206nepa.pdf. 

Collaboration at Hanford (continued from page 1)

The process that culminated in the Agreement began last August with several face-to-face meetings and weekly conference calls. The discussions received priority attention from senior managers in DOE Headquarters Offices, including Environmental Management (EM), General Counsel, and Environment, Safety and Health; the Hanford Field Offices (Richland Operations Office and Office of River Protection); and the State of Washington Department of Ecology and the Office of the Attorney General; as well as support from the Department of Justice. The parties worked in good faith to find common ground and a path forward as an alternative to protracted litigation. The timeline below summarizes the NEPA and litigation history involving the Hanford Solid Waste EIS, leading to the issuance of a Notice of Intent for the new EIS (71 FR 5655; February 2, 2006).

Comprehensive Scope for New EIS

To implement the Agreement, DOE will expand the scope of its ongoing Tank Closure EIS (DOE/EIS-0356) in a new EIS for Tank Closure and Waste Management (DOE/EIS-0391). As currently planned, the new EIS will:

- Build on the analyses initiated in 2003 for the Tank Closure EIS, including potential impacts of retrieval of tank waste and closure of certain tanks, as well as treatment and disposal of retrieved low-activity radioactive waste;
- Update and revise the Solid Waste EIS analyses, including a re-evaluation of potential impacts from on-site disposal of low-level and mixed low-level radioactive waste generated at Hanford and other DOE sites;

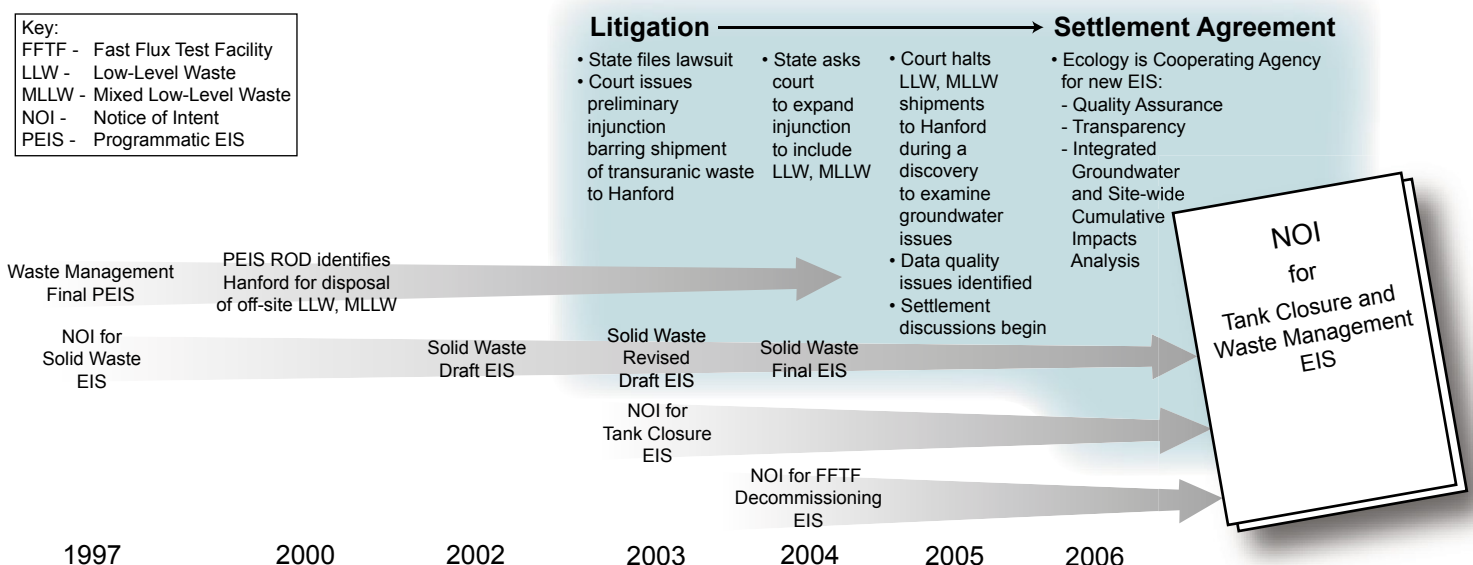
- Include a site-wide, quantitative analysis of the cumulative impacts of other past, present, and reasonably foreseeable actions at Hanford; and
- Complete the analyses initiated in 2004 for the Decommissioning of the Fast Flux Test Facility EIS (DOE/EIS-0364).

The State's role as a Cooperating Agency will help achieve our shared cleanup goals for the Hanford Site. Where we disagree on technical matters, DOE and Ecology will run sensitivity analyses on impact estimates. Where there are policy differences, DOE will provide the State an opportunity to express its views in the new EIS.

***– Dr. Ines Triay
Chief Operating Officer
Office of Environmental Management***

DOE will share data and analyses with Ecology in a transparent manner throughout preparation of the new EIS so that Ecology can independently verify analytical methodology and EIS results. Further, DOE and Ecology – jointly recognizing the complexities and uncertainties of groundwater modeling – will collaborate to develop the technical approaches to be used for the groundwater evaluation. Ecology's expertise and knowledge of the site can help ensure the adequacy of the new EIS analyses.

(continued on next page)



Collaboration at Hanford *(continued from previous page)*

While the Tank Closure and Waste Management EIS is being prepared, DOE will continue current waste management and remediation operations at Hanford. With certain exemptions identified in the Agreement, DOE will not ship off-site waste to Hanford until the new EIS has been completed and appropriate Record(s) of Decision issued. Upon completion, the new EIS will supersede the Solid Waste EIS and encompass the scope of the two ongoing EISs.

Quality Assurance Lesson Learned

A key element of the Settlement Agreement is an emphasis on quality assurance, stemming from the identification of discrepancies in the Solid Waste EIS groundwater analyses that came to light during the litigation. (This experience prompted a wider examination of quality assurance in DOE NEPA documents. See text box.)

The State had initiated litigation in 2003 on issues related to the importation of radioactive and hazardous waste from other DOE sites for storage, processing, or disposal, as had been decided under the Waste Management Programmatic EIS (DOE/EIS-0200, 1997) and associated Records of Decision. In 2004, DOE issued the Solid Waste EIS, which included site-specific evaluations of managing low-level, mixed low-level, and transuranic wastes from Hanford and other DOE sites. Later that year, the State amended its lawsuit to challenge the adequacy of this EIS. In the process of responding to the State's discovery requests for information, DOE was informed by its EIS-preparation contractor in July 2005 of several differences in groundwater analyses between the Solid Waste EIS and its underlying data. DOE promptly notified the court and the State. (See *LLQR*, September 2005, page 25; June 2005, page 22; and June 2003, page 12.)

(continued on next page)

Do We Take Quality Assurance for Granted in NEPA Documents?



The Department's experience last year regarding quality assurance issues with the Hanford Solid Waste EIS prompted a re-examination of DOE's quality assurance plans for NEPA documentation. Assistant Secretary for Environment, Safety and Health John Spitaleri Shaw issued a memorandum to Secretarial Officers and Heads of Field Organizations on January 10, 2006, requesting confirmation that NEPA quality assurance plans are in place, as required by DOE Order 451.1B, paragraph 5.a(3).

Under the Council on Environmental Quality (CEQ) NEPA regulations, agencies must ensure the "scientific integrity" of their NEPA analyses (40 CFR 1502.24). Further, the CEQ regulations specify that environmental information in NEPA documents "must be of high quality" and that "accurate scientific analysis" is "essential to implementing NEPA" (40 CFR 1500.1). DOE's 1996 *National Environmental Policy Act Contracting Reform Guidance* recommends project-specific quality assurance plans. (This guidance and a model statement of work for contractors preparing DOE NEPA documents are available on the DOE NEPA Web site at www.eh.doe.gov/nepa/contracting.html.) Mr. Shaw requested that Departmental organizations identify when their organizational quality assurance plans were signed or revised and whether project-specific plans are in place for EAs and EISs.

In preparing responses for their Offices, several NEPA Compliance Officers commented that this reminder prompted a review and revision of their Office quality assurance plan. Kathy Pierce of the Bonneville Power Administration said, "I see this as an opportunity to revamp our QA documentation in a thoughtful effort to develop a readily useable and useful QA plan."

"It is important to have a well-conceived quality assurance plan and to ensure its implementation," emphasized Carol Borgstrom, Director, Office of NEPA Policy and Compliance. "Everyone involved in the process – whether contractor, NEPA Document Manager, NEPA Compliance Officer, or reviewing official – should take responsibility for ensuring high quality and 'scientific integrity' in our NEPA documents," she said.

To date, responses to Mr. Shaw's memorandum have been received from nearly all Program and Field Offices. A preliminary review of these responses suggests that although there are project-specific quality assurance plans for some EISs, many projects rely on the organization's general quality assurance plan supplemented by the contractor's quality assurance plan. The preliminary review also indicates that few EAs have specific quality assurance plans.

NAEP Annual Conference: April 23–26 in Albuquerque

The National Association of Environmental Professionals (NAEP) will hold its 31st Annual Conference, *Global Perspectives on Regional Issues: The Future for Environmental Professionals in the Next 30 Years*, April 23–26, 2006, in Albuquerque, New Mexico – coinciding with the city’s 300th anniversary celebration. “This year’s conference focuses on issues with global implications that can be addressed regionally and locally,” according to the registration brochure.

The conference is organized around 12 “tracks” or sets of presentations related by subject area. The “NEPA Symposium” track features discussion of the outcomes of the Congressional NEPA Task Force (related article, page 3), in addition to future issues for NEPA, tools and techniques, unique EISs, and legislation and litigation. Other tracks include Environmental Health and Safety Management Systems,

Energy Water Nexus, Homeland Security Issues and the Environment, Geospatial Technology, and Health Impact Assessment. Local field trips offer the opportunity to learn more about the unique ecological features of the Sandia Mountains or the engineering and environmental aspects of a Rio Grande water diversion project.



Six pre-conference NEPA training courses, including “Advanced Tools and Techniques for Solving NEPA and Environmental Planning Problems,” “Integrating NEPA with the ISO 14001 EMS,” and “Managing an Interdisciplinary Team in Large Scale Planning Projects,” are offered on April 23.

Registration remains open through the conference dates; NAEP membership is not required to attend. Additional information is available on the NAEP Web site at www.naep.org under Annual Conferences. LL

Collaboration at Hanford *(continued from previous page)*

In September 2005, Dr. Ines Triay, Chief Operating Officer, EM, convened a team of DOE experts to conduct a quality assurance review of the Solid Waste EIS. The team’s January 2006 report on the EIS’s data quality, control, and management issues identified additional discrepancies.

In conducting its review, the team sampled computer files and compared calculations to results reported in the Solid Waste EIS for the groundwater, human health and safety, and transportation analyses. The team also reviewed management issues, including contracting arrangements, qualifications of DOE personnel, and whether appropriate quality assurance plans were in place. “The lack of formal data verification and validation processes along with the absence of [quality assurance] oversight activities by both the contractor and Federal agency led to the data inaccuracies found in the [EIS],” the team concluded.

The report contains several recommendations for improving software and management quality assurance and determining the significance of the data quality errors. One of the report’s most significant recommendations is to redo the groundwater impacts analysis.

The Settlement Agreement, data quality report, and related information are available through the EM Web site at www.em.doe.gov under Featured Items. The State’s announcement of the Agreement is available on Ecology’s Nuclear Waste Program Web site at www.ecy.wa.gov/programs/nwp under Current News. The Notice of Intent to prepare the Tank Closure and Waste Management EIS and other information related to the EIS are available on the DOE NEPA Web site at www.eh.doe.gov/nepa. For further information, contact Jeanie Loving at jeanie.loving@eh.doe.gov or 202-586-0125. LL

Groundwater – a Key Regional Issue

The Hanford Site is approximately 586 square miles.



For more than four decades, Hanford’s mission involved nuclear research and development, and the production of nuclear weapons materials, resulting in a variety of hazardous and radioactive wastes. Existing and newly generated wastes are disposed of in the Central Plateau. The potential for these wastes to reach the groundwater, and eventually the Columbia River, is a significant concern in the region. Nearly 50 miles of the river flow through the site. The cities of Richland, Pasco, and Kennewick, and downstream communities in Washington and Oregon, rely on the river for drinking water, agriculture, and other uses.

DOE Solicits Early Comments on FutureGen EIS Process

The Department of Energy initiated the NEPA process for the FutureGen Project by issuing an Advance Notice of Intent (ANOI) to prepare an EIS on February 16, 2006 (71 FR 8283). The ANOI invites early public comment, due March 20, 2006, on the proposed scope of the EIS, including the Department's plans for determining the range of reasonable alternative host sites to be analyzed in the EIS. Site selection involves a competitive procurement process conducted in partnership with an industry consortium.



Artist's conception of the proposed FutureGen Facility.

What is FutureGen?

FutureGen is an approximately \$1 billion project involving the design, construction, and operation by a private-sector entity of a near-zero-emissions coal-fired electric power and hydrogen gas production plant integrated with the capture and geologic sequestration of carbon dioxide. The Office of Fossil Energy through the National Energy Technology Laboratory (NETL) envisions that the proposed 275-megawatt power plant and carbon dioxide sequestration project would contribute to the nation's energy security. The project is intended to prove the technical and economic feasibility of a large-scale integrated application of advanced clean coal technologies and showcase emerging technologies that could further address environmental concerns about the use of coal.

DOE's proposed action is to provide up to \$700 million to implement the project through a Cooperative Agreement with FutureGen Industrial Alliance, Inc. The Alliance, a consortium of large industrial companies that produce a significant portion of the nation's coal and coal-fueled electricity, would provide an estimated \$250 million for the project, and would plan, design, construct and operate the power plant and geologic sequestration facility with DOE oversight, as described in the Cooperative Agreement, signed in December 2005.


Highly Competitive Process Expected

The Alliance will conduct a site competition to identify candidate sites suitable for the FutureGen Facility. The selection process will be open to states, tribes, private organizations, and other interested parties and will use site *qualifying* (i.e., mandatory) and *scoring* criteria (e.g., measures of power plant and sequestration site suitability, availability of infrastructure, environmental and other factors). DOE will approve the selection plan.

In view of preliminary expressions of interest from proponents of candidate sites in about 20 states, the site selection process likely will be highly competitive.

The Alliance is now considering comments on a draft request for proposals (RFP) and plans to issue a final RFP in March 2006. The draft RFP proposes qualifying and scoring criteria for the power plant (including transmission line, transportation, and pipeline corridors) and the geologic formation for carbon dioxide sequestration. Following the RFP, the Alliance will review proposals to identify in a report to DOE those that the Alliance determines to be reasonable from a technical, environmental, and economic perspective.

Based on its review of the Alliance's identification of candidate sites and other relevant information, DOE will identify a preliminary range of reasonable alternatives to be analyzed in the EIS, which DOE will announce in a Notice of Intent planned for July 2006. After completing the EIS, DOE may identify in a record of decision one or more sites that DOE regards as acceptable. The Alliance would then select a host site from among those sites, if any, and conduct extensive site characterization. DOE would review the site characterization data and prepare a supplemental analysis to determine whether a supplemental EIS is required.

Additional information about FutureGen is available on the Office of Fossil Energy Web site at www.fossil.energy.gov/programs/powersystems/futuregen/index.html; the NETL Web site at www.netl.doe.gov, and the Alliance Web site at www.futuregenalliance.org. The ANOI is available on the DOE NEPA Web site at www.doe.eh.gov/nepa under What's New. The NEPA Document Manager is Mark McKoy, who can be contacted at mmckoy@netl.doe.gov or 304-285-4426. 

Alternative NEPA Arrangements

(continued from page 1)

Emergency Order Addresses Electricity Reliability Concerns

Mirant Corporation ceased plant operations on August 24, 2005, after its modeling had indicated that the plant's coal-fired operations caused or contributed to significant localized exceedances of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. On the same day, the DC Public Service Commission filed a petition with DOE for an Emergency Order under Section 202(c) of the Federal Power Act, asserting that the plant's closure reduced the reliability of the electrical supply to the central DC area (much of the central business district, many Federal institutions, and the regional waste water treatment plant), placing this area at risk of a blackout and, if the blackout lasted longer than a day, the release of untreated sewage to the Potomac River.

The Mirant plant, consisting of five generating units, is one of only three sources of electricity to the central DC area. The other sources are two 230,000-volt (230-kV) transmission lines that deliver electricity from other generating sources on the regional electric grid. Under North American Electric Reliability Council standards, a power system must always be operated with sufficient reserves to compensate for the sudden failure of an area's most important single generator or transmission line. To maintain a minimally reliable electric power system, the Mirant plant must be available to operate when one of the 230-kV lines serving the central DC area is out of service. Just days before issuance of the Order, one of those lines "tripped." DOE also learned that maintenance on the lines was needed in January 2006.

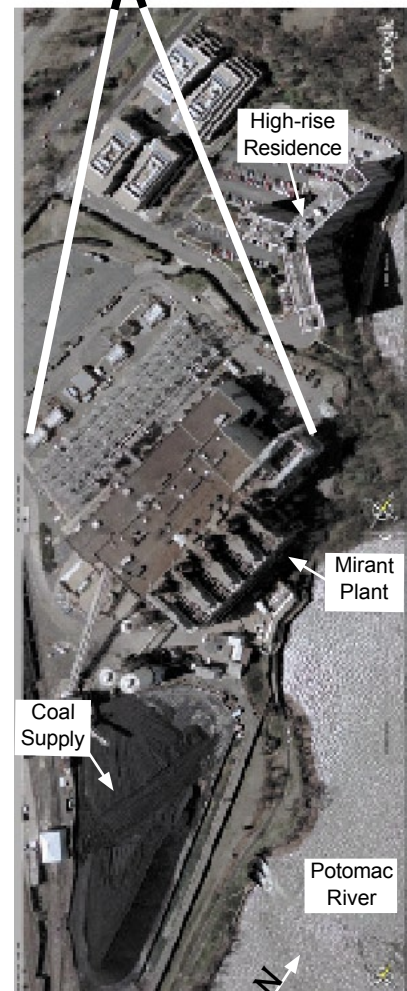
The Secretary's Emergency Order, which extends through October 1, 2006, was issued after an exhaustive review of the facts, and consultation with Federal and state officials responsible for environmental compliance and the private entities responsible for electricity transmission. The Order directs Mirant to, among other things, (1) operate the plant to produce power to meet demand in the central DC area during any period in which one or both of the 230-kV lines is out of service, and (2) keep as many generating units operating, and take measures to reduce the start-up time of units not operating, to provide this reliability without causing or significantly contributing to exceedance of the NAAQS.

In response to requests from the City of Alexandria, the DC Public Service Commission, and DEQ, DOE granted on February 17, 2006, a rehearing of the Order for the limited purpose of further consideration and has invited comments and information concerning the plant's current operational status by March 23, 2006. (The Order and related materials are posted on the DOE Web site for this matter, identified below.)

Consultations and Analyses to Address Mitigation Options

After emergency action, CEQ advocates a forward-looking approach to provide value to decisionmaking, and this approach guided DOE in its consultations with CEQ before and after issuance of the Emergency Order. In a letter confirming that DOE had completed the necessary consultation, CEQ General Counsel Dinah Bear stated, "The alternative arrangements proposed in your January 18, 2006 letter are limited to the immediate actions necessary to reduce electricity supply risks to acceptable levels, provide for local involvement and informed decision-making, and otherwise comply with NEPA in a manner appropriate to the nature and scope of the emergency described in the associated Federal Register notice."

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The Mirant plant is next to a high-rise residence, where modeling indicated potentially high levels of sulfur dioxide. (Map: MapQuest; photo: Google Earth)

Alternative NEPA Arrangements *(continued from previous page)*

DOE issued its *Federal Register* Notice (71 FR 3279, January 20, 2006) within 30 days of issuing the Order, in compliance with its NEPA regulations (10 CFR 1021.343(a)), to document the emergency and set forth the steps it intends to take to comply with NEPA. In a Special Environmental Analysis, DOE will examine potential impacts resulting from issuance of the Order and reasonably foreseeable impacts from possible changes in operations of the plant until two additional transmission lines planned to serve the central DC area are installed in about two years. The Analysis will describe any steps that DOE believes can be taken to mitigate the environmental impacts from its Order.

DOE is continuing to consult with EPA and DEQ concerning information on emissions, modeling results, potential further mitigation measures, and any changes to the operation of the plant. For example, Mirant has proposed use of “trona” – sodium sesquicarbonate, a naturally occurring substance similar to baking soda – and/or lower sulfur coal to manage air emissions. In addition, EPA will act as a cooperating agency in preparation of the Analysis to provide information regarding the environmental effects of plant operations.

Public Has Opportunities to Access Documents and Provide Comments

DOE currently is evaluating public comments on Mirant’s compliance plan and on the January 2006 Notice, in which DOE invited comment on its alternative arrangements and issues to be addressed in the Special Environmental Analysis. Comments were received from the City of Alexandria, the Georgetown University Law Center Institute for Public Representation on behalf of three “Riverkeeper” organizations, the local Sierra Club, and the Southern Environmental Law Center on behalf of itself and the American Lung Association of Virginia.

Issues raised for consideration in the Special Environmental Analysis include adverse health impacts from long-term exposure to emissions of criteria air pollutants, including particulate matter and nitrogen oxides in addition to sulfur dioxide; lack of conformity to the State Implementation Plan for criteria pollutants; and impacts from emissions of hazardous air pollutants, such as hydrogen chloride. Concern was expressed that increased disposition of substances such as particulate matter and metals in the watershed can adversely affect water quality and should be analyzed. Commentors also requested analysis of impacts from sustained use of trona on air and water quality and traffic, and analysis of alternative measures to address electricity reliability.

DOE will make the Analysis available to the public on the Web sites identified below as well as announce its availability in the *Federal Register*, and will consider

DOE Emergency Actions and NEPA


DOE has prepared Special Environmental Analyses under the emergency provisions of the CEQ and DOE regulations only three other times, most notably for the Cerro Grande wildfire near Los Alamos National Laboratory in 2000 (*LLQR*, September 2001, page 4; September 2000, page 1; and June 2000, page 1). DOE also prepared Special Environmental Analyses in 1991 for Bonneville Power Administration’s action to save the endangered sockeye salmon on the Snake River and for the threatened failure of the Par Pond Dam at the Savannah River Site. In 2004, DOE invoked the emergency provisions to consult with CEQ on a classified action to transport nuclear material from Libya (*LLQR*, June 2004, page 8).

Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance for actions necessary to control the immediate impacts of the emergency. The arrangements take the place of an EIS and only apply to Federal actions that may have significant environmental impacts.

CEQ issued guidance on “Emergency Actions and NEPA” on September 8, 2005, to help agencies comply with NEPA while taking necessary immediate action in the wake of Hurricane Katrina. (See *LLQR*, December 2005, page 30.)

public input in determining appropriate further mitigation measures and any additional actions it may take. The Web sites also will identify which mitigation measures DOE adopted, and for any measures not adopted, why not.

Publicly available documents, including the Order, Mirant’s compliance plan, DOE’s Notice concerning alternative arrangements, and public comments are available via DOE’s Web site for this matter at www.electricity.doe.gov/about/dcpssc_docket.cfm. DOE also will post on this Web site information regarding the environmental effects of ongoing or alternative operations of the plant (e.g., ambient air quality data and results of air quality modeling) that the Department receives from Mirant, EPA, and DEQ. DOE will post the Special Environmental Analysis and discussion of any future decisionmaking in this matter on the above Web site and on the DOE NEPA Web site at www.eh.doe.gov/nepa.

For further information on technical issues, contact Lawrence Mansueti, Office of Electricity Delivery and Energy Reliability, at lawrence.mansueti@hq.doe.gov or 202-586-2588. For information on the DOE NEPA process, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

DOE Provides Comments on Interagency Work Groups' Draft NEPA Guidance



Twelve interagency Work Groups are developing guidance to improve NEPA implementation. Under the leadership of Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), the Work Groups support implementation of recommendations from the NEPA Task Force report to CEQ, *Modernizing NEPA Implementation* (September 2003). (See *LLQR*, June 2005, page 2, and September 2005, page 2.) CEQ plans to first coordinate draft guidance with all Federal agencies, then issue it for public review, respond to comments, and issue final guidance.

In a series of requests, CEQ asked Federal agencies for comments on preliminary guidance products and for other information to support the Work Groups. The Office of NEPA Policy and Compliance circulated the requests within DOE and provided consolidated DOE comments.

Programmatic NEPA Documents

On January 19, 2006, the NEPA Office provided comments on draft interim guidance on programmatic analyses. This guidance addresses a concern expressed in the NEPA Task Force report that agencies need to clarify in their programmatic NEPA documents the relationship between the programmatic document and future tiered NEPA analyses, and provide a “roadmap” of how interested parties will be involved in the future analyses. In response to a specific request for case studies, the NEPA Office provided information about two DOE programmatic EISs that effectively implemented the aim of the guidance: *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs* (DOE/EIS-0203), and the *Hanford Comprehensive Land Use Plan* (DOE/EIS-0222). A separate Work Group is preparing broader guidance on the development and use of programmatic analyses.

NEPA and EMS Processes

Two CEQ requests addressed draft products that Work Groups are preparing on aspects of NEPA and environmental management systems (EMSs), including (1) case studies for a handbook of useful practices for using EMS or adaptive management processes to facilitate NEPA implementation, and (2) draft *Guidance for Complementary Processes of Environmental Management Systems and National Environmental Policy Act*. The guidance is intended to assist Federal agencies in aligning their EMS process with NEPA analysis and the decisionmaking process. The NEPA Office responded to CEQ on January 23, 2006, and recommended that the

guidance better explain certain EMS terms that might not be familiar to NEPA practitioners.

Stakeholder NEPA Training


CEQ asked Federal agencies to identify their policies, procedures, guidance, training materials, and courses supporting their environmental justice activities and coordination and cooperation with state and local governments, tribes, nongovernmental organizations, and permittees/grantees. In addition to coordinating its response with NEPA Compliance Officers, the NEPA Office consulted with DOE contacts for tribal matters, environmental justice, and public affairs before submitting DOE’s response to CEQ on January 27, 2006. The response identified relevant DOE policies and orders, and listed guidance issued by the Office of Environment, Safety and Health. The response also included guidance and strategies on cultural resources, tribal affairs, and environmental justice that has been issued by DOE Program and Field Offices. The Stakeholder Training Work Group will use this information to develop NEPA training (related article, page 12).

NEPA Procedures and Guidance

The NEPA Office on December 21, 2005, provided CEQ a list of DOE NEPA procedures and guidance for a matrix of such information from Federal agencies. The response highlighted DOE’s *NEPA Compliance Guide*, *Lessons Learned Quarterly Reports*, *Directory of Potential Stakeholders for DOE Actions under NEPA*, and the DOE NEPA implementing regulations.

Other CEQ Work Groups continue to develop guidance addressing:

- Aligning or harmonizing NEPA and other laws
- Establishing and using categorical exclusions (two Work Groups)
- Interagency collaboration
- Preparing environmental assessments
- Monitoring agency use of categorical exclusions and environmental assessments.

CEQ plans to complete this guidance development in about 12 to 15 months. For further information about implementation of the NEPA Task Force recommendations, see <http://ceq.eh.doe.gov/ntf/implementation.html>. 


DOE Submits Cooperating Agency Report to CEQ, Proposes “Measurable Goals” to Work Group

Six of the 12 EISs that DOE initiated in fiscal year 2005 are being prepared with cooperating agencies, and only two of the 26 EAs that DOE completed during that year were prepared with cooperating agencies, as indicated in DOE’s cooperating agency report to the Council on Environmental Quality (CEQ). This is the first report in response to CEQ’s December 2004 revision of cooperating agency report procedures, which simplified reporting requirements. The number of EISs and EAs with cooperating agencies – and the number of cooperating agencies involved – do not in themselves measure the success of DOE efforts to involve cooperating agencies. So what do these numbers mean?

- *To evaluate agency efforts to include cooperating agencies in the NEPA process:* early identification and official invitation of potential cooperating agencies, and absence of agency comments about noninclusion or delayed inclusion in a NEPA review.
- *To evaluate cooperating agency contributions to a NEPA document or decisionmaking:* no delay attributable to late identification of issues that could have been identified earlier by cooperating agency involvement, and no public comments on incompleteness or inaccuracy of information that was provided by cooperating agencies.

CEQ Work Group to Consider Metrics

To better interpret agencies’ annual reports, CEQ established in late 2004 a Cooperating Agency Measurable Goals Work Group to develop metrics for using the reports to improve agency NEPA processes and decisionmaking. In late 2005, the Work Group asked agencies to propose qualitative and quantitative approaches for evaluating the cooperating agency process. After coordinating with DOE’s NEPA Compliance Officers, Office of NEPA Policy and Compliance staff on January 3, 2006, proposed measurable goals to the Work Group:


The NEPA Office staff also provided examples of memoranda of agreement and case studies, including *LLQR* articles on the Hanford Comprehensive Land Use Plan EIS (March 2000, page 1), the Moab Uranium Mill Tailings EIS (September 2005, page 10), and cooperating agency discussions at recent DOE NEPA Meetings (September 2004, page 7, and December 2005, page 15). For further information about DOE’s cooperating agency reports to CEQ or the Work Group, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE-wide NEPA Contracts Update

Since DOE issued six NEPA support contracts in late 2002 (two to small businesses and four under full and open competition), the contract administrator has been tracking task assignments and performance. Agustin Archuleta, the recently designated contract administrator (introduced in *LLQR*, December 2005, page 28), reports that of the 33 tasks awarded under this set of DOE-wide NEPA contracts:

- 10 tasks (30%) with a total value of \$12 million (27%) were awarded under the two small business contracts (Ageiss Environmental, Inc., and Potomac-Hudson Engineering, Inc.)
- 23 tasks (70%) with a total value of \$33 million (73%) were awarded to the four contracts awarded under full and open competition (Battelle Memorial Institute, Jason Associates Corporation, Science Applications International Corporation, and Tetra Tech, Inc.)

Mr. Archuleta can be contacted at the NNSA National Service Center at aarchuleta2@doeal.gov or 505-845-4686. NEPA Document Managers should provide him copies of all new task awards and modifications as they are issued and contractor performance evaluations after task completion.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. 

Description	DOE Contact	Date Awarded	Contract Team
Yucca Mountain Rail Alignment EIS	Lee Bishop 702-794-5558 lee_bishop@ymp.gov	9/30/2005	Potomac-Hudson
EIS for Spokane River Development and Post Falls Hydroelectric Projects	Federal Energy Regulatory Commission	10/1/2005	Battelle
West Valley Demonstration Project NEPA Compliance Support	Dan Sullivan 716-942-4016 daniel.w.sullivan@wv.doe.gov	11/18/2005	Battelle

How Can We Better Engage Tribes in the NEPA Process?

How can Federal agencies better engage tribes in the NEPA process? Is it sufficient to conduct government-to-government consultations? These were among the questions addressed in a meeting of Federal NEPA Contacts on “Tribal Involvement in Federal Decision Making and NEPA,” co-sponsored by the Council on Environmental Quality (CEQ) and the Department of the Interior (DOI) on February 22, 2006.

Government-to-government consultation between Federal decisionmakers and the leaders of Federally-recognized tribes should be an ongoing exchange, explained Kathryn Lynn, Native Program Coordinator, DOI Office of Collaborative Action and Dispute Resolution, but engaging tribes in the NEPA process generally occurs at different levels and through different interactions. She invited agencies to make use of the resources that DOI is assembling at www.doi.gov/cadr, including information on the laws regarding government-to-government consultation and on previous related events.

How well we engage tribes in the NEPA process depends on how well we listen, how well we understand each other, and how much we want to be successful.

– Kathryn Lynn
Native Program Coordinator
Department of the Interior

Building Tribal Capacity through Training

Tribes can engage in the NEPA process in several ways, said Horst Greczmiel, CEQ Associate Director for NEPA Oversight:


- Tribal governments may participate in the NEPA process as cooperating agencies with an active role in developing the NEPA analyses and documents.
- Tribal governments, organizations, and nongovernmental organizations can join the Federal agencies preparing the NEPA analyses and documents by mutual agreement to establish a regular exchange of information.
- Native Americans may participate in the NEPA process, like all individuals, as interested stakeholders.

“Reaching out to tribes is not enough, and rarely simple,” he observed, “because Federal decisionmaking is rarely transparent, but training can yield a more productive exchange.”

An overview of the initiative underway by the CEQ Work Group on Stakeholder Training (related article, page 10) was provided by Chair Cheryl Wasserman, Associate Director for Policy Analysis, Office of Federal Activities, Environmental Protection Agency (EPA). The Work Group is assembling existing Federal NEPA training and developing a 14-module training program that then will be specifically tailored for delivery to train senior decisionmakers, nongovernmental organizations, state and local officials, tribes, and Federal permit or grant applicants.

The “Tribes and NEPA” module, and the Tribal NEPA training program generally, are intended to empower tribes to use NEPA to achieve their goals of sustaining cultural heritage and identity. They are also intended to promote more effective tribal involvement in Federal decisionmaking – for example by proposing alternatives for analysis, identifying adverse impacts to cultural resources and vulnerable populations, and developing mitigation measures. This training will complement other efforts, such as the earlier work by the Tulalip Tribes to develop NEPA training and assist tribes in developing tribal environmental policy acts (*LLQR*, June 2004, page 10). Pilots of the training program are being planned for fall of 2006.

For information on the CEQ NEPA Stakeholder Training Work Group, contact Ms. Wasserman at wasserman.cheryl@epa.gov or 202-564-7129. For questions on the consultation dialogue series or working with tribes in the NEPA process, contact Ms. Lynn at kathryn_lynn@ios.doi.gov or 202-327-5315. Additional environmental justice resources are posted by EPA at www.epa.gov/compliance/resources/ej.html; the link to Publications includes two reports on tribal consultation prepared by the National Environmental Justice Advisory Council, a chartered Federal advisory committee.

Also see *LLQR*, September 2004 (page 16) on the establishment of the Tribal Capacity Work Group and March 2005 (page 2) on issuance of the DOE Environment, Safety and Health brief on *Consultation with Native Americans* (<http://homer.ornl.gov/oepa/cultural/>). 

OMB, CEQ Urge Use of Environmental Conflict Resolution

A Memorandum issued jointly by the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) directs agencies to build institutional capacity for collaborative problem solving and increase the effective use of environmental conflict resolution (ECR), defined as third-party assisted conflict resolution and collaborative problem solving regarding environmental, public lands, or natural resources issues.

The *Memorandum on Environmental Conflict Resolution* (November 28, 2005) was prompted in part by responses to a U.S. Institute for Environmental Conflict Resolution (U.S. Institute) survey of selected Federal agencies, including DOE. (See *LLQR*, December 2003, page 12.) ECR applies to all Federal agencies and may be useful in the NEPA process.

Preventing and Reducing Conflict

The Memorandum includes policy direction, mechanisms and strategies, and basic principles that were developed collaboratively with 15 Federal agencies, including DOE.


Agencies are advised to invest early in collaborative processes and conflict resolution, align ECR implementation plans with agency strategic plans and staff performance plans, build partnerships with other agencies, and issue guidance. The Memorandum recommends that agencies use their own staff, the U.S. Institute, the Department of Justice, or other ECR organizations, as appropriate, and also recognizes a broad array of cooperative arrangements and unassisted negotiations. It also encourages agencies to use the U.S. Institute for reviewing agency strategies and techniques and for developing performance and accountability measures.

Agencies are asked to systematically collect relevant information on their ECR activities and outcomes

Working through environmental conflicts can be extremely challenging. While DOE has applied Alternative Dispute Resolution techniques to help resolve existing conflicts, anticipating potential conflicts and addressing them before they escalate is even more promising.

*– Kathy Binder, Director
DOE Office of Dispute Resolution*

and report at least annually to OMB and CEQ on their progress in using ECR and other collaborative approaches to dispute resolution and in tracking cost savings and performance outcomes. OMB and CEQ plan to convene quarterly interagency senior staff forums and periodic meetings with agency leaders to facilitate information exchange.

The Memorandum is available on the U.S. Institute Web site at www.ecr.gov/ombceq.htm. DOE adopted an Alternative Dispute Resolution Policy (www.gc.doe.gov/adr.html) in September 1995 to support and promote the same techniques encompassed by ECR for dispute prevention, early intervention, and litigation resolution. DOE's Office of Dispute Resolution is committed to helping the Department assess and resolve environmental conflicts. For more information on DOE's implementation of the ECR Memorandum, contact Ms. Binder at kathleen.binder@hq.doe.gov or 202-586-6972 or Beverly Stephens, Office of Environment, at beverly.stephens@eh.doe.gov or 202-586-5942. 

DOE Experiences with ECR

DOE has used ECR approaches successfully in unassisted negotiation resulting in the collaborative resolution of litigation at DOE's Hanford site (article, page 1) and agreement on compensatory mitigation measures for the Bonneville Power Administration's Kangley-Echo Lake transmission line project (*LLQR*, September 2003, page 16). Conversely, settlement negotiations under a court's Alternative Dispute Resolution program failed to yield agreement in litigation over DOE's cleanup activities at the Energy Technology Engineering Center (*LLQR*, December 2005, page 36).

In growing recognition of the importance of ECR and in response to the Memorandum, DOE's Office of General Counsel devoted a portion of its annual Joint DOE/Contractor Environmental Attorney's Training Workshop (February 28–March 1, 2006) to ECR issues. In addition, the Office of Dispute Resolution is establishing a working group to assemble complex-wide information on DOE's ECR efforts and develop strategies for implementing the Memorandum.



OMB Proposes Risk Assessment Guidance



The Office of Management and Budget (OMB), in consultation with the White House Office of Science and Technology Policy, has issued for public comment its *Proposed Risk Assessment Bulletin* (71 FR 2600, January 17, 2006), which would provide “new technical guidance on risk assessments produced by the federal government.” By establishing “uniform, minimum standards,” OMB seeks to “enhance the technical quality and objectivity of risk assessments.” The Bulletin may be of interest to DOE NEPA practitioners because NEPA documents and their supporting technical analyses may need to comply with the proposed risk assessment and reporting standards.

[I]t is expected that every risk assessment shall describe the data, methods, and assumptions with a high degree of transparency; shall identify key scientific limitations and uncertainties; and shall place the risk in perspective/context with other risks familiar to the target audience. Similarly, every quantitative risk assessment should provide a range of plausible risk estimates, when there is scientific uncertainty or variability.

**– Proposed Risk Assessment Bulletin
January 2006**

The principles of good risk assessment described in the Bulletin are also principles of good NEPA practice, and many of the principles in NEPA regulations and DOE NEPA guidance, such as the *Green Book*,¹ are reflected in the Bulletin. Examples include common core values, such as objectivity, transparency, and public scrutiny. Other examples of common principles include consistent approaches to ensuring technical adequacy, such as: appropriate treatment of uncertainty, meaningful presentation of potential impacts, and application of a “rule of reason” in determining the level of detail and other aspects of analysis. The Bulletin, therefore, may provide supplemental technical guidance that could improve NEPA implementation.

Applicability

The Bulletin states: “To the extent appropriate, all agency risk assessments available to the public shall comply with the standards of this Bulletin.” *Risk assessment* means “a scientific and/or technical document that assembles and synthesizes scientific information to determine

whether a potential hazard exists and/or the extent of possible risk to human health, safety or the environment.” The Bulletin notes that risk assessment “is a useful tool for estimating the likelihood and severity of risks to human health and the environment and for informing decisions about how to manage those risks.” Although many NEPA documents or their underlying technical analyses arguably meet this definition, the Bulletin does not specifically refer to NEPA documents.


Sliding-Scale Approach

Although the proposed Bulletin does not use the term, the proposed standards appear consistent with the *sliding-scale* approach described in DOE’s *Green Book* – that the level of analysis and scope should depend on the significance of the potential impacts. For example, the Bulletin states that the level of effort “shall be commensurate with the importance of the risk assessment Agencies should take into account the importance of the risk assessment in gauging the resources, including time and money, required to meet the requirements of this Bulletin.” The Bulletin further states that the scope and content of the analyses should be determined based on the objectives and best professional judgment.

Also consistent with the sliding-scale approach, OMB distinguishes between risk assessments termed *influential* and *non-influential*, and provides special standards for *influential risk assessments*. (See text box on next page.) An *influential risk assessment* is defined as one that “the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.” This includes “assessments that determine the level of risk regarding health (such as reference doses, reference concentrations, and minimal risk levels), safety and environment.”

OMB Process

OMB plans to modify the Bulletin as appropriate in response to an ongoing National Academy of Sciences peer review of the proposed standards, and public and Federal agency comments received through June 15, 2006. Comments can be submitted electronically to OMB_RAbulletin@omb.eop.gov.

The *Proposed Risk Assessment Bulletin* is available at www.whitehouse.gov/omb/inforeg under Information Policy, IT & E-Gov then Information Quality Government-wide Initiatives. For further information, contact Dr. Nancy Beck, Office of Information and Regulatory Affairs, OMB, at 202-395-3093. 

¹ *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition* (December 2004), www.eh.doe.gov/nepa under Selected Guidance Tools.

Proposed Standards for All Risk Assessments (Excerpts)

- **Informational Needs and Objectives.** Provide a clear statement of the informational needs of decision makers, including the objectives of the risk assessment.
- **Scope.** Clearly summarize the scope of the assessment, including a description of: a) the agent, technology and/or activity that is the subject of the assessment; b) the hazard of concern; c) the affected entities [populations and ecosystems]; d) the exposure/event scenarios; and e) the type of event-consequence or dose-response relationship for the hazard of concern.
- **Risk Characterization.** Provide a characterization of risk, qualitatively and, whenever possible, quantitatively. When a quantitative characterization of risk is provided, a range of plausible risk estimates shall be provided.
- **Objectivity.** Be scientifically objective: a) as a matter of substance, neither minimizing nor exaggerating the nature and magnitude of risks; b) giving weight to both positive and negative studies in light of each study's technical quality; and c) as a matter of presentation.
- **Critical Assumptions.** For critical assumptions in the assessment, whenever possible include a quantitative evaluation of reasonable alternative assumptions and their implications for the key findings of the assessment.
- **Executive Summary.** Provide an executive summary including: a) key elements; b) key findings; c) key scientific limitations and uncertainties and, whenever possible, their quantitative implications; and d) information that places the risk in context/perspective with other risks.
- **Related to Regulatory Analysis.** For risk assessments that will be used for regulatory analysis, the risk assessment also shall include an evaluation of alternative options and a comparison of the baseline risk against the risk associated with the alternative mitigation measures being considered.

Proposed Standards for Influential Risk Assessments (Excerpts)

In addition to the above, the following requirements would apply to influential agency risk assessments:

- **Reproducibility.** Be “capable of being substantially reproduced.”
- **Comparison to Other Results.** Compare the results of the assessment to other results published on the same topic from qualified scientific organizations.
- **Ranges of Risk.** Highlight central estimates as well as high-end and low-end estimates of risk when such estimates are uncertain.
- **Uncertainty.** Characterize uncertainty with respect to the major findings. Document and disclose the nature and quantitative implications of model uncertainty and include a sensitivity analysis.
- **Results.** Portray results based on different effects observed and/or different studies.
- **Variability.** Characterize variability through a quantitative distribution.
- **Human Health Effects.** Where human health effects are a concern, determinations of which effects are adverse shall be specifically identified and justified based on the best available scientific information generally accepted.
- **Scientific Limitations.** Discuss the nature, difficulty, feasibility, cost and time associated with undertaking research to resolve a report's key scientific limitations and uncertainties.
- **Comment Response.** Consider all significant comments received on a draft risk assessment report and issue a “response-to-comment” document. Provide a rationale for why the agency has not adopted the position suggested by commenters and why the agency position is preferable.

States Could Implement NEPA for Certain DOT Projects

Some states could make categorical exclusion determinations and prepare EAs and EISs for certain Department of Transportation (DOT) projects under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU; Pub. L. 109-59, August 2005). Under any of three programs established by SAFETEA-LU, states may enter into agreements with DOT to accept responsibility for implementing NEPA, as well as the jurisdiction of Federal courts to ensure compliance. States also may request to assume DOT's authority to implement other Federal environmental review requirements related to the projects for which it assumes NEPA responsibility.

- **Recreational Trails and Transportation**


Enhancement Projects: During the first three years following enactment of SAFETEA-LU, up to five states (unspecified) can participate in a pilot program. An agreement between DOT and a state would be limited to three years and subject to renewal for additional three-year periods. (See Section 6003.)

- **Categorical Exclusions:** Any state can apply to assume responsibility for determining whether certain activities are included within categorically-excluded classes of action. (See Section 6004.)

- **Highway Projects:** Five states – Alaska, California, Ohio, Oklahoma, and Texas – can assume the responsibility for NEPA implementation for one or more highway projects within their borders under a six-year pilot program. (See Section 6005.)

Individual states would apply to DOT and, after an opportunity for public comment, enter into a Memorandum of Understanding.

SAFETEA-LU directs DOT to issue regulations by May 2006 regarding information to be included in an application to assume responsibilities for highway projects. DOT is developing guidance for the two other programs.

A copy of SAFETEA-LU and information on DOT's implementation of it are available at www.fhwa.dot.gov/safetealu. Related updates also are published on Federal Highway Administration's *Re: NEPA* Web site (<http://nepa.fhwa.dot.gov>) under SAFETEA-LU. Also see a summary of Section 6002 of SAFETEA-LU in *LLQR*, September 2005, page 18. For additional information, contact Lamar Smith at lamar.smith@fhwa.dot.gov or 202-366-8994. 


Integration with NEPA Addressed in NOAA's Revised Coastal Zone Consistency Regulations

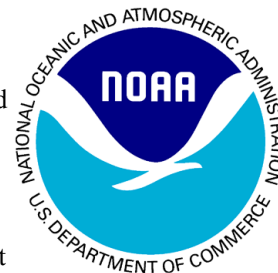
The National Oceanic and Atmospheric Administration (NOAA) recently revised portions of the Coastal Zone Management Act (CZMA) Consistency Regulations (15 CFR Part 930), including a provision related to a Federal agency's use of a NEPA document to support a CZMA consistency determination. The addition to 15 CFR 930.37, *Consistency determinations and National Environmental Policy Act (NEPA) requirements*, states that while a Federal agency may use a NEPA document for that purpose, a state cannot require the agency to do so. The changes were effective February 6, 2006.

Under the CZMA, coastal states have the authority to review proposed Federal actions, within or outside the coastal zone, that have reasonably foreseeable effects on a state's coastal uses or resources. NOAA initiated revisions to address, among other things, determinations of when some Federal actions are subject to consistency review. The final rule also incorporates changes required by the Energy Policy Act of 2005 that relate to CZMA appeals by applicants.

The new regulations are posted at www.ocrm.nos.noaa.gov/czm/federal_consistency.html. For additional information, see the Office of Ocean and Coastal Resource Management (OCRM) Web site at

www.ocrm.nos.noaa.gov or contact David W. Kaiser, Federal Consistency Coordinator, OCRM, NOAA, at david.kaiser@noaa.gov or 301-713-3155, extension 144.

For questions on DOE compliance with CZMA, contact Lois Thompson, Office of Air, Water and Radiation Protection Policy and Guidance, at lois.thompson@eh.doe.gov or 202-586-9581, and see the updated Web site at www.eh.doe.gov/oepa/laws/czma.html. See *LLQR*, March 2001, page 7, for discussion of earlier revisions to the regulations, their relation to NEPA, and recommendations for DOE coastal zone review. 




FAA EIS Guide Promotes Smooth NEPA Process

The DOE NEPA Office is always eager to share other agencies' lessons learned with the DOE NEPA community. When Nicholas Yost, former General Counsel, Council on Environmental Quality, recently testified that an EIS management guide prepared by the Federal Aviation Administration (FAA) is "the single best guidance put out by any Federal agency on expediting the NEPA process," the NEPA staff checked it out.



The *FAA Guide to the Best Practices for Environmental Impact Statement Management* is one of six FAA initiatives to improve and streamline its environmental review process outlined in a report to Congress in 2001. "The Guide compiles some of the most critical aspects of the NEPA process into a concise package that has proven

to be extremely valuable to our program managers and NEPA practitioners," explained Matthew McMillen, FAA Office of Environment and Energy.

Although tailored to airport projects, the Guide contains advice helpful to NEPA practitioners in other agencies. The FAA Guide promotes practical approaches for managing the NEPA process and identifies examples of successful community outreach, document management, and fostering cooperating agency relationships. The Guide and the complete *Report to the U.S. Congress on Environmental Review of Airport Improvement Projects* are available on the FAA Web site at www.faa.gov/ARP under Environmental Issues. (Mr. Yost's testimony before the Congressional Task Force on Updating NEPA, November 17, 2005, is available at <http://resourcescommittee.house.gov/nepataskforce/archives/nicholasyost.pdf>). 

Sample FAA Best Practices for EIS Management

EIS Project Management

- A key part of the FAA project manager's responsibility is EIS quality control. If quality control is unacceptably short-changed, there will be delays when analyses and documentation do not pass muster in program or legal reviews.
- The best measure of successful EIS management is that the environmental process does not produce conceptual, methodological, or informational "surprises" towards the end. [The project manager] needs to look ahead, identify issues and problems as early as possible, and initiate appropriate and timely additional analysis, consultation, or other efforts that will lead to successful resolution and completion of the environmental process.



Community Consultation

- Informal workshops at periodic points during the planning and environmental processes tend to provide better forums for community consultation than formal public hearings. Project and environmental impact information understandable to a non-technical person should be made available at workshops.

Interagency and Intra-Agency Coordination

- Other agencies should be informed of project priorities and time schedules. They should be alerted ahead of time when they will receive critical documents (e.g., scoping information, technical working drafts, Draft EIS) and notified of definitive deadlines for comment, so that the other agencies may plan and adjust their workload and resources to the extent possible.

Combining Federal and State Environmental Processes

- [Although it is the agency's practice to combine reviews to the extent possible,] [i]f Federal and State processes are sufficiently different in requirements and timing, it may be more effective and efficient not to combine documents, but to run the two processes on somewhat parallel tracks within concurrent time frames to the extent possible.
- If Federal and State processes are not combined, care must be exercised to use common data bases for both processes and to avoid end-to-end sequential processes that extend the overall environmental [review] time line for the project.

Online Tools Support Environmental Justice Analyses

Identifying the existence of “environmental justice” (EJ) populations, i.e., minority and low-income groups, potentially affected by proposed Federal actions and then assessing impacts on such populations, including those posed by unique exposure pathways, can be a challenge in NEPA reviews. Several computer-assisted geographic mapping tools and resources are available through government agencies and private organizations to assist NEPA practitioners in performing such EJ analyses. Four interactive tools in user-friendly formats are described below.

EPA’s Environmental Justice Geographic Assessment Tool

The Environmental Protection Agency (EPA) states that its online *Environmental Justice Geographic Assessment Tool* (www.epa.gov/enviro/ej) “provides information relevant to assessing adverse health or environmental impacts, aggregate or cumulative impacts, unique exposure pathways, vulnerable or susceptible populations, or lack of capacity to participate in [a] decision making process,” among other conditions. The tool uses a Geographic Information System (GIS) to generate digitized maps by the user’s choice of state, county, city, zip code, watershed, EPA region, latitude and longitude, or facility. Map overlays can be selectively added to show features such as transportation routes, water bodies, environmental monitoring sites, community demographics, and institutions such as schools, hospitals, and regulated facilities. The system’s data sources include EPA, U.S. Geological Survey, Census Bureau, and Centers for Disease Control and Prevention.

Census Bureau’s LandView® 6

LandView® 6, available for demonstration or purchase on the Census Bureau Web site (www.census.gov under Geography), has its roots in software developed by EPA and the National Oceanic and Atmospheric Administration to facilitate implementation of the Emergency Planning and Community Right-to-Know Act. The two-disk set contains both mapping and database management software to create a simple computer mapping system. Users can map *Census 2000* legal and statistical areas and retrieve

Census 2000 demographic and housing data, as well as all places, features, and areas in the United States with Federally-recognized geographic names.

DOD’s Native American Environmental Tracking System

The *Native American Environmental Tracking System* (www.naets.info), prepared by the Department of Defense (DOD), maintains information on reported environmental impacts on American Indian and Alaska Native lands and resources resulting from DOD activities on formerly used defense sites. The system is searchable by state or tribe and provides a variety of information, including site description and history, points of contact, and health risks.

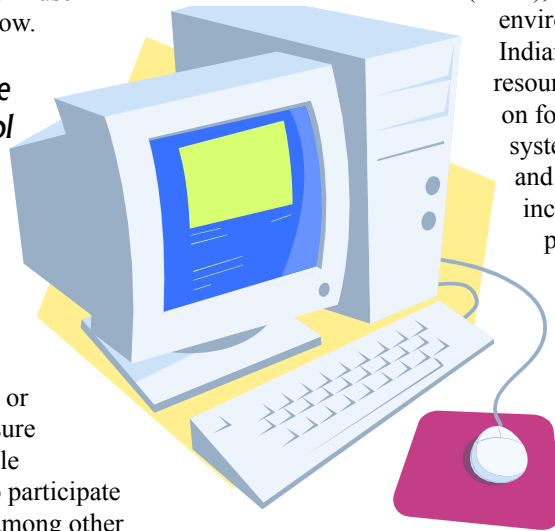
The tool also offers information on tribes, including addresses, Congressional districts, and Bureau of Indian Affairs regions. Additional information is available through an online registration process (currently only approved for members of tribes and the U.S. Army Corps of Engineers), but all

other online features are available to the public without registration.

Scorecard

Owned by a nongovernmental environmental organization, Green Media Toolshed, *Scorecard* (www.scorecard.org) provides environmental justice profiles for U.S. communities. Using bar charts, *Scorecard* illustrates the distribution of Superfund sites, toxic chemical releases, cancer risks from hazardous air pollutants, and facilities emitting air pollutants across seven demographic categories: race/ethnicity, income, poverty, childhood poverty, education, home ownership, and job classification. *Scorecard’s* data sources include EPA, the Census Bureau, and the Department of Agriculture.

The NEPA Office thanks Dr. Christopher Turner, Library Director of the Smithsonian’s National Museum of the American Indian, for his assistance in the preparation of this article. ■■



Transitions

Veteran NEPA Compliance Officer Retires

Paul Dunigan: Richland Operations Office

Paul F.X. Dunigan, one of DOE's original NEPA Compliance Officers (NCOs), retired from the Richland Operations Office on January 3, 2006, concluding a distinguished public service career of more than 33 years with DOE and its predecessors, the Energy Research and Development Administration (ERDA) and the Atomic Energy Commission (AEC). By his count, he contributed to 44 EISs for these agencies – as author, NEPA Document Manager, reviewer, or “advisor.” “My NEPA work has been sometimes frustrating, sometimes scary, sometimes fun, and sometimes deeply satisfying,” Mr. Dunigan noted. His legacy to his successor, he observed, is a large roomful of good environmental documents.

Mr. Dunigan had the right pedigree for his career at Hanford. His parents both participated in the Manhattan Project at Chicago and were part of the first operations group in Richland. Hired to prepare regulatory impact analyses and environmental impact analyses, he still remembers his first assignment, *Waste Management Operations, Hanford Reservation, Richland, Washington* (ERDA-1538, 1975). It was interesting, he observed, to work out what was required for an EIS during the earliest years of NEPA practice, with neither guidance nor past EISs to use as models.

When asked about his “favorite” NEPA review, Mr. Dunigan referred to his role in the 1994 Hanford



Paul Dunigan receives award from Richland Operations Office Manager.

Reach EIS, prepared by the National Park Service in consultation with DOE and with assistance from the Bureau of Land Management and the Fish and Wildlife Service. “Government is often viewed as a monolithic entity,” he observed, “but in this case the multiple agencies had divergent missions and interests – mining, agricultural, and environmental preservation. The agency representatives involved had wildly different views and personal politics. Because of the document team’s good working relationships, we could appreciate the dramatic diversity.”

Mr. Dunigan was designated as the Richland Operations NCO in 1990, when DOE first established the NCO position for Program and Field Offices. In 1998, when Congress directed the establishment of the Office of River Protection to manage Hanford tank waste retrieval, treatment, and disposal, he was also assigned NCO responsibilities for this new organization.

In more than 15 years as NCO, Mr. Dunigan has been an active leader in the DOE NEPA Community. The Office of NEPA Policy and Compliance wishes Paul well in his future endeavors. He can be reached at dunigan@bossig.com.


Tom Ferns, who has been Deputy NCO for several years, now serves as NCO for the Richland Operations Office and the Office of River Protection. He can be reached at thomas_w_ferns@rl.doe.gov or 509-372-0649.

New NEPA Compliance Officers

Electricity Delivery and Energy Reliability: Tony Como

Anthony (Tony) Como has been designated the NCO for the Office of Electricity Delivery and Energy Reliability, a new Program Office created by the Secretary in April 2005. He has over 25 years of experience in permitting electric transmission lines and the attendant NEPA compliance requirements. As NEPA Document Manager, he has led teams for major environmental reviews, including the supplemental EIS for the sale of Naval Petroleum Reserve No. 1 (DOE/EIS-0158-S2, 1997). (See *LLQR*, December 1997, page 1.) He can be reached at anthony.como@hq.doe.gov or 202-586-5935.

Portsmouth/Paducah Project Office: Kristi Wiehle

Kristi Wiehle has been designated NCO for the Portsmouth/Paducah Project Office in Lexington, Kentucky. During her 12 years in environmental remediation and waste management projects at the Portsmouth Gaseous Diffusion Plant, she participated in many NEPA activities, including serving as NEPA Document Manager. She oversees cleanout of the Gas Centrifuge Enrichment Plant and previously managed several New Technology Demonstration Projects. Ms. Wiehle can be reached at kristi.wiehle@lex.doe.gov or 740-897-5020. 



DOE Litigation Updates

Los Alamos County Challenges LANL Security Perimeter Plan

The County of Los Alamos filed a complaint against DOE in the United States District Court for the District of New Mexico on December 27, 2005, alleging that DOE failed to prepare an adequate EA for proposed modifications to the security perimeter at Los Alamos National Laboratory (LANL). Following a January 4, 2006, hearing, the court denied the County's request for a temporary restraining order to immediately halt work on the project. A hearing on the merits of the case has not been scheduled.

Security Changes Would Affect Traffic

DOE proposed physical security enhancements in 2002 that would restrict vehicular traffic to certain areas within LANL and change traffic flow patterns. The proposed action included the installation of several security checkpoints for screening of drivers and vehicles and for further limiting access during periods of heightened security. The proposed action also included construction of bypass roads to facilitate traffic flow through the new security checkpoints and within Technical Area 3, where about one-half of LANL workers are located. DOE would construct bridges to span canyons to minimize the disturbance of areas within LANL that are being protected because of their significance to biological and other resources. DOE evaluated the proposal in the *Environmental Assessment for Proposed Access Control and Traffic Improvements at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EA-1429, August 2002) and issued a finding of no significant impact.

Subsequently, DOE modified its proposal to reduce costs. The modified proposal includes fewer security checkpoints and road improvements, would pave an unpaved road to improve access to nearby recreation areas, and eliminated the bypasses and bridges previously planned.

To assess whether existing NEPA analyses adequately address the potential environmental impacts of the proposed changes, DOE reviewed the 2002 EA and five other relevant EAs completed since 1997. This approach was similar to the supplement analysis process provided for in DOE's NEPA regulations to evaluate whether to prepare a supplemental EIS (10 CFR 1021.314(c)). In March 2004, DOE concluded that the proposed modifications are bounded by the analyses in those EAs and that, therefore, no new EA is required.

Utility modification and other work in preparation for the project began in September 2005. Activities that would affect existing road conditions are planned to begin in March 2006. DOE does not expect to begin operating the first of the new security checkpoints before August 2006.

County Seeks New EA

Los Alamos County asked the court to prohibit DOE from modifying the LANL security perimeter until DOE prepares a new EA. The County alleges that DOE has not analyzed potential impacts associated with the current proposal. Adverse impacts would stem from restrictions on public access to a non-Federal research park and recreational facilities, increased traffic congestion, elimination of an evacuation route for area residents, and restricted access by emergency vehicles, the County states.

The court concluded that the alleged harms are not imminent, if they would occur at all. The court also concluded that, although it is "concerned that the Defendants' NEPA process was flawed, the County has not established that it is substantially likely to succeed on the merits." [Case No.: 05-1343]

Court Allows Clean Air Act Challenge in Border Power Lawsuit

The United States District Court for the Southern District of California will consider whether DOE and the Bureau of Land Management violated the Clean Air Act by not completing a conformity determination before DOE issued Presidential permits for the construction and operation of electric transmission lines that carry electricity into the United States from two new power plants in Mexico. The two utilities that received the Presidential permits (Sempra Energy Resources and Baja California Power), who are interveners in the case, asked the court to dismiss the Clean Air Act charges. The Department did not file briefs

with regard to the interveners' motion. The court denied the request on February 8, 2006, thereby leaving the issues open for litigation on the merits. A date for a hearing on the merits has not been set.

Plaintiffs Allege NEPA and CAA Violations

In this case, *Border Power Plant Working Group v. Department of Energy et al.*, the plaintiffs allege that DOE and the Bureau of Land Management violated NEPA by preparing an inadequate EIS for the *Imperial-Mexicali*

(continued on next page)

Litigation Updates (continued from previous page)

230-kV Transmission Lines (DOE/EIS-0365, December 2004), which was completed after the court found the agencies' 2001 EA inadequate. (See *LLQR*, September 2005, page 25, for a summary of the alleged NEPA violations.)

The plaintiffs also allege that the Federal agencies violated the Clean Air Act by failing to prepare a conformity determination. A conformity determination is an analysis by which Federal agencies assess how their actions would conform to applicable state implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. Imperial County, California, an area impacted by the transmission lines and emissions from the power plants and does not meet National Ambient Air Quality Standards (i.e., it is a nonattainment area) for ozone, particulate matter less than 10 microns in diameter.

Based on information in the EIS, the plaintiffs allege that "the Permits will cause emissions in Imperial County that will exceed several of these [Clean Air Act] thresholds" and that these are "indirect emissions" within the meaning of the law. In addition, the plaintiffs contend that DOE can set conditions in the permits that would control emissions.

Court Rejects Motion to Dismiss

The intervenor utility companies, whose power plants are within three miles of the California Border (the California portion of the line being approximately six miles long), asked the court to dismiss the Clean Air Act claims.

The interveners argued that a conformity determination is not required for the emissions from the power plants because (1) the emissions "occur" in Mexico and not in a nonattainment area (i.e., Imperial County), (2) issuance of the Presidential permits is a "foreign affairs function" such that any emissions are exempt from the conformity determination requirements, and (3) the emissions are not "indirect emissions" under the Clean Air Act regulations (40 CFR 51.852) because the Federal agencies cannot "practicably control" the emissions and do not "maintain control over [the emissions] due to a continuing program responsibility."

On the first point, the court referenced Environmental Protection Agency regulations that require a conformity analysis where Federal action causes "the total of direct and indirect emissions in a nonattainment or maintenance area" to exceed the emissions criteria (40 CFR 51.853(b)). Indirect emissions may "be farther removed in distance from the action itself," the court noted (quoting 40 CFR 51.852). The court also concluded that it advances the purposes of the Clean Air Act to require a conformity

determination for emissions emanating from outside the United States that are caused by Federal agency action and that impact a state's ability to comply with air quality standards.

On the interveners' second point, the court referred to discussion, in the EIS, of whether a conformity determination is required for the transmission lines. Had DOE believed it was exempt from the requirements because issuance of the permits is a "foreign affairs function," the court wrote, then DOE need not have completed a conformity review in the EIS. The court also referred to a DOE Information Brief,¹ *Compliance with the General Conformity Regulations* (March 2003, available on the Web at www.eh.doe.gov/oepa/guidance/caa/conformbrf.pdf), which gives examples of circumstances where the conformity rule would apply, including "construction of an electric power transmission line between the U.S. and a foreign country pursuant to a Presidential permit issued by DOE . . ." The court found the guidance "sufficiently persuasive to preclude dismissal" of the Clean Air Act claim.

On the interveners' third point, the court referred to conditions in the existing Presidential permits that require that the transmission lines be connected "only to an electric power plant that employs the same cooling technology, water treatment plant, and air pollution control technologies as those analyzed" in the EIS and that require DOE approval of any change in connection to the transmission lines. These "conditions demonstrate that the DOE can 'practicably control' the emissions emanating from the export turbines of the Mexican power plants," the court wrote.

Moreover, the court concluded that the argument that DOE has practicable control over the emissions is supported by the Supreme Court decision in *Department of Transportation v. Public Citizen*. (See *LLQR*, September 2004, page 20.) In that case, the Supreme Court found that the Federal agency did not exercise any control over the action that that would generate air emissions (vehicle exhaust from Mexican trucks). The district court contrasted that with the conditions in the Presidential permits, which demonstrate that "DOE does as a practical matter exert control over the amount of emissions emanating from the Mexican power plants," the court concluded.

The court similarly concluded that the permit conditions indicate that DOE has some "continuing program responsibility" to control the emissions. However, the court wrote that "it is not clear whether the DOE has the authority to monitor the emissions" and that the "ultimate determination of whether DOE has a continuing program

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¹ The court incorrectly attributes the Information Brief to the U.S. Environmental Protection Agency.

Litigation Updates (continued from previous page)

responsibility within the meaning of the [Clean Air Act] implementing regulations will require a detailed examination of the underlying facts.”

(See *LLQR*, December 2005, page 36; June 2004, page 16; December 2003, page 7; and September 2003, page 22,

for history on the litigation. Also see *LLQR Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process*, available on the DOE NEPA Web site, www.eh.doe.gov/nepa, under Selected Guidance Tools.) [Case No.: 02-0513]

Other DOE NEPA Litigation in Brief

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project (WVDP) site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). The plaintiffs also allege that the *West Valley Demonstration Project Waste Management Environmental Impact Statement* (DOE/EIS-0337, December 2003) does not support the Record of Decision’s (70 FR 35073; June 16, 2005) reference to the possible use of a waste-incident-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level waste or mixed low-level waste.


DOE filed an answer to the complaint on December 7, 2005. The court issued a scheduling order on February 15, 2006, that provides for a filing of the administrative record and briefing of the case to be completed by October 31, 2006. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Center for Biological Diversity et al. v. Department of Energy et al. (N.D. Calif.): A hearing is scheduled for March 2, 2006, on the plaintiffs’ claim 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 complaint also states that DOE violated NEPA when it promulgated a rule in which it determined, based on application of a categorical exclusion, 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). The categorical exclusion applied in this instance

is for “Rulemaking (interpreting/amending), no change in environmental effect” (10 CFR Part 1021, Subpart D, Appendix A, Section A5). (See *LLQR*, June 2005, page 23.) [Case Nos.: 02-00027 and 05-01526]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): The court has scheduled a hearing on summary judgment for June 23, 2006. The plaintiffs allege that DOE’s cleanup activities at the Energy Technology Engineering Center (ETEC) are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. The lawsuit challenges the adequacy of DOE’s *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated finding of no significant impact. (See *LLQR*, December 2004, page 16.) [Case No.: 04-04448]

Tri-Valley Communities Against a Radioactive Environment et al. v. Department of Energy (9th Cir.): The plaintiffs requested on February 14, 2006, that the court block DOE from beginning operation of a Biosafety Level 3 (BSL-3) facility at Lawrence Livermore National Laboratory until the appeals process is complete. The plaintiffs asked the court to act on the request before March 15, 2006, because DOE has indicated its intention to begin operations in April 2006. DOE’s opposition brief is due March 3, 2006.

This case is an appeal of the district court’s ruling on September 10, 2004, that DOE’s EA for the BSL-3 facility is sufficient. (See *LLQR*, June 2005, page 23; December 2004, page 18; March 2004, pages 2 and 16; and September 2003, page 23.) [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.

- **Environmental Impact Assessment: NEPA and Related Requirements**
San Francisco, CA: May 31-June 2
Fee: \$995

American Law Institute -
American Bar Association
800-253-6397
www.ali-aba.org
- **NEPA: Turning Complexities into Strategies**
San Diego, CA: March 17
Fee: \$495 (GSA contract: \$445)

NEPA: A View from All Sides
Las Vegas, NV: April 6-7
Fee: \$595 (GSA contract: \$495)

Continuing Legal Education (CLE)
800-873-7130
www.cle.com
- **Implementation of the National Environmental Policy Act**
Durham, NC: March 13-17
Fee: \$1,175 (waitlist)

Accounting for Cumulative Effects in the NEPA Process
Durham, NC: April 5-7
Fee: \$750
until March 14

The Law of NEPA
Durham, NC: May 17-19
Fee: \$750
until April 25

NEPA Certificate Program
Requires one core and three elective Duke University NEPA short courses and a paper. Previously completed courses may be applied. Co-sponsored by the Council on Environmental Quality.
Fee: Included in registration for constituent courses

Nicholas School of the Environment and Earth Sciences
Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuinged/certificates.html
- **Reviewing NEPA Documents**
Las Vegas, NV: March 13-15
Fee: \$885 (GSA contract: \$795)
until March 3
Anchorage, AK: May 17-19
Fee: \$880 (GSA contract: \$795)
until May 7
Denver, CO: June 28-30
Fee: \$880 (GSA contract: \$795)
until June 18

NEPA Writing Workshop
Las Vegas, NV: March 16-17
Fee: \$660 (GSA contract: \$595)
until March 6

How to Manage the NEPA Process and Write Effective NEPA Documents
Salt Lake City, UT: March 27-29
Fee: \$885 (GSA contract: \$795)
San Francisco, CA: May 16-19
Fee: Contact The Shipley Group
Atlanta, GA: June 13-16
Fee: \$1,110 (GSA contract: \$995)
until May 30

NEPA Cumulative Effects Analysis and Documentation
Salt Lake City, UT: March 30-31
Fee: \$660 (GSA contract: \$595)
Las Vegas, NV: May 16-18
Fee: \$880 (GSA contract: \$795)
until May 6
Anchorage, AK: May 22-23
Fee: \$660 (GSA contract: \$595)
until May 12
Baltimore, MD: July 11-13
Fee: \$835 (GSA contract: \$745)
until April 11

Advanced Writing for NEPA Specialists
Salt Lake City, UT: April 3-5
Fee: \$885 (GSA contract: \$795)
Anchorage, AK: May 24-26
Fee: \$880 (GSA contract: \$795)
until May 14
Portland, OR: July 25-27
Fee: \$830 (GSA contract: \$745)
until April 25

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Training Opportunities

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NEPA Process Management

Anchorage, AK: May 15-16
Fee: \$660 (GSA contract: \$595)
until May 5

Adaptive Management and NEPA

Baltimore, MD: June 6-8
Fee: \$835 (GSA contract: \$745)
until March 6

Las Vegas, NV: July 11-13
Fee: \$835 (GSA contract: \$745)
until April 11

Managing NEPA Projects and Teams

Las Vegas, NV: June 6-8
Fee: \$885 (GSA contract: \$795)
until May 27

Overview of the NEPA Process

Denver, CO: June 27
Fee: \$220 (GSA contract: \$195)
until June 17

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 course materials)

Natural Resources and
Environmental Policy Program
Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/policy/

• **Assessing Cumulative Impacts**

San Francisco, CA: April 5 (half day)
Fee: Contact Tetra Tech

Effective Public Outreach

San Francisco, CA: April 5 (half day)
Fee: Contact Tetra Tech

Endangered Species

San Francisco, CA: April 6 (half day)
Fee: Contact Tetra Tech

Wetlands Workshop

San Francisco, CA: April 6
Fee: Contact Tetra Tech

NEPA Workshop

Orlando, FL: June 8-9
Fee: Contact Tetra Tech

Tetra Tech, Inc.
877-468-3872
www.tetratechNEPA.com

- **Preparing for the Environmental, Political, Cultural, Economic, and Other Implications of Energy Development in Indian Country**
Denver, CO: March 22-23

Council of Energy Resource Tribes
303-733-0481
info@CERTRedEarth.com
www.certreearth.com/event.php

- **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 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

EAs and EISs Completed October 1 to December 31, 2005

EAs

**Lawrence Berkeley National Laboratory/
Office of Science**
DOE/EA-1527 (9/30/05)
*Environmental Assessment and Corrective
Measures Study Report for Remediating
Contamination at Lawrence Berkeley National
Laboratory Regulated under the Resource
Conservation and Recovery Act, Berkeley, California*
Cost: \$36,000
Time: 7 months

**Savannah River Operations Office/
Office of Nonproliferation and National Security**
DOE/EA-1538 (12/16/05)
*Safeguards and Security Upgrades for Storage of
Plutonium Materials at the Savannah River Site,
Aiken, South Carolina*
Cost: \$62,000
Time: 5 months

**Strategic Petroleum Reserve Office/
Office of Fossil Energy**
DOE/EA-1523 (11/10/05)
*Proposed Site Modifications at the Strategic
Petroleum Reserve's West Hackberry Raw
Water Intake Structure Site, Louisiana*
Cost: \$31,000
Time: 10 months

Western Area Power Administration
DOE/EA-1508 (11/10/05)
*Beaver Creek-Hoyt-Erie 115 kV Transmission Line
Upgrade, Morgan and Weld Counties, Colorado*
Cost: \$388,000
Time: 15 months

EIS

**Office of Electricity Delivery and Energy
Reliability**
DOE/EIS-0372 (70 FR 71139, 11/25/05)
(EPA Rating: EC-2)
*Bangor Hydro-Electric Northeast Reliability Interconnect,
Maine*
Cost: The cost for this EIS was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 12 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections
EC – Environmental Concerns
EO – Environmental Objections
EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA Web site at:
www.epa.gov/compliance/nepa/comments/ratings.html.)

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of four EAs for which cost data were applicable was \$49,000; the average was \$129,000.
- Cumulatively, for the 12 months that ended December 31, 2005, the median cost for the preparation of 16 EAs for which cost data were applicable was \$57,000; the average was \$118,000.
- For this quarter, the median and average completion time of 4 EAs was 9 months.
- Cumulatively, for the 12 months that ended December 31, 2005, the median completion time for 22 EAs was 7 months; the average was 13 months.

EIS Costs and Completion Times

- For this quarter, there were no EISs completed for which cost data were applicable.
- Cumulatively, for the 12 months that ended December 31, 2005, the median cost for the preparation of 3 EISs for which cost data were applicable was \$3,300,000; the average was \$2,800,000.
- For this quarter, the completion time for one EIS was 12 months.
- Cumulatively, for the 12 months that ended December 31, 2005, the median completion time for 6 EISs was 33 months; the average was 31 months.

Recent EIS-Related Milestones (December 1, 2005, to February 28, 2006)

Advance Notice of Intent

**Office of Fossil Energy/
National Energy Technology Laboratory**
DOE/EIS-0394
FutureGen Project Environmental Impact Statement
February 2006 (71 FR 8283, 2/16/06)

Notices of Intent

**Office of Environmental Management/
Office of River Protection**
DOE/EIS-0391
*Tank Closure and Waste Management for the
Hanford Site, Richland, Washington*
February 2006 (71 FR 5655, 2/2/06)
(71 FR 8569, 2/17/06, extension of scoping period)

Western Area Power Administration
(with Office of Electricity Delivery
and Energy Reliability)
DOE/EIS-0395
*San Luis Rio Colorado Project, Yuma County,
Arizona*
February 2006 (71 FR 7033, 2/10/06)

Draft EIS

**Office of Fossil Energy/
National Energy Technology Laboratory**
DOE/EIS-0357
*Gilberton Coal-to-Clean Fuels and Power Project,
Gilberton, Pennsylvania*
December 2005 (70 FR 73233, 12/9/05)

Records of Decision

Office of Electricity Delivery and Energy Reliability
DOE/EIS-0372
*Bangor Hydro-Electric Company Northeast Reliability
Interconnect, Maine*
January 2006 (71 FR 587, 1/5/06)

**Office of Environmental Management/
Idaho Operations Office**
DOE/EIS-0287
*Idaho High-Level Waste and Facilities Disposition,
Idaho Falls, Idaho*
December 2005 (70 FR 75165, 12/19/05)

Amended Record of Decision

**Office of Environmental Management/
Savannah River Operations Office**
DOE/EIS-0082-S2
*Savannah River Site Salt Processing Alternatives,
Aiken, South Carolina*
January 2006 (71 FR 3834, 1/24/06)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program Environmental Impact Statement (DOE/EIS-0246)

DOE/EIS-0246-SA-49*
*Albeni Falls Wildlife Mitigation - Gold Creek
Acquisition, Bonner County, Idaho*
(No further NEPA review required)
November 2005

DOE/EIS-0246-SA-50
*Albeni Falls Wildlife Mitigation - Eaton Lake
Acquisition, Bonner County, Idaho*
(No further NEPA review required)
December 2005

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

DOE/EIS-0265-SA-244*
*Idaho Fish Screening Improvement - Kenny Creek;
LKC-03, Lemhi County, Idaho*
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-245
*Idaho Fish Screening Improvement - Challis Creek
Diversion, Custer County, Idaho*
(No further NEPA review required)
December 2005

DOE/EIS-0265-SA-246
*Pataha Creek Stream and Cropland Restoration -
Garfield County Sediment Reduction and Riparian
Improvement, Garfield County, Washington*
(No further NEPA review required)
December 2005

* Not previously reported in LLQR

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Recent EIS-Related Milestones (December 1, 2005, to February 28, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-247

Implement Trout Creek Watershed Enhancement and Trout Creek Habitat Restoration, Jefferson County, Oregon

(No further NEPA review required)

January 2006

DOE/EIS-0265-SA-248

Idaho Fish Screening Improvement - Squaw Creek SSC-02 Diversion Project, Clayton, Idaho

(No further NEPA review required)

January 2006

DOE/EIS-0265-SA-249

Satus Creek Watershed Restoration Project (Yakama Reservation Watersheds Project - FY2006), Yakama Nation Reservation, Washington State

(No further NEPA review required)

January 2006

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

DOE/EIS-0285-SA-260*

Vegetation Management along the St. Johns - St. Helens 115 kV Transmission Line Corridor, Columbia and Multnomah Counties, Oregon

(No further NEPA review required)

June 2005

DOE/EIS-0285-SA-261*

Vegetation Management along the Bald Mountain Microwave Service Road, Mineral County, Montana

(No further NEPA review required)

August 2005

DOE/EIS-0285-SA-262*

Vegetation Management along the Walla Walla - North Lewiston 115 kV Transmission Line Corridor, Columbia, Garfield, Asotin, and Whitman Counties, Washington; and Lewis County, Idaho

(No further NEPA review required)

August 2005

DOE/EIS-0285-SA-263*

Vegetation Management along the McNary - Ross (345 kV) and McNary - Horse Heaven (230 kV) Transmission Line Corridor, Benton County, Washington

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-264*

Vegetation Management for the Macks Inn - Madison Transmission Line Project, Gallatin, Montana and Fremont County, Idaho

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-265*

Vegetation Management along the Roundup - La Grande 230 kV Transmission Line Corridor, Union County, Oregon

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-266*

Vegetation Management for the Driscoll Substation, Clatsop County, Oregon

(No further NEPA review required)

October 2005

DOE/EIS-0285-SA-267*

Vegetation Management along the 115 kV Reedsport - Fairview No. 1, Tahkenitch - Reedsport No. 1, and Tahkenitch - Gardiner No. 1 Transmission Line Corridors, Coos and Douglas Counties, Oregon

(No further NEPA review required)

September 2005

DOE/EIS-0285-SA-268*

Vegetation Management along the 115 kV Dorena Tap No. 1 Transmission Line Corridor, Lane County, Oregon

(No further NEPA review required)

October 2005

DOE/EIS-0285-SA-269*

Vegetation Management along the 115 kV Alvey - Martin Creek No. 1, Martin Creek - Drain No. 1, Martin Creek Tap No. 1, and Latham Tap No. 1 Transmission Line Corridors, Lane and Douglas Counties, Oregon

(No further NEPA review required)

October 2005

DOE/EIS-0285-SA-270*

Vegetation Management along the Right-of-Way (ROW) of the Lapine - Chiloquin and Lapine - Fort Rock Transmission Line Corridor, Klamath and Deschutes Counties, Oregon

(No further NEPA review required)

October 2005

* Not previously reported in LLQR

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Recent EIS-Related Milestones (December 1, 2005, to February 28, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-271*

*Vegetation Management along the Bonneville - Alcoa
Transmission Line Corridor, Clark and Skamania
Counties, Washington*

(No further NEPA review required)

November 2005

DOE/EIS-0285-SA-272*

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

(No further NEPA review required)

November 2005

DOE/EIS-0285-SA-273*

*Vegetation Management along the Red Mountain -
White Bluffs 115 kV Transmission Line Corridor,
Benton County, Washington*

(No further NEPA review required)

November 2005

DOE/EIS-0285-SA-274

*Vegetation Management along the Sacajawea - Sun
Harbor 115 kV Transmission Line Corridor, Walla
Walla County, Washington*

(No further NEPA review required)

December 2005

Office of Environmental Management

Savannah River Site Salt Processing Alternatives


Environmental Impact Statement

(DOE/EIS-0082-S2)

DOE/EIS-0082-S2-SA-01

*Salt Processing Alternatives at the Savannah River
Site, Aiken, South Carolina*

(No further NEPA review required)

January 2006 

* 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 October 1 and December 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

- *Meetings with interested parties.* Individual meetings were held with each landowner to discuss the project. DOE also met with the city to discuss concerns and draft mitigation plans.
- *Lessons learned from similar project.* The scope was similar to a previous EA, enabling us to reduce analysis time.
- *Consolidated scope.* Several related projects were combined in a single EA.
- *Early scoping.* Detailed, early internal scoping was conducted with all parties; responsibilities for the EA were clearly designated through a meeting record.

What Didn't Work

- *Definition of no action alternative.* The state insisted that the No Action alternative for the EA be defined as a cessation of all remediation and monitoring, rather than maintaining the status quo. Thus, DOE implemented most of the preferred alternative while preparing the Corrective Measures Study/EA.

Data Collection/Analysis

What Worked

- *Coordination with special interest groups.* Special interest groups provided essential information on threatened and endangered species and historical impacts.
- *Knowledgeable contractors and specialists.* The EA contractors were familiar with the local area and knew where to obtain information. A contracted hydrogeologist helped with critical analyses.

What Didn't Work

- *Change of scope.* A scope change regarding tree removal during EA preparation required additional wetland and archeological impact assessments.
- *NEPA issues hidden.* A Corrective Measures Study is comprehensive, but it tends to submerge NEPA issues.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Schedule management.* Aggressive schedule management and troubleshooting facilitated timely completion of the EA.
- *Good contractors.* A good contractor with strong subcontractors who were familiar with the area and DOE requirements facilitated timely completion of the EA.
- *Established responsibilities and lines of communication.* Decisions made at a well-attended and well-documented internal scoping meeting, with responsibilities and lines of communication established, were carried all the way through the project and helped to complete the EA on time.
- *Consolidated scopes.* The EA covered four projects with different management chains and funding profiles. Combining the scopes in one EA made each project dependent upon the others and created momentum for staying on schedule.
- *Good strategy.* A well-conceived strategy by the NEPA Compliance Officer and dedicated teamwork facilitated timely completion of the EA.
- *Early completion of draft.* Early completion of the draft EA assisted the DOE NEPA staff's review and ability to provide timely feedback to the preparer.

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What Worked and Didn't Work

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- *Use of categorical exclusion.* Two smaller projects of insignificant impact within the larger scope were categorically excluded to facilitate the overall project schedule, but their scopes and potential impacts were included in the scope of the EA.
- *Access to electronic files.* Concurrent access by multiple reviewers to electronically-shared files made the resolution of comments and incorporation into the final document highly efficient. Electronic files were re-established remotely during hurricane recovery.

Factors that Inhibited Timely Completion of Documents

- *Design changes.* Changes in project design required additional procurements.
- *Critical path.* The EA did not start on the critical path but circumstances pushed it that way.
- *Calculations made too early.* Health effects calculations for the EA were made very early in the project process, so they were less refined than might usually be the case. The authors generally took a bounding approach.
- *Complicated scope.* A complicated EA scope with three diverse projects, a combined impact assessment, and the classified nature of some information needed to be organized and presented for public review.
- *Natural disasters.* Hurricanes Katrina and Rita interrupted distribution and posting of the document to the Department's Web site.
- *Combination with state-level review.* Combining the EA and state Resource Conservation and Recovery Act assessment into one document left parts of the critical path in the state's hands.

Teamwork

Factors that Facilitated Effective Teamwork

- *Good cooperation.* Teamwork and cooperation cannot be emphasized enough.
- *Good communication.* Close, frequent, and useful communication between the NEPA Compliance Officer, the Document Manager, and the project managers helped keep the process on track.
- *Common goals and responsibilities.* Establishment of common goals and a clear determination of the responsible party for each task facilitated teamwork.

Factors that Inhibited Effective Teamwork

- *Limited involvement.* The private sector project participant was loosely involved in the NEPA review.
- *Inconsistent goals.* The state's goals were not entirely consistent with NEPA.

Process

Successful Aspects of the Public Participation Process

- *Frequent, personal meetings.* DOE project staff visited frequently with individual landowners whenever they wanted to discuss project issues. Every potentially affected landowner was contacted personally. The landowners were very pleased with this response. This took a lot of time on a project of nearly 80 miles, but the rewards were big.
- *Use of Web site.* Posting the draft EA and notice of availability on the Web site facilitated public review.
- *Public briefings.* During briefings to the Citizens Advisory Board, one individual asked why all the projects were included in a single EA. This person was apparently satisfied with the response that each involved some aspects of safeguards and security for materials stored at the site.
- *Well-written document.* There was little public response because the EA was well constructed and written. Public safety would be enhanced by the proposed action.
- *Identification of alternatives and impacts.* Several reasonable alternatives, a sliding-scale impact analysis, and detailed human health risk assessment and dose calculations were identified through the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *NEPA process bypassed.* The public essentially ignored NEPA, submitting their comments on the Corrective Measures Study directly to the state.

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What Worked and Didn't Work

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Usefulness

Agency Planning and Decisionmaking: What Worked

- *Issues identified.* The EA process facilitated informed and sound decisionmaking.
- *Consolidated projects.* By combining several separately-funded but related projects, the NEPA process helped coordinate planning and was useful in showing how the projects fit together. The process required several projects to consolidate pertinent impact information on human health and environmental issues.
- *Early evaluation of impacts and problems.* The EA process was fundamental in promoting early evaluation of potential impacts and problems.
- *Effective review comments.* Comments received and incorporated during the review of the draft EA clarified certain project aspects and facilitated a better understanding of the final project scope.
- *Clarification of concerns.* This EA process clarified environmental concerns across all contractors involved with the project.

What Didn't Work

- *Lateness of study.* The EA/Corrective Measures Study was too late to seriously affect remediation decisions. However, it validated the suitability of interim measures already implemented.

Enhancement/Protection of the Environment

- *Issues identified early.* The incorporation of revegetation on sandy soils and construction staging to accommodate wildlife contributed to protection and enhancement of the environment.
- *Wetland impacts avoided.* The project boundaries were modified to avoid impacts to wetlands and an endangered species. By virtue of internal questions during the concurrence process, waste management requirements were made more explicit in the EA and were clarified for the responsible organization.
- *Wetland impacts mitigated.* The EA process ensured that impacts to wetlands were mitigated as an integral part of the project.

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 7 questionnaire responses were received for 4 EAs, 6 out of 7 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that public input was effective, changes in project design and implementation protected resources and accommodated landowners.
- A respondent who rated the process as “5” stated that the NEPA process facilitated the consolidation of several complicated projects into one integrated scope and ensured mitigation of potential significant impacts on wetlands and sensitive species.
- A respondent who rated the process as “5” stated that the NEPA process resulted in mitigation activities being “built into” the project at the conceptual stage, which will effectively minimize impacts to wetlands.
- A respondent who rated the process as “4” stated that the EA was very effective because it addressed NEPA requirements for several projects.
- A respondent who rated the process as “4” stated that ecological and human health impacts evaluated in the NEPA process received early attention, which aided in project planning.
- A respondent who rated the process as “3” stated that although a management decision had already been made to enhance the safety and security of materials, the NEPA review was an effective tool in consolidating all aspects of the safety and security upgrades. NEPA should be considered an effective tool used during project planning stages.
- A respondent who rated the process as “0” stated that to be useful, the NEPA review would have to come well before the Corrective Measures Study, perhaps as anticipated cumulative impacts analyzed in the first Engineering Evaluation/Cost Analysis for an interim measure. **LL**

EIS Completion Times Need Attention

EIS Costs Remain Stable

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

The Office of NEPA Policy and Compliance periodically analyzes and reports on NEPA performance metrics to assess DOE's progress toward meeting NEPA performance goals. The NEPA Office examines NEPA process costs, completion times, and measures of quality and recommends ways to foster improvements. Based on an analysis of EIS cost and completion times over the last 10 calendar years (1996 through 2005), DOE is not consistently meeting its 15-month completion time goal. Management attention to EIS schedules is warranted to ensure that the EIS process meets program needs. The cost to prepare an EIS has remained about the same over the past 10 years.

EIS Completion Times

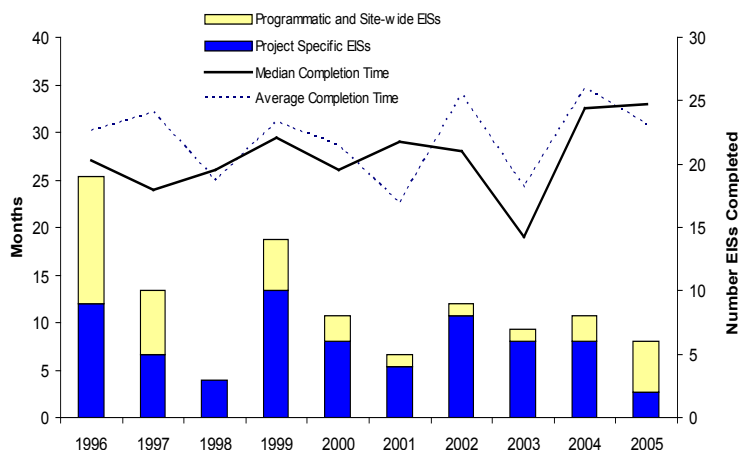
EIS completion time is measured from DOE's Notice of Intent to the Environmental Protection Agency's Notice of Availability of the Final EIS. In 1994, DOE set a median EIS completion time goal of 15 months, and DOE Order 451.1B, National Environmental Policy Act Compliance Program, directs the development of EIS schedules that, absent extraordinary circumstances, will provide for completion within 15 months.

Data for the past 10 years show that DOE is not meeting its 15-month completion time goal. The median completion time was 28 months for 89 EISs completed during this period.

(See Figure 1.)

These time trend data should be interpreted cautiously in view of the relatively small number of EISs completed per year because even one or two documents can significantly influence the statistics for a given year. Nonetheless, the data appear to show a negative trend: after a promising decrease to below 20 months in 2003, the median EIS completion time rose to more than 30 months for two consecutive years.

Figure 1: EIS Completion Times and Number of EISs, 1996-2005



EIS Type	Number of EISs	Average Time (months)	Median Time (months)	Min/Max (months)
Project-Specific EISs	59	26	22	9/76
Programmatic and Site-wide EISs	30	38	33	15/86
Overall	89	30	28	9/86

What's Going On?

A partial explanation for the increase is that during 2004 and 2005 DOE completed more programmatic and site-wide EISs than during 2001–2003. Median completion times for programmatic and site-wide documents typically are longer than for project-specific EISs (33 vs. 22 months, respectively). In 2003, only one of seven completed EISs was programmatic or site-wide. Four of six EISs completed in 2005 were programmatic or site-wide. While this may account for the completion time increase in 2005, it likely is not a complete explanation of the increase from 2003 to 2004, and further examination is warranted.

Figure 2 shows the distribution of EIS completion times during the past 10 years. The most frequent completion time (mode) is 15 months, and DOE completed about 25 percent of its EISs in 15 months or less. A prominent feature of the distribution is that it is skewed, with a long "tail" comprised of EISs with completion times greater than about 40 months. Analysis, however, shows that these EISs do not account for the recent increase in completion times. Further, most of these EISs met program needs and were not of concern: the long completion times were either intentional (e.g., to enable completion of studies or the needs of cooperating agencies) or reflect projects that were placed "on hold" for several years and then reactivated.

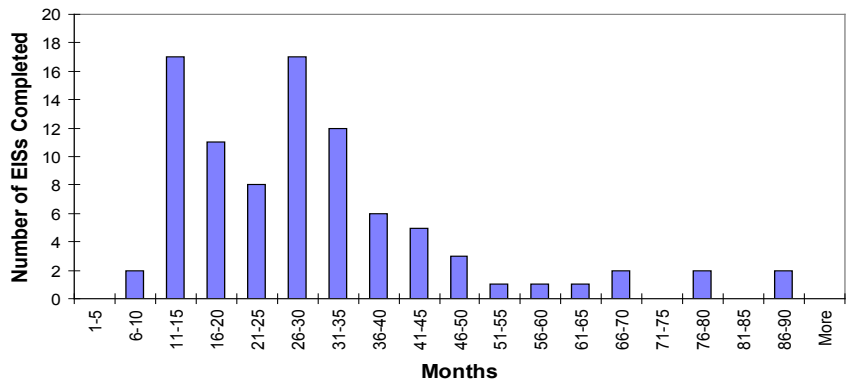
Comparison of Figure 2 with a similar EIS distribution for 10 years of EISs completed through 2003 (*LLQR*, September 2003, Page 6, Figure 4) reveals an increase in the number of EISs completed in 26 to 35 months, and these are the documents that most account for the recent increase in completion times. Several of these documents were

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EIS Completion Times (continued from previous page)

programmatic or site-wide EISs that reasonably required more time to prepare. A few, however, were project-specific EISs that were of concern to programs because the programs wanted to complete them sooner. One of these documents, the EIS for the Moab Uranium Mill Tailings Remedial Action Project (DOE/EIS-0355, August 2005), was completed very quickly after receiving DOE senior management attention. (See *LLQR*, September 2005, page 10.) It appears that management attention to EIS schedules, particularly those with projected completion times of 26 to 35 months, can help DOE meet its EIS completion time goals.

Figure 2: Completion Times for 89 EISs from 1996-2005



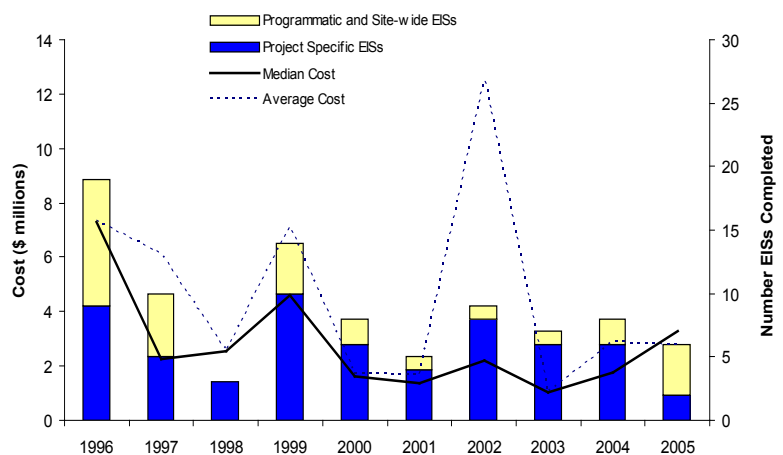
Schedules Are Uncertain

In the course of preparing the monthly Schedules of Key Environmental Impact Statements (available at www.eh.doe.gov/nepa/docsta.html), the NEPA Office has observed an increasing number of in-process EISs whose schedules are “uncertain.” In some cases, this may be appropriate (e.g., certain applicant processes where financial uncertainties may result in suspensions of EIS preparation). In other cases, the causes are less clear, and management attention to schedule appears warranted. Also, preliminary review of Annual NEPA Planning Summaries for 2006 reinforces an apparent need for greater attention to schedules (e.g., some schedules are “uncertain” or extend beyond 15 months).


The NEPA Office has analyzed root cause factors associated with long and short EIS completion times. (See *LLQR*, September 2003, Page 6.) Our analysis continues to show that, while many factors affect EIS completion times (e.g., skill and dedication of the document preparation team including reviewers, communications, the involvement of multiple sites and offices, the participation of cooperating agencies, late identification of data needs, and changes in scope), the single most important factor is senior management attention to scope, content, and the schedule itself.

Conclusion: Increased management attention to EIS schedules is warranted to ensure that documents are completed in time to meet program needs. The NEPA Office recommends that NEPA Compliance Officers and NEPA Document Managers involve senior management throughout the EIS process, including during planning (e.g., Annual NEPA Planning Summaries) and document preparation to ensure that the EIS process meets the needs of the decisionmaker.

Figure 3: EIS Cost and Number of EISs, 1996-2005



EIS Costs

The cost to prepare an EIS has remained about the same over the past 10 years. The decrease in overall cost per EIS from the mid-to-late 1990s to present (Figure 3) can be attributed to the completion of fewer relatively more-costly programmatic and site-wide documents. Similarly, the increase in the number of such documents accounts for the slight increase in EIS costs in 2005. 

EIS Type	Number of EISs with Cost Data	Average Cost (\$M)	Median Cost (\$M)	Min/Max (\$M)
Project-Specific EISs	39	\$2.4	\$1.3	\$0.25/\$15
Programmatic and Site-wide EISs	29	\$9.5	\$7.3	\$0.56/\$44
Overall	68	\$5.4	\$2.1	\$0.25/\$44