

LESSONS LEARNED

June 1, 2009; Issue No. 59

Second Quarter FY 2009

DOE NEPA Compliance Officers Share Strategies

“The Department of Energy is both privileged and challenged” by its critical role in implementing the American Recovery and Reinvestment Act, said Matt Rogers, Senior Advisor to the Secretary, to DOE’s NEPA Compliance Officers (NCOs) and NEPA staff from the Office of General Counsel at the NCO meeting in Washington, DC, on April 28–29, 2009. In the keynote address, Mr. Rogers cited DOE’s intense efforts since late February to identify and approve projects for Recovery Act funding and the imminent need to address an expected 5,000 to 7,000 grant applications. “We must demonstrate to the public that the government *can* work for them,” he continued, “to make a material down-payment on the Nation’s energy and environmental future.”

Noting that DOE will be responsible for distributing a level of Recovery Act funding that exceeds the entire DOE annual budget, Mr. Rogers cautioned that “we need to understand existing constraints and find ways of relieving them in the near term and longer.” This demands coordination and collaboration among Departmental elements, he said, and



Keynote speaker Matt Rogers emphasized that efficient NEPA compliance is essential for DOE success in implementing the Recovery Act.



urged the meeting’s participants to propose creative approaches for the Department to accelerate environmental reviews under NEPA.

Meeting Focuses on Working Smarter

“Expediting schedules and improving quality is applicable to all projects, not just to Recovery Act projects,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. “We must do more, better, faster, and cheaper. How do we do this? My answer is to do it smarter,” she explained, “through more concerted work effort, vigorous oversight, and timely support from many offices.”

To advance the goal of faster, high-quality NEPA compliance, NCOs and General Counsel staff discussed how to effectively and efficiently manage environmental impact statements (EISs), environmental assessments (EAs), and categorical exclusion (CX) determinations. New resources to be applied to improving DOE’s NEPA implementation were described, including procedures for contract use and guidance in preparation. Speakers also addressed the relationship between the NEPA process and the Administration’s Freedom of Information Act policies, and between the NEPA process and the Department’s project management system. (The meeting articles that follow are indicated by the meeting logo, *Accelerating a Quality NEPA Process*.)

In a May 15 memorandum to NCO meeting participants, Ms. Borgstrom outlined follow-up actions that the NEPA Office has been working on since the meeting. In particular, she emphasized the need to effectively manage EIS schedules (related article, page 2).

Inside **LESSONS LEARNED**

Welcome to the 59th quarterly report on lessons learned in the NEPA process. We are pleased to feature the DOE NCO meeting and the NAEP annual conference, where streamlining the NEPA process for Recovery Act projects and consideration of climate change in NEPA documents were both addressed. We've begun to follow up on suggestions from the NCO meeting (below). Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

2009 NCO Meeting: Expediting a Quality NEPA Process

Expedite Schedule and Maintain Quality.....	3
Preparing Focused, Concise EAs	6
Stakeholder Views on DOE's NEPA Process	7
NOI and ROD Guidance In Preparation	7
Recovery Act Stimulates Significant NEPA Workload	8
Categorical Exclusions	9
Speak and Understand "Project Management"	10
Considering Climate Change Under NEPA: "Just Do It".....	12
DOE-wide NEPA Contracts Updates	13
Take Control of the EA Process: NCO Perspective	15

2009 NAEP Conference: Focus on Sustainability

Many Ways to Streamline the NEPA Process	16
NEPA and Climate Change: "Don't Do Nothing".....	18
Towards a More Effective NEPA Process?.....	21
NAEP Award Recognizes Climate Change Analysis	23
Abstracts and Award Nominations for NAEP 2010.....	23
CEQ Submits First Recovery Act Report to Congress.....	24
New FOIA Guidelines Favor Disclosure and Transparency	25
Transitions	27
Litigation Updates.....	29
Training Opportunities	30
EAs and EISs Completed This Quarter.....	32
Cost and Time Facts.....	33
Recent EIS Milestones	33
Questionnaire Results	35

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 August 3, 2009. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 3, 2009

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2009 (April 1 through June 30, 2009) should be submitted by August 3, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

Printed on recycled paper




This icon indicates that LLQR online (www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.



Follow-up to April NEPA Compliance Officers Meeting

"With a heavy NEPA workload, this is an important time to focus on doing our job well the first time," said Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in a May 15 follow-up memorandum to NEPA Compliance Officers (NCOs). "Your suggestions for continuing to improve DOE's implementation of NEPA will help us meet that goal," she said.

A concern raised by NCOs at the meeting is that too often EISs are delayed during the Headquarters review, Ms. Borgstrom noted. She emphasized the attention needed to effectively manage EIS schedules, explaining that "balancing this concern is the recognition that schedules are influenced by both the quality of drafts submitted for review and DOE priorities." In response to a common request from NCOs to reduce the number of review cycles, the memorandum included a sample 15-month EIS schedule, which assumes two reviews each for the draft and final EIS.

Ms. Borgstrom also requested that interested NCOs, as well as NEPA Document Managers and others with NEPA experience, contact Brian Costner about assisting with Recovery Act implementation (brian.costner@hq.doe.gov or 202-586-9924). In addition, she noted that the NEPA Office will host a periodic NCO conference call. The next call will be on Wednesday, June 17. 

Panel Offers Variety of Suggestions To Expedite Schedule, Maintain Quality

One of the strengths of DOE's cadre of NEPA practitioners is its diversity. The presentations of a panel advising on "How Can We Expedite Schedule and Maintain Quality?" – followed by an open discussion on "What Can We Do Better" – provided an array of perspectives: from Headquarters and Field representatives, legal and technical staff, and highly-experienced and relatively new NEPA practitioners. The panelists represented DOE Offices with vastly different missions and types of workload, including the extent of responsibility for Recovery Act projects.



Steve Blazek, Shane Collins, and Mike Jensen provide views on expediting the NEPA process.

Despite this diversity, common themes emerged from the panel's recommendations:

- Manage the NEPA process as a project, including management of schedule, contractor and in-house resources, and document quality.
- Anticipate and address issues early in the NEPA process to avoid delays late in the process.
- Streamline by consolidating review of similar actions; establish standard procedures, content, and format for repeated activities and document sections.
- Exploit tools such as NEPA guidance, and project management and other software.

Highlights of Panelists' Recommendations

Steve Blazek, NEPA Compliance Officer (NCO), Golden Field Office

Mr. Blazek described the "tsunami increase in the workload" that the Golden Field Office will face because of its responsibilities for Recovery Act projects, estimated as a 25 percent increase from the Office's previous annual

appropriation. He expects the Office's NEPA workload this year to include preparation of 7 EISs and up to 40 EAs, and about 2,000 categorical exclusion (CX) determinations – a challenge that will require the most effective NEPA strategies and improved coordination between the Field Office and Headquarters. Mr. Blazek recommended:

- Use a tracking system. Golden Field Office uses a database system to track NEPA activities, integrate them with the Office's management systems, and help coordination between project managers and NEPA staff.
- Establish clear assignment of EIS roles and responsibilities, communication pathways, and schedule responsibilities.
- Request environmental information from applicants in Funding Opportunity Announcements when a financial assistance project may need an EA or EIS.
- Categorically exclude groups of similar projects, when appropriate.

Shane Collins, NCO, Western Area Power Administration

Ms. Collins advocated streamlining the EIS process by preparing a draft EIS that will not need extensive changes in response to comments, followed by an "abbreviated" final EIS. Under the Council on Environmental Quality (CEQ) regulations (40 CFR 1503.4(c)), if changes in response to comments on the draft EIS are minor, agencies may circulate only the comments, responses, and changes. This approach saves time and cost, and commentors can easily see how their comments were addressed. Ms. Collins advised:

- Ensure there are no surprises. Address public concerns adequately in the draft EIS, so that if changes are required in the final EIS, they will be only factual, nonsubstantive corrections. This approach requires preparation of a solid, readable, and "noncontroversial" draft EIS.
- Adequately address stakeholder concerns in the draft EIS by up-front work that may go beyond scoping. Meet to resolve issues with the interested public, make personal contact with affected landowners, and coordinate early with Native American tribes.
- Avoid sensitive resources, and commit to mitigation.
- Ensure that the EIS evaluates an adequate range of alternatives and provides appropriate justification regarding alternatives eliminated from detailed study.

(continued on next page)

Expedite Schedule, Maintain Quality

(continued from previous page)

Mike Jensen, Attorney-Adviser, Office of the Assistant General Counsel for Environment

Mr. Jensen emphasized that ensuring the legal adequacy of an EIS is a means of attaining schedule goals and a high level of document quality. He recommended diligent attention to regulatory requirements to avoid delay during Headquarters review. Mr. Jensen also advised:

- The statement of purpose and need should not be so narrow as to rule out alternatives, nor so broad as to expand the range of alternatives beyond those that reflect the Department's need. It should be "just right" (the "three bears" approach).
- Know the project completely to support a clear description in the NEPA document.
- Streamline documents through good writing:
 - Apply the sliding scale; do not provide extensive detail for resource areas with minor impacts.
 - Avoid repetition, for example, for alternatives with identical impacts in a particular resource area; consider combining the sections on affected environment and consequences.
 - Have someone not familiar with the project review the document.
- Reduce litigation risk by carefully considering whether an alternative suggested by the public is within the range of reasonable alternatives to be evaluated in detail. Pay attention to controversial topics that are frequently the subject of litigation: greenhouse gases, terrorism, and transboundary impacts.



Jeanie Loving, Carrie Moeller, and Matt Urie listen to meeting participant comments.

Jeanie Loving, NCO, Office of Environmental Management

Ms. Loving, an NCO who previously worked as a staff member in the Office of NEPA Policy and Compliance, noted that she appreciates Program Office and Headquarters NEPA compliance and legal perspectives. She attested to the value added by them and advised other NCOs that delegation of EIS approval authority (from the General Counsel to the Program Secretarial Officer) can increase litigation risk even though counsel concurrence in the EIS would still be required. Her recommendations included:

- Be aware that contractors and Field Office representatives tend to be highly concerned with the schedule of NEPA review, while Headquarters Offices tend to focus more on the quality side of the review process.
- For a smooth Headquarters review, NEPA Document Managers should "involve GC early and often" (referring to retired NCO Harold Johnson); prepare high quality documents so that the NEPA Office can focus on NEPA adequacy of a document instead of editing.
- The NEPA Document Manager should manage the approval process by seeking agreement on the number of iterative reviews (for example: a preliminary and final review); developing detailed schedules for program, NEPA Office, and legal review; and seeking buy-in by the reviewers.
- To reduce the potential for delay, Headquarters reviewers should look for opportunities to resolve issues early, for example, before approval review of a final EIS; provide specific direction and language, where possible, for requested changes to more efficiently get the desired result; provide final approvals "subject to comments" instead of waiting to receive revised pages.

Carrie Moeller, Office of NEPA Policy and Compliance

Ms. Moeller, a relatively new staff member in the NEPA Office, described her observations on the value added in Headquarters approval review of EISs: providing a comprehensive, objective, "fresh eyes" reading; reviewing the entire EIS, with particular attention to NEPA terminology and principles; applying perspectives on DOE cross-cutting issues and approaches; and focusing on

(continued on next page)

Expedite Schedule, Maintain Quality

(continued from previous page)



readability, good communication, and consistency. She acknowledged that there are actions that the NEPA Office could take to be more proactive:

- Host monthly conference calls with NCOs to identify and resolve issues early and maintain open communication.
- Conduct training to help avoid problems in the “crunch” of EIS preparation.
- Identify recurring issues and address them through guidance.

Matt Urie, Acting Deputy General Counsel, National Nuclear Security Administration (NNSA)

Mr. Urie addressed the need for more effective management of the NEPA process in both Field and Program Offices, and emphasized the need for Program Secretarial Officers “to own” the NEPA process, which can be especially challenging for site-wide EISs. Acknowledging the need for accelerating the NEPA process, he reminded NCOs that the Project Managers they support should understand that “streamlining” must stay within the law. He urged NCOs to manage schedules strictly but realistically, as attempts to meet schedule may result in poor quality documents that will require time-consuming, multiple rounds of review. He recommended:

- Learn from other documents (e.g., for terrorism analyses, look at the Yucca Mountain EISs).
- Use a Management Council and Management Review team approach, and expect to receive comments.
- Establish guidelines for document reviewers to encourage disciplined, value-added comments, and establish realistic schedules that account for the priorities of other Offices.
- Pay attention to the administrative record for the NEPA process, and consider when conversation rather than email is an appropriate approach for deliberations.

Discussion Continued on Process Improvements

NCO meeting participants later conducted a group discussion to further explore “what we can do better.” Carol Borgstrom started the discussion by asking NCOs about the feasibility of posting CX determinations on DOE websites. Several participants suggested that posting CX determinations may be appropriate in light of the President’s emphasis on transparency for Recovery Act projects, and the Attorney General’s March 19, 2009, memorandum regarding the Freedom of Information Act. One NCO previously had posted the title of CX determinations on the Field Office website, but said this practice was discontinued because resources were limited. Several NCOs expressed concern about posting CX determinations because of resource limitations, and one NCO said there was not enough time to post such determinations for Recovery Act projects.

During further discussions on streamlining the EIS process, several NCOs recommended that Headquarters reviewers should better recognize the importance of schedule to Field Offices. NCOs offered several suggestions, such as shortening Headquarters review times and limiting the number of review cycles. Bill Levitan, Director, Office of Compliance, in the Office of Environmental Management, said a paradigm shift is needed, and that Headquarters reviewers should themselves regard their EIS reviews as projects. He recommended developing a master review schedule that includes a baseline, and the use of project management software to manage reviews. “Plan your work and work your plan,” he said.

In response to these recommendations, the NEPA Office proposed an example schedule based on completing an EIS in 15 months (related article, page 2). The NEPA Office requested that NCOs work with NEPA Document Managers to provide their existing, detailed EIS schedules, which will enable the Office to improve its planning and better support Program and Field Office EIS schedules. ■■



At the recent NCO meeting, then Acting General Counsel Eric J. Fygi spoke to the importance of the NCO as the linchpin who holds together the program resources needed for successful NEPA compliance. Mr. Fygi remarked that thanks to the NCOs’ hard work, “the Department’s decisions are durable even in the face of controversy.” (Scott Blake Harris was sworn in as the new DOE General Counsel on May 21, 2009.)

Preparing Focused, Concise EAs

DOE prepares far more EAs than EISs. Because this is the largest component of DOE's NEPA document workload, looking for efficiencies in EA preparation can have a big payback, remarked Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in introducing the session on preparing focused, concise EAs. To structure a group exploration of potential pathways to improvement, the NEPA Office had examined more than 100 DOE EAs issued since 2004. About two-thirds ranged from 50 to 200 pages, but some were quite brief and some significantly longer. Some features of the shortest and longest EAs suggested questions (below) that were discussed during breakout sessions at the NEPA Compliance Officers (NCO) meeting. The results, which were then shared with the reassembled group, represent the "Wisdom of the NCOs."



- Establish aggressive but realistic schedules with senior management involvement and buy-in
- Manage contractors for quality as well as schedule
- Use information from existing sources; tier from existing NEPA documents; require applicants to provide adequate environmental information
- Manage coordination with internal stakeholders (e.g., Program Offices, counsel) and external stakeholders (e.g., State Historic Preservation Officers, tribal organizations)
- Hold to established (i.e., 14–30 day) state and public comment periods; accommodate late comments as practicable without extending the comment period for all
- Exploit available tools, such as online document review and revision software and EA checklists¹

What Factors Tend to Produce a Large EA?

- A purpose and need statement that is unfocused or unclear, leading to unnecessarily broad scope
- A cooperating agency whose requirements or expectations exceed DOE's with respect to scope and level of detail
- Inclusion of content intended to minimize litigation risks ("bulletproofing")
- Inherently complex projects – for example, involving several sites
- Preparation of an EA that is an EIS in disguise
- Repetition

What Techniques Have Proven Effective in Reducing the Time Required to Prepare an Adequate EA?

- If the analysis to be presented in the EA requires much explanation, consider whether an EIS is more appropriate
- Begin EA development only after key elements (purpose and need statement, proposal, alternatives) are defined in order to avoid late scope changes
- Assign clear roles and responsibilities for preparation, review, and approval – for example, by instructing reviewers to focus on substantive comments

Would Combining Affected Environment and Environmental Consequences Help Shorten and Focus EAs?

- Would create a logical flow that enhances readability
- An EA may not require a detailed Affected Environment section

What Minimum Information Is Appropriate to Include for Resource Areas When the Analysis Indicates *De Minimis* Impacts?

- Include only enough information to demonstrate that resource areas were analyzed
- Reference the most recent site documents (e.g., EISs, Annual Site Environmental Reports)
- Use tables or charts to summarize *de minimis* impacts, without restating in text

What Should an EA Present Regarding Standard Operating Procedures (SOPs) and Mitigation Measures?

- Include mitigation and SOPs in site-wide NEPA documents, environmental management systems, and resource management plans; incorporate them by reference in an EA
- Separately identify mitigation measures, but include SOPs in the proposed action (use table format)

(continued on next page)

¹ See, for example, DOE's Environmental Assessment Checklist (www.gc.energy.gov/nepa, under Guidance) and the Washington State Environmental Checklist (www.ecy.wa.gov/pubs/ecy05045.pdf).

What Is Required for an Adequate Finding of No Significant Impact (FONSI)?

- A summary of the environmental consequences presented in the EA or a statement incorporating the EA by reference
- A summary of any stakeholder comments
- Mitigation commitments that are not integral elements of proposed action, if necessary for a mitigated FONSI
- Statement of determination of significance, floodplain findings (as appropriate), date of issuance, signature of approving official (potentially a page or two) **LL**

“EA Idol” – NCO Edition

In the weeks before the meeting, the NEPA Office asked NCOs to nominate an “excellent EA” that exemplifies a concise, readable, high-quality document. Meeting participants were invited to inspect the candidates and vote for their favorite. Golden Field Office NCO and NEPA Document Manager Steve Blazek received a certificate of recognition for the top vote-getter, *EA for the University of Nevada, Las Vegas Research Foundation Solar Technology Center* (DOE/EA-1622; 2009).

Stakeholder Views on DOE’s NEPA Process

Jay Coghlan, Director of Nuclear Watch New Mexico, which is a member of the Alliance for Nuclear Accountability, was invited to provide a stakeholder perspective on ways to improve DOE’s NEPA process. “I think DOE has an honest intent to implement NEPA,” he said.

“NEPA hurts at times, but it benefits DOE,” Mr. Coghlan said, recalling how the 1999 Los Alamos National Laboratory Site-wide EIS was used during the response to the Cerro Grande fire in 2000 (*LLQR*, June 2000, page 1). He emphasized that the public has to be better informed about adverse effects of intentional destructive acts without compromising national security and called for unclassified summaries to be included in publicly available NEPA documents.

Mr. Coghlan made a number of recommendations to improve DOE’s NEPA Program: make greater use

of Internet services during the NEPA process; post all categorical exclusion determinations online as part of an online NEPA public library; prepare a site-wide EIS for each site routinely every 10 years; include estimated costs in EAs and EISs for each alternative; prepare EISs for projects costing over \$100 million; and ensure uncompromising compliance with NEPA in American Recovery and Reinvestment Act projects. **LL**



Jay Coghlan, Director, Nuclear Watch New Mexico, presented recommendations for improving openness at the NCO meeting.

Guidance in Preparation: NOI and ROD

To help expedite the EIS process and improve document quality, the Office of NEPA Policy and Compliance is developing guidance on preparing a notice of intent (NOI) to prepare an EIS and a record of decision (ROD). The intent of the guidance is to avoid repeated rounds of revision during the approval process and to meet *Federal Register* requirements routinely. Accordingly, the guidance will address content (“telling DOE’s NEPA story”) of the two types of notices, as well as format and procedures.

“The NOI and ROD are the ‘bookends’ of the public side of the EIS process,” said Yardena Mansoor,

NEPA Office. After completion of the guidance and preliminary coordination with the Office of the Assistant General Counsel for Environment, the DOE NEPA Community will be invited to review the draft guidance this summer. The NEPA Office intends to make available electronic file templates for the two types of *Federal Register* notices and supporting documents.

For further information or to submit suggestions, contact Yardena Mansoor, at yardena.mansoor@hq.doe.gov or 202-586-9326. **LL**

Recovery Act Stimulates Significant NEPA Workload

Many DOE NEPA personnel, at Headquarters and in the Field, are busy implementing the American Recovery and Reinvestment Act (Recovery Act), including various reporting requirements. Brian Costner, Recovery Act Point of Contact in the Office of the NEPA Policy and Compliance, provided an update at the NEPA Compliance Officers (NCO) meeting on the increased NEPA workload and efforts to accelerate completion of NEPA reviews while maintaining quality.

Section 1609 of the Recovery Act makes clear that established NEPA processes apply to projects and activities proposed to be undertaken with Recovery Act funds. (See [LLQR, March 2009, page 1.](#)) This presents a challenge to DOE because of the amount of funding the Department received (almost \$40 billion) and the sense of urgency to move funds quickly into projects that will create jobs and have lasting benefits, Mr. Costner explained. Most Recovery Act funding must be obligated by September 30, 2010. Obligated balances are available for expenses incurred until September 30, 2015, at which point any remaining balance will be cancelled.



Brian Costner, NEPA Office, encouraged NCOs to seek creative solutions to expedite NEPA without sacrificing quality.

Approximately \$26 billion of DOE's funding will be disbursed through grants and other mechanisms to state, local, and tribal governments, universities, and other external parties, for which DOE expects to receive more than 5,000 to 7,000 applications for funding. Based on past experience and the types of projects to be funded, Mr. Costner said, the current expectation is that the large majority of the proposed activities will fit within DOE's existing categorical exclusions (CXs). Nonetheless, the level of effort required to review these applications and make NEPA determinations in a few months is unprecedented. In addition, even if only a small percentage

of proposals require an EA or EIS, DOE's workload of such NEPA reviews would more than double.

Most of the increased workload would be focused in a few offices – Energy Efficiency and Renewable Energy, Electricity Delivery and Energy Reliability, Fossil Energy, Golden Field Office, and the National Energy Technology Laboratory. Last year, DOE made fewer than 2,000 CX determinations. Normally, DOE prepares about 20 to 30 EAs and completes about 10 EISs per year.

Project Reviews and NEPA Reporting

Since passage of the Recovery Act in February, the NEPA Office has been assisting with Recovery Act implementation primarily in two ways. First, DOE Offices proposed approximately 165 Recovery Act "projects" (many with a broad scope involving several discrete actions). Mr. Costner described how the NEPA Office works with NCOs to identify existing NEPA reviews applicable to the proposed actions or develop an initial strategy for completing such reviews. The NEPA Office incorporates this information into comments on the project plans prior to their approval by DOE senior management.

Second, the NEPA Office is preparing reports to the Council on Environmental Quality (CEQ) on the status of NEPA compliance for approved Recovery Act projects. Section 1609(c) of the Recovery Act requires the President to report to Congress on NEPA compliance status every 90 days for activities through September 30, 2010. The NEPA Office provided input to CEQ on reporting guidance. Mr. Costner further explained that the NEPA Office uses information gathered during the review of DOE Recovery Act project plans to prepare the reports to CEQ.

Mr. Costner provided NCOs a draft of DOE's April 30 report to CEQ and received helpful feedback from them during the meeting. DOE and other Federal agencies provided their reports to CEQ on April 30 for inclusion in the first report to Congress on May 18, 2009 (related article, page 24).

Looking ahead to future Section 1609(c) reports, Mr. Costner said that "We are trying to keep the reporting workload simple." DOE's next report to CEQ (for activities through June 30) is due July 15, 2009. The NEPA Office will use the baseline information from the project reviews and routine tracking of EAs and EISs to compile much of the report. The NEPA Office also will need to know the date of the determination, the CX(s) applied, and the number of grants or other actions to which the determination applies.

(continued on page 11)

Categorical Exclusions: Established Procedures, Possible New Approaches?

DOE makes almost 2,000 categorical exclusion (CX) determinations each year, and prepares a record of nearly all the determinations, although not required to do so, reported Carolyn Osborne, Office of NEPA Policy and Compliance, in relating lessons she had learned from a recent informal exchange with DOE NEPA Compliance Officers (NCOs). She also reported that most NCOs use the model template for CX record keeping provided in 1998 (www.gc.energy.gov/nepa, under Guidance), with many incorporating it in a checklist that also records other environmental information about a proposal.

In addition to reviewing DOE's established procedures and providing recommendations based on information gathered from NCOs, Ms. Osborne encouraged discussion



While it is appropriate to get technical assistance from contractors, a CX determination is a Federal responsibility, advised Carolyn Osborne.

of possible new procedures regarding public notification and availability of CX determinations. Although a few NCOs announce application of a CX and a few others make the determinations available (neither of which is required), most do not, but respond to infrequent requests for them, she said.

Are There Extraordinary Circumstances?

In reviewing DOE's established procedures for applying CXs, Ms. Osborne emphasized the role of the NCO under DOE Order 451.1B, *NEPA Compliance Program*. The NCO is the DOE official in each Program and Field Office with responsibility for making CX determinations for actions under the Office's purview – and that responsibility cannot be delegated, she said.

Ms. Osborne pointed to the need to look for extraordinary circumstances when applying a CX, that is, to look for project-specific time and place considerations that may affect the significance of impacts. In this regard, she added that it is important to revisit CX determinations regularly, especially broad ones, to ensure that the situation has not changed over time. She noted that the Council on Environmental Quality (CEQ) guidance on Recovery Act

reporting emphasizes extraordinary circumstances, calling for either the date of the record of a CX determination or the date when an agency considered extraordinary circumstances.

Are New CXs Needed?

Suggestions received by the NEPA Office in late 2008 for proposing new CXs and revisions to existing ones are under review, Ms. Osborne said. She encouraged NCOs to make further proposals this spring and reminded them of the relevant draft CEQ guidance (71 FR 54816; September 19, 2006).

Noting that an agency's CXs are to be based in its experience with actions and their environmental impacts, Ms. Osborne described DOE's planned approach to apply certain of its CXs to proposals under the Advanced Technology Vehicles Manufacturing Incentive Program (Auto Loan Program). She pointed out that four of DOE's CXs address activities very similar to reequipping and retooling of existing facilities and associated engineering integration proposed under the Auto Loan Program.

She recounted DOE's consultation with CEQ. Secretary of Energy Steven Chu advised CEQ Chair Nancy Sutley on March 19, 2009, that DOE planned, as appropriate, to apply existing CXs established before the Auto Loan Program to certain proposals under that Program. He stated that DOE would verify the validity of Environmental Reports submitted by loan applicants and that extraordinary circumstances do not exist. The CEQ Chair responded on March 20, 2009, that DOE's approach "comports with NEPA and the CEQ regulations" and that it focuses appropriately on the underlying activity funded by DOE, not on whether the activity is directly undertaken by DOE. (The consultation letters are posted on the CEQ NEPA net, www.nepa.gov, under CEQ Guidance.)



Posting CXs and Other New Approaches?

As agencies respond to the new Administration's emphasis on openness and transparency, Ms. Osborne asked NCOs to consider whether DOE should establish procedures to post notices of CX determinations on the web. NCOs expressed general enthusiasm for greater openness and transparency in the Government's work, but reluctance to expand CX procedures in this regard, citing the increased workload it would present.

For further information, contact Carolyn Osborne at carolyn.osborne@hq.doe.gov or 202-586-4596. 

It Helps to Speak and Understand “Project Management” Language

When in Rome, it really helps to speak and understand Italian, right? Because if you don’t know the language, how in the world are you going to communicate? The same is true if you happen to be a NEPA Document Manager or NEPA Compliance Officer (NCO) and have to interact with the program or project management staff, but can’t speak their language. You won’t be able to fully understand the terms they use or how their process might impact the NEPA review. As Drew Grainger, the Savannah River Operations NCO, advised. “We, as NEPA folks, need to become very familiar with the language that

project managers speak” The NEPA staff not only needs to know the project management language, but also understand the process used, he explained. When project managers talk about the initial or execution phase, or that Critical Decision (CD) 1 is scheduled for approval next month, the NEPA practitioners need to understand what that means and how it will affect their EA or EIS schedule.

In explaining DOE Order 413.3A, *Program and Project Management for the Acquisition of Capital Assets*, Jim Daniel, Office of NEPA Policy and Compliance, used a figure from the Order (below) to explain the different phases and CDs associated with the Energy Systems Acquisition Advisory Board process and to show the point where NEPA review should be completed.

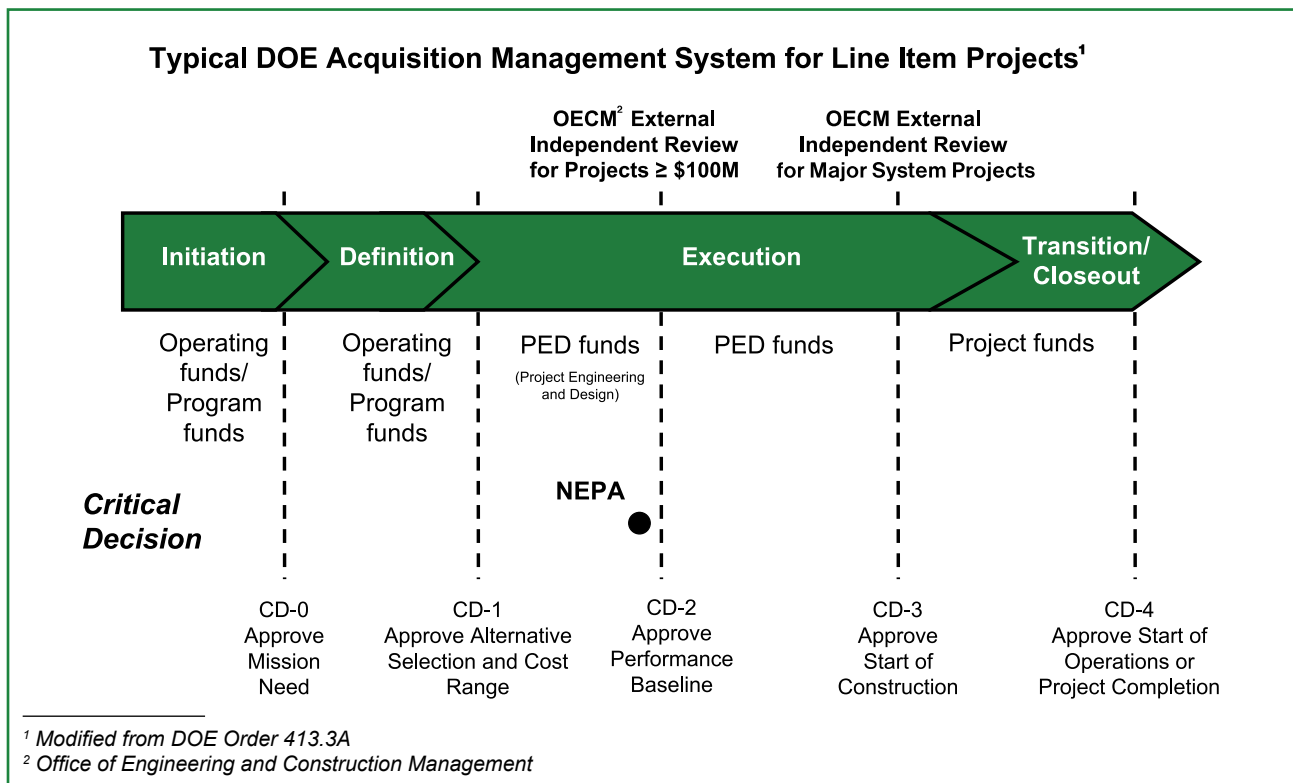


Learn to speak the language and understand the project management process was the theme of Drew Grainger’s and Jim Daniel’s presentations.

“No decision can be made that would limit the choice of reasonable alternatives prior to completion of the NEPA review,” Mr. Daniel emphasized, “and all reasonable alternatives must be considered . . . even though in Project Management language, approval of CD-1 [Approve Alternative Selection and Cost Range] implies that only one alternative is selected for further study.”

In discussing CD-2, Approve Baseline Performance, both Mr. Daniel and Paul Bosco, the Director, Office of Engineering and Construction Management, emphasized the importance of this critical decision.

(continued on next page)





When you go through "Gate 2" (CD-2), you've made a decision and really cannot go back, said Paul Bosco.

Mr. Daniel stressed that the NEPA review needs to be completed before CD-2 is approved, because its approval allows final (detailed) design to proceed.

Mr. Bosco described CD-2 as the "point of no return." In the project management process, he indicated that in approving CD-2, the Acquisition Executive approves cost, schedule, and scope of the project, and then notifies Congress. "You can change your mind after approval of CD-1, but unless

the project is cancelled," Mr. Bosco explained, "you really cannot go back after CD-2 approval."

A final issue concerning CD-2 approval was raised by Mr. Grainger: "When is NEPA complete, so that CD-2 approval can proceed?" While it was clear from the discussion that an EA/finding of no significant impact or EIS must be issued before approval of CD-2, it was not clear whether issuance of a record of decision (ROD) is required prior to CD-2. "Given that CD-2 approval by the Acquisition Executive is approval of the project's cost, scope and schedule, it seems reasonable to conclude that a ROD documenting this decision must follow, not precede, CD-2," Mr. Grainger said. This question will be clarified during the next revision to DOE Order 413.3A, which according to Mr. Bosco will be later this year or early 2010. **LL**

Recovery Act and NEPA (continued from page 8)

Lessons Learned and Recommendations

Mr. Costner thanked the NCOs who helped gather information during the reviews of DOE Recovery Act projects. He noted that in preparing project plans "more often than not, the Program Offices have not engaged NCOs in a discussion of the respective project's NEPA strategy." This slowed the review process, Mr. Costner explained. The NEPA Office intends to continue trying to connect NCOs and project or program managers to improve the review process and project implementation, he said.

There is considerable schedule pressure, he emphasized, and DOE senior management, as well as Congress through the CEQ reports, will be notified when NEPA schedules slip and hamper Recovery Act project implementation. There also is a clear signal from CEQ and DOE senior management that the quality of the NEPA process and analyses remain important. In addition, the President has made clear that the Recovery Act is to be implemented with a high degree of transparency.

Mr. Costner reported several findings from reviewing NEPA compliance for Recovery Act projects. Existing NEPA documents for many ongoing activities are more than 5 years old, he said. "If you are relying on an existing NEPA document for a Recovery Act project, then look at it closely, particularly if it is more than 5 years old, and be

confident that the document is appropriate for the newly funded activities," Mr. Costner advised.

***Be extremely mindful of schedule,
but also of NEPA values.***

– Brian Costner, NEPA Office

Mr. Costner concluded with several recommendations to expedite the NEPA process for Recovery Act projects. Approaches encouraged by CEQ, he said, include grouping similar activities for NEPA review; preparing concise, focused EAs; preparing programmatic EAs; and reviewing other agency NEPA documents for applicable analysis. He also recommended that DOE make more use of Management Councils to bring all interested DOE Offices to the table early in EIS preparation, and prepare the best possible draft (in order to minimize time between draft and final EIS). Also, he suggested the use of "NEPA detailees" to help manage the increased workload as a result of the Recovery Act for some organizations within the Department. For example, an NCO with a lighter workload could assist an NCO with heavy Recovery Act workload on a temporary basis to help distribute the responsibilities and assignments. **LL**

Recommendations for Considering Climate Change under NEPA: “Just Do It”

“Given the advances in climate science, extensive litigation, and potential regulation, there is a little doubt that DOE will need to analyze the reasonably foreseeable effects of greenhouse gas (GHG) emissions in its NEPA documents,” said Eric Cohen, Office of NEPA Policy and Compliance, to participants at the NEPA Compliance Officers meeting. Currently, there is little Federal agency guidance on climate change and NEPA, he said, so DOE’s guidance could be among the first. While guidance is being developed, Mr. Cohen recommended taking a “just-do-it” approach to considering GHGs in EAs and EISs.



Eric Cohen described how impacts from GHG emissions can be readily analyzed in NEPA documents using established methodologies and the application of basic NEPA principles.

The NEPA Office has been working with the Office of the Assistant General Counsel for Environment to develop guidance on the consideration of GHGs and climate change impacts in DOE NEPA documents. In a panel discussion, Mr. Cohen, Felix Amerasinghe, Office of the Assistant General Counsel for Environment, and Paul Detwiler, Director, Office of Project Facilitation and Compliance, National

Energy Technology Laboratory, discussed the preliminary scope of the guidance, some of the key issues, and an example EIS analysis.

GHG Impacts Are Cumulative

Mr. Cohen emphasized that the “sliding-scale” principle could be applied to provide analysts flexibility in determining the appropriate level of GHG analysis for different DOE proposed actions. He noted several distinctive aspects of GHG emissions, including that virtually all measurable climate change impacts are cumulative impacts, not direct impacts from proposed actions. Also, when compared to global GHG impacts, the incremental impacts of a large GHG emission source will nearly always be small; however, GHG emissions combine with other past, present, and reasonably foreseeable emissions, contributing to potentially significant climate change impacts, he said.

Mr. Amerasinghe noted that, for GHG guidance to be useful, it would have to address certain complex and controversial issues that have multi-agency implications and, therefore, warrant multi-agency consideration.

Mr. Amerasinghe recommended that DOE work closely with the Council for Environmental Quality (CEQ) and other agencies when drafting the guidance.




Paul Detwiler shared perspectives from his former role as a Headquarters counsel and his new one as Field Office NCO.

Three-step Approach Proposed

Notwithstanding the distinctive aspects of GHG emissions, Mr. Cohen said that climate change impacts can readily be analyzed using a three-step approach, which he outlined as follows:

1. Identify and quantify relevant GHG emissions;
2. Discuss the *actual* potential environmental consequences, not just actual emissions; and
3. Explore potential mitigation measures and reasonable alternatives that would reduce GHG emissions.

Dr. Detwiler described the analysis of GHG emissions in the preliminary Final EIS for the Mesaba Energy Project (DOE/EIS-0382), which is currently under internal review. He recommended that the Mesaba analysis be used as a model until DOE or CEQ issues guidance on analyzing GHGs in NEPA documents. He noted that the Mesaba EIS assumes that the proposed Clean Coal Power Initiative project would emit “significant quantities” of GHGs. “This example touches on all aspects of climate change analysis that we have been discussing, and could serve as a model that can be easily adapted to other EISs,” he said, emphasizing that analysis of GHG emissions and climate change impacts need not be difficult or unduly lengthy.

Office of General Counsel staff anticipate providing draft guidance to the DOE NEPA community for comment this summer. Comment and suggestions should be sent to Mr. Cohen at eric.cohen@hq.doe.gov or 202-586-7684. 

DOE-wide NEPA Contracts Updates



All Contracts Awarded

DOE completed awarding all seven contracts for NEPA support services – three under full and open competition and four under a small business set-aside – in mid-May, following completion of the required Foreign Ownership, Control, or Influences clearances. The contracts are managed by the National Nuclear Security Administration (NNSA), but are available to all DOE Program and Field Offices, including the Federal Energy Regulatory Commission. These contracts are designed to provide, with performance incentives, high-quality and timely NEPA document support. The contract teams include a range of expertise in disciplines required for DOE NEPA documents. Representatives of the new DOE-wide contracting teams were introduced at the recent NEPA Compliance Officers (NCO) meeting, where they made brief presentations on their teams’ capabilities and engaged in informal discussions through the lunch break. (See [LLQR, March 2009, page 8](#), and the DOE NEPA Website, www.gc.energy.gov/nepa, under NEPA Contracting, for information about the contracts, procurement process, and resources for potential users.)

DOE-wide NEPA Contracting Procedures

New task order and contractor evaluation procedures, using “STRIPES” (Strategic Integrated Procurement Enterprise System) and “CPARS” (Contractor Performance Assessment Reporting System), were described at the recent NCO meeting by staff from NNSA’s Headquarters Procurement Operations and DOE’s Headquarters Procurement Services.

Designation of key personnel in a task order proposal was strongly recommended by both Dan Medlin, Manager, Headquarters Procurement Operations, NNSA, and Drew Grainger, Savannah River Operations NCO and Lead Technical Evaluator in the recent contracts procurement. Mr. Medlin advised contractors to be able to deliver what the DOE customer needs and not change key personnel during task performance.




From left to right, staff from NNSA Headquarters Procurement Operations – Aneesah Vaughn, Won (Bo) Sim, and Richard (Dan) Medlin – described roles and procedures for task orders under the DOE-wide NEPA support contracts.

Aneesah Vaughn, Contract Specialist, described the process to use to compete and issue a task order, including a step-by-step explanation of review and approval procedures. She also displayed how to incorporate delivery milestones into the Statement of Work for an EA or EIS using STRIPES, stating that the system provides efficiencies in task ordering and monitoring.

Mr. Grainger emphasized the importance of frequent contractor evaluation, not just at the end of a task, and reminded NCOs to, at a minimum, review each monthly invoice, matching hours and personnel to work performed. Any concerns from this review should be expressed in writing to the Contracting Officer, Bo Sim, he said.

The Office of NEPA Policy and Compliance plans to update its NEPA contracting guidance to reflect new procedures and recommendations.

First Task Awarded

The first task has been awarded under the new DOE-wide NEPA contracts. For further information, contact Aneesah Vaughn, Contract Specialist, at aneesah.vaughn@nnsa.doe.gov or 202-586-1815. 

Task Description	NEPA Document Manager	Date Awarded	Contract Team
EIS: Storage and Management of Elemental Mercury	David Levenstein, EM-11 david.levenstein@em.doe.gov 301-903-6500	5/8/2009	SAIC

2009 DOE NEPA Compliance Officers Meeting





Take Control of the EA Process: A Perspective of a Field NCO

By: Gary Hartman, NEPA Compliance Officer (NCO), Oak Ridge Office

Each Federal agency has its own implementing procedures for complying with the Council on Environmental Quality NEPA regulations and its own internal processes. When I came to DOE from another Federal agency way back in December 1989, I experienced NEPA culture shock. My former agency, Tennessee Valley Authority, prepared its NEPA documents in-house with existing staff, so I was really surprised to find that Federal staff did not prepare most NEPA documents at DOE. Noticing the process and length of time for preparing draft categorical exclusion (CX) determinations, I began writing the CX determinations for the Formerly Utilized Sites Remedial Action Program. My preparation of CX determinations for this Program was a major factor in reducing the time to issue them, and I believe it reduced the cost and schedule of project implementation.

Save Time, Save Money

A relatively untapped potential for efficiency and excellence in the DOE NEPA process is in-house preparation of EAs. This is especially true for EAs with well-defined scopes and proposed actions with adequate environmental baseline data. DOE staff could still choose to use a NEPA contractor to prepare EAs that are more complex or that may require the collection of additional data or modeling. NCOs will have to work closely with new NEPA Document Managers electing to prepare their EAs to ensure adherence to the NEPA process and that projected impacts are appropriately addressed. However, for proposed actions that are fairly straightforward with well-defined scope, substantial time and money savings may be realized by preparing EAs in-house. Several DOE sites have already taken the step to prepare some of their EAs with existing Federal staff and find that the staff become more knowledgeable of site operations, program missions, and environmental concerns.

I believe that what I'm proposing – using existing Federal staff to prepare EAs – will be beneficial to DOE's NEPA process in many ways. First is the ability to take total control of the schedule . . . time used to create a Statement of Work and associated documentation and waiting on delivery of a draft product can be used to complete the needed NEPA documents. Second is control of document content . . . multiple reviews can be eliminated. Third, because of the aforementioned first and second benefits, there are resultant cost savings. Fourth, and in my opinion most important, is that there is increased Federal ownership of the document because of the "hands-on" experience and knowledge gained by Federal document preparation. Although the DOE NEPA Document Manager for a contractor-prepared EA constitutes the Federal component and ownership, it is not the same as when you actually prepare the draft document. If you prepare it, you OWN it. NEPA is a Federal responsibility.

Be Responsible: Do It Yourself

You, the NEPA practitioners, are going to have to work a little bit differently to implement my suggestion, but think of all the time expended in reviewing and commenting on multiple versions of EAs that just don't say things the way you think they should. I believe that we may save effort and funds by reviewing fewer preliminary drafts by preparing our own. If I prepare a successful EA and finding of no significant impact, there is great satisfaction in the outcome. Let us all be responsible and accountable for our work, and unafraid to push for improvement in the quality and efficiency of the NEPA process. It is time for DOE to take control of the EA process for our sites by preparing more of our EAs in-house. We can all do this, and DOE will be saving substantial funds and reducing time in the NEPA process!

For further information, contact Gary Hartman at hartmangs@oro.doe.gov or 865-576-0273.




2009 NAEP Conference: Focus on Sustainability

By: Eric Cohen and Carrie Moeller, Office of NEPA Policy and Compliance

Under the theme of *Making Sustainability Happen: Goals, Practices, and Challenges*, more than 200 participants met at the 34th annual conference of the National Association of Environmental Professionals (NAEP) in Scottsdale, Arizona, on May 2–6, 2009. “Sustainability is about improving today’s quality of life without sacrificing tomorrow’s options; it is about finding solutions that seek to balance social, environmental, and economic values; and it is about treating the Earth like we intend to stay,” said keynote speaker, Dr. Jonathan Fink, Director of Arizona State University’s Global Institute of Sustainability.

Participants at the conference had the opportunity to hear from a diverse mix of presenters on topics such as

sustainable systems, air and climate change, energy, and public participation. NEPA implementation was a major topic of discussion. Several sessions addressed ways to make the NEPA process faster and more effective, including a presentation on streamlining the NEPA process for Recovery Act projects. Six panels addressed a range of issues regarding the consideration of climate change in NEPA documents.


Articles on these sessions (identified by the NAEP logo), including recommendations by presenters, are on the following pages. The NEPA Office presents the recommendations without endorsement. However, the discussions at the NAEP conference paralleled those at the April NEPA Compliance Officers meeting. 

Many Ways to Streamline the NEPA Process

The NEPA process need not impede the effective, rapid implementation of projects, concluded several presenters, who suggested ways to minimize the time needed to complete EAs and EISs. One presentation focused on streamlining NEPA reviews for Recovery Act projects.

Some Federal agencies have developed proven methods to streamline the EIS process, which will be essential for projects under the Recovery Act, observed Ron Bass, a senior regulatory specialist with ICF Jones & Stokes. Building on those methods, past NEPA streamlining studies, and the experience of his firm, Mr. Bass and his colleagues developed four specific recommendations for streamlining the EA process, and 15 recommendations for the EIS process (summarized in text boxes; the full paper, *Economic Stimulus and NEPA Compliance – Streamlining the Environmental Review Process*, is at www.icfi.com/transition under Climate & Energy).

Most of the recommendations are consistent with those discussed at DOE’s NCO meeting in April and include some new ideas as well. In addition, Mr. Bass suggested providing opportunities for public review of all draft EAs, and encouraged review by the Environmental Protection Agency and independent third parties.

In presenting these recommendations, Mr. Bass noted that, given the importance of Recovery Act projects, agencies should be able to complete an EIS in less than 1 year within the existing legal and regulatory framework, rather than the government-wide average of 3.4 years. Mr. Bass also emphasized the importance of the NEPA process to effective decision making, not only for Recovery Act projects, and he cited former Secretary of Energy James Watkins, who said “Thank God for NEPA” after an EIS helped him avoid making a poor decision. 

Recommendations for Streamlining the EA Process from the NAEP Conference

1. Develop checklists to standardize the preliminary project evaluation. Checklists can help eliminate unnecessary topics and can be tailored to meet agency needs.
2. Develop uniform thresholds for determining significance to ensure that conclusions in a finding of no significant impact (FONSI) are well-supported.
3. Design projects to avoid or reduce impacts. Rather than prepare an EIS, appropriate use of a “mitigated FONSI” can streamline the process.
4. Provide supporting documentation for FONSI. Explaining why a proposed action will not have significant impacts in terms of the concepts of “context” and “intensity” will improve legal defensibility.

Ron Bass, ICF

(continued on next page)



Recommendations for Streamlining the EIS Process from the NAEP Conference

1. *Obtain senior-level commitment to streamlining.* Agency management should commit to making the NEPA process work better and preparing documents expeditiously. Once management makes this commitment and engages in the EIS process, staff and consultants are likely to follow, and can take advantage of all available tools and resources.
2. *Ensure adequate staffing.* Agencies should assign highly-experienced managers, especially for complex, controversial NEPA documents. Effective EIS management requires a combination of skills, including those of experienced management, technical, legal and communication staffs, as well as consultants. Agencies should also commit sufficient qualified staff to avoid bottlenecks during internal EIS reviews.
3. *Establish and stick to time limits for EIS preparation.* Some agencies have proven track records in following time limitations. Federal agencies should consider modifying their internal procedures to adopt time limits.
4. *Establish and stick to deadlines for internal review.* One of the most widespread causes of EIS delay can be avoided if Federal agencies develop and enforce internal EIS review deadlines, and obtain commitments for timely review from cooperating agencies.
5. *Establish internal steering committees.* Committees that include senior agency management, policy staff, legal counsel, cooperating agencies, and, in some cases, the Department of Justice and the Council on Environmental Quality (CEQ), can reveal major issues and develop solutions throughout the EIS process.
6. *Rely on programmatic EISs and tiering.* Using programmatic EISs in conjunction with tiering, agencies can significantly reduce the need for new, time-consuming studies. This approach would be particularly helpful for Recovery Act projects that can tier from an existing programmatic EIS.
7. *Use scoping to eliminate unnecessary studies.* During scoping, an agency can eliminate a specific issue from the EIS if it determines that the issue is not relevant, saving time and effort.
8. *Prepare concise and readable documents.* Consistent with CEQ regulations, some agencies have prepared “reader-friendly” EISs that minimize technical jargon and acronyms and use easy-to-understand graphics.
9. *Prepare for the writing process in advance.* Determine as much as possible about the content and look of the document in advance. Consider project-specific style guides, choice of terminology (e.g., how to refer to the project), need for graphics and tables, level of detail, and need for appendices and references.
10. *Develop comprehensive strategies for integrating NEPA with other laws.* Identify all permitting and consulting agencies, including roles and review timelines; rely on memoranda of understanding for cooperating agencies; and establish interagency steering committees or resource advisory committees. For particularly complex and important projects, CEQ can have a positive influence on inter-agency interaction, which often is responsible for slowing the EIS process.
11. *Engage in effective collaboration with concerned state and local agencies and stakeholders.* Consider using professional mediators or facilitators on particularly complex or controversial projects. Although collaboration may involve considerable up-front effort, it is the best way to gain acceptance for Federal projects.
12. *Encourage pre-application consultation with regulatory agencies.* Agencies should develop procedures for allowing applicants to engage in pre-application consultation with staff. The Federal Energy Regulatory Commission has developed such procedures, which expedite projects.
13. *Conduct “just-in-time” NEPA training.* The level of NEPA knowledge among parties participating in the EIS process (e.g., technical preparers and reviewers) is not consistent, resulting in delays. During scoping and throughout the EIS process, as needed, internal, on-the-job NEPA training sessions may be beneficial.
14. *Use efficient and expedited contracting approaches.* Use of indefinite quantity contracts under which a consultant is selected in advance to prepare one or more NEPA documents on a retainer basis can avoid potentially lengthy delays from selecting consultants anew each time a project is proposed.
15. *Consider what states can do.* States with “little NEPA” laws can achieve considerable streamlining within their existing framework. When both Federal and state approvals are necessary, most state laws encourage state and local agencies to cooperate with Federal agencies to prepare joint documents to reduce duplication of effort and save cost and time.

Ron Bass, ICF



NEPA and Climate Change: “Don’t Do Nothing”

Greenhouse gas (GHG) emissions and climate change continues to be a hot topic, as indicated by six different panel discussions at the NAEP conference. Presenters addressed a range of issues and responded to key questions on this topic relevant to NEPA practitioners.

Are Climate Change Impact Analyses Required under NEPA?

Presenters expressed no doubt about this question. Michael Smith, ICF International, reviewed recent litigation history that answered this question in the affirmative, and quoted Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ): “How could you read the NEPA statute and CEQ regulations and not think that NEPA analyses should address climate change impacts?”

“Don’t do nothing,” cautioned Ron Bass, author of *Evaluating Greenhouse Gases and Climate Change Impacts under NEPA: Ten Steps to Taking a Hard Look*. “There is no need to wait for guidance. NEPA already applies to greenhouse gases and climate change impacts,” he said.

How Do We Do It?

Noting that there is little Federal agency guidance on climate change analyses under NEPA, presenters focused on aspects of *how* to conduct analyses, not *whether*. “Its not whether, but how much,” said Linda Strozyk, an attorney with the Maryland Attorney General’s office.

Fred Wagner, an attorney with Beveridge and Diamond, said there is “no difference” between the analysis of climate change impacts and other resources. He recommended taking ownership of the issue by making climate change analyses visible in NEPA documents, such as by creating separate sections or appendices on the topic. “Lead with your jaw,” he advised.

One presenter noted that, in the absence of guidance, “every analysis is a new adventure.” Presenters nevertheless characterized climate change impact analyses as “doable” through application of time-tested NEPA principles, and recommended analytical approaches.

“What’s the big fuss?” asked Alice Lovegrove, an air quality engineer with Parsons Brinkerhoff. “GHG analyses can be conducted using approaches and procedures similar to those that are currently used for the other regulated pollutants. There are plenty of tools for analysis that we regularly apply to estimate emissions from all types of projects,” she said.

Honey Walters, a climate change specialist with EDAW AECOM, said “you can’t manage what you don’t measure.” Ms. Walters provided a list of GHG emission estimation tools, described several protocols for emissions inventories, and discussed methodologies for climate change impact assessments. She noted similarities in a variety of models used in analyzing impacts from land use change and transportation that are applicable to climate action plans. “Analysts have discretion to choose the appropriate analytical tools,” she said.

Several presenters discussed step-by-step approaches for climate change impact analyses in NEPA documents, which are consistent with the preliminary approach to DOE guidance discussed at the DOE NEPA Compliance Officers meeting in April (related article, page 12). Albert Herson, SWCA Environmental, suggested a three-step approach involving: (1) a summary of the literature on climate change impacts; (2) analysis of the impacts of the proposed action on climate change (normally under cumulative impacts); and (3) analysis of impacts of climate change on the proposed action. Also, Mr. Bass presented his 10-step approach to addressing GHG and climate change impacts (text box, next page).

What Is the Appropriate Level of Detail?

“Use the scoping process to ‘right size’ the analysis; not every analysis needs to be as robust as the Columbia River Crossing Project,” said Michael Culp, Federal Highway Administration, with regard to the analysis of climate change impacts in NEPA documents for transportation projects. (The Columbia River Crossing Project was the recipient of NAEP’s NEPA Excellence Award – related article page 23).

“You don’t have to win an award to be adequate – do what’s appropriate,” advised Mr. Wagner. He also recommended the use of scoping to help gauge the context and intensity of a project’s GHG emissions (e.g., in relationship to state and local climate action plans). Taking the “public’s pulse” on climate change issues, he said, will help in determining the appropriate level of detail for analyses. Mr. Wagner further noted that the appropriate level of GHG emissions analysis for an EIS on corporate average fuel economy standards will be different than for a highway interchange project. Other presenters also reflected this view: “Scale the analysis proportional to the proposed actions’s GHG emissions and climate change risk,” said Mr. Herson.

(continued on next page)



A Ten-Step Approach to Addressing GHG and Climate Change Impacts

The following is an excerpt from Ron Bass's presentation, "NEPA and Climate Change: What Constitutes a Hard Look?" at the NAEP conference.

Although there is little doubt that agencies must evaluate GHG/climate change impacts under NEPA, he said, in the absence of specific requirements, the key question is: *What should an agency do – right now – to avoid putting itself in jeopardy?* The recommended 10-step approach takes into consideration the existing provisions of the NEPA regulations, recent court decisions, and various state programs. The steps conform to the main elements of a NEPA document.

Affected Environment

- Step 1** – Describe the existing global context in which climate change impacts are occurring and are expected to continue to occur in the future.
- Step 2** – Summarize any relevant state laws that address climate change.
- Step 3** – Describe any relevant national, statewide, and regional GHG inventories to which the project will contribute.

Environmental Consequences

- Step 4** – Quantify the project's direct and indirect GHG emissions.
- Step 5** – Convert the GHG emissions into carbon equivalents using an established "carbon calculator."
- Step 6** – Discuss whether the project would enhance or impede the attainment of applicable state GHG reduction.
- Step 7** – Describe the cumulative global climate change impacts to which the proposed action would contribute, i.e., the impacts of the project on climate change. (This may use the same information as in Step 1.)
- Step 8** – Describe how the impacts of global climate change could manifest themselves in the geographic area in which the project is proposed, and therefore potentially affect the project, i.e., the impacts of climate change on the project (e.g., sea level rise could affect a coastal project).

Alternatives

- Step 9** – Include alternatives that would meet the project objectives but would also reduce GHG emissions.

Mitigation Measures

- Step 10** – Identify mitigation measures that would reduce GHG emissions, including both project design or operational changes and potential compensatory mitigation (e.g., carbon offsets).

Should Indirect and "Upstream" Emissions Be Considered?

Several presenters addressed questions regarding the appropriate level of analysis needed for indirect emissions of a project. Indirect emissions may result from a project's consumption of energy (e.g., electricity or steam), water conveyance, waste treatment, or waste disposal. Presenters stated that such indirect emissions should be considered for the construction and operation phases of a project. Several questions centered on how far, if at all, an analysis should go beyond these types of indirect emissions. Should an analysis consider so-called "upstream" GHG emissions

from the processing of raw materials ultimately used in a project?

Heather Phillips, EDAW AECOM, said that there is a point where the analysis must stop, where emission sources become too speculative. Mr. Bass indicated that analysts will need to determine what is foreseeable and what is speculative for this issue, in accordance with established NEPA principles. Ms. Lovegrove addressed this question for transportation projects, explaining that, in documents she has worked on, GHG emissions from vehicle traffic were considered, but emissions from *manufacturing* the vehicles were not.

(continued on next page)



What Are Climate Action Plans and Are They Relevant to NEPA Analyses?

A number of states have established or plan to establish GHG reduction targets and goals. In response, many states, communities, and local governmental entities are developing “climate action plans.” Several presenters discussed how climate action plans help to focus land use and transportation planning efforts toward sustainability, and foster the implementation of measures to meet state or regional GHG reduction goals.

Ms. Walters described potential GHG reduction policies and implementing measures for climate action plans, such as roadway, bike, and trail connections; efficient public transportation options; the creation of neighborhood centers and other sustainable urban design concepts; use of

energy efficient lighting and design; and many other mitigation measures that could be relevant in NEPA documents.

Mr. Bass noted that NEPA analyses of climate change impacts for proposed actions should consider climate action plans, and reminded participants that NEPA regulations require discussions of “possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned” [40 CFR 1502.16(c)]. Several presenters stated that consistency with such plans is a factor to consider in determining the *significance* of a proposed project’s climate change impacts, which is one of the issues with which NEPA practitioners continue to struggle. LL

DOE Celebrates Earth Day 2009

DOE Headquarters celebrated Earth Day 2009 from April 20–24 with displays highlighting the Department’s environmental accomplishments and a tree planting, with assistance by children from the DOE Child Care Center, at the DOE Earth Day Park on Independence Avenue.



In April and May, the Office of NEPA Policy and Compliance, represented by Carrie Moeller, featured the NEPA Lessons Learned Quarterly Report in its display at “Earth Week” at DOE Headquarters, the NCO meeting, and the NAEP annual conference in Scottsdale, Arizona.



At the first annual “EStar” (Environmental Sustainability Star) awards ceremony on April 22, Andy Lawrence, Director of DOE’s Office of Nuclear Safety, Quality Assurance, and Environment, explained that DOE changed the name of the award to “highlight the Department’s commitment at all levels to identifying, implementing, and evaluating the practices and programs that advance sustainability in environmental and energy management.” (This is the fifth year the Department conferred awards recognizing exemplary environmental stewardship.)



Towards a More Effective NEPA Process?

In two presentations at the 2009 NAEP conference, Owen Schmidt, an environmental attorney who worked for the Bonneville Power Administration in the 1980s, offered his NEPA perspectives.

Most Asked NEPA Questions?

“Are the answers to CEQ’s 40 Questions¹ still accurate guidance? Are these still the most-asked questions?” asked Owen Schmidt. Based on his in-depth review, he offered a critique, comparing questions issued by the Council of Environmental Quality (CEQ) in 1981 to the current situation, and recommended revisions, based on case law and guidance memoranda. He also proposed several new “frequently asked questions” (FAQs).

Proposed Revisions to CEQ Guidance

In categorizing each of CEQ’s 40 Questions, Mr. Schmidt identified 18 of them as “good to go,” 11 as “need work,” and 11 as “do over.” For example, he identified Question 32, *Supplement to Old EISs*, as a “do over.” Question 32 asks “under what circumstances do old EISs have to be supplemented before taking action on a proposal?” CEQ’s answer is that agencies should reexamine EISs that are more than 5 years old “if the proposal has not yet been implemented, or if the EIS concerns an ongoing program” and prepare supplemental EISs “if an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”

“The answer is not time-dependent,” asserted Mr. Schmidt, stating that 5 years is superfluous and arbitrary. He emphasized that supplementation should not be necessary unless the changes or new information are relevant to remaining decisions. The guidance should focus on the notion of informing decisions yet to be made, he said.

Mr. Schmidt also proposed Question 37, concerning findings of no significant impact (FONSI), as a “do over.” It is problematic that an EA is separate from a FONSI, while at the same time, he explained, a FONSI must include or incorporate an EA. Both documents together constitute a finding in administrative law, he said. He suggested that CEQ’s NEPA regulations be revised to “restore the concept of a finding,” which he described as a combination of evidence, conclusions of fact, and conclusions of law that yield a legal consequence and recommended that the EA and FONSI be bound together because “together they make up the ‘finding.’”

New FAQ Recommendations

Mr. Schmidt proposed several new FAQs for consideration, with one on the proper scope of a FONSI. He said that many agencies simply find only the “proposed action” to be not significant, locking themselves in on the proposed action as the only option to select at the time of a decision.

“The proper scope of a FONSI should be to find all alternatives to be not significant that can be found to be not significant . . . then, at the time of decision, the decisionmaker is free to choose among them on whatever basis their individual merit may be,” he explained.

How much detail is necessary when describing the proposed action and alternatives? asked Mr. Schmidt, in proposing another FAQ. Agencies should not necessarily amass a large amount of detail on a proposal, he said, but should provide enough detail so stakeholders and agencies can understand the proposal and its consequences. “Case-by-case judgments must be made,” he noted. Mr. Schmidt offered tiering as a solution if a proposal does not “fit” well into a single NEPA document. “Complicated projects might benefit from a tiered approach . . . where an initial NEPA document would analyze site selection . . . and a later tiered NEPA document would analyze operational matters, and a third tiered NEPA document would analyze maintenance,” he said.

Mr. Schmidt underscored the importance of identifying at the outset the scope of the current NEPA document and what will be analyzed in subsequent tiered documents.

Mr. Schmidt also proposed a new FAQ on what constitutes an extraordinary circumstance when deciding whether a proposed action can be categorically excluded. He noted that many agencies wrongly equate a judgment of extraordinary circumstances with a judgment of significant impacts. “This is a false approach because the actions within the category have already been found to normally have no significant impacts, individually or cumulatively,” he said. By definition “what is ‘extraordinary’ is what is not ‘ordinary’” – an agency would consider whether the proposal at hand would cause any consequences not originally considered when the category was created and if so, the circumstances are extraordinary, he explained.



(continued on next page)

¹ The Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations is available at www.nepa.gov under CEQ Guidance.



“Perfect” Environmental Impact Assessment

In presenting “My Search for the ‘Perfect’ Environmental Impact Assessment,” Mr. Schmidt said that NEPA documents are often described as adequate, effective, efficient, legally-defensible, but not perfect. Perfect means to be precisely accurate and contain all the required elements and nothing else, he explained. “Perfect is what we want – we want everything that is necessary, and nothing that is not necessary,” he said. Mr. Schmidt proposed how to achieve “perfect” in steps of the NEPA process, as described below.

NEPA documents should take as long as it takes and be as long as need be, and not one minute or page more.

– Owen Schmidt

Perfect FONSI?

A perfect FONSI is simply one that provides enough information to enable the reader to fill in a three-column table, Mr. Schmidt explained: The first column is “what?” – i.e., what is the environmental impact? The second column is “how much?” – i.e., provide the size, magnitude or intensity of the impact. The third column is “why?” – i.e., why is that thing of that size “not significant?” The third column contains the reasons why the consequences in the first column, given their size in the middle column, are not significant, emphasized Mr. Schmidt. Based on his recent review of a number of FONSI, Mr. Schmidt found that all provide information to fill in the first column, about half provide information to fill in the second column, and none provide information to fill in the third column, i.e., the reasons. “Giving reasons is the minimum requirement for any finding,” he said.

Perfect EA? Perfect EIS? Perfect ROD?

There are eight plain language questions that a reader should have readily answered if an EA or EIS is “perfect,” proposed Mr. Schmidt: (1) What are they up to? (2) Why are they doing that? (3) What else would do the same thing? (4) What’s so bad about doing nothing? (5) What are the comparative merits of each alternative? (6) On what basis will a decision be made? (7) What, if anything, will be done about the adverse consequences? (8) What monitoring will be done, if any?

Each question represents a necessary element of an EA or EIS, explained Mr. Schmidt. “If you can answer those eight questions, then the EA/EIS would fulfill its obligations to inform the reader,” he said. Similarly, the perfect record of decision (ROD) would yield answers to three questions, he explained: (1) Should I do something, or should I do nothing? (2) If something, then which something? and (3) Is there anything to be done about any of the adverse consequences? The third question reflects an agency’s duty to investigate the possibility of mitigating the adverse consequences of its actions, Mr. Schmidt noted.


Perfect Range of Alternatives?

Perfect Cumulative Impacts Analysis?

The idea behind the perfect range of alternatives is that agencies must include alternatives that accomplish the same thing (i.e., meet the purpose and need for agency action) that is intended by the proposed action alternative, asserted Mr. Schmidt. He acknowledged that preparing the perfect cumulative impacts analysis can be as simple as analyzing the sum of the incremental impacts of six potential contributing sources, that is, proposed action, existing actions, past actions, other present actions, reasonably foreseeable actions, and mitigation actions.

“The word ‘perfect’ is attention-getting and controversial, but I think it’s an honest word . . . I don’t think perfect is too hard to reach,” Mr. Schmidt said.



For additional information, contact Mr. Schmidt at oschmidt@att.net. His NAEP conference presentations are available at <http://web.mac.com/olschmidt/NEPA/Downloads.html> (case sensitive). 

NAEP Award Recognizes Climate Change Analysis



NAEP conferred eight Environmental Excellence Awards to recognize significant achievements in improving the quality of the environment and productively engaging interested citizens. A NEPA Excellence Award was presented to the team that prepared the Draft EIS for the Interstate 5 (I-5) Columbia River Crossing Project in recognition of its innovative methods in climate change evaluation. The Team included the Federal Highway Administration and Federal Transit Administration and several state and regional transportation agencies.

The I-5 Columbia River Crossing Project is a multi-modal project focused on improving safety, reducing congestion, and increasing mobility of motorists, freight, transit riders, bicyclists, and pedestrians along a 5-mile section of the I-5 corridor connecting Vancouver, Washington, and Portland, Oregon. In a later presentation on the Project, Jeff Heilman (Parametrix), the NEPA contractor project manager, described consideration of the following factors to estimate greenhouse gas (GHG) emissions: vehicle trips, expected advancements in vehicle and fuel technology and transit technology (electric for light rail and bio-diesel for buses).

The Draft EIS, issued in May 2008, included a comparative analysis of GHG emissions for each of the five EIS alternatives and specific consideration of both short-term construction-related effects and long-term effects from operations of the highway and the transit system. The Draft EIS evaluates a no-build alternative and four multi-modal build alternatives that replace or rehabilitate the existing river crossing, provide highway improvements, extend light rail or provide bus rapid transit with several transit alignment and length options, and/or improve bicycle and pedestrian facilities. The Draft EIS shows that all of the action alternatives would result in a reduction of GHG emissions compared with the no-build alternative, while differences among the alternatives are relatively small.



NAEP awarded the NEPA Excellence Award to the Columbia River Crossing Team. Left to right: Ron Deverman, President of NAEP; Jeff Heilman, Parametrix, receiving the award for the Team; and Bob Cunningham, Chair of the NAEP Awards Committee.

Independent Expert Review Panel Endorses GHG Analysis

As part of the consideration of a locally preferred alternative for the Project, the Metro Council, the Portland City Council, and the Project's Advisory Task Force requested that the Team assemble an independent expert panel to review and evaluate the findings of the GHG emissions analysis in the I-5 Draft EIS. The Panel issued its report in January 2009 declaring the EIS GHG emissions methodology and findings "sound and reasonable." The Panel also recommended some refinements to the model for the Final EIS, primarily to provide a more comprehensive understanding of traffic-related emissions. For more information on the Project, go to www.columbiarivercrossing.org. The Federal Highway Administration and the Federal Transit Administration expect to issue the Final EIS in late 2009. **LL**

Abstracts and Award Nominations Due September 15 for NAEP 2010 Conference on 40 Years of NEPA

The National Association of Environmental Professionals (NAEP) announced that its 2010 conference, planned for April 27–30 in Atlanta, will explore the theme of "Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment."

At the conference, NAEP will present its National Environmental Excellence Awards to recognize outstanding achievements in eight categories, including

NEPA Excellence, Public Involvement/Partnership, Environmental Management, and Environmental Stewardship. Nominations may include self-nominations; the nominator need not be a member of NAEP. Conference information is provided on the NAEP website (www.naep.org), including instructions for submitting abstracts and award nominations, both due September 15, 2009. **LL**



CEQ Submits First Recovery Act Report to Congress

The Council on Environmental Quality (CEQ) addressed the status of NEPA compliance for more than 51,000 Recovery Act funded projects and activities in its first report to Congress, submitted on May 18, 2009, pursuant to Section 1609(c) of the Recovery Act. NEPA reviews had been completed to support more than \$57 billion in Recovery Act funds obligated as of April 24, 2009, the report said.

“This initial report shows that agencies have and will continue to meet their NEPA obligations in a timely manner,” said Nancy H. Sutley, Chair, CEQ, in her transmittal letter to Congress. “Overall, the progress reported to CEQ indicates that NEPA analyses are informing decisions for expenditure of Recovery Act funds in an environmentally sound manner.”

CEQ’s Report to Congress is based upon reports from individual agencies. The majority of completed NEPA actions identified in the report were associated with a single U.S. Department of Agriculture program. The Rural Development program made more than 26,000 categorical exclusion (CX) determinations for direct and guaranteed loans for single-family housing. The next largest number of completed NEPA actions reported was more than 4,000 CX determinations made by the Federal Highway Administration for infrastructure improvement projects. In addition to completed NEPA actions, CEQ reported that about 5,000 NEPA reviews (approximately 24 EISs, 400 EAs, and 4,500 CX determinations) are underway for Recovery Act projects and activities among all Federal agencies.

DOE Progress Included in Report

CEQ reported that DOE has completed NEPA reviews for 28 of its Recovery Act projects and activities for obligations

Recovery Act and NEPA Milestones

April 30 – DOE submitted its Recovery Act Section 1609(c) Report to CEQ (activities through April 24)

May 18 – On behalf of the President, CEQ submitted the first Recovery Act Section 1609(c) Report to Congress

July 15 – Due date of the next DOE report to CEQ (activities through June 30)

August 3 – Due date of the next CEQ report to Congress

totaling over \$3 billion. NEPA reviews were pending for another 15 DOE Recovery Act projects, the report said, and NEPA reviews are not required for nine projects being undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.

Matt Rogers, Senior Advisor to the Secretary of Energy for Recovery Act Implementation, provided DOE’s Report to CEQ on April 30. The report addressed the 52 DOE Recovery Act projects approved as of April 24, about one-third of the total proposed DOE Recovery Act projects. The 52 projects identified in the report include 37 Office of Environmental Management projects, 6 projects each from the Office of Energy Efficiency and Renewable Energy and Office of Science, and program management and administrative funding for the Loan Guarantee Program Office and the Western Area Power Administration.

Most NEPA reviews yet to be completed for these projects involved applications for grants or other funding. DOE began receiving applications for various programs in May.

(continued on page 36)

EPA Offers DOE Assistance in Fulfilling Recovery Act Goals

EPA is committed to helping you meet all applicable requirements and to providing timely reviews and approvals that may be needed under [NEPA]. – Lisa P. Jackson, EPA Administrator, April 20, 2009, letter to Secretary Chu.

In an April 20, 2009, letter to Secretary Chu, Lisa P. Jackson, EPA Administrator, offered EPA’s assistance to DOE in “realizing the Recovery Act’s full promise in a timely and responsible manner.” Ms. Jackson’s letter outlined various tools and best practices for “greening” Recovery Act projects, resources for promoting environmental justice, and information on environmental requirements that may arise in carrying out Recovery Act responsibilities and how best to meet them. Many of these resources are available on EPA’s Recovery Act website at www.epa.gov/recovery.

In addition, she requested that DOE provide a list of projects that require preparation of an EIS (and thus, EPA review pursuant to Section 309 of the Clean Air Act) or review under any of the following: transportation/general conformity requirements; Sections 402 or 404 of the Clean Water Act; Section 142(e) of the Safe Drinking Water Act; and Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act/Superfund Amendments and Reauthorization Act. The DOE Office of NEPA Policy and Compliance will provide a project list to EPA’s NEPA Compliance Division, which in turn will distribute the list to EPA’s appropriate regional offices for prompt action.

New FOIA Guidelines Favor Disclosure and Transparency



The Attorney General issued new Freedom of Information Act (FOIA) Guidelines on March 19, 2009. The Guidelines, prepared in response to President Obama's January 21, 2009, memorandum on FOIA, direct all executive branch departments and agencies to apply a presumption of openness when administering FOIA. (See [LLQR, March 2009, page 1.](#)) The Department of Justice (DOJ) Office of Information Policy published additional guidance on April 17, 2009, that summarizes these earlier documents and provides specific instructions on implementing FOIA consistent with Obama Administration policies. Openness is one of NEPA's core principles, and the requirements for public disclosure under FOIA and NEPA are related. Both the Council on Environmental Quality NEPA regulations (40 CFR 1506.6(f)) and the DOE NEPA regulations (10 CFR 1021.340) require making information publicly available, consistent with FOIA.

Second, an agency must consider whether it can make a partial disclosure of requested information whenever it determines that it cannot fully disclose a record. The Attorney General reminds agencies that "FOIA requires them to take reasonable steps to segregate and release nonexempt information." The DOJ guidance further states that, in addition to reviewing records to see if information can be segregated and released as nonexempt, agencies should also determine whether portions that are technically exempt can be released as a matter of discretion. The guidance provides detail on each of the areas of exemption under FOIA and the appropriate application of discretion to disclose information under each of them.

"The combined impact of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is a sea change in the way transparency is viewed across the government."

DOJ Guidance, April 17, 2009

New Standard for Defending Agencies

The Attorney General's Guidelines also outline a new standard for defending agency decisions to withhold records requested under FOIA. DOJ will defend an agency's decision to deny a FOIA request only if the agency "reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions" (e.g., national security, personal privacy, privileged records, law enforcement interests) or if the law prohibits disclosure. The policy of the previous administration had been to defend a denial when agencies had a "sound legal basis" for their decisions.

A Presumption of Openness

"By restoring the presumption of disclosure that is at the heart of the Freedom of Information Act, we are making a critical change that will restore the public's ability to access information in a timely manner," noted Attorney General Eric Holder in a press release accompanying the new Guidelines. The DOJ guidance calls for agency personnel to change their thinking in keeping with this vision of a "new era of open government" heralded by the President. They must focus on the principles set out by the President and Attorney General and, most importantly, "view all FOIA decisions through the prism of openness."

The Attorney General's Guidelines address the presumption of openness in two specific ways. First, they state that an agency should not withhold information simply because it may do so legally. The DOJ guidance expands upon this point and directs agencies to review records "with a view toward determining what can be disclosed, rather than what can be withheld." It also reminds agencies that records cannot be withheld to protect the government from embarrassment, to avoid revealing errors, or because of "speculative or abstract fears."

The DOJ guidance expands upon the requirement to predict "foreseeable harm" when deciding to withhold documents. It recognizes that protection remains appropriate for certain information. However, agencies should review records for their content and the actual impact that would result from disclosing that particular record, rather than simply considering whether that record type could fit under an exemption category. The guidance outlines the factors to consider for each of the FOIA exemption categories and notes that "records protected by Exemption 5 hold the greatest promise for increased discretionary release under the Attorney General's Guidelines." Exemption 5 involves records created as part of an agency's deliberative process, such as that inherent in the NEPA process. The DOJ guidance notes that the discretionary release of such records "will be fully consistent with the purpose of the FOIA to make available to the public records which reflect the operations and activities of the government." When examining such records, agencies should analyze the age of the record, the sensitivity of its content, the nature and status of the decision, and the personnel involved.

(continued on next page)

New FOIA Guidelines (continued from previous page)

FOIA Is Everyone's Responsibility


In addition to outlining the disclosure standards, the Attorney General's Guidelines address accountability in the administration of the FOIA process. "Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests," the Attorney General wrote. He noted that all government employees share responsibility for effective FOIA administration, not just an agency's FOIA staff. Agencies must address the obstacles to improving FOIA performance such as competing agency priorities and insufficient technological support. To that end, the guidelines call for the active participation of agency Chief FOIA Officers in supporting the work of FOIA professionals.

Working Proactively and Promptly

In addition to recommending that agencies not withhold information simply because they may do so and suggesting that agencies consider whether they can make a partial disclosure of requested information, the Guidelines address a third tenet of open government – the obligation to work proactively and respond to requests promptly. Agencies should anticipate interest in records and systematically post such information online before receiving a FOIA request. The DOJ guidance calls this "a key area where agencies should strive for significant

improvement" and refers to the principles for the dissemination of information outlined in Section 8 of Office of Management and Budget Circular A-130. In addition, agencies should respond in a timely manner to requests that they do receive, rather than viewing long delays as inevitable given the high demand for information. The Attorney General's Guidelines remind agencies of requirements effective December 31, 2008, to assign tracking numbers to requests that will take longer than 10 days to process and to establish a telephone or Internet service that allows requestors to track the status of their request.

Next Steps

Agency Chief FOIA Officers are to report to DOJ each year on the steps taken at their agencies to improve FOIA operations and facilitate information disclosure. DOJ will issue guidance on the content and timing of these reports. To facilitate implementation of the Guidelines, DOJ hosted a training conference on March 26, 2009, for agency Chief FOIA Officers, agency Principal FOIA Contacts, and FOIA Public Liaisons across the Federal government to discuss the President's and Attorney General's memoranda. In June, the 2009 *Department of Justice Guide to the Freedom of Information Act* will be published by the Government Printing Office and made electronically available on the DOJ website (www.usdoj.gov/oip). 

Key Elements in the Commitment to Open Government

In summarizing the policy of President Obama and Attorney General Holder regarding FOIA under this Administration, the DOJ guidance outlined 10 key elements, abridged below, that agencies must take into account to realize the commitment to open government:

1. The presumption of disclosure should be kept at the forefront of all decisions involving FOIA.
2. Agencies should approach their review of documents by asking, "What can I release?"
3. Records should not be withheld merely because they fall within an exemption.
4. Agency reviews of each document should focus on whether there is foreseeable harm from disclosure of that particular record.
5. Agencies should determine foreseeable harm on a case-by-case basis, considering universal factors such as the age of the document and the sensitivity of its contents.
6. Agencies should make discretionary releases of otherwise exempt records when possible.
7. Agencies should strive to make partial disclosures when full release of a record is not possible.
8. Agencies should anticipate interest in records and set up systems for identifying and posting such records on their websites.
9. Agencies should work cooperatively with requestors and respond promptly.
10. FOIA professionals should work with their agency Chief FOIA Officers.

Transitions

New Staff in the Office of NEPA Policy and Compliance:

The Office of NEPA Policy and Compliance is pleased to welcome two Environmental Protection Specialists to its staff. Both started in April and were able to meet DOE's NEPA Compliance Officers at the recent meeting.



Jeff Dorman

Jeff Dorman comes to DOE with 5 years of NEPA experience in the private sector working on projects for the U.S. Army Corps of Engineers, Mobile District, and U.S. Department of Navy, Strategic Systems Programs. He also has experience with Geographic Information Systems for numerous Federal, state, and local agency projects, including traditional cartography, spatial data creation and management, and data analysis and modeling. Jeff joins the Western Energy and Waste Management Unit and can be reached at jeffrey.dorman@hq.doe.gov or 202-586-3181.



Julie Smith

Julie Smith joins DOE from the Department of Transportation, Federal Transit Administration (FTA), where for almost 5 years she advised headquarters and regional staff on NEPA compliance and other environmental issues and reviewed a range of NEPA documents. She was the FTA's representative on the Federal Interagency Working Group on Transportation, Land-use and Climate Change and a member of FTA's Global Climate Change Reauthorization Working Group. She has an undergraduate degree in Environmental Chemistry and masters and doctoral degrees in Public Policy – Environmental. Julie joins the Eastern Energy and Waste Management Unit and can be reached at juliea.smith@hq.doe.gov or 202-586-7668.

New NEPA Compliance Officers

National Energy Technology Laboratory: Paul Detwiler, Mark Lusk, Roy Spears

The National Energy Technology Laboratory (NETL) has designated three additional NCOs in recognition of the need for timely NEPA compliance for a greatly increased number of proposals expected under the American Recovery and Reinvestment Act. Paul Detwiler (ralph.detwiler@netl.doe.gov or 412-386-4839, located in Pittsburgh), Mark Lusk (mark.lusk@netl.doe.gov or 304-285-4145), and Roy Spears (roy.spears@netl.doe.gov or 304-285-5460) join John Ganz (john.ganz@netl.doe.gov or 304-285-5443) at Morgantown in fulfilling the NEPA responsibilities of NETL.

Paul Detwiler transferred to NETL in January 2009 after 13 years at DOE Headquarters, most recently serving as Deputy General Counsel of the NNSA. (See LLQR, December 2008, page 33.)

Nevada Site Office: Lori Plummer (Deputy NCO)



Lori Plummer now serves as the Deputy NCO for the Nevada Site Office (NSO). She has over 15 years of environment, safety and health experience and is currently the Acting Team Leader for the Environmental Protection Team. She has been with NNSA for more than 3 years and is responsible for a variety of programs including environmental monitoring, and environmental permitting and reporting. Previously she was the Explosive Safety Program Manager for the NSO. As Deputy NCO, Ms. Plummer reports that she is pleased to have the opportunity to support the NSO's NCO, Linda Cohn, and is looking forward to being involved in NEPA processes at her site. She can be reached at plummerl@nv.doe.gov or 702-295-0903.

(continued on next page)

Transitions (continued from previous page)

Oakland Projects Office: Stephanie Jennings

Stephanie (Stephie) Jennings now serves as NCO for the Oakland Projects Office, as well as NEPA Document Manager for the Santa Susana Field Laboratory Area IV EIS ([LLQR, September 2008, page 8](#)). Ms. Jennings brings over 30 years of experience working with stakeholders and regulators on highly complex and controversial projects, including facilitating NEPA activities in Idaho and Washington and at the Waste Isolation Pilot Plant (WIPP). Before joining DOE in 2007, she worked at Los Alamos National Laboratory supporting activities related to WIPP and led the team that developed a DOE safety standard for transuranic waste facilities. In the 1990s, she was the Community Relations Manager for several Superfund sites and earlier served for 8 years as a U.S. Congressional staffer. Ms. Jennings can be reached at stephanie.jennings@emcbc.doe.gov or 818-466-8162.

Rich Schassburger, formerly Rocky Flats NCO and now Director of the Oakland Projects Office, explained the genealogy of DOE Offices in and near Oakland as follows: When the Oakland Operations Office was closed, most staff were transferred to NNSA's Livermore Site Office and Albuquerque Service Center, and the Office of Science's Berkeley Site Office and Stanford Site Office. Left behind were a very few Environmental Management (EM) staff to manage cleanup at several nearby sites (Lawrence Berkeley National Laboratory, work now completed; SLAC National Accelerator Center; Energy Technology Engineering Center at the Santa Susana Field Laboratory near Los Angeles; and General Electric Vallecitos Nuclear Center). That EM Office, now called the Oakland Projects Office, is managed by EM's Small Sites Office (EM-3.3).

Farewell to Dan Ruge, Deputy Assistant General Counsel

A strong leadership voice in DOE's NEPA compliance activities, Dan Ruge, retired from the Office of General Counsel in April, closing out a DOE career of 30 years. He had transferred to the Office of the Assistant General Counsel for Environment from the Office of the Assistant General Counsel for Conservation in the early 1980s. As described by friend and (now retired) colleague, Steve Ferguson, Dan was told at the time that his short-term assignments would include the Nuclear Waste Policy Act, but that he could expect to transition out of that work in a few months. It is indeed ironic that, in his later years as a Deputy Assistant General Counsel for Environment, much of Dan's substantial contribution to DOE's mission included NEPA work for the Waste Act. In addition, Dan was the Department's preeminent expert on the Resource Conservation and Recovery Act. Dan also served for a time as the Acting Assistant General Counsel for Environment, providing sage advice on a myriad of NEPA issues.

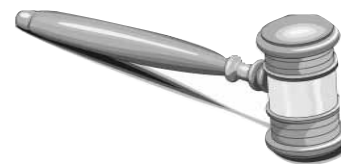


Dan's Parting Message

I thoroughly enjoyed working with the DOE NEPA Community. I have been fortunate to have worked on many projects where NEPA has been a very important component of the Department's decisionmaking and public involvement. I encourage all to work collectively to maintain NEPA's vitality. There are significant challenges ahead and I urge those involved with NEPA to give serious thought on how to keep NEPA relevant. One challenge, of course, is the increasing tendency for NEPA documents to become lengthy and cumbersome. Although general concerns are frequently raised, there needs to be a universal appreciation of the problem and, more importantly, the resolution. To do this there needs to be a concerted and disciplined effort on the part of all involved to evaluate options and implement recommendations. All affected Offices in DOE need to be a part of this process and other discussions on how to meet the challenges to keep NEPA relevant. I wish you all well.

On behalf of DOE's NEPA Community, the Office of NEPA Policy and Compliance thanks Dan for his significant contributions to DOE's NEPA Program and wishes him well in all his future endeavors.

Litigation Updates



DOE Litigation

Preliminary Injunction Granted for Proposed Facility at LBNL

The Federal District Court for the Northern District of California granted the request of Save Strawberry Canyon, a citizens' group based in Berkeley, California, to temporarily halt construction of the planned Computational Research and Theory Facility pending a ruling on the merits. At issue in *Save Strawberry Canyon v. DOE, et al.* is the construction and operation of the Facility by the University of California at Lawrence

Berkeley National Laboratory. The plaintiff alleged in its complaint that DOE is in violation of NEPA by not preparing an EA or EIS, and sought an injunction to halt any ground-disturbing activity on the project until DOE complies with NEPA. The case is currently set for trial in September 2009. (See [LLQR, September 2008, page 20.](#)) (Case No.: 08-03494 (N.D. Cal.))

Annual DOE Litigation Report to CEQ

In its 2008 NEPA Litigation Survey provided to the Council on Environmental Quality (CEQ) on April 21, 2009, the DOE Office of General Counsel reported on nine active cases. This annual report summarizes basic information about the status of pending cases that challenge DOE decisionmaking under NEPA. CEQ compiles individual agency responses to the annual NEPA Litigation Survey and posts aggregate data on the CEQ NEPAnet, www.nepa.gov. The majority of DOE suits (eight out of nine) contested NEPA review determinations made by DOE – namely the adequacy of environmental assessments, the validity of a finding of no significant impact (FONSI), or lack of NEPA review. Six of the nine cases are new with three cases filed before 2008. Eight of the nine cases are still ongoing. In one case, the court ordered DOE to prepare an EIS because it found that the EA did not support a FONSI. For further information, please contact Steven Miller at steven.miller@hq.doe.gov.



Government-wide NEPA Litigation Scorecard

In her annual NEPA case law update at the 2009 NAEP conference in Scottsdale, Arizona, Lucinda Low Swartz, former CEQ Deputy General Counsel, noted that in 2008, Federal courts issued about 46 substantive decisions involving the implementation of NEPA. The Government prevailed in 29 of the 46 cases (63 percent), which involved 18 different Federal departments and agencies, she said.

Ms. Swartz explained that courts continued to uphold decisions where the agency could demonstrate it had given potential environmental impacts a “hard look” and invalidated those where the agency did not do so. She summarized three decisions involving public involvement requirements for EAs noting that “the court is not dictating what public involvement [for EAs] looks like.” For example, in *Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers*, the court concluded that the circulation of a draft EA is not required in every case, she explained. (See [LLQR, June 2008, page 21.](#)) Federal agencies have flexibility in how they involve the public in EAs, but they must provide sufficient information to allow such involvement, she emphasized.

In cases involving segmentation claims, the courts affirmed that connected actions are those that are automatically triggered or are not independently justified. In *Northwest Bypass Group v. U.S. Army Corps of Engineers* (D. N.H., April 22, 2008; Case No.: 06-00258) concerning a connector road project with three phases, the courts determined that the U.S. Army Corps of Engineers did not segment actions in violation of NEPA as phase II has “independent utility” and it would not automatically trigger phase III.

Ms. Swartz also summarized a decision regarding programmatic EISs where the court concluded that an agency’s decision to prepare a programmatic EIS on a hypothetical future level of activity did not undermine the agency’s issuance of EAs/findings of no significant impact for specific activities during programmatic EIS preparation (*Native Village of Point Hope v. Minerals Management Service*, D. Alaska, July 2, 2008, Case No.: 08-00011).

For additional information, please contact Ms. Swartz at lls@lucindalowschwartz.com.

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.

- DOE Project Management
Career Development Program
505-245-2112
Register through CHRIS
For DOE employees only

Environmental Laws, Regulations, and NEPA

Oak Ridge, TN: August 3-5
No fee

- International Association for Public Participation
703-837-1197
iap2training@theperspectivesgroup.com
www.iap2.org

Planning for Effective Public Participation

Boston, MA: July 13-14
Albany, NY: August 10-11
St. Louis, MO: August 31-September 1
\$700

Communications for Effective Public Participation

Boston, MA: July 15
Albany, NY: August 12
St. Louis, MO: September 2
\$350

Techniques for Effective Public Participation

Boston, MA: July 16-17
Albany, NY: August 13-14
St. Louis, MO: September 3-4
\$700

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

Implementation of NEPA

Durham, NC: June 15-19
\$1,275

Accounting for Cumulative Effects in the NEPA Process

Durham, NC: September 16-18
\$800 (\$875 after 8/26/09)

Certificate in the National Environmental Policy Act

Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses.

- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org

NEPA: Writing the Perfect EA/FONSI or EIS

Philadelphia, PA: June 18-19
Columbus, OH: September 3-4
\$495 (\$395 reduced tuition is available,
see website)

- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com

Reviewing NEPA Documents

Las Vegas, NV: June 16-18
\$985 (GSA contract: \$895)
Las Vegas, NV: September 28-30
\$945 (GSA contract: \$855) see website
for registration deadlines

Collaboration in the NEPA Process

Olympia, WA: July 6-7
\$785 (GSA contract: \$695)

Applying the NEPA Process and Writing Effective NEPA Documents

Baltimore, MD: July 14-17
\$1,185 (GSA contract: \$1,095)
New Orleans, LA: August 18-21
\$1,145 (GSA contract: \$1,055) until 7/1/09
Salt Lake City/Park City, UT: September 15-18
\$1,145 (GSA contract: \$1,055) see website
for registration deadlines

(continued on next page)

Training Opportunities

(continued from previous page)

Applying the NEPA Process – Emphasis on Native American Issues

Las Vegas, NV: July 21-23
\$945 (GSA contract: \$855) until 6/3/09

NEPA Cumulative Effects Analysis and Documentation

Phoenix, AZ: August 4-7
4-day, two course registration:
\$1,445 (GSA contract: \$1,055) until 6/17/09
Phoenix, AZ: August 6-7
\$745 (GSA contract: \$655) until 6/17/09
Eglin, FL: August 19-20
\$745 (GSA contract: \$655) until 6/17/09

Applying the NEPA Process

Phoenix, AZ: August 4-5
\$745 (GSA contract: \$655)

NEPA Climate Change Analysis and Documentation

Denver, CO: August 5-6
\$745 (GSA contract: \$655) until 6/17/09

Core Principles: Telling the NEPA Story, Keeping Documents Brief, Meeting Legal Requirements

Denver, CO: August 18-20
\$945 (GSA contract: \$855) until 7/7/09

Reviewing NEPA Documents and NEPA Project and Program Management

Las Vegas, NV: September 28-October 2
2-day, individual course registration:
see individual course listing for pricing
4-day, two course registration: \$1,345
(GSA contract: \$1,255) until 7/12/09

NEPA Project and Program Management

Las Vegas, NV: October 1-2
\$745 (GSA contract: \$655) until 7/12/09

- Natural Resources and Environmental Policy Program
Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/hm/students/grad-degrees/nepa

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: \$5,896 (includes tuition, course fees, and all materials)

- SWCA Environmental Consultants
800-828-7991
training@swca.com
www.swca.com/training/webinar

Introduction to NEPA

Webinar: July 29-30
\$200

- U.S. Institute for Environmental Conflict Resolution (520) 901-8501
usiecr@ecr.gov
www.ecr.gov/Training/training.aspx

Introduction to Managing Environmental Conflict

Washington, DC: September 15-16
\$995

Customized NEPA Training

- Environmental Impact Training
512-940-7969
info@eiatraining.com
www.eiatraining.com
- Environmental Training & Consulting International, Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.com
- Environmental Planning Strategies, Inc.
563-332-6870
jleeeps@mchsi.com
www.jlee-eps.com/workshops.php

EAs and EISs Completed January 1 to March 31, 2009

EAs

Office of the Chief Financial Officer

DOE/EA-1631 (02/27/09)

Loan Guarantee for Beacon Power Corporation Frequency Regulation Facility in Stephentown, New York

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

Time: 7 months

DOE/EA-1638 (03/31/09)

Loan Guarantee to Solyndra, Inc. for Construction of a Photovoltaic Manufacturing Facility and Leasing of an Existing Commercial Facility in Fremont, California

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

Time: 7 months

Golden Field Office/Office of Energy Efficiency and Renewable Energy

DOE/EA-1622 (01/13/09)

University of Nevada, Las Vegas Research Foundation: Solar Technology Center, Nevada

Cost: \$50,000

Time: 10 months

DOE/EA-1647 (01/14/09)

Construction and Operation of a Proposed Cellulosic Ethanol Plant, Range Fuels Soperton Plant, LLC (formerly Range Fuels Inc.), Treutlen County, Georgia

Cost: \$65,000

Time: 2 months

Idaho Operations Office/Office of Nuclear Energy

DOE/EA-1386 (02/18/09)

Remote-handled Waste Disposition Project, Scoville, Idaho

Cost: \$240,000

Time: 96 months

National Energy Technology Laboratory/Office of Fossil Energy

DOE/EA-1625 (03/15/09)

Southeast Regional Carbon Sequestration Partnership (SECARB) Phase III Early Test, Oklahoma

Cost: \$91,000

Time: 8 months

Western Area Power Administration

DOE/EA-1596 (02/18/09)

Belfield to Rhame Transmission Line Project, North Dakota

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

Time: 21 months

DOE/EA-1602 (01/20/09)

Transmission Line and Interconnection to Contra Costa Water District Alternative Intake Project, Sacramento-San Joaquin Delta, California

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

Time: 16 months

DOE/EA-1611 (02/02/09)

Interconnection Request for the Colorado Highlands Energy Project (Fleming Wind Energy Project), Logan County, Colorado

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

Time: 12 months

DOE/EA-1612 (03/06/09)

Fairview West – Spring Lake 115-kV Transmission Line Project, Fairview, Montana

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

Time: 12 months

DOE/EA-1633 (12/31/08; FONSI 01/26/09)

Green Mountain Reservoir Substitution and Power Interference Agreements, Colorado

Cost: The cost for this EA was paid by the Bureau of Reclamation and the City of Colorado Springs; therefore, cost information does not apply to DOE.

Time: 4 months

EIS

Western Area Power Administration

DOE/EIS-0410 (74 FR 6289, 02/06/09)

(EPA Rating: EC-2)

Keystone Oil Pipeline Project

[Department of State was the lead agency; DOE was a cooperating agency.] EIS adopted; therefore, time and cost information does not apply to DOE.

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 4 EAs for which cost data were applicable was \$78,000; the average cost was \$112,000.
- Cumulatively, for the 12 months that ended March 31, 2009, the median cost for the preparation of 24 EAs for which cost data were applicable was \$88,000; the average cost was \$122,000.
- For this quarter, the median completion time for 11 EAs was 10 months; the average was 18 months.
- Cumulatively, for the 12 months that ended March 31, 2009, the median completion time for 33 EAs was 9 months; the average was 14 months.

EIS Cost and Completion Times

- For this quarter, there were no EISs completed for which cost and time data were applicable.
- Cumulatively, for the 12 months that ended March 31, 2009, the median cost for the preparation of 8 EISs for which cost data were applicable was \$5,700,000; the average cost was \$8,600,000.
- Cumulatively, for the 12 months that ended March 31, 2009, the median completion time for 9 EISs was 30 months; the average was 31 months.

Recent EIS-Related Milestones (March 1 to May 31, 2009)

Amended Notice of Intent

Office of Energy Efficiency and Renewable Energy

DOE/EIS-0407

Abengoa Biorefinery Project, Kansas

April 2009 (74 FR 19543, 04/29/09)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0419

Whistling Ridge Energy Project, Washington

April 2009 (74 FR 18213, 04/21/09)

Western Area Power Administration

DOE/EIS-0418

PrairieWinds Project, South Dakota

April 2009 (74 FR 15718, 04/07/09)

Extension of Scoping Period

Western Area Power Administration

DOE/EIS-0411

*Construction and Operation of the Proposed
Transmission Agency of Northern California
Transmission Project, California*

May 2009 (74 FR 21674, 05/08/09)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

*Bonneville Power Administration's Business Plan
Leaning Juniper II Wind Project, Oregon*

April 2009 (74 FR 18214, 04/21/09)

DOE/EIS-0397

*Lyle Falls Fish Passage Project, Klickitat County,
Washington*

March 2009 (74 FR 9091, 03/02/09)

(continued on next page)

Recent EIS-Related Milestones *(continued from previous page)*

Supplement Analyses

Bonneville Power Administration

Hood River Fisheries Restoration Project (DOE/EIS-0241)

DOE/EIS-0241-SA-02*

Comparative Hatchery Release Evaluation for Spring Chinook, Hood River, Oregon
(Decision: No further NEPA review required)
December 2008

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

DOE/EIS-0285-SA-387*

Big Eddy-Chemawa No. 1 et al., 500 kV, 230 kV, 115 kV Transmission Line Corridors, Oregon and Washington
(Decision: No further NEPA review required)
November 2008

DOE/EIS-0285-SA-388*

Shelton-Fairmount No. 4, Washington
(Decision: No further NEPA review required)
December 2008

DOE/EIS-0285-SA-389*

Lower Columbia River Transmission Line, Oregon and Washington
(Decision: No further NEPA review required)
January 2009

DOE/EIS-0285-SA-390*

Chehalis-Raymond #1, Raymond-Willapa #1 and Raymond-Henkle St. #1 Transmission Lines, Washington
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-391*

Holcomb-Naselle #1 and Nacelle-Tartlet #1 & #2 Transmission Lines, Washington
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-392*

Raymond-Cosmopolis Transmission Line, Washington
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-393*

Multiple Transmission Line Rights-of-Way, Oregon and Washington
(Decision: No further NEPA review required)
February 2009

DOE/EIS-0285-SA-394

Green Bluff Tap to Bell-Trentwood #2, Washington
(Decision: No further NEPA review required)
March 2009

DOE/EIS-0285-SA-395

Sacheen-Albeni Falls #1, 115 kV Transmission Line Corridor, Idaho
(Decision: No further NEPA review required)
March 2009

*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.

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

Scoping

What Didn't Work

- *Alteration of project scenarios.* Constantly changing project scenarios and options made resolving scoping issues difficult.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Contractor responsiveness.* The contractor and applicant were very responsive to requests for additional information and analysis.
- *State infrastructure for document distribution.* The state clearinghouse provided a direct link for distributing the EA to state agencies and tracking agency comments for each submittal. The clearinghouse expedited communication with state agencies, insuring the timely completion of the NEPA process.
- *Early work with applicant.* Early work with the applicant allowed the draft EA to be completed and reviewed on time.

Factors that Inhibited Timely Completion of Documents

- *Resolution of legal matters.* Review took longer than anticipated due to a delayed decision regarding the publication of certain information in the EA.

Teamwork

Factors that Facilitated Effective Teamwork

- *Coordination between NEPA and project staff.* Program Office NEPA staff worked closely with other Program Office staff on the project. The flow of information helped integrate the EA process into overall project planning and close coordination between team members facilitated effective teamwork.
- *Contractor experience.* The contractor selected and paid for by the applicant was very knowledgeable and responsive, adding to an effective EA preparation team.
- *Applicant involvement in NEPA process.* Early involvement of the applicant with Program Office staff regarding NEPA issues facilitated teamwork.

Process

Successful Aspects of the Public Participation Process

- *Usefulness of public comments.* The public participation process produced some very good comments that influenced the EA.

Unsuccessful Aspects of the Public Participation Process

- *Length of comment period.* Some members of the public felt that the comment period was too short.
- *Repeated public participation activities.* Public involvement in the NEPA process was limited because the project had already undergone local public review prior to the EA.

(continued on next page)

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

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Applicant considered impacts of proposal.* The Program Office found the NEPA process to be of particular value in ensuring that the applicants fully considered the environmental consequences of their loan application proposals early in their decisionmaking process.
- *Communication was enhanced.* The continuous communication facilitated by the NEPA process was used to cross check the status of the project and helped identify any unresolved issues.
- *Technical expertise.* Information received from external technical experts during the EA comment period facilitated the selection of a transportation route that minimized potential impacts and enabled project decisionmaking.

Enhancement/Protection of the Environment

- *Environmental consequences considered in design phase.* The environment was protected through the NEPA process. The state environmental review conducted just prior to the completion of the EA identified potential environmental consequences, allowing impacts to be minimized during the design phase.

Other Issues

Guidance Needs Identified

- *NEPA guidance.* The development of the EA identified the need for a Program Office NEPA Policy and Procedures manual, which is currently being developed.

CEQ Submits Report to Congress (continued from page 24)

Availability of Recovery Act Reports

The May 18, 2009, CEQ report to Congress is available on CEQ's NEPAnet at www.nepa.gov. Also, DOE Recovery Program Plans – high-level plans outlining the type of work, expected outcomes, and how performance will be measured – are available at www.recovery.gov, and other

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 3 questionnaire responses were received for EAs, 2 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “4” stated that the NEPA process was effective in selecting a transportation route.
- A respondent who rated the process as “3” stated that the applicant took action in the design of the facility to minimize potential environmental impacts and to demonstrate environmental stewardship. This allowed the rest of the project office team to feel confident in moving forward with the project.
- A respondent who rated the process as “2” stated that the state environmental review process carried out prior to the EA decreased the benefit of the federal NEPA process. By the time work on the EA began, the applicant had adjusted project design to minimize or eliminate potential environmental concerns.

information on DOE's implementation of the Recovery Act is available at www.energy.gov/recovery. For more information on DOE's NEPA activities related to the Recovery Act, contact Brian Costner, Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924. 