

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

March 1, 1999; Issue No. 18

For First Quarter FY 1999

Dr. David Michaels — DOE's New Leader for Environment, Safety and Health

The new Assistant Secretary for Environment, Safety and Health, Dr. David Michaels, recognizes the value of NEPA in supporting good decisions. "I understand the importance of examining options carefully before we make decisions that will affect our workers, the public, and the environment in lasting and profound ways," he said. "We must be fully informed of the environmental consequences of all major DOE decisions. NEPA is a tool that we, as public servants and policy makers, need to help us do our jobs well."

Dr. Michaels said that in considering the suitability of the Yucca Mountain site for a geologic repository for

spent nuclear fuel and high-level radioactive waste, for example, the environmental impact statement will be an essential document, used by both decision makers and the public. "The NEPA process provides an open and inclusive forum for the nation to address this significant issue," he said.

Dr. Michaels was sworn in as Assistant Secretary on December 14, 1998. As Assistant Secretary, he is responsible for assuring compliance with environmental laws (including NEPA), evaluating potential health impacts from DOE operations, conducting independent safety and health oversight at DOE facilities, enforcing nuclear safety rules, and providing advice and technical support to DOE sites' efforts to protect the environment and the health and safety of workers and the public.

"We must be fully informed of the environmental consequences of all major DOE decisions. NEPA is a tool that we . . . need to help us do our jobs well."

—Dr. David Michaels



Dr. David Michaels, new Assistant Secretary for Environment, Safety and Health, enthusiastically supports the Lessons Learned approach.

Believes in NEPA and Lessons Learned

Dr. Michaels has affirmed his strong belief that NEPA can help DOE make better decisions, and that the preparers of DOE NEPA documents and the Headquarters EH organization should work closely together through the Office of NEPA Policy and Assistance. He especially appreciates the DOE NEPA Lessons Learned process. "It makes sense under any circumstances," he said, "to

continued on page 3

Inside *LESSONS LEARNED*

Welcome to the first quarter FY 1999 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

- Society Promotes Lessons Learned Exchange at DOE 3
- Partnering Facilitates SPR Pipeline EA 4
- Mini-guidance
 - An EIS Needs an Index 6
 - When We Don't Know, Say So 6
 - Extending Public Comment Periods 7
- Advisory Council on Historic Preservation to Issue New Section 106 Regulations 8
- National Association of Environmental Professionals to Hold 24th Annual Conference in June 8
- Training Opportunities 8
- DOE-wide NEPA Contracts Update 9
- Litigation Updates 10
- Executive Order Issued on Invasive Species 11
- Documents Issued First Quarter FY 1999 12
- First Quarter FY 1999 Questionnaire Results 13
- Recent EIS Milestones 14




Director
Office of NEPA Policy and Assistance

Integrated Safety Management Workshop Planned

Integrated management of environment, safety, and health at the work activity level is the topic of an upcoming workshop sponsored by the DOE Safety Management Implementation Team and the Office of Environment, Safety and Health. An important focus will be incorporating environmental elements (including environmental impacts, NEPA reviews, permitting requirements, and pollution prevention practices) into work planning.

If you want to learn about best practices around the DOE complex or have success stories to share, plan to attend. The workshop is scheduled for May 11 and 12 at a location to be announced near Cincinnati, Ohio.

For more information, contact Steven Woodbury at steven.woodbury@eh.doe.gov, phone 202-586-4371, or Linda Yost at lyost@apexenv.com, phone 301-417-0200. 

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report*. Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone 202-586-9326. Draft articles for the next issue are requested by April 30, 1999.

Second Quarter Questionnaires Due April 30, 1999

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 1999 (January 1 to March 31, 1999) should be submitted as soon as possible after document completion, but no later than April 30, 1999. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

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

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

Assistant Secretary Michaels (continued from page 1)


learn from experience. Internalizing the lessons of DOE-wide experience helps to identify ways to save time and resources, increase effectiveness, build public trust, reduce litigation risks, and avoid repeating mistakes. I encourage DOE NEPA practitioners to incorporate these lessons into their NEPA reviews.”

Including Environment in Integrated Safety Management Is a Priority

Like Energy Secretary Bill Richardson, Dr. Michaels places high priority on Integrated Safety Management (ISM) as the key to safety in the workplace. Dr. Michaels believes that DOE managers should champion Integrated Safety Management so that it is understood by workers and management and actively embraced throughout the DOE complex. “As the ISM policy was developed, it was assumed that ‘safety’ meant environment, safety, and health. We need to apply ISM principles more clearly and consistently to environmental work,” said Dr. Michaels.

Background in Occupational and Environmental Health

Dr. Michaels is an epidemiologist who comes from a family with a long tradition of public service. He has more than 20 years of experience in both occupational and environmental aspects of public health. He has directed epidemiological studies of construction workers, printing press operators, and bus drivers. Dr. Michaels has also conducted public health research on AIDS, mental health, drug abuse, and homelessness. His methodology for estimating the number of children orphaned by the HIV/AIDS epidemic has been instrumental in turning public attention to this issue. He also has consulted for the World Health Organization and the Inter-American Development Bank on air pollution epidemiology.

Dr. Michaels received Masters and Doctoral degrees in public health from Columbia University. He served as a Robert Wood Johnson fellow in health policy for the U.S. House of Representatives, working primarily on national health reform legislation, and has served on the Executive Board of the American Public Health Association. 

Society Promotes Lessons Learned Exchange at DOE

Lesson Learned – A “good work practice” or innovative approach that is captured and shared to promote repeat application. It may also be an adverse work practice or experience that is captured and shared to avoid recurrence.


DOE Lessons Learned Standard (DOE-STD-7501-95; May 1995)

NEPA lessons learned, such as those published in this *Lessons Learned Quarterly Report*, are part of a broader information network: the Department of Energy Lessons Learned Program, currently administered by the Society for Effective Lessons Learned Sharing (SELLS).

SELLS is a volunteer organization with more than 100 members, representing some 20 DOE program, operations office, site, national laboratory, and contractor organizations. SELLS members share the goal of improving the exchange of lessons learned information within DOE, as well as between DOE and other public and private organizations. The Society is an outgrowth of the Lessons Learned Process Improvement Team, established in March 1994 with an 18-month mission to develop the structure for a Department-wide Lessons Learned Program. In 1997, the DOE Lessons Learned Process Improvement Team received a “Hammer Award” from Vice President Al Gore’s National Performance Review for its work.

Lessons sharing is accomplished by members and coordinators at each site who use a server to promptly

e-mail lessons to all members and contacts. This allows people doing similar work to share timely, applicable information. Lessons learned are also made available through a centralized, searchable repository. (See web address below.) SELLS holds workshops twice a year to share information among sites on their lessons learned programs and to discuss issues regarding the Department-wide program. The next workshop is scheduled for March 15 to 17, 1999, in Las Vegas, Nevada. Society members also participate twice a month in conference calls on current issues.

The Society seeks representation from all DOE programs and welcomes individuals committed to building a stronger lessons learned network. For further information about SELLS, visit its web site at <http://tis.eh.doe.gov/ll/>, or contact: Mary McCune at mary.mccune@em.doe.gov, phone 301-903-8152, fax 301-903-3617; John Bickford at john_c_bickford@rl.gov, phone 509-373-7664, fax 509-376-5243; or, regarding membership, Cynthia Eubanks at eub@ornl.gov, phone 423-576-7763, fax 423-574-5398. 

Partnering Facilitates SPR Pipeline EA

By: Hal Delaplane, NEPA Contact, Fossil Energy, Strategic Petroleum Reserve Program Office

In 23 years of developing the Strategic Petroleum Reserve (SPR), DOE has done many NEPA reviews of pipeline projects. These projects resulted in a network of 255 miles of crude oil pipelines, a marine terminal, and many miles of raw water and brine disposal pipelines in coastal Louisiana and Texas. Last year, DOE was involved in a private sector proposal for what probably would have been just another pipeline construction project – except that it precipitated some unusual NEPA process considerations concerning mitigation of adverse impacts.

While considering granting a lease of facilities that would directly result in a private pipeline construction project, DOE sought to facilitate the project while ensuring that significant impacts would not result. The solution was to integrate its NEPA process with the U.S. Army Corps of Engineers Section 404 permit process, in close cooperation with the host State and private applicant. This enabled DOE to accept a mitigation action plan that the applicant had negotiated with the State. Once the State indicated approval of the plan, in rapid succession DOE approved its EA and issued a mitigated Finding of No Significant Impact (FONSI), and the Corps of Engineers adopted DOE's EA and issued a Section 404 permit that incorporated the mitigation commitments as permit conditions.

Government-Industry Partnership

To cut operating costs and generate revenue, DOE is commercializing its underused crude oil distribution facilities through government-industry arrangements for shared use. In 1997, after competitive bidding, DOE awarded a short-term lease of its Bayou Choctaw Pipeline in Louisiana to Shell Pipe Line Corporation after categorically excluding the action from further NEPA review. This pipeline, which DOE built in 1978, connects DOE's St. James Marine Terminal, 63 miles up the Mississippi River from New Orleans, to the SPR Bayou Choctaw Facility, an underground salt dome petroleum storage facility 37 miles to the northwest of the marine terminal.

Initially, Shell Pipe Line Corporation (renamed Equilon Enterprises LLC in 1998) anticipated connecting the Bayou Choctaw Pipeline with one or more third-party pipelines to provide commercial pipeline capability to Baton Rouge refiners located about 16 miles north of the SPR Bayou Choctaw Facility. This plan fell through, however, and Equilon subsequently proposed to construct a new underground crude oil pipeline from the Bayou Choctaw Facility to the Baton Rouge market: a 16-mile pipeline, 24 inches in diameter, to carry 100,000 barrels of

A Section 404 Primer

Section 404 of the Federal Clean Water Act establishes a program to regulate the discharge of dredged and fill material into the waters of the United States, including wetlands. The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency jointly administer the program. The basic premise of the program is that no discharge of dredged or fill material can be permitted if a less damaging practicable alternative exists. Regulated activities are controlled through a permit process. For projects not likely to have potentially significant impacts, the Corps of Engineers may approve an application under a *general permit*. These are defined on a nationwide, regional, or state basis for particular categories of activities to expedite the permitting process. If a proposed activity is not covered by a general permit, an *individual permit* is required; usually, these are required for projects with potentially significant impacts.

oil per day. To allow recovery of the required capital investment, Equilon asked DOE to restructure its annual lease to a 10-year lease. Because DOE's long-term leasing of the existing pipeline would result in the private party construction of a new pipeline, this new proposed action triggered the need for additional environmental review under NEPA.

Interagency Coordination Was Key

In addition to having numerous water crossings (including crossing the 300-foot wide Intracoastal Waterway) that would require a Corps of Engineers Section 404 individual permit (Primer, above), the project as proposed would unavoidably involve floodplains and bottomland hardwoods. Bottomland hardwoods, a swamp forest ecosystem, are becoming scarce and fragmented regionally and nationally as a result of construction of highways, pipelines, and powerlines.

DOE and Equilon discussed these concerns with State and Federal regulators and consulting agencies, first with the Corps of Engineers and Louisiana Department of Wildlife and Fisheries and then with the U.S. Fish and Wildlife Service. These discussions indicated that bottomland hardwoods removal would require compensatory wetlands mitigation. While an EA typically would be the appropriate level of NEPA review for a pipeline of this scale, the need for mitigation — over which DOE would not have control — could have precluded DOE's issuing a FONSI.

continued on page 5



1978 construction of a DOE crude oil pipeline in bottomland hardwoods/wetlands near the SPR Bayou Choctaw Facility (DOE file photo).


Effective Integration of NEPA and Wetlands Protection Processes

Because a Section 404 permit can contain enforceable mitigation commitments, it made sense to fully integrate the DOE NEPA process with the Section 404 permit process. DOE and Equilon obtained the early assistance of the Louisiana Department of Wildlife and Fisheries and the U.S. Fish and Wildlife Service in identifying a preferred right-of-way for the new pipeline and developing a compensatory wetlands mitigation plan. DOE and the Corps of Engineers integrated their public involvement procedures and merged their respective NEPA and permit notification lists, effectively providing more comprehensive information to a larger set of stakeholders.

After DOE distributed an EA for pre-approval review and responded to State comments, Equilon quickly obtained approvals from the Louisiana Department of Wildlife and Fisheries and the U.S. Fish and Wildlife Service for the wetlands mitigation plan. The Corps of Engineers then added the mitigation plan to its permit terms and conditions. Based on the mitigation commitments, DOE issued the EA and a mitigated FONSI on September 1, 1998 (Environmental Assessment of Bayou Choctaw Pipeline Extension to Placid Refinery, Iberville and West Baton Rouge Parishes, Louisiana, DOE/EA-1251). The Corps of Engineers then adopted DOE's EA and issued the Section 404 permit.

Mitigation Will Restore Environment

Construction began in September 1998 and ended in January 1999. Through careful planning, Equilon minimized tree removal so that only 37 acres of compensatory wetlands are required, far less than the maximum of 86 acres analyzed in the EA. The wetlands mitigation work will be accomplished near the right-of-way by restoring agricultural land (currently in sugarcane) as close as possible to its original state by planting cypress and other bottomland hardwood species. The project proponents are required to restore the new pipeline corridor to preconstruction elevations, so the buried pipeline will not interfere with floodplain functions and values.

For more information on mitigated FONSI's, see questions 39 and 40 in "Forty Most Asked Questions Concerning CEQ's Regulations" (46 FR 18026; March 23, 1981) amended, and 10 CFR 1021.322(b) and (e), and 1021.331(b). For more information on this project or the SPR Program, contact Hal Delaplane at hal.delaplane@hq.doe.gov or phone 202-586-4730. 

Selected Project Chronology

February 1998

- ◆ DOE made NEPA determination and began EA preparation

March 1998

- ◆ Equilon submitted Section 404 permit application to Corps of Engineers
- ◆ DOE and Corps of Engineers agreed to integrate NEPA and permit processes

April 1998

- ◆ Corps of Engineers issued public notice of Section 404 permit application

May 1998

- ◆ U.S. Fish and Wildlife Service responded to Corps of Engineers public notice
- ◆ DOE published notice of floodplain and wetlands involvement

June 1998

- ◆ U.S. Fish and Wildlife Service responded to DOE floodplain/wetland notice

- ◆ Equilon obtained State approval of right-of-way and completed Section 404 permit application

July 1998

- ◆ DOE issued EA for pre-approval review
- ◆ U.S. Fish and Wildlife Service commented on the EA

August 1998

- ◆ Louisiana Departments of Environmental Quality and Wildlife and Fisheries commented on EA
- ◆ Louisiana Department of Wildlife and Fisheries approved compensatory wetland mitigation action plan; Corps of Engineers attached plan to permit application

September 1998

- ◆ DOE approved EA and issued mitigated FONSI
- ◆ Corps of Engineers adopted EA and issued Section 404 permit
- ◆ Applicant began construction

(additional concurrent State activities are not listed)

An EIS Needs an Index

The Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1502.10) require that an EIS include an index. This requirement does not distinguish between a draft and final EIS. The EIS index is distinct from the table of contents, which is also required.


In “NEPA’s Forty Most Asked Questions” (46 FR 18026; March 23, 1981), in response to “How detailed must an EIS index be?” (Question 26a), CEQ advises: “The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.”

Creating a useful index requires planning and judgment. While word processing software facilitates generating an index, it is not an entirely automated function. During EIS preparation, the NEPA Document Manager, subject area

specialists, public involvement staff, and technical editors all should help identify key words. Preparing an index is a craft, however, and an index specialist can likely coordinate the job best.

Even after a software program generates an initial draft index, further work is almost always needed to check entries, add subheadings and cross-references, and remove unnecessary items.

Recommendations:

- ✓ Do not rely upon the EIS table of contents as an index.
- ✓ Choose index entries that readers, including the public, are reasonably likely to know and want to read about.
- ✓ Consider using an index specialist.
- ✓ Apply a quality control process to the index.
- ✓ Track index development as a subtask in EIS preparation. 

When We Don’t Know, Say So

“I don’t know.” These may well be the three most difficult words a technical analyst ever has to say.


In NEPA documents, agencies are expected to discuss the environmental impacts of a proposed action. Council on Environmental Quality (CEQ) regulations direct that this environmental information, presented to decision makers and the public, must be “of high quality”; the regulations inform us that “accurate scientific analysis” is “essential to implementing NEPA” (40 CFR 1500.1(b)). But in practice, environmental information may be lacking, environmental systems are often more complex than we realize, and our ability to estimate potential consequences accurately may be severely limited. There even is uncertainty about uncertainty analyses.

CEQ regulations address the issue of “incomplete and unavailable information” as follows: “When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking” (40 CFR 1502.22). NEPA implementation, in other words, does not require perfect knowledge. It does require, however, that we describe what we know and, when necessary, disclose what we do not know when conducting analyses of significant or potentially significant adverse effects in an EIS. In these cases, CEQ regulations require an agency to obtain information that is essential to a reasoned choice among alternatives when the cost is not exorbitant.

In environmental assessments, document preparers also should disclose when information is incomplete and unavailable. However, note the following from *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (DOE/EH, May 1993; page 19): “Use available data for an EA. If data needed to quantify impacts are not available, prepare a qualitative description of the most relevant impacts. Be aware that inability to satisfactorily characterize an important impact in an EA likely will render it inadequate to support a finding of no significant impact.”

Finally, when we do not know, we may be tempted to conclude that impacts are “minor” or “insignificant,” because we “know” (or think we know) based on judgment or intuition that they just *are*. Nevertheless, an EIS or EA should not include unsubstantiated conclusions.

Recommendations:

- ✓ Be clear about unknown impacts in NEPA documents. If relevant information needed for a NEPA document cannot be obtained for technical or cost reasons, say so.
- ✓ Avoid inappropriate conclusions to the effect that the information or data are unavailable but the impacts are minor. 

Extending Public Comment Periods

Public participation is essential to the NEPA process. For the public to participate effectively, however, DOE should establish a comment period that allows enough time to study a NEPA document and prepare thoughtful comments. When accommodating a stakeholder request to extend a comment period, DOE should recognize that commentors cannot take full advantage of any extension unless DOE notifies them well before the close of the original comment period.

DOE EIS Public Comment Periods Have Varied

Under the Council on Environmental Quality NEPA regulations, agencies must allow at least 45 days for comments on a draft EIS (40 CFR 1506.10(c)). Over the last five years, approximately 40 percent of DOE's draft EISs were issued with longer comment periods, typically programmatic or site-wide EISs, and EISs of high public interest or for unusually complex projects. The average original comment period was 57 days for DOE EISs during 1994 through 1998 (table, below).

DOE extended the public comment periods beyond the originally announced date for one-fourth of these draft EISs, by an average of 32 days (with a range of 7 to 65 days). Two-thirds of these extensions applied to programmatic or site-wide EISs. (The DOE NEPA Office has no data on denials of extension requests.)


Timeliness of Extension Notice

Stakeholders generally appreciate DOE honoring their request to extend a comment period. They are not pleased, however, to receive an extension notice too late for them to take full advantage of the extension. Indeed, two-thirds (10 out of 15) of DOE's extension notices in the *Federal Register*¹ from 1994 through 1998 were published after the original comment period had closed.²

Sometimes, though, announcing an extension at or after the end of a comment period is unavoidable, such as when a stakeholder requests the extension late in the original comment period.

Recommendations

These recommendations apply to a public comment period for a draft EIS and also are appropriate for EIS scoping and pre-approval review of an EA.

- ✓ Establish the comment period thoughtfully; consider whether the minimum period is appropriate in light of likely public interest, document complexity, and project schedule needs.
- ✓ Strive to announce an extension quickly enough so that stakeholders may take full advantage of the additional time. The goal should be to provide notice of the extension at least a week before the original comment period expires.
- ✓ Use quick and effective notification methods, including phone, mail, or e-mail to known or likely interested parties, local print and broadcast media, and the DOE NEPA Web. Do not rely solely on a *Federal Register* notice, and do not delay other means of announcing the extension until a *Federal Register* notice is published.
- ✓ State in all comment period notices that DOE will consider late comments to the extent practicable. 

¹ For "an action with effects of national concern," a public participation notice shall include publication in the *Federal Register* and notice by mail to national organizations who have requested such notices to be provided to them regularly (40 CFR 1506.6(b)(2)).

² The *Federal Register* requires notices that would be published after the original comment period has closed to be designated as "reopening" rather than "extending" the comment period.

Original and Extended Comment Periods for DOE EISs, 1994 to 1998

	Number of draft EISs	Average original period (days)	Number extended	Average extension (days)	Average total comment period (days)
All EISs	61	57	15 (25%)	32	65
Project-specific EISs	38	52	5 (13%)	30	56
Programmatic/ Site-wide EISs	23	65	10 (43%)	33	79


NAEP to Hold 24th Annual Conference in June

The National Association of Environmental Professionals (NAEP) will hold its 24th Annual Conference in Kansas City, Missouri, June 20 to 24, 1999. The theme of this year's conference is "Environment in the 21st Century." As in previous years, the conference will include NEPA-related sessions and training (see "Training Opportunities" below). The NAEP is a multidisciplinary association with over 2,000 members dedicated to the advancement of the environmental professions in the United States and abroad. (See *Lessons Learned Quarterly Report*, December 1997, page 8.) For more information, visit the NAEP web site at www.naep.org or contact Donna Carter, NAEP, phone 888-251-9902.

Advisory Council on Historic Preservation Now Expects to Issue New Section 106 Regulations

On February 12, 1999, the Advisory Council on Historic Preservation decided to issue new regulations implementing Section 106 of the National Historic Preservation Act. The DOE NEPA Office expects that the new regulations will allow agencies to use the NEPA process to comply with Section 106 when certain conditions are met. The new regulations will be effective 30 days after publication in the *Federal Register*, which the Council plans for later this spring.

This reverses the Council's earlier decision to implement changes to its environmental review process through nonbinding guidance, not regulations. (See "Historic Preservation Proposed Regulatory Revision Withdrawn" in *Lessons Learned Quarterly Report*, December 1998, page 11.)

The NEPA Office will distribute the regulations when published to the DOE NEPA Community, and the *Lessons Learned Quarterly Report* will continue to report on developments. For more information, contact Katherine Nakata at katherine.nakata@eh.doe.gov or phone 202-586-0801. 

Training Opportunities

Implementation of the National Environmental Policy Act on Federal Land and Facilities

Durham, NC: April 5-9, 1999
Fee: \$960

New Advances in Ecological Risk Assessment

Durham, NC: April 12-15, 1999
Fee: \$960

Cumulative Effects Assessment under the National Environmental Policy Act

Durham, NC: May 3-5, 1999
Fee: \$595

Center for Environmental Education,
Duke University.
Phone: 919-613-8082
e-mail Bonnie Britt at britt@duke.edu

Environmental Laws and Regulations

Scottsdale, AZ: March 22-24, 1999
Nashville, TN: April 19-21, 1999
Alexandria, VA: May 17-19, 1999
Fee: \$999

Advanced Environmental Laws and Regulations

Scottsdale, AZ: March 25-26, 1999
Fee: \$999

Government Institutes
Phone: 301-921-2345
<http://www.govinst.com/index.html>

Reducing Your Vulnerability to Litigation

Kansas City, MO: June 24, 1999
(See NAEP Conference announcement, above)
Fee: \$75

Advanced Environmental Scoping and Decision Analysis

Kansas City, MO: June 24, 1999
(See NAEP Conference announcement, above)
Fee: \$75

National Association of Environmental Professionals
Phone: 888-251-9902
<http://naep.org/> (under "1999 Annual Conference")

Reviewing NEPA Documents

Reno, NV: April 20-22, 1999
Fee: \$795

How to Manage the NEPA Process and Write Effective NEPA Documents

Phoenix, AZ: May 18-21, 1999
Fee: \$995

Managing the Environmental Impact Analysis Process

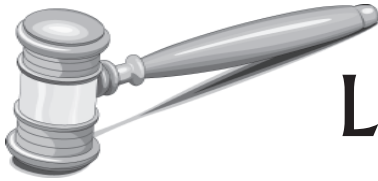
San Antonio, TX: April 26-29, 1999
Washington, DC: June 15-18, 1999
Fee: \$995

Shiple Environmental
Phone: 888-270-2157
e-mail vonnie@shipleynviro.com
<http://www.shipleynviro.com>

DOE-wide NEPA Contracts Update

The tasks below have been awarded since July 1998. For more information on the use of the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov or 505-845-6215. See *Lessons Learned Quarterly Report*, June 1997, page 1; September 1997, page 10; June 1998, page 6; September 1998, page 7.

Task Description	DOE Contact	Date Awarded	Contractor Team
Minnesota Agri-Power Plant EIS Scoping	Deborah Turner, GO 303-275-4746 deborah_turner@nrel.gov	7/30/98	Battelle Memorial Institute
EIS for Transfer of Heat Source/ Radioisotope Thermoelectric Generator Assembly and Test Operations at the Mound Site	Tim Frasier, OH 937-865-3748 tim.frazier@em.doe.gov	8/20/98	Tetra Tech, Inc.
EA Support	Lawrence Berkeley National Laboratory	8/21/98	Tetra Tech, Inc.
Accident Analysis for Idaho High-Level Waste and Facilities Disposition EIS	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	8/31/98	Tetra Tech, Inc.
Modification to Draft EIS on Advanced Mixed Waste Treatment Project, for Final EIS (includes Comment/Response)	John Medema, ID 208-526-1407 medemaje@inel.gov	8/31/98	Tetra Tech, Inc.
EIS for Proposed Production of Pu-238 for Use in Advanced Radioisotope Power Systems for Space Missions	Colette Brown, NE 301-903-6924 colette.brown@hq.doe.gov	9/17/98	SAIC
Minnesota Agri-Power Plant Project EIS	Deborah Turner, GO 303-275-4746 deborah_turner@nrel.gov	9/18/98	Battelle Memorial Institute
Idaho High-Level Waste and Facilities Disposition EIS, Analysis Support	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	9/18/98	Tetra Tech, Inc.
EIS for Eagle Mountain	Federal Energy Regulatory Commission	9/25/98	Battelle Memorial Institute
EA for Wind Fuel Cell Hybrid Project, Alaska	Deborah Turner, GO 303-275-4746 deborah_turner@nrel.gov	9/25/98	Battelle Memorial Institute
EIS for TRU Waste Treatment Project, ORNL	Gary Riner, OR 423-241-3498 riner.g.oro.doe.gov	9/30/98	SAIC
Environmental Studies	Federal Energy Regulatory Commission	9/30/98	Tetra Tech, Inc.
Completion of the Savannah River Spent Nuclear Fuel Management EIS	Karl Waltzer, SR 803-952-4121 karl.waltzer@srs.gov	10/09/98	Tetra Tech, Inc.
Idaho High-Level Waste and Facilities Disposition Expanded Risk Based Alternative Study	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	12/03/98	Tetra Tech, Inc.
EA for Receipt and Storage of Uranium Materials from the Fernald Environmental Management Project	J. Dale Jackson, OR 423-576-0892 jacksonjd@oro.doe.gov	12/10/98	SAIC
Electrometallurgical Treatment of Sodium-Bonded Spent Nuclear Fuel EIS	Susan Lesica, NE 301-903-8755 sue.lesica@hq.doe.gov	2/08/99	SAIC
Closure of the High-Level Waste Tanks EIS	Larry Ling, SR 803-208-8248 l.ling@srs.gov	2/12/99	Tetra Tech, Inc.



Litigation Updates

Department Settles SSM PEIS and WM PEIS Lawsuit

On December 14, 1998, Judge Stanley Sporkin of the United States District Court for the District of Columbia approved a Joint Stipulation and Order that settles the outstanding issues in the lawsuit filed by the Natural Resources Defense Council (NRDC) and 38 other groups over the adequacy of the Stockpile Stewardship and Management Programmatic EIS (SSM PEIS, DOE/EIS-0236, December 1996) and the need for an Environmental Restoration and Waste Management (ERWM) PEIS. The plaintiffs agree in the Stipulation not to sue DOE for any claims: that an ERWM PEIS is needed, that the Waste Management Programmatic EIS (WM PEIS) does not adequately address in any respect environmental restoration waste, or that a PEIS is needed for DOE's environmental restoration program. (DOE and the plaintiffs had already settled some issues involving the SSM PEIS, and the Court had ruled in DOE's favor regarding other issues. See related articles in the *Lessons Learned Quarterly Reports*, June 1997, page 5; December 1997, page 17; and September 1998, page 10.)

In return for the release from litigation, DOE agrees in the Stipulation to:

1. Establish and maintain a central database, with links to other DOE databases, available to the public on the Internet and updated annually, with information on:
 - (a) contaminated environmental media, contaminated facilities, and waste controlled by the Office of Environmental Management;
 - (b) contaminated facilities and waste generated by programs managed by the Offices of Defense Programs, Science, and Nuclear Energy;
 - (c) DOE-managed domestic and foreign research reactor spent nuclear fuel;
 - (d) closed low-level waste disposal facilities transferred to DOE under Section 151(b) of the Nuclear Waste Policy Act; and
 - (e) sites managed under the Formerly Utilized Sites Remedial Action Program, if returned to DOE for management.
2. Conduct a minimum of two national stakeholder forums to address issues relating to implementation of the

database. (The first will be held in June 1999 under the terms of the Joint Stipulation.)

3. Prepare a study on long-term DOE stewardship activities, including land-use controls, monitoring, maintenance, and information management. Although the study will not be a NEPA review or its functional equivalent, it will discuss, as appropriate, alternative approaches to long-term stewardship and the environmental consequences associated with those alternative approaches. DOE will follow specified portions of the NEPA regulations in preparing the study.

4. Establish a \$6.25 million citizen monitoring and technical assessment fund. The main purpose of the fund is to provide money to eligible organizations in order to procure technical and scientific assistance to perform technical and scientific reviews and analyses of environmental management activities at DOE sites.

The Court will retain jurisdiction over the case for five years after the second stakeholder forum. *Natural Resources Defense Council v. Richardson*, Civ. No. 97-936 (SS) (AK), Dec. 14, 1998, and *Natural Resources Defense Council v. Watkins*, Civ. No. 89-1835 (SS) (AK), Dec. 14, 1998.

Other DOE Cases of Interest

Plaintiff Files Summary Judgment Motion in EBR II Litigation

On January 19, 1999, the plaintiff in *Coalition 21 v DOE*, Civ. No. 98-0299-E-BLW (D. Id.) filed for summary judgment in a lawsuit that challenges the adequacy of an environmental assessment DOE had prepared for the shutdown of the Experimental Breeder Reactor-II located at Argonne National Laboratory-West at the Idaho National Engineering and Environmental Laboratory (*Lessons Learned Quarterly Report*, September 1998, page 12). Coalition 21, a not-for-profit Idaho corporation, alleges that shutdown of EBR-II is in effect the decommissioning of the reactor and requires an EIS under DOE's NEPA regulations. Alternatively, they argue that DOE has impermissibly segmented shutdown and decommissioning, and that both actions must be examined in the same EIS. DOE's filing, consisting of a response and cross motion for summary judgment, is due March 18.

continued on page 11

DOE Sued to Produce Information; Special Counsel Investigation Requested

On November 12, 1998, Tri-Valley Communities Against a Radioactive Environment (Tri-Valley CARES) sued to compel DOE to produce information relating to certain activities at Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL). The complaint, filed in the United States District Court for the Northern District of California, concerns two Freedom of Information Act (FOIA) requests by Tri-Valley CARES: one for a document referenced in the LANL Institutional Plan, and the other for documents concerning the air filters and the adequacy of the air filtration methods used at the LLNL main plutonium facility. According to the

complaint, DOE did not provide any of the requested documents within the 20-day period required under FOIA, and DOE has a “pattern and practice” of failing to respond to FOIA requests within the required 20-day period.

Tri-Valley CARES is asking the court to order DOE to immediately produce the requested documents and declare that DOE has a mandatory obligation to respond to all future FOIA requests within the statutory period. In addition, based on its allegation of DOE’s pattern and practice, Tri-Valley CARES asks that the court order the Office of the Special Counsel (within the Merit Systems Protection Board) to begin an investigation under FOIA to determine whether disciplinary action is warranted against any Federal employee. **LL**

Executive Order Issued on Invasive Species NEPA Guidance to Be Developed by Three-Agency Council

Executive Order 13112 of February 3, 1999, Invasive Species, applies to Federal agencies whose actions may affect the status of invasive species — species not native to a particular ecosystem “whose introduction does or is likely to cause economic or environmental harm or harm to human health.”

“Subject to the availability of appropriations, and within Administration budgetary limits,” Federal agencies are directed to use their programs and authorities to:

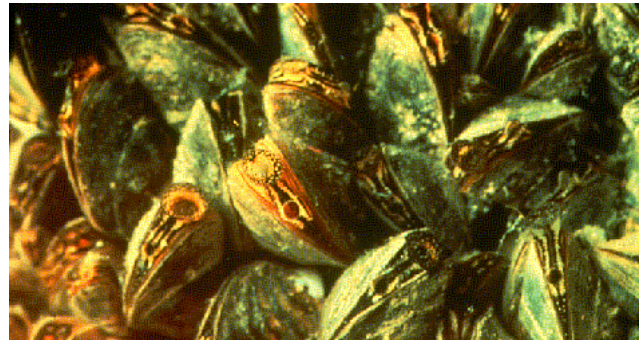
- (1) prevent the introduction of invasive species,
- (2) detect and respond quickly to and control invasive species populations,
- (3) monitor invasive species populations,
- (4) provide for restoration of native species and habitat conditions where invasions have occurred,
- (5) conduct research and develop technologies to control and prevent introduction of invasive species, and

(6) promote public education.

In addition, Federal agencies shall not authorize or fund actions that may contribute to the introduction or spread of invasive species.

Among other provisions, the Executive Order establishes an Invasive Species Council co-chaired by the Secretary of the Interior, Secretary of Agriculture, and the Secretary of Commerce. This Council will manage the implementation of the Executive Order, including, in consultation with the Council on Environmental Quality, developing guidance pursuant to NEPA on prevention and control of invasive species. *Lessons Learned Quarterly Report* will report on progress in implementing this Executive Order.

Executive Order 13112 was published in the *Federal Register* on February 8, 1999 (64 FR 6183). **LL**



Water hyacinths (left), Eichhornia crassipes, and zebra mussels (right), Dreissena polymorpha, examples of invasive species (photographs courtesy of the National Biological Information Infrastructure).

Documents Issued Between October 1 and December 31, 1998

Completed EAs and EISs

EAs

Albuquerque Operations Office/Defense Programs

DOE/EA-1250 (12/23/98)

Strategic Computing Complex at the Los Alamos National Laboratory, Los Alamos, New Mexico

Cost: \$65,000

Time: 10 months

Savannah River Operations Office/

Environmental Management

DOE/EA-1246 (10/07/98)

A-01 Outfall Constructed Wetlands at the Savannah River Site, Aiken, South Carolina

Cost: \$24,000

Time: 8 months

Western Area Power Administration

DOE/EA-1278 (10/20/98)

Refinement of the Power Delivery Component of the Southern Nevada Water Authority Treatment and Transmission Facility

[**Note:** DOE adopted this EA from the Bureau of Reclamation; therefore, cost and time information do not apply to DOE.]

Final EISs

(No EISs were completed in this quarter.)

Other EIS-related Documents

Notices of Intent

DOE/EIS-0302

Transfer of the Heat Source/Radioisotope Thermoelectric Generator Assembly and Test Operations from the Mound Site

10/02/98 (63 FR 53031)

DOE/EIS-0299

Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Space Missions

10/05/98 (63 FR 53398)

DOE/EIS-0300

Minnesota Agri-Power Project: Biomass for Rural Development, Granite Falls, Minnesota

10/07/98 (63 FR 53885)

DOE/EIS-0301

NRG Energy Services, Inc. Arizona-Baja California 500 kV Transmission Line

10/26/98 (63 FR 57109)

DOE/EIS-0303

Savannah River Site Tank Closure, Aiken, South Carolina

12/29/98 (63 FR 71628)

DOE/EIS-0247

Spallation Neutron Source, Oak Ridge National Laboratory, Oak Ridge, Tennessee

12/24/98 (63 FR 71285)

DOE/EIS-0279

Management of Spent Nuclear Fuel at the Savannah River Site, Aiken, South Carolina

12/24/98 (63 FR 71285)

Record of Decision

DOE/EIS-0277

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats

Environmental Technology Site, Rocky Flats, Colorado

12/01/98 (63 FR 66136)

Supplement Analyses

DOE/EIS-0265-SA-11

Burgdorf Conservation Easement, Watershed Management Programmatic EIS in Oregon, Idaho, Washington and Montana

(Decision: No further NEPA review required)
December 1998

DOE/EIS-0082-SA-01

High-Level Waste Salt Disposition Alternative Evaluation, Defense Waste Processing Facility Supplemental EIS

(Decision: Prepare second supplemental EIS)
December 1998

Draft EISs

DOE/EIS-0294

Sutter Power Plant and Transmission Line Project, California

10/30/98 (63 FR 58379)

DOE/EIS-0297

Griffith Power Plant and Transmission Line Project, Mohave County, Arizona

11/6/98 (63 FR 59988)

First Quarter FY 1999 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 1998. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping and Data Collection/ Analysis

What Didn't Work

- Poor definition. *The initial scope was not well defined, and data collection was ongoing while the scope was being defined.*

Schedule

Factors that Facilitated Timely Completion of Documents

- Frequent meetings. *Frequent meetings were held with project and NEPA staff.*
- Early and continuing communication, timely internal reviews. *An early kickoff meeting involved DOE, the project team, and the EA preparers. Good communication continued throughout the EA process and internal reviews were completed on time.*
- Integrating NEPA in the project schedule.

Factors that Inhibited Timely Completion of Documents

- Constant changes in scope. *The construction schedule, total project cost, and project scope and conceptual design kept changing.*
- Last minute comments. *Federal regulators provided last minute comments.*

The Office of NEPA Policy and Assistance is considering revising the **Lessons Learned Questionnaire**. Please provide any suggestions to Hitesh Nigam at hitesh.nigam@eh.doe.gov, phone 202-586-0750, or fax 202-586-7031.

Factors that Facilitated Effective Teamwork

- Good communications. *Good communications facilitated teamwork and helped avoid delays.*
- Being in the neighborhood. *Physical proximity of DOE and contractors facilitated meetings and discussions.*

Process

Successful Aspects of the Public Participation Process

- Use of local publications. *Periodic notification regarding the status of the EA in the local DOE environmental newsletter appeared beneficial to the public participation process.*

Unsuccessful Aspects of the Public Participation Process

- Lack of interest. *The public did not show a great deal of interest.*

Usefulness

Agency Planning and Decision Making— What Worked

- Better informed decisions. *The NEPA process enabled persons responsible for the proposal to make better informed project decisions.*
- Forcing definition of the scope. *The NEPA process helped drive the need to better define the final scope of the project.*
- Attention to critical issues. *The NEPA process focused attention on critical environmental issues (e.g., threatened and endangered species, soil conditions) and provided a focus for environmental input to project planning.*

continued on page 14

First Quarter FY 1999 Questionnaire Results

What Worked and Didn't Work in the NEPA Process


(continued from page 13)

Enhancement/Protection of the Environment

- Development of alternatives helped protect the environment. *The decision had already been made to do something in order to avoid an environmental fine, but NEPA was a useful planning tool in making decisions toward that goal. The EA was written to encompass all foreseeable alternatives and, as such, NEPA should be considered an effective tool used during project planning stages.*
- Protection of sensitive species and soils. *The project will avoid threatened and endangered species habitat and areas subject to soil slumping.*
- Precipitated new programs. *Because of this NEPA review, we now have water and energy conservation programs.*

Effectiveness of the NEPA Process

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

- For this quarter, in which there were three EAs, four of the five respondents rated the NEPA process as "effective." Interestingly, three ratings received for the same EA were all different (2,3,4), suggesting different perceptions of the same process. Even the respondent giving the lowest rating acknowledged that the NEPA process helped drive the project sponsors to make a final decision on the scope of the project. 

Recent EIS Milestones (January 1 to March 1, 1999)

Notices of Intent

DOE/EIS-0305

Transuranic Waste Treatment Project at the Oak Ridge Reservation, Oak Ridge, Tennessee
1/27/99 (64 FR 4079)

DOE/EIS-0307

Public Service Company of New Mexico, Arizona-Sonora, Mexico Transmission Lines
2/12/99 (64 FR 7173)

DOE/EIS-0306

Electrometallurgical Treatment of Sodium-Bonded Spent Nuclear Fuel at Argonne National Laboratory-West, Idaho National Engineering and Environmental Laboratory
2/22/99 (64 FR 8553)

DOE/EIS-0082-S2

Supplemental EIS for the Replacement of the In-Tank Precipitation Process at the Savannah River Site, Aiken, South Carolina
2/22/99 (64 FR 8558)

Draft EIS

DOE/EIS-0293

Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
2/26/99 (64 FR 9483)

Final EISs

DOE/EIS-0290

Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory
2/12/99 (64 FR 7190)

DOE/EIS-0238

Los Alamos National Laboratory Site-wide, Los Alamos, New Mexico
2/19/99 (64 FR 8338)

Records of Decision

DOE/EIS-0183

Power Subscription Strategy under the Bonneville Power Administration's Business Plan
1/04/99 (64 FR 149)

DOE/EIS-0277

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado; second ROD (for seven categories of residues)
2/18/99 (64 FR 8068)