NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

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New DOE Order Focuses on EMS, Supports Basic NEPA Principles

A new DOE Order aims to embed environmental principles more fully into the Department's day-to-day activities. DOE Order 450.1, Environmental Protection Program, issued January 15, 2003, requires DOE sites and facilities to implement an Environmental Management System (EMS) as part of their existing Integrated Safety Management System (ISMS).

The Order emphasizes many principles long championed by the NEPA community, including systematic planning, early identification of potential adverse environmental impacts, and mitigation to reduce the consequences of unavoidable impacts.

"**If you have an EMS in place, it can help your performance under NEPA**," said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), at a February 2003 DOE workshop on the new Order. A vibrant EMS gives you a wealth of information that informs the NEPA process, he explained.

"DOE has long been a leader in the EMS field," said the Federal Environmental Executive, John Howard, at the DOE workshop.

Mr. Greczmiel told the workshop audience that the CEQ NEPA Task Force, which he directs, has looked at ways EMS could improve NEPA implementation. An EMS can improve relations with local communities, especially with regulators, who appreciate the Federal effort to address environmental issues systematically, he said. Another benefit of an EMS, he noted, is that it can provide methods for following up NEPA's predictive analysis.

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Few Comments Received on Proposed Floodplain / Wetlands Rule Changes

DOE is evaluating the three sets of public comments received – from a state government, a county government, and a member of the public – on the changes it proposed to its regulations for environmental review of actions in a floodplain or wetland. Revisions to 10 CFR Part 1022, *Compliance with Floodplain/Wetlands Environmental Review Requirements*, were proposed on November 18, 2002 (67 FR 69487), with a public comment period ending January 17, 2003. The revisions would streamline requirements (e.g., reduce the number of required assessments through new exemptions, emphasize publication of notices locally rather than through the *Federal Register)*, and add no new requirements. (See *LLQR*, December 2002, page 3.)

Commenters generally supported the proposed changes, but one commenter objected to streamlining on the grounds that it would make it easier to sabotage environmental protection. Other comments emphasized the need for DOE to ensure compliance with the full suite of Federal and state laws applicable to its proposed actions, underscored the importance of distributing notices and other information related to floodplain and

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Inside *LESSONS LEARNED*

Welcome to the 34th quarterly report on lessons learned in the NEPA process. We are pleased to feature the synergy between NEPA and the new DOE Order 450.1, Environmental Protection Program. Thank you for your continuing support of the Lessons Learned program.

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.* Draft articles for the next issue are requested by May 1, 2003. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2003

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2003 (January 1 through March 31, 2003) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at *tis.eh.doe.gov/nepa* under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

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

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China Promulgates Environmental Impact Assessment Law

The Ninth National People's Congress, China's legislature, has passed a Law on Environmental Impact Assessment (EIA), which will become effective September 1, 2003. Its passage establishes a national framework for environmental compliance and encourages public participation in the EIA process. The law addresses the preparation of EIAs to support land use, development, and construction project plans.

Documentation specified under the law ranges from an environmental impact registration form for projects with small potential impacts to a comprehensive analysis for projects with potentially major environmental impacts. Air and water pollution prevention and control provisions also are incorporated into this law.

In developing this law, high-level Chinese officials in October 2000 conducted a study tour of EIA practices in the United States, hosted by the U.S. Environmental Protection Agency. Eric Cohen, Office of NEPA Policy and Compliance, briefed the Chinese delegation on aspects of DOE's NEPA program in which the delegation had expressed interest, including public participation, use of programmatic NEPA documents, tracking mitigation commitments, and analyzing cumulative impacts. Chinese officials stated that these were areas of weakness to be addressed in the new law.

The new law is announced on the Web site of the United Nations Environment Programme, International Environmental Technology Centre, at *www.unep.or.jp/ietc/announcements/EIA_China.asp.* LL

Few Comments Received

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wetland environmental reviews to all interested parties, and requested clarification of the exemptions and of certain terms within the rule.

The Office of NEPA Policy and Compliance is preparing the final rulemaking package, including a preamble that responds to public comments. The NEPA Office plans to have the final rule ready for Department-wide concurrence in March, with publication in late spring. The rule would become effective 30 days after publication. DOE initially promulgated 10 CFR Part 1022 in 1979. For more information contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. LL

New DOE Order Focuses on EMS

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In a later panel discussion of EMS experiences at DOE, Teresa Perkins, Director, Environmental Technical Support Division, Idaho Operations Office, agreed that EMS helps with follow up of NEPA commitments. (Also see *LLQR*, September 2002, pages 1 and 8.)

EMS Well-Established at DOE

"EMS is not something new to you," Beverly Cook, Assistant Secretary for Environment, Safety and Health, told DOE and contractor personnel gathered at the Forrestal Building in Washington, DC, and participating remotely from 28 DOE sites. DOE has been involved with EMS for several years, and both DOE headquarters and field offices have contributed to its growth. EMSs at nine DOE sites either have been certified for conformance with the ISO 14001 international environmental management system standard or have been recognized by the Environmental Protection Agency's (EPA's) National Environmental Performance Track program.

An EMS is a continuing cycle of planning, implementing, evaluating, and improving processes and actions undertaken to achieve environmental goals.

John Howard, the Federal Environmental Executive, applauded DOE's performance in being among the first Federal agencies to implement EMS both at local sites and as Departmental policy. He further congratulated the Department for integrating EMS with safety, health, and security programs. (The position of the Federal Environmental Executive was created in 1993 by Executive Order 12873 to help the President promote recycling and waste prevention among Federal agencies. Today, the Office has evolved its mission to promoting sustainable environmental stewardship throughout the Federal government.)

DOE Order 450.1 strives to implement sound stewardship practices:

- **that are protective of the air, water, land, and other natural and cultural resources impacted by DOE operations; and**
- **by which DOE cost effectively meets or exceeds compliance with applicable environmental, public health, and resource protection laws, regulations, and DOE requirements.**

Elliott Gilberg, EPA's Associate Director, Office of Federal Facilities Enforcement, similarly praised DOE for its EMS efforts. "Environmental compliance is very costly," he said. "Anytime you can come up with things that improve the 'system,' that's good for the government and good for the taxpayer."

Performance-Based Management

President Bush wants the Federal Government to lead by example, according to Mr. Howard, as "wise fiscal stewards" as well as "wise environmental stewards." EMS is an effective tool that can help us achieve this vision, he said. The most important benefit from EMS is an "unforeseeable and positive dynamic synergy that will flow" from bringing people together from across the organization to "work together on a shared vision."

Ms. Cook described Order 450.1 as a "giant step" taking the Department from a 50-plus page command-and-control style Order to a nine page performance-based Order. [DOE Order 450.1 supercedes DOE Order 5400.1, General Environmental Protection Program (November 9, 1988), and DOE Notice 450.4, Assignment of Responsibilities for Executive Order 13148, Greening the Government Through Leadership in Environmental Management (February 5, 2001).]

Andy Lawrence suggested two take-home messages: "Compliance is a given," and "Leave no legacy."

Integrated, Systematic Planning and Execution

Andy Lawrence, Director of the Office of Environmental Policy and Guidance, which hosted the two-day workshop, said the Order moves DOE toward environmental best practices. Under the Order, when integrating an EMS into an ISMS, DOE and contractors must consider such factors as conformity of proposed actions with state plans to maintain ambient air quality standards, implementation of a watershed approach for surface water protection, implementation of a site-wide approach for groundwater protection, protection of natural resources including biota, fire protection for site resources, and protection of cultural resources. DOE and contractors also must promote long-term stewardship of a site's natural and cultural resources, ensure early identification of and appropriate responses to adverse

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Interior and Forest Service Jointly Propose New Categorical Exclusions

The Department of the Interior and the Forest Service, U.S. Department of Agriculture, jointly have proposed to modify their agencies' respective NEPA procedures to include two new categorical exclusions (CXs) (67 FR 77038; December 16, 2002).

The agencies state that the proposed CXs are intended to enable timely response to forest health problems and improve consistency between agency actions by the use of identical management tools.

The proposed CXs, one for fuels reduction and one for rehabilitation and stabilization of lands and infrastructure impacted by wildfire or wildfire suppression, are based on the agencies' experience involving a large number of NEPA reviews. The agencies reviewed over 3,000 fuel reduction and rehabilitation/stabilization projects completed from 1998 to 2002. Over half of these projects were the subject of an EA, and fewer than 50 were the subject of an EIS. The remaining projects were categorically excluded. Of the EISs, only 12 projects were predicted to have significant environmental effects from these activities. A summary of the review of NEPA documents is available at *www.fs.fed.us/projects/HFI.shtml*.

The proposed rehabilitation CX would apply only to activities in the aftermath of a wildfire. The fuels reduction CX would not apply to activities that do not have fuel reduction as their primary purpose. Neither CX would apply in situations with extraordinary circumstances.

The two agencies are now considering about 1,900 individually written comments and about 37,000 "campaign" comments received on the proposed CXs, whose comment period closed on January 31, 2003. For further information contact Dave Sire, USDA Forest Service, Ecosystem Management Coordination, at 202-205-2935, or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance, at 202-208-3891. LL

New DOE Order Focuses on EMS

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environmental impacts, and ensure pollution prevention and improved energy efficiency.

Responsibilities for implementing the Order are assigned to the Assistant Secretary for Environment, Safety and Health and headquarters, site, and field offices, and flow down to management contractors and their subcontractors. The Order does not require adoption of a particular EMS framework, such as ISO 14001, but rather gives programs and sites the flexibility to determine the framework best suited to their objectives. A site's ISMS may serve this purpose, said Steve Woodbury, Office of Environmental Policy and Guidance, if it encompasses the scope and requirements of the Order.

The Office of Environmental Policy and Guidance is discussing guidance needs to support the new Order with headquarters and field staff. Among topics being considered are: what constitutes an EMS, how to implement specific elements of an EMS, pollution prevention, and watershed management. DOE Order 450.1 is available on the Web at *www.directives.doe.gov* and *tis-nt.eh.doe.gov/oepa/workshop/order450_1.html*.

A video of the workshop will be available. For more information, contact Larry Stirling at john.stirling@eh.doe.gov or 202-586-2417. LL

Significance under NEPA and EMS

Mr. Horst Greczmiel, CEQ, pointed to one potential inconsistency between NEPA and EMS that can be accommodated. Something that is significant in one context may not be significant in the other. The evaluative process required to develop and implement an EMS might identify significant environmental issues that are not significant in the NEPA context of requiring an EIS, he explained. On the other hand, a potentially significant impact discussed in an EIS might be resolved through the NEPA process or subsequent mitigation and therefore not be a significant issue for the EMS. Michael Green, National Aeronautics and Space Administration (NASA), who summarized his agency's EMS approach at the workshop, noted that NASA uses the term "priority impacts" rather than "significant impacts" in EMS to avoid confusion with significance under NEPA. (Also see *LLQR*, December 1997, page 7.)

Potential Resources for NEPA Practitioners

EPA Issues Community Culture Guide

The U.S. Environmental Protection Agency's Office of Wetlands, Oceans, and Watersheds has issued *Community Culture and the Environment: A Guide to Understanding a Sense of Place* (EPA 842-B-01-003, November 2002). The *Guide* and related training provide the tools for working with community groups to protect the environment.

The *Guide* provides a toolkit and guidance on conducting a community assessment process that includes pre-project planning, defining the community and the appropriate goals of the assessment, identifying a range of community characteristics (e.g., community boundaries, economic conditions and employment, environmental awareness and values), selecting appropriate assessment methods (e.g., using census data results, maps, and geographic research), and analyzing the results of the community assessment. The *Guide* also includes sample worksheets and 15 community case studies.

The EPA *Guide* may be useful to DOE's NEPA Community and others during preparation of public participation plans, cultural resource plans, or incorporating environmental justice considerations into the NEPA process.

Copies of the *Guide* may be obtained from the National Center for Environmental Publications and Information at (513) 489-8190, (800) 490-9198, or by mail to NCEPI, U.S. EPA Publications Clearinghouse, P.O. Box 42419, Cincinnati, OH, 45242, or by e-mail to ncepiwo@one.net. For further information, contact: Theresa Trainor at trainor.theresa@epamail.gov or 202-566-1250.

EPA Web Site Offers Information and Tools for Pollution Prevention

In support of EPA's newest pollution prevention initiative, the National Waste Minimization Partnership Program, the EPA Office of Solid Waste has created a Web site that provides information and tools NEPA practitioners can use when considering pollution prevention as part of the NEPA process. (See *LLQR*, December 1999, page 9.)

The Web site, *www.epa.gov/epaoswer/hazwaste/minimize/index.htm*, supports a voluntary waste-reduction program focused on wastes containing 27 organic chemicals and three metals (cadmium, lead, and mercury) that EPA has identified as the highest priorities for waste minimization (Waste Minimization Priority Chemicals). The Web site offers resources to serve the needs of Federal, state, and local government agencies, commercial entities, nongovernmental agencies, and consumers. Web site users can learn about sources of these priority chemicals, find guidance on identifying waste minimization priorities, use data and analysis tools, and explore technical assistance resources.

DOE's contact for Pollution Prevention is Jane Powers, Office of Environmental Policy and Guidance, at jane.powers@eh.doe.gov or 202-586-7301.

EIA Guidelines for Statistical Graphs Available Online

The Energy Information Administration (EIA), the independent statistical agency of the Department of Energy, has posted online a potentially useful reference for NEPA document preparers and reviewers. *EIA Guidelines for Statistical Graphs (Second Edition)* provides detailed guidance for choosing the type of graph that will best present your data.

Based on the *Guidelines*, the first decision to make is to determine the message the graph will communicate (the purpose). The second decision is to determine who the audience is and what they will expect or extract from the graph. Once these decisions are made, the question of graph format and design can be answered. Good design supports the data rather than the data supporting the design. A well-designed graph displays the minimum design and the maximum data. To further aid the user, the *Guidelines* provides excellent examples of graphs with detailed explanations, several helpful URLs, and other references. The Guidelines are available at *www.eia.doe.gov/neic/graphs/preface.htm*.

A View from the Trenches: EA Enables Project to Proceed

By: Roger Twitchell, NEPA Compliance Officer, Idaho Operations Office

To further compliance with NEPA and the National Historic Preservation Act, the DOE Idaho Operations Office recently prepared an environmental assessment (EA) even though a categorical exclusion (CX) approach initially seemed appropriate. Formalizing the consultations with the State and Tribal Historic Preservation Officers within the EA process alleviated delay after controversy had stalled the project.

The Idaho Nuclear Technology and Engineering Center is a 250-acre compound at the Idaho National Engineering and Environmental Laboratory (INEEL). It is located close to the channel of the Big Lost River, an intermittent stream that flows into an undrained desert basin.

To establish a basis for estimating potential future flood flows at the Center, the Idaho Operations Office decided to examine the geologic record left by past floods. Geologists proposed digging a series of trenches along the Big Lost River at four sites with unique geological and topographical characteristics.

Review of cultural resource surveys for the proposed trenching sites led DOE to eliminate one proposed trenching site and realign the proposed trenches at the three other sites to try to avoid cultural resources. The Idaho Operations Office NCO applied DOE's categorical exclusion B3.1 for site characterization to activities at two of the three sites, allowing DOE immediately to carry out the trenching under the oversight of INEEL and Tribal cultural resource specialists.

Controversy Signals CX May Be Inappropriate

At the third proposed site, which geologists deemed likely to provide the most definitive evidence of past floods, cultural resources could not be avoided. These resources included buried artifacts and a traditional cultural place of the Shoshone-Bannock Tribes that is potentially eligible for listing on the National Register of Historic Places because it "has yielded or may be likely to yield information important in prehistory or history." The Idaho Operations Office Cultural Resource Coordinator initiated consultation under section 106 of the National Historic Preservation Act with the State Historic Preservation Officer and invited the Advisory Council on Historic Preservation to comment.

The Idaho Operations Office NCO, Cultural Resource Coordinator, and Chief Counsel's staff anticipated that the consultation would result in a Memorandum of Agreement supporting a finding of no adverse effect under section 106 of the National Historic Preservation Act. Such a finding would have allowed trenching at this location to be categorically excluded. After 14 months, however, the parties had not been able to finalize the Memorandum.

EA Process Provides "A Reasonable Opportunity" to Comment

DOE then decided to prepare an EA to publicly and formally document its compliance efforts with respect to section 106 of the National Historic Preservation Act. On August 6, 2002, the NCO notified the Shoshone-Bannock Tribal Business Council, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation that DOE would meet its section 106 obligations for the proposed trenching through the EA process as provided for under the National Historic Preservation Act implementing regulations (36 CFR 800.8).

The Idaho Operations Office issued an EA, "Geomorphic Investigations of the Big Lost River at Site BLR-8 on the Idaho National Engineering and Environmental Laboratory" (DOE/EA-1448), in August 2002 for a 30-day public review. Appended to the draft EA was a draft Memorandum of Agreement between the State Historic

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A tribal representative monitors trenching operations for cultural resources at a site near the Big Lost River.

Fossil Energy Launches EIS Process Improvement Team

DOE Fossil Energy's (FE) Office of Environment, Security, Safety, and Health hosted a workshop in Washington, DC, on February 13, to explore ways to streamline the EIS process for FE projects. The workshop concept was developed in response to a break-out discussion at the Department's December 2002 Executive Safety Summit.

Office of NEPA Policy and Compliance and General Counsel staff and the NEPA Compliance Officers (NCOs) for the Offices of Energy Efficiency, Nuclear Energy, FE, and the National Environmental Technology Laboratory participated as process improvement team members, along with other FE staff. Workshop participants examined the process involved in completing a recent Clean Coal Technology Program project EIS, with the goal of developing suggestions for process improvements. The NEPA Document Manager and a representative of the EIS preparation contractor contributed to the discussions. Participants also considered factors that contributed to timely completion of complex EISs for other programs.

Process improvement team members expect that the recommendations developed will facilitate the timely and efficient completion of several new EISs for upcoming Clean Coal Technology Program projects. Team members plan to share the recommendations and lessons learned with the DOE NEPA community when they are finalized.

A View from the Trenches

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Preservation Officer and DOE supporting a finding of no adverse impact to cultural resources. The State Historic Preservation Officer commented on the draft Memorandum of Agreement in the draft EA, effectively resolving the State issues. With the State issues resolved, the Advisory Council chose not to participate in formal consultation.

DOE also initiated government-to-government consultation regarding the proposed action with the Shoshone-Bannock Tribal Business Council. The Tribes strongly disagreed with the National Historic Preservation Act's narrow definition of cultural resources, holding that it should include the viewshed, vegetation, and spiritual setting. They also disputed other requirements of the Act, such as curating collected artifacts in a museum instead of leaving them in place or returning them to the collection site.

DOE and the State Historic Preservation Officer signed the Memorandum of Agreement to mitigate potential adverse effects of the proposed action on cultural resources on September 17, 2002, but the Tribes chose not to concur. DOE issued a finding of no significant impact for the EA on September 20, 2002, initiated the proposed action three days later, and completed the trenching the following day. Only two arrowheads were collected and mitigation was effective in preventing impacts to cultural resources as defined under the National Historic Preservation Act. The trenches will remain open for a year of observation and analysis to help delineate the floodplain.

The Idaho Operations Office studied past flooding of the Big Lost River, an intermittent stream.

DOE prepared this EA and finding of no significant impact in compliance with NEPA and the National Historic Preservation Act to implement an important action that had been stalled by "unresolved conflicts concerning alternate uses of available resources (10 CFR 1021.410(b)(2))." This unresolved conflict created the "extraordinary circumstances" that rendered the CX inappropriate. For more information, contact Roger Twitchell at twitchrl@id.doe.gov or 208-526-0776.

Second Report on Cooperating Agencies Due to CEQ on April 30

DOE, along with other Federal agencies, will soon start to prepare its second biannual report on cooperating agency involvement in its NEPA process. The second report, due to the Council on Environmental Quality (CEQ) on April 30, 2003, will list EISs and EAs that DOE initiated from September 1, 2002, to February 28, 2003, and will update information on EISs and EAs started between March 1 and August 31, 2002, which were included in the first biannual report.

The Agencies' NEPA contacts met on December 17, 2002, to hear Horst Greczmiel, CEQ Associate Director for NEPA Oversight, discuss the information agencies provided for the first report. He also described possible changes for future reports, including improvements to the Cooperating Agency Reporting System (CARS), CEQ's Web-based information system. Further guidance is anticipated and will be forwarded to NEPA Compliance Officers to help them enter information for their office's NEPA reviews directly into CARS. For more information on cooperating agency reporting, see *LLQR*, December 2002, page 2, and March 2002, page 1, or contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Report on CEQ NEPA Task Force Planned for Spring 2003

For the past year LLQR has reported on the progress of the Council on Environmental Quality NEPA Task Force, from planning (March 2002, page 17) to establishment (June 2002, page 11), soliciting examples of effective NEPA implementation (September 2002, page 4), and the responses of government agencies and the public (December 2002, page 1). This update focuses on the anticipated results of the Task Force's undertaking.

The members of the NEPA Task Force discussed their work with James Connaughton, Chair of the Council on Environmental Quality (CEQ), and Joshua Bolten, Assistant to the President and Deputy Chief of Staff for Policy, on January 16, 2003. A report of the NEPA Task Force findings and recommendations to CEQ is being prepared and will be available in the spring of 2003 in hard cover and on the NEPA Task Force Web site, *ceq.eh.doe.gov/ntf*.

"The information gained and disseminated by the NEPA Task Force should help Federal agencies update their practices and procedures and better integrate NEPA into Federal agency decisionmaking," according to Horst Greczmiel, Director of the NEPA Task Force. A publication highlighting case studies and useful practices will also be available in 2003.

***The CEQ NEPA Task Force**, pictured clockwise from front center: **Patricia E. Haman**, EPA; **Michele McRae**, U.S. Geological Survey; **Anne Norton Miller**, EPA and Task Force Deputy Director; **Dr. Mark Colosimo**, Corps of Engineers; **Jordon Pope**, Bureau of Land Management; **Horst Greczmiel**, CEQ Associate Director for NEPA Oversight and Task Force Director; **Lee Jessee**, DOE; **Matthew McMillen**, Federal Aviation Administration; **Ramona Schreiber**, National Oceanic and Atmospheric Administration; and in the center **Mary Wilke**, CEQ intern. Not pictured are: **Mary Gary**, EPA; and **Rhey Solomon**, Assistant Director of the Task Force, U.S. Forest Service (retired).*

Innovative, Efficient EIS Distribution Saves Yucca Mountain Project $200,000

Rather than distribute paper copies of the entire 5,000-page Yucca Mountain Final EIS, the Yucca Mountain Project primarily distributed CD-ROMs and paper copies of the EIS Summary. The CD-ROMs contained the entire EIS* as well as images of more than 13,000 EIS comments, which were not part of the EIS. The Project also distributed about 75 paper copies of the entire document to certain Federal, state, and local agencies, and other people known to want it.

Before circulating the Final EIS, DOE consulted with the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA), who agreed that DOE's planned distribution procedures were an appropriate way to meet the requirements of 40 CFR 1502.19. In the initial distribution of about 6,200 CD-ROM/paper Summary sets, the Project told recipients how to request paper copies of the entire document, with an option to call a toll-free telephone number. DOE also used commercial express service to fulfill such requests. (The NEPA Document Manager received fewer than 40 requests for paper copies.) After initial distribution of the CD-ROM/paper Summary sets, DOE waited an extra week before filing the EIS with EPA so that people who wanted the complete document could receive it before DOE filed the EIS (67 FR 65539; October 15, 2002) and EPA published a Notice of Availability (October 25, 2002).

The Project produced about 10,000 CD-ROM/paper Summary sets. Each set cost about $3 to produce and $4 to distribute. To be prepared for requests for paper copies of the entire EIS and to meet future needs, the Project also produced about 2,500 paper copies of the entire document. Each complete EIS paper copy cost about $19 to print and $25 to distribute by commercial express service.

The total production and distribution cost was slightly more than $100,000. If the Project had decided to circulate primarily paper copies of the entire EIS, then the costs to produce enough documents and distribute 6,200 copies would have been well over $300,000.

** The CD-ROMs did not include EIS Volume IV, which contains nonclassified, security-sensitive information that is available only in paper copy upon written request.* LL

Recommended Radiation Risk Factors Updated

The Office of Environmental Policy and Guidance (OEPG) recently issued a revised Air and Radiation Information Brief, *Estimating Radiation Risk from Total Effective Dose Equivalent (TEDE), ISCORS Technical Report No. 1* [DOE/EH-412/0015/0802 rev.1 (January 2003)] to correct a numerical error and provide a recommended dose-to-risk conversion factor for workers, in addition to members of the public, applicable where doses are estimated using TEDE. The factors are recommended for estimating radiation risk for comparison purposes (e.g., comparing risk among alternatives) and are appropriate for most DOE NEPA documents.

OEPG first circulated its Info Brief and the technical report from the Interagency Steering Committee on Radiation Standards (ISCORS) in August 2002. The report (*A Method for Estimating Radiation Risk from TEDE, ISCORS Technical Report No. 1*, July 2002; available at www.iscors.org) contains guidance on calculating radiation risk from dose. The ISCORS guidance recommends that agencies use a conversion factor of 6×10^{-4} fatal cancers per TEDE (rem) when making qualitative or semi-quantitative estimates of risk from radiation exposure to members of the general public. (OEPG advises that such estimates should not be stated to more than one significant digit.) We reported on this guidance in the September 2002 issue of *Lessons Learned* and recommended use of the new factor in new DOE NEPA documents.

OEPG's January 2003 revised Info Brief now provides a recommended risk factor for workers. Noting uncertainties in risk estimates, OEPG recommends that the factor 6×10^{-4} fatal cancers per TEDE (rem) also could be used for workers. In addition, the revised Info Brief corrects a numerical error in the original Info Brief: the risk factor for morbidity applicable to the general public should be 8×10^{-4} (not 8×10^{-6}).

The revised Info Brief and related materials are available on the OEPG Web site at *www.eh.doe.gov/oepa* in the "focus areas" under "dose and risk assessment." The OEPG contact for this guidance is Hal Peterson (harold.peterson@eh.doe.gov).

The Office of NEPA Policy and Compliance recommends using this factor, i.e., 6×10^{-4} fatal cancers per TEDE (rem), for workers and members of the public in new NEPA documents. LL

NRC Rules Terrorism Reviews Not Required For Its Actions Under NEPA

"What is an agency's responsibility under NEPA to consider intentional malevolent acts, such as those directed at the United States on September 11, 2001?"

The Nuclear Regulatory Commission (NRC) asked this question in reviewing four cases raising terrorism-related issues referred to it by NRC's Atomic Safety and Licensing Board (Licensing Board). The Commission answered the question in four corresponding orders issued on December 18, 2002, each holding that NEPA does not require NRC to consider the impacts of terrorism in rendering licensing decisions.

DOE, on the other hand, has not expressed a conclusion regarding whether or not such analyses are required under NEPA. As described below, DOE sometimes conducts such analyses at its discretion when it judges them useful.

The Commission provided a detailed rationale for its conclusion in the order that involved Private Fuel Storage L.L.C.'s (PFS) proposal to build an independent spent fuel storage installation on the Skull Valley Goshute Indian Reservation in Utah. (The proposed facility would store spent nuclear fuel from commercial nuclear power plants pending disposal in a repository.) In abbreviated orders issued for the other three "companion" cases, the Commission refers to its rationale expressed in the PFS order.

One of the companion cases involved Duke Cogema Stone & Webster's proposed licensing of the Mixed Oxide (MOX) Fuel Fabrication Facility at DOE's Savannah River Site in South Carolina. The Commission's order in the MOX case reversed a Licensing Board decision to admit for licensing hearing an intervenor's contention that NEPA requires NRC to evaluate terrorism impacts at the proposed MOX facility. The Licensing Board had stated: "Regardless of how foreseeable terrorist acts that could cause a beyond-design-basis accident were prior to the terrorist attacks of September 11, 2001, it can no longer be argued that terrorist attacks … are not reasonably foreseeable …."

Basis for the Commission's Conclusion

As explained in the PFS case, the Commission concluded that **"the possibility of a terrorist threat … is speculative and simply too far removed from the natural or expected consequences of agency action to require a study under NEPA** [emphasis added]…. As a practical matter, attempts to evaluate that threat even in qualitative terms are likely to be meaningless and consequently no use in the agency's decision making."

In reaching this conclusion, the Commission noted two Federal court of appeals decisions that addressed the issue of terrorism and NEPA in the area of nuclear regulation. Both decisions upheld, as reasonable, an agency refusal to consider terrorism under NEPA (*Limerick Ecology Action v. NRC* [869 F.2d 719, 743-44 (3rd Cir. 1989)]; and *City of New York v. U.S. Department of Transportation* [715 F.2d 732, 750 (2nd Cir. 1982), appeal dismissed and cert. denied, 465 U.S. 1055 (1984)]).

Further, the Commission observed that the risk of a terrorist attack (generally thought of as the product of the probability of an occurrence and the consequences) cannot be adequately determined because "the likelihood of attack cannot be ascertained using any state-of-the-art methodology." The State of Utah, an intervenor in the PFS proceedings, asked the Commission to assume an attack with a large jumbo jet and to analyze the consequences without consideration of probability. The Commission, however, concluded that such an analysis "…amounts to a form of 'worst case' analysis, which the Supreme Court, in *Robertson v. Methow Valley Citizens Council* [490 U.S. 332 (1989)], determined is not required under NEPA." Under Utah's approach, the Commission wrote, "… presumably all other kinds of terrorism, if conceivable, would require NEPA review as well …. Such an open-ended approach to NEPA is unworkable …. As the Supreme Court noted in *Robertson*, it is always possible to 'conjure up' progressively more disastrous scenarios."

> *"In our view, the public interest would not be served by inquiries … into where and how nuclear facilities are vulnerable …"*
> *— Nuclear Regulatory Commission*

NRC's Security Concerns

In further arguments that NEPA is not an appropriate forum for considering terrorism, the Commission noted, "The public aspect of NEPA processes conflicts with the need to protect certain sensitive information …. In our

continued on next page

Planning Summaries Posted on DOE NEPA Web

The Office of NEPA Policy and Compliance is posting Program and Field Office annual NEPA planning summaries on the DOE NEPA Web to assist in making them available to the public. The annual planning summaries are posted as they are received and are available through two locations within the NEPA Web site (*tis.eh.doe.gov/nepa*): in the pull-down menu of topics on the front page and the *DOE NEPA Document Status & Schedules* module (*tis.eh.doe.gov/nepa/planningsummaries.html*).

In addition to alerting the public to ongoing and future NEPA documents, the primary purpose of the annual planning summaries is to ensure that senior DOE managers are involved early in the NEPA process and can allocate monetary and staff resources appropriately. Knowing the schedules of all the EISs also helps the NEPA Office in its planning, that is, making staff resources available to review and assist in the preparation and approval of the EISs. Additionally, identifying all EAs and EISs being prepared or planned throughout the Department helps the NEPA Office identify trends and crosscutting issues.

Based on a preliminary review of the 23 annual NEPA planning summaries received to date, approximately 32 new EAs and 9 new EISs are scheduled in the next 12 to 24 months. In addition, there are 38 EAs and 25 EISs that are ongoing.

NRC Rules Terrorism Reviews Not Required Under NEPA

(continued from previous page)

view, the public interest would not be served by inquiries … into where and how nuclear facilities are vulnerable … and what consequences would ensue if security measures failed at a particular facility. Such NEPA reviews may well have the perverse effect of assisting terrorists seeking effective means to cause a release ….”

The Commission did not close the door to analyzing terrorism in NEPA documents, and wrote in a footnote, “This is not to suggest that an environmental review should never consider threat of terrorism …. In fact, the NRC has briefly considered, as a matter of discretion, the issue of terrorism in generic environmental reviews [for nuclear power plant license renewal].”

DOE Practice

DOE sometimes finds it appropriate to consider potential environmental impacts of intentional destructive acts (acts of sabotage or terrorism) in its NEPA documents, although the Department has not expressed a conclusion regarding whether or not such analyses are required under NEPA.

In *Recommendations for Analyzing Accidents under the National Environmental Policy Act* (July 2002), DOE stated, “In identifying the reasonably foreseeable impacts of a proposed action and alternatives, past DOE NEPA documents have addressed potential environmental impacts that could result from intentional destructive acts. Analysis of such acts poses a challenge because the potential number of scenarios is limitless and the likelihood of attack is unknowable.”

The Guidance further states, “Intentional destructive acts are not accidents. Nevertheless … the consequences of an act of sabotage or terrorism could be discussed by a comparison to the consequences of a severe accident …. When intentional destructive acts are reasonably foreseeable, a qualitative or semi-quantitative discussion of the potential consequences of intentional destructive acts could be included in the accident analysis.” The Guidance provides two examples of qualitative discussions of intentional destructive acts that might be appropriate in an EIS.

Regarding security concerns, DOE conducts security reviews of its environmental documents to ensure that security sensitive information is protected. For example, some DOE EISs have contained a nonsensitive summary of the results of an analysis of intentional destructive acts. In these cases, details of the analysis, which may contain nonclassified security-sensitive information, were segregated into a separate EIS appendix whose distribution was appropriately limited. For a further discussion of related EIS security matters, see *LLQR,* March 2002, page 9, and December 2001, page 1.

Further Information: The Commission’s rulings can be found on the NRC Web site (Utah ruling: *www.nrc.gov/reading-rm/doc-collections/commission/orders/2002/2002-25cli.html*; MOX Fabrication Facility ruling: *www.nre.gov/reading-rm/doc-collections/commission/orders/2002/2002-24cli.html).* DOE’s guidance on accident analyses can be found on the DOE NEPA Web site: *tis.eh.doe.gov/nepa* under Guidance.

Litigation Updates

Supreme Court Declines to Review South Carolina Plutonium Disposition Challenge

On January 13, 2003, the Supreme Court denied former South Carolina Governor Jim Hodges' petition to review the August 6, 2002, decision by the U.S. Court of Appeals for the Fourth Circuit upholding a lower court decision in support of DOE's plans to implement its plutonium disposition program. (See *LLQR*, September 2002, page 19.) Governor Hodges was attempting to stop the shipment of plutonium from the Rocky Flats Environmental Technology Site to the Savannah River Site for long-term storage pending final disposition. The Supreme Court's denial of the Governor's petition for review of the case marks an end to his challenge to the plutonium shipments.

Court Rules in Favor of Sierra Club in Rocky Flats Case

The U.S. District Court for the District of Colorado ruled on November 22, 2002, that DOE violated NEPA and the Endangered Species Act by categorically excluding a road easement granted by the National Wind Technology Center to a private mining company to expand its mining activities in the Rocky Flats buffer zone. DOE was ordered to void the 1995 road easement and comply with NEPA and the Endangered Species Act regarding any future road easement and development of the mine.

In February 2001, the district court had dismissed the Sierra Club complaint as premature because of the many procedural steps yet to be completed before the mining company would decide whether to construct the road (*LLQR*, March 2001, page 13). The Sierra Club appealed the dismissal, and in June 2002, the appeals court remanded the case to the district court, finding that the plaintiff's claims were ripe for review and that the Sierra Club had standing to raise those claims (*LLQR*, June 2002, page 14).

On remand, the district court found that DOE's categorical exclusion A7 is limited to property transfers where the property use remains unchanged and therefore without new impacts. The court held that construction and use of a road to access the mine constituted a new use of the property that would impact the environment. Furthermore, the court determined that the easement and the mining are connected actions, and that DOE therefore was required to consider and evaluate the mine's impacts on the environment. The district court also determined that at the time the easement was granted, the mine expansion was a reasonably foreseeable action and that DOE also should have considered both actions in determining the appropriate level of NEPA documentation.

Other DOE NEPA-related Litigation Developments in Brief

Benton County v. DOE (E.D. Wash.) challenging DOE's decision to deactivate the Fast Flux Test Facility pending preparation of additional NEPA documentation: oral argument on the parties' cross-motions for summary judgment was held on February 25, 2003. At the conclusion of the hearing, the judge indicated that a written ruling in favor of DOE would be forthcoming by March 3, 2003. In addition, the court granted the plaintiff's request to extend DOE's self-imposed injunction on draining the sodium from the reactor until 30 days after issuance of the written opinion, to allow the plaintiff to decide whether to appeal. (See *LLQR*, December 2002, page 22.)

Nevada v. DOE (D.C. Cir.) concerning the recommendation of Yucca Mountain to Congress as a geologic repository, DOE's site suitability guidelines, and DOE's final EIS: DOE filed its brief on February 21, 2003. (See *LLQR*, March 2002, page 19, and December 2002, page 22.)

NRDC v. Abraham (D. Idaho) challenging DOE Order 435.1 on radioactive waste management: DOE requested an extension to March 6, 2003, to file its cross-motion for summary judgment. (See *LLQR*, March 2000, page 16; June 2000, page 17; and September 2002, page 19.)

Border Power Plant Working Group v. DOE (S.D. Calif.) challenging two Presidential Permits for the construction of electric transmission lines crossing the international border with Mexico: DOE's cross-motion for summary judgment is due March 7, 2003. (See *LLQR*, June 2002, page 13.) LL

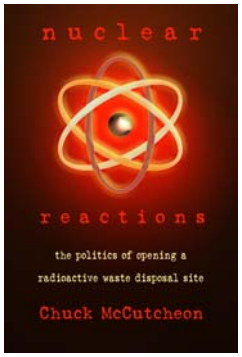
Book Review: A History of WIPP

By: Jeanie Loving, *Office of NEPA Policy and Compliance*

Nuclear Reactions: The Politics of Opening a Radioactive Disposal Site

Chuck McCutcheon
Albuquerque, New Mexico:
University of New Mexico Press; 2002
Phone: 800-249-7737
Internet: www.unmpress.com
ISBN 0-8263-2209-3; 231 pages; $24.95

Subtitled "**The Politics of Opening a Radioactive Disposal Site,**" ***Nuclear Reactions*** traces the highly controversial policy, environmental, judicial, and legislative debates surrounding the development of the Waste Isolation Pilot Plant (WIPP), from its earliest conception in the 1950s to the present. WIPP – the world's first deep geologic repository for transuranic nuclear waste disposal – opened in 1999 near Carlsbad, New Mexico, to dispose of waste generated by defense-related activities at DOE sites across the country.



Although ***Nuclear Reactions*** does not focus on NEPA *per se*, the book examines the environmental issues that played a major role in how WIPP was developed. Readers who followed or were involved in the NEPA reviews for WIPP (which included a final EIS in 1980 and supplemental EISs in 1990 and 1997), may find the book adds other dimensions to their knowledge and will no doubt recall that the NEPA process provided a significant forum for the WIPP debates. Readers concerned with other aspects of national energy policy may gain some insights into the importance of public values and dialogue between Federal agencies and their host constituents to the decision making process – both part of the fundamental principles of NEPA.

Mr. McCutcheon, who reported for the *Albuquerque Journal* (1986-1995), has written a thoroughly referenced summary of WIPP's history in nontechnical, easily readable language. He achieves his stated purpose: "neither to advocate nor oppose WIPP." Although his descriptions of the pro-WIPP views and their opposition are balanced and matter-of-fact, the author succeeds in conveying the intense passion with which many individuals on both sides approached their arguments.

The first few pages of the book acquaint the reader with WIPP's basic layout, engineered in salt deposits nearly a half-mile beneath the desert, and explain the kind of waste WIPP is designed to accept. The introduction lays out the roles played by the executive, legislative, and judicial branches of Federal government, and the influence on the debates exerted by State, regional, and local politicians, as well as by a strong and active cadre of environmentalists.

Subsequent chapters weave a true tale of conflict, dramatic oratory, high-level political actions, and grassroots environmental opposition. The author's research includes interviews with and character sketches of key environmental, congressional, and governmental figures, ranging from past Secretaries of Energy, to current DOE officials involved in the WIPP program, past and present influential Governors, and members of Congress still very much concerned with DOE and national energy issues. Although WIPP has now received hundreds of shipments, the controversy over nuclear waste disposal continues, and Mr. McCutcheon's book sends a message to "Stay tuned." LL

19th Edition of Stakeholders Directory Issued

The Office of NEPA Policy and Compliance issued the 19th edition of the Directory of Potential Stakeholders for DOE Actions under NEPA in January 2003. In addition to contact and address updates, this Directory includes information provided by government agencies and nongovernmental organizations on subjects of interest to them, the number of copies of NEPA documents requested for review, and preferences regarding receipt of paper, electronic, or CD-ROM document formats. NEPA Document Managers should use the most recent Directory to supplement lists of local stakeholders for specific programs, projects, or facilities. The NEPA Office has distributed the Directory to the DOE NEPA Community and made it available online at *tis.eh.doe.gov/nepa/* under Guidance, Public Participation. For questions or copies, contact Katherine Nakata at katherine.nakata@eh.doe.gov or 202-586-0801. LL

Transitions

Energy Efficiency: Othalene Lawrence

Othalene Lawrence has resumed serving as NCO for Energy Efficiency and Renewable Energy. She may be reached at othalene.lawrence@ee.doe.gov or 202-586-9577. LL

DOE-wide NEPA Contracts Update

Brief Guide to Be Issued

Staff from the Offices of Environment, Procurement and Assistance Management, and National Nuclear Security Administration (NNSA) Procurement and Assistance Management, with the assistance of the NNSA Service Center, have prepared a new *Brief Guide: DOE-wide National Environmental Policy Act Contracts* to replace a 1998 Guide of similar title. The *Brief Guide* provides information on how to use the six new indefinite delivery/indefinite quantity (task order) contracts that the NNSA Service Center, on behalf of the Department, issued in late 2002 to provide support services for NEPA document preparation and related environmental tasks. (See *LLQR,* December 2002, page 24.)

The *Brief Guide* would be issued by the three preparing Offices to Secretarial Officers and Heads of Field Organizations with NEPA responsibilities. The Office of NEPA Policy and Compliance plans to distribute the *Brief Guide* to the DOE NEPA Community and will make it available on the DOE NEPA Web site. For more information on use of the DOE-wide NEPA Contracts, contact the DOE-wide NEPA Contracts Administrator, David Gallegos, NNSA Service Center, at dgallegos@doeal.gov or 505-845-5849.

DOE-wide NEPA Contracting Resources Available on DOE NEPA Web Site

To aid potential users of the DOE-wide NEPA contracts, relevant information discussed in the *Brief Guide* has been posted on the DOE NEPA Web site at *tis.eh.doe.gov/nepa* under a link entitled "DOE-wide NEPA Contracting." Resources provided on this Web page are:

- ✓ **Guidance and Information:** the contracts' statement of work, the contractor points of contact, and the *Brief Guide* (when issued)
- ✓ **Forms and Tools:** the Request for Task Proposal/Task Order Form, the Performance Evaluation Form, and an Incentive Fee Calculator
- ✓ **Background Documents:** DOE Contracting Reform Guidance of December 1996, and a Secretary of Energy Policy Statement (September 25, 2002) and NNSA memorandum (August 29, 2002), both on contracting with small business

Please direct questions or suggestions concerning the contents of this Web page to Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

First Task Issued under the New Contracts

The following task has been awarded under the new DOE-wide NEPA contracts. For questions, including information on the tasks awarded on the initial set of DOE-wide NEPA contracts, contact David Gallegos (contact information above).

Task Description	DOE Contact	Date Awarded	Contract Team
Retrieval, Treatment, and Disposal of Tank Wastes and Closure of Single-Shell Tanks at the Hanford Site	Mary Burandt mary_e_burandt@rl.gov 509-373-9160	12/24/02	SAIC

Training Opportunities

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

- **Cumulative Impact Analysis and Documentation**
  Logan, UT: March 20-21
  Denver, CO: April 23-24
  Minneapolis, MN: May 14-15
  Fee: $595

  Overview of the NEPA Process
  Boise, ID: March 4
  Phoenix, AZ: March 11
  Washington, DC: March 11
  Minneapolis, MN: May 12
  Billings, MT: May 13
  Fee: $195

  Reviewing NEPA Documents
  Boise, ID: March 5-7
  Phoenix, AZ: May 6-8
  Logan, UT: May 19-21
  Fee: $795

  How to Manage the NEPA Process and Write Effective NEPA Documents
  4-Day Course
  Reno, NV: April 8-11
  Jacksonville, FL: May 6-9
  Philadelphia, PA: June 24-27
  Fee: $995

  3-Day Course
  Washington, DC: March 12-14
  Portland, OR: May 26-28
  Anchorage, AK: June 17-19
  Fee: $795

  Clear Writing for NEPA Specialists
  Logan, UT: March 17-19
  Spokane, WA: March 25-27
  Washington, DC: April 15-17
  Salt Lake City, UT: May 20-22
  Fee: $795

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

- **Workshop on NEPA in Indian Country**
  Denver, CO: March 19-20
  Fee: $450

  International Institute for Indigenous Resource Management
  303-321-6666
  iiirm@iiirm.org
  www.iiirm.org

- **Tribal Consultation**
  Durham, NC: May 7-9
  Fee: $750

  The Law of NEPA
  Durham, NC: May 28-30
  Fee: $750

  Making the NEPA Process More Efficient: Scoping and Public Participation
  Durham, NC: August 6-8
  Fee: $750

  Nicholas School of the Environmental and Earth Sciences
  Levine Science Research Center
  Duke University
  919-613-8082
  sea3@duke.edu
  www.env.duke.edu/cee/NEPA.html

- **NEPA Toolbox™ Training**
  Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including those from other agencies. Services are available through GSA Contract No. GS-10F-0163L (899-3).

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

EAs and EISs Completed, October 1 to December 31, 2002

EAs

Albuquerque Operations Office/Environmental Management
DOE/EA-1452 (11/29/02)
Groundwater Compliance at the Durango, Colorado, UMTRA Project Site, Durango, Colorado
Cost: $280,000
Time: 4 months

Albuquerque Operations Office/National Nuclear Security Administration
DOE/EA-1430 (12/12/02)
New 20 Mw Turbine at TA-3 Steam Plant, Los Alamos, New Mexico
Cost: $80,000
Time: 9 months

Chicago Operations Office/Office of Science
DOE/EA-1437 (10/25/02)
Design, Fabrication, and Operation of the National Compact Stellerator Experiment at Princeton Plasma Physics Laboratory, Princeton, New Jersey
Cost: $25,000
Time: 5 months

Naval Petroleum Reserve/Fossil Energy
DOE/EA-1434 (10/9/02)
Sunrise II Power Plant, Kern County, California
Time: 6 months
[**Note**: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]

Nonproliferation and National Security/National Nuclear Security Administration
DOE/EA-1442 (12/16/02)
Construction and Operation of a Bio-Safety Level-3 Facility at Lawrence Livermore National Laboratory, Livermore, California
Cost: $86,000
Time: 7 months

Oak Ridge Operations Office/Environmental Management
DOE/EA-1339 (11/5/02)
Waste Disposition Activities at the Paducah Site, Paducah, Kentucky
Cost: $227,000
Time: 33 months

Oak Ridge Operations Office/Environmental Management
DOE/EA-1393 (10/16/02)
Storage, Transportation and Disposition of Potentially Reusable Uranium Materials, Oak Ridge, Tennessee
Cost: $180,000
Time: 18 months

Oak Ridge Operations Office/Office of Science
DOE/EA-1451 (10/18/02)
USEC Centrifuge Research and Development Project at ETTP, Oak Ridge, Tennessee
Cost: $156,000
Time: 2 months

Richland Operations Office/Environmental Management
DOE/EA-1412 (11/6/2002)
Expansion of the Hazardous Materials Management and Emergency Response Facility, Richland, Washington
Cost: $65,000
Time: 14 months

EISs

Environmental Management/Idaho Operations Office
DOE/EIS-0287 (10/11/02)
(EPA Rating: EC-2)
Idaho High-Level Waste and Facilities Disposition, Idaho Falls, Idaho
Cost: $15,000,000*
Time: 61 months

** This cost includes substantial expenses for project activities whose cost normally would not be attributed to the NEPA process, including engineering and detailed conceptual design, characterization studies, and program policy development/coordination. Such costs could not be distinguished in this case.*

Fossil Energy/National Energy Technology Laboratory
DOE/EIS-0318 (12/13/02)
(EPA Rating: EC-2)
Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Kentucky
Cost: $675,000
Time: 32 months

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EAs and EISs Completed, October 1 to December 31, 2002

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EISs (continued)

Office of Civilian Radioactive Waste Management/Yucca Mountain Site Characterization Office
DOE/EIS-0250 (10/25/2002)
(EPA Rating: EC-2)
Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada
Cost: $44,000,000*
Time: 86 months

**Does not include Federal employee costs.*

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

Adequacy of the EIS
Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost of 8 EAs completed was $121,000; the average was $137,000.
- Cumulatively, for the 12 months that ended December 31, 2002, the median cost for the preparation of 32 EAs, excluding 5 for which costs were paid by the applicant, was $89,000; the average was $103,000.
- For this quarter, the median completion time of 9 EAs was 7 months; the average was 11 months.
- Cumulatively, for the 12 months that ended December 31, 2002, the median completion time for 32 EAs was 11 months; the average was 13 months.

EIS Costs and Completion Times

- The costs for 3 EISs completed this quarter were $675,000, $15,000,000, and $44,000,000.
- Cumulatively, for the 12 months that ended December 31, 2002, the median cost for the preparation of 5 EISs for which cost data were applicable was $2.2 million; the average was $12.5 million.
- The preparation times for 3 EISs completed this quarter were 32, 61, and 86 months.
- Cumulatively, for the 12 months that ended December 31, 2002, the median completion time for 8 EISs was 31 months; the average was 37 months.

  Note: These numbers far exceed the Department's goal of completing EISs in 15 months (median). The median completion time in the preceding reporting period, which ended September 30, 2002, was 23 months. Statistics for the 8 EISs completed in this cumulative reporting period are substantially influenced by two documents with unusually long completion times. One of these, the Yucca Mountain EIS, was stopped for more than one year for budgetary reasons.

Recent EIS-Related Milestones (December 1, 2002, to February 28, 2003)

Notices of Intent

Environmental Management/Idaho Operations Office
DOE/EIS-0355
Remediation of the Moab Uranium Mill Tailings Site in Grand County, Utah
December 2002 (67 FR 77969, 12/20/02)

Environmental Management/Richland Operations Office
DOE/EIS-0356
Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, Washington
January 2003 (68 FR 1052, 1/8/03)

Other Notice*

Environmental Management/Richland Operations Office
DOE/EIS-0286
Hanford Site Solid (Radioactive and Hazardous) Waste Program, Richland, Washington
February 2003 (68 FR 7110, 2/12/03)

**This Notice of Revised Scope announces DOE's decision to incorporate the scope of the* Tank Waste Remediation System Supplemental EIS for the Disposal of Immobilized Low Activity Wastes from Hanford Tank Waste Processing *into the scope of the EIS for the Solid Waste Program (DOE/EIS-0286). DOE will not issue a separate Supplemental EIS for immobilized tank waste, as was announced July 8, 2002 (67 FR 45104).*

Draft EIS

Bonneville Power Administration
DOE/EIS-0317-S1
SEIS Kangley-Echo Lake Transmission Line, King County, Washington
January 2003 (68 FR 1458, 1/10/03)

Final EISs

Bonneville Power Administration
DOE/EIS-0333
Maiden Wind Farm, Benton County, Washington
January 2003 (68 FR 365, 1/3/03)

DOE/EIS-0325
Schultz-Hanford Area Transmission Line Project, Washington
January 2003 (68 FR 5019, 1/28/03)

Records of Decision

Bonneville Power Administration
DOE/EIS-0344
Grand Coulee-Bell 500 kV Transmission Line, Washington
January 2003 (68 FR 3030, 1/22/03)

Fossil Energy/National Energy Technology Laboratory
DOE/EIS-0318
Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Kentucky
February 2003 (68 FR 5628, 2/4/03)

National Nuclear Security Administration/ Defense Programs
DOE/EIS-0319
Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions, Los Alamos, New Mexico
December 2002 (67 FR 79906, 12/31/02)

Supplement Analyses

Bonneville Power Administration

Watershed Management Program EIS
(DOE/EIS-0265)

DOE/EIS-0265/SA-101
Restoration of Anadromous Fish Access to Hawley Creek, Idaho
(Decision: No further NEPA review required)
January 2003

DOE/EIS-0265/SA-102
Yakima Tributary Access and Habitat Program — Ellensburg Water Company/Cooke Creek, Washington
(Decision: No further NEPA review required)
January 2003

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Recent EIS-Related Milestones (December 1, 2002, to February 28, 2003)

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Supplement Analyses

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

DOE/EIS-0285/SA-115
Vegetation Management Along the Shelton Fairmount #1-4 230 kV & 115 kV Transmission Lines Corridor From Structure 34/3 Through Structure 60/2, Jefferson County, Washington
(Decision: No further NEPA review required)
December 2002

DOE/EIS-0285/SA-116
Vegetation Management Along the Allston-Clatsop 230 kV Transmission Line and Along Portions of Six Adjacent Lines, Oregon
(Decision: No further NEPA review required)
January 2003

DOE/EIS-0285/SA-117
Vegetation Management for the Non-Electric Portions of the BPA's Ross Complex, Clark County, Washington
(Decision: No further NEPA review required)
January 2003

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2002.

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

Scoping

What Worked

- *Early stakeholder input.* A "brown bag" public meeting provided early public input into the process. The NEPA Document Manager communicated regularly with local stakeholders, who had a chance to provide comments before the EA was prepared.
- *Controlled scope.* The conciseness of the EA was innovative – 13 pages. Technical details associated with the pre-existing facility were not rehashed.

What Didn't Work

- *Inadequate scoping.* Inadequate internal EIS scoping led to difficulty in determining data requirements and poorly defined data requests.

Data Collection/Analysis

What Worked

- *On-the-ground data collection*. A "windshield survey" of the area and visits to local Bureau of Land Management offices to look for information about potential impacts were useful.
- *Focused reanalysis*. The analysis for the Supplement to the Draft EIS focused on important changes in the proposed action.

What Didn't Work

- *Information gathering*. Difficulty in obtaining necessary environmental information from our industrial partner resulted in delays.
- *Regulatory uncertainty*. Waste data were difficult to finalize because regulatory interpretation of the definition of waste types continually changed.
- *Stale data*. Tracking data changes during the lengthy EIS process was difficult. As data changed, reanalysis was required.
- *Unnecessary analyses*. A desire to be flexible to cover all program contingencies resulted in analyses that were not needed.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Contractor incentives*. Completion of the EA and FONSI on schedule was a performance measure for the contractor's award fee.
- *Timely reviews*. The Document Manager made follow-up visits and telephone calls to encourage timely review of the draft document.
- *Use of automated tools for review*. Using redline-strikeout features to highlight changes in drafts focused reviewers' attention, and Web-based editing meetings facilitated timely completion.
- *Real-time review.* The willingness of a core team of EIS reviewers to meet on-site for two weeks to do a real-time review and make changes was critical. The final core team review was facilitated by preliminary chapter-by-chapter reviews by relevant DOE offices.
- *Master schedule*. A schedule of the critical activities and assumptions helped everyone involved know what needed to be done to meet the schedule.
- *Revision process.* Delegating the revision control process to a contractor rather than having every change approved by the DOE Document Manager helped keep the document on schedule.

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What Worked and Didn't Work in the NEPA Process

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Schedule (continued)

Factors that Inhibited Timely Completion

- *Iterative processes.* There were too many iterative efforts in the document review process. Limiting the number of field and headquarters reviews would help.
- *Lack of Department-wide definitions.* All issues and definitions of terms related to high-level waste had to be addressed and settled in the context of EIS preparation. That is, the EIS project staff had to force the rest of DOE to confront issues and definitions of terms.
- *State interactions.* The host state was a cooperating agency and did not have to observe DOE protocols regarding lines of communication. This led to the state going "answer shopping." Anyone trying to influence the conduct of the preparation of an EIS should be forced to go through the NEPA Document Manager.
- *Late decisions.* Failure to make timely decisions, such as agreeing upon the proposed action, led to the addition of a supplement to the draft EIS, additional review cycles, comment period extensions, and additional problems in maintaining consistency with other major program documents.

Teamwork

Factors that Facilitated Effective Teamwork

- *Teamwork*. EH and GC were made a part of the EIS team (rather than being viewed as regulators or enforcers), and they reacted positively.
- *Open-door policy*. The NEPA Document Manager's open-door policy and quick response to e-mails and phone messages facilitated teamwork and open communication.
- *Cooperation*. Close cooperation between the project site, headquarters, and the area office, beginning with the project kickoff meeting, led to schedules being beaten and budgets met.
- *Stakeholder involvement.* The DOE area office and the project site encouraged involvement of stakeholders during the entire process. This was crucial to both the quality of the NEPA document and maintaining the schedule.
- *Initial training.* NEPA training at the project start improved team members' understanding of the EIS process and goals. Training on technical topics was useful, but should have been lengthened and formalized.
- *Roles, responsibility, and authority.* Identifying DOE and contractor leads, with associated responsibility and authority, facilitated effective teamwork.
- *Problem-solving meeting*. An off-site meeting with DOE, the M&O, and the NEPA contractor staff identified problems and cleared the air, and participants came away committed to making the process work.

Factors that Inhibited Effective Teamwork

- *Other organizations' priorities*. EIS concurrence review and comment periods had to be extended because some DOE elements had other priorities. To get the job done, the Document Manager must build relationships and work within the time constraints of other organizations.
- *Concurrence process.* The concurrence of EH or GC staff had no apparent bearing on gaining concurrence from EH or GC management, so staff involvement was useful only insofar as they were knowledgeable, ran interference at headquarters, helped with correspondence, and provided an extra pair of eyes to help proofread.
- *Geographic dispersion*. The EIS preparation team was too large and too widely spaced. The remote location of many analysts posed difficulties; however, use of teleconferences and electronic communications helped.

Resource Issues

Staffing and Support Issues

- *Staff retention*. There was high turnover in project management (three DOE NEPA Document Managers and four contractor EIS managers) during the long time to complete the EIS.
- *Matrixed staff.* DOE staff were not assigned but "matrixed" to the NEPA Document Manager. When the work on the EIS got hard, the matrixed staff just walked away.

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What Worked and Didn't Work in the NEPA Process

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Resource Issues (continued)

- *Contractor roles*. Contract management training by DOE Contracts staff will enable better understanding of the role of contractors and better implementation of contract management procedures.

Process

Successful Aspects of the Public Participation Process

- *Cooperating agency involvement.* Having the cooperating agency integrally involved in the public participation process worked well and conveyed the message that we were working together to solve a problem.
- *Ongoing meetings*. Meetings between the public and site staff were held regularly. This created an atmosphere of trust and even ownership.
- *Document presentation*. The writing style and level of technical detail in the EA were determined with the public in mind. Complex science was communicated successfully to non-technical readers.
- *Native American involvement*. Native American comments regarding the right to participate in the processes, perspectives with respect to land ownership, and government-to-government relationships were valuable. There were multiple tribes involved in the Native American Writers group.
- *Meeting location*. It was useful to begin public meetings with the location expected to be of lowest conflict, allowing us to fine-tune our presentations and "work out the bugs."
- *Evolving mailing list.* It helped to keep an accurate "evolving" mailing list to accurately track what information had actually been distributed to commenters.
- *Color in documents.* The use of color was beneficial and useful to the public as well as DOE. Congressional staff and members of the public indicated that color helped them understand the EIS.

Unsuccessful Aspects of the Public Participation Process

- *Hearing format and number.* While the Q&A sessions went well in general, they were not on the record, and the public resented it. There were too many public hearings, and the number of hearings and changing comment periods seemed to confuse and irritate the public.
- *Sensitivity to public desires*. The public participation process did not engage stakeholders, and there were no cooperating agencies, workshops, or town hall forums. Going to the counties and getting them to help shape the public participation process would have helped.
- *Comment response issues*. The public was frustrated by the lack of response (or the time it took for DOE to respond) to comments. The original comment team was too large, and this led to difficulties in maintaining consistency in tone, style and level of detail in response, and in maintaining consistency with the final EIS.
- *Database development*. The use of a database for comment response development was invaluable and the job of responding to thousands of comments could not have been accomplished without it. A new comment response database system was built from the ground up. It worked, but may not have been a good use of DOE resources.
- *Multiple mailing lists*. A comment period had to be extended because we omitted some people from the EIS mailing list. Using a single mailing list database would have avoided that problem.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Expert input*. The NEPA process provided an opportunity for numerous scientists to review and comment on DOE's proposed action. As a result, several changes were made – primarily associated with groundwater analyses.

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What Worked and Didn't Work in the NEPA Process

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Usefulness (continued)

Agency Planning and Decisionmaking : What Didn't Work

- *Issuance of addendum*. The amount of additional information needed for a final EIS appeared to be very small, so, to save money, we planned to prepare an addendum only and not reprint all the material and appendices contained in the draft EIS. This was a mistake: compared to trying to highlight all the changes that occur between draft and final, printing is cheap. In the end, we prepared a full final EIS.

Enhancement / Protection of the Environment

- The environment will be protected due to the identification of sensitive issues and the application of avoidance and mitigation measures.
- The NEPA process assisted DOE in identifying waste management needs across projects.

Other Issues

Guidance Needs Identified

- One respondent suggested that further guidance be made available regarding the requirements for preparation of a comment response document, what is to be included in the final EIS (e.g., comment letters), the format for transmittal letters, and the concurrence process.
- One respondent stated that environmental justice analysis guidance would have been helpful.
- One respondent noted that draft guidance on administrative records exists, and needs to be updated to account for the existence of personal computers. The guidance needs to deal with what goes into the administrative record, how to handle electronic documents and references to sources found on the Internet, etc.
- One respondent requested guidance on how to handle responsible opposing views – i.e., the difference between a "responsible opposing view" and an "area of controversy."
- One respondent suggested guidance be made available on how to handle homeland security issues.

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 and 5 responses were received for EISs, 7 out of 8 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "2" stated that the wastes being analyzed were already highly regulated at both Federal and state levels.
- A respondent who rated the process as "4" stated that DOE had considered a categorical exclusion but, due to scope and cost of the experiment, decided that preparation of an EA would be a prudent step. Successful completion of the EA provided confidence that environmental and human health issues had been fully identified and addressed.
- A respondent who rated the process as "4" stated that some decisionmaking has been done without benefit of the NEPA process; for example, plant siting usually is determined by site availability. However, the NEPA process does contribute greatly to informed decisions – analysis of the physical site and technology is very helpful in determining associated impacts. LL

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