NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

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The Council on Environmental Quality (CEQ) and the White House have taken two important actions to ensure the consideration of climate change in federal decisionmaking. Both have implications for NEPA implementation. Revised draft guidance issued by CEQ would help federal agencies more consistently consider greenhouse gas (GHG) emissions and climate change in their NEPA reviews. A new Executive Order establishes a federal flood risk management standard to respond to climate change, and provides three approaches that federal agencies can use to establish the flood elevation and hazard area for consideration in their decisionmaking.

CEQ Issues Revised Draft NEPA Guidance on GHG Emissions and Climate Change

CEQ issued revised draft guidance in December to "provide Federal agencies direction on when and how to consider the effects of greenhouse gas (GHG) emissions and climate change" in NEPA reviews (79 FR 77802; December 24, 2014). The revised draft guidance supersedes CEQ's February 2010 draft guidance (*LLQR*, March 2010, page 3).

Overall, this guidance is designed to provide for better and more informed Federal decisions regarding GHG emissions and effects of climate change consistent with existing NEPA principles.

– Council on Environmental Quality
December 2014 Revised Draft Guidance

At a meeting with Federal NEPA Contacts on January 16, Horst Greczmiel, Associate Director for NEPA Oversight at CEQ, presented an overview of CEQ's revised draft guidance, noting that the fundamental NEPA principles (e.g., rule of reason, proportionality, direct and indirect effects) apply to consideration of the potential impacts of GHG emissions and climate change.

The December 2014 revised draft guidance states that consideration of climate change "falls squarely within NEPA's focus" and recommends that agencies consider (1) the potential effects of a proposed action on climate change as indicated by its GHG emissions, and (2) the implications of climate change for the environmental effects of a proposed action.

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New Flood Risk Management Standard Responds to Effects of Climate Change

Observing that impacts of flooding "are anticipated to increase over time due to the effects of climate change and other threats," President Obama declared in a new Executive Order (E.O.) that, "The Federal Government must take action, informed by the best-available and actionable science, to improve the Nation's preparedness and resilience against flooding." E.O. 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*, signed January 30, 2015, amends E.O. 11988, *Floodplain Management* (1977), which requires federal agencies "to avoid, to the extent possible, the long- and short-term adverse impacts associated with

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Inside *Lessons Learned*

Welcome to the 82nd quarterly report on lessons learned in the NEPA process. This issue features an Executive Order, draft CEQ guidance, and online tools aimed at improving the consideration of climate change in federal decisionmaking. By using these, our NEPA documents will better inform future decisions to ensure that DOE facilities and communities affected by DOE programs are more resilient in the face of changing environmental conditions. Thank you for your continued support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

Carol Borgstrom
Director
Office of NEPA Policy and Compliance

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Be Part of Lessons Learned

We Welcome Your Contributions to *LLQR*

Send suggestions, comments, and draft articles – especially case studies on successful NEPA practices – by April 10, 2015, to Yardena Mansoor at yardena.mansoor@hq.doe.gov.

Quarterly Questionnaires Due May 1, 2015

For NEPA documents completed January 1 through March 31, 2015, NEPA Document Managers and NEPA Compliance Officers should submit a Lessons Learned Questionnaire as soon as possible after document completion, but not later than May 1. Other document preparation team members are encouraged to submit a questionnaire, too. Contact Vivian Bowie at vivian.bowie@hq.doe.gov for more information.

LLQR Online

All issues of *LLQR* and the Lessons Learned Questionnaire are available on the DOE NEPA Website at energy.gov/nepa under Guidance & Requirements, then Lessons Learned. The electronic version of *LLQR* includes links to most of the documents referenced herein. To be notified via email when a new issue of *LLQR* is available, send your email address to yardena.mansoor@hq.doe.gov. (DOE provides paper copies only on request.)

Notify Congressional and Intergovernmental Affairs Before Issuing an EIS or Record of Decision

DOE's Office of Congressional and Intergovernmental Affairs (CI) requests that program offices provide information for congressional and intergovernmental notifications at least 3 business days in advance of certain actions and announcements, including issuance of a draft or final EIS or a record of decision. The primary tool for providing this information is the Priority Congressional and Intergovernmental Notification (PCIN) form, which CI issued in late 2014 to replace the previous 72-Hour Prior Notification form.

The PCIN form asks for a program contact and summary of the action, as well as known congressional and intergovernmental interests. CI uses this information to coordinate with the program office regarding communications with Congress, governors, and local and tribal governments.

CI also recently issued a *Guide for Congressional and Intergovernmental Notifications*, which provides information and recommendations on the PCIN process and other categories of CI notifications. The *Guide* states that the 3-day advance notice should be considered a minimum. "Programs are encouraged to be forward thinking in bringing information to CI's attention as early as possible. As a practical matter, there are many important announcements that require far more than 3 days advance notification," advises the *Guide*.

The PCIN form reminds the program office to coordinate with the Office of NEPA Policy and Compliance, which can review draft distribution communications and otherwise assist in distribution planning. The NEPA Office requests to be copied when the form is provided to CI.

The form and associated *Guide* are posted on Powerpedia (accessible to DOE staff). Additional information may be requested from the CI Liaisons for DOE Programs, listed on the CI website, or call 202-586-5450. (The National Nuclear Security Administration (NNSA) Office of External Affairs is the lead for NNSA congressional and intergovernmental activities and may be reached at 202-586-7332.) LL

CEQ Issues Final Guidance on Effective Use of Programmatic NEPA Reviews

In response to agency requests and an increasing number of broad, landscape analyses, the Council on Environmental Quality (CEQ) issued final guidance in December on the effective use of programmatic NEPA reviews. The guidance "is designed to assist agency decisionmakers and the public in understanding the environmental impacts from proposed large-scale Federal actions and activities and to facilitate agency compliance with NEPA by clarifying the different planning scenarios under which an agency may prepare a programmatic, broad-scale, review," CEQ explains (79 FR 76986; December 23, 2014).

"This final guidance was developed to provide for the consistent, proper, and appropriate development and use of programmatic NEPA reviews by Federal agencies. It reinforces the process required to establish opportunities for public involvement, increased transparency, and informed decision-making," CEQ continues. The guidance describes: (1) the nature of programmatic NEPA reviews, (2) when to use a programmatic and tiered NEPA review, (3) practical considerations for programmatic reviews and documents, (4) how to effectively conduct subsequent project- or site-specific NEPA reviews, and (5) the lifespan of a programmatic NEPA document.

Determining When To Prepare a Programmatic Review

Although the guidance does not indicate when a programmatic EA or EIS (PEA or PEIS) is required, CEQ explains that "agencies usually benefit by asking two questions when determining whether to prepare a programmatic NEPA review: (1) Could the PEA or PEIS be sufficiently forward looking to contribute to the agency's basic planning of an overall program?; and (2) Does the PEA or PEIS provide the agency the opportunity to avoid 'segmenting' the overall program from subsequent individual actions and thereby avoid unreasonably constricting the scope of the environmental review?" The guidance discusses a variety of circumstances in which a programmatic review may be appropriate.

> *[A]gencies that are able to clearly explain how specific, outstanding, or future actions will be addressed in subsequent tiered documents, and how the analyses will be vetted publicly, will ensure that the public is informed and can improve the quality of participation and analysis agencies receive from the public, thereby enhancing decision-making.*
>
> *– Council on Environmental Quality*
> Effective Use of Programmatic NEPA Reviews

"Programmatic NEPA reviews can facilitate decisions on agency actions that precede site- or project-specific decisions and actions, such as mitigation alternatives or commitments for subsequent actions, or narrowing of future alternatives. They also provide information and analyses that can be incorporated by reference in future NEPA reviews. Programmatic NEPA review may help an agency look at a large or multi-faceted action without becoming immersed in all the details of future site- or project-specific proposals," states CEQ.

Appropriate Use of Tiered NEPA Reviews

"Effective programmatic NEPA should present document reviewers with the agency's anticipated timing and sequence of decisions, which decisions are supported by the programmatic NEPA document and which decisions are deferred for some later time, and the time-frame or triggers for a tiered NEPA review," explains CEQ. "Stating the nature of subsequent tiered decisions allows agencies to craft the alternatives for a programmatic review and focus the scope and development of alternatives for the subsequent tiered NEPA reviews." CEQ encourages proactive and robust public participation to "ensure agency objectives are understood and to clarify how a programmatic review influences subsequent tiered reviews." "Clarity of approach is essential to avoid the impression that a programmatic NEPA review creates a situation whereby the public is too early to raise issues in the broader programmatic analysis and then too late to raise them in any subsequent tiered analyses," states CEQ.

Framework for Potential Impacts in Programmatic and Tiered NEPA Reviews

"The contrast between a programmatic and a project- or site-specific NEPA review is most strongly reflected in how these environmental impacts are analyzed," explains CEQ. "Because impacts in a programmatic NEPA review typically concern environmental effects of a large geographic and/or time horizon, the depth and detail in programmatic analyses will reflect the major broad and general impacts that might result from making broad programmatic decisions," states CEQ.

CEQ explains that "the scope and range of impacts may also be more qualitative" particularly when "there is no clear indication – no site- or project-specific proposal pending – for the level of activity that may follow a programmatic decision." "When a PEA or PEIS has been prepared and an action is one anticipated in, consistent with, and sufficiently explored within the programmatic

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CEQ Revised Draft GHG Guidance

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Use of a Reference Point

CEQ's revised draft guidance recommends that agencies use a reference point to determine when GHG emissions warrant a quantitative analysis, taking into account available GHG quantification tools and data that are appropriate for proposed agency actions. CEQ provides a reference point of 25,000 metric tons of carbon dioxide (CO_2) equivalent on an annual basis below which a GHG emissions quantitative analysis is not warranted unless quantification below that reference point is easily accomplished.

CEQ further explains that, "If tools or methodologies are available to provide the public and the decision-making process with information that is useful to distinguishing between the no-action and proposed alternatives and mitigations, then agencies should conduct and disclose quantitative estimates of GHG emissions and sequestration." The revised draft guidance acknowledges that there are many widely-available tools and methodologies that can be used to calculate estimates of GHG emissions and carbon storage and provides several examples. (In January, CEQ updated its website to include a list of available GHG accounting tools and methodologies.)

CEQ explains that the reference point "would allow agencies to focus their attention on proposed projects with potentially large GHG emissions." CEQ also explains that "agencies should keep in mind that the reference point is for purposes of disclosure and not a substitute for an agency's determination of significance under NEPA. The ultimate determination of significance remains subject to agency practice for the consideration of context and intensity, as set forth in the CEQ Regulations."

Projected GHG Emissions as a Proxy

CEQ recommends that agencies use the quantity of projected GHG emissions as "the proxy for assessing a proposed action's potential climate change impacts." This is consistent with the 2010 CEQ draft guidance, which emphasized quantification of GHG emissions, when appropriate, as an indicator of potential impacts, and recognized the difficulties in determining the specific potential impacts of GHG emissions.

"This approach allows an agency to present the environmental impacts of the proposed action in clear terms and with sufficient information to make a reasoned choice between the no-action and proposed alternatives and mitigations, and ensure the professional and scientific integrity of the discussion and the analysis," explains CEQ. CEQ advises that, "the statement that emissions from a government action or approach represent only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether to consider climate impacts under NEPA."

> ***This guidance is designed to encourage consistency in the approach Federal agencies employ when assessing their proposed actions, while also recognizing and accommodating a particular agency's unique circumstances.***
>
> ***– Council on Environmental Quality***
> ***December 2014 Revised Draft Guidance***

Direct, Indirect, and Cumulative Impacts

The December 2014 revised draft guidance advises that when assessing direct and indirect climate change effects, agencies should take account of the proposed action, including connected actions, "subject to reasonable limits based on feasibility and practicality." CEQ explains that "emissions from activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as downstream emissions) should be accounted for in the NEPA analysis." Mr. Greczmiel elaborated on this point in his January presentation to the Federal NEPA Contacts, explaining that "disclosure goes beyond those actions over which the agency has control or responsibility – it includes effects outside the control of the agency; however, the agency should clearly distinguish the effects over which the agency has control or responsibility from effects over which it does not."

CEQ points out that an agency must consider cumulative impacts, but that it "does not expect that an EIS would be required based on cumulative impacts of GHG emissions alone." CEQ explains that "there may remain a concern that an EIS would be required for **any** emissions because of the global significance of aggregated GHG emissions" (emphasis added). However, CEQ advises that "agencies need to consider whether the reasonably foreseeable incremental addition of emissions from the proposed action, when added to the emissions of other relevant actions, is significant when determining whether GHG emissions are a basis for requiring preparation of an EIS."

The revised draft guidance also states that "agencies should consider reasonable mitigation measures and alternatives as provided for under the existing regulations to lower the level of the potential GHG emissions."

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CEQ Revised Draft GHG Guidance

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CEQ identifies enhanced energy efficiency and lower GHG-emitting technology (such as using renewable energy technology), carbon capture, and carbon sequestration, among others, as mitigation that agencies might consider.

Apply "Rule of Reason"

"Agencies should be guided by a 'rule of reason' in ensuring that the level of effort expended in analyzing GHG emissions or climate change effects is reasonably proportionate to the importance of climate change related considerations to the agency action being evaluated," the revised draft guidance states. In addition, CEQ recommends that agencies take advantage of traditional NEPA tools such as scoping, incorporation by reference, using available information (e.g., current scientific information and technologies), and using programmatic – broad based – NEPA reviews, when appropriate. "It is essential, however, that Federal agencies not rely on boilerplate text to avoid meaningful analysis, including consideration of alternatives or mitigation."

Mr. Greczmiel advised Federal NEPA Contacts to "analyze potential GHG emissions and climate change effects early in the NEPA process to maximize opportunities to adjust alternatives and mitigations which will ultimately lead to more resilient and sustainable proposed actions."

CEQ notes that agencies "continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance, consistent with the CEQ Regulations and their respective implementing regulations and policies, so long as they provide the public and decisionmakers with explanations of the bases for their determinations." Further, "the revised draft guidance does not establish regulatory requirements or compel agencies to prohibit or curtail GHG emissions. In conformance with NEPA's basis principles, it does not mandate particular results or insist that agencies select the alternative with the least GHG emissions and climate change effects," explained Mr. Greczmiel at the January meeting.

Development of 2014 Revised Draft Guidance

CEQ circulated draft guidance on this topic in 2010 for agency and public comment. (See *LLQR*, March 2010, page 3; June 2011, page 8.) After considering public and agency comment, CEQ issued revised draft guidance on December 24, 2014.

CEQ's notice of availability (NOA) of the revised draft guidance includes summaries of and responses to the more than 100 sets of comments that CEQ received on the 2010 draft guidance. CEQ's preamble in the NOA also provides useful background information to understand CEQ's reasoning underlying the guidance.

In its NOA, CEQ requested public comments on the revised draft guidance during a 60-day public review period. CEQ later extended the public comment period by 30 days to March 25 (80 FR 9443; February 23, 2015).

The revised draft guidance is available on the DOE NEPA Website and the CEQ website. Public comments on the 2010 draft guidance and those received on the 2014 revised draft guidance are available on the CEQ Website.

Editor's Note: DOE has a long history of considering GHG emissions and climate change in its NEPA analyses. (See LLQR, *December 2007, page 1.) DOE's NEPA practices have been evolving with advances in climate science, litigation experience, and policy direction. For many years, DOE has recognized climate change as a "reasonably foreseeable" impact of GHG emissions and has taken steps to ensure that DOE NEPA documents adequately consider climate change issues.*

In addressing GHG emissions, agencies should be guided by the principle that the extent of the analysis should be commensurate with the quantity of projected GHG emissions. This concept of proportionality is grounded in the fundamental purpose of NEPA to concentrate on matters that are truly important to making a decision on the proposed action. When an agency determines that evaluating the effects of GHG emissions . . . would not be useful . . . to distinguish between the no-action and proposed alternatives and mitigations, the agency should document the rationale for that determination.

– Council on Environmental Quality
December 2014 Revised Draft Guidance

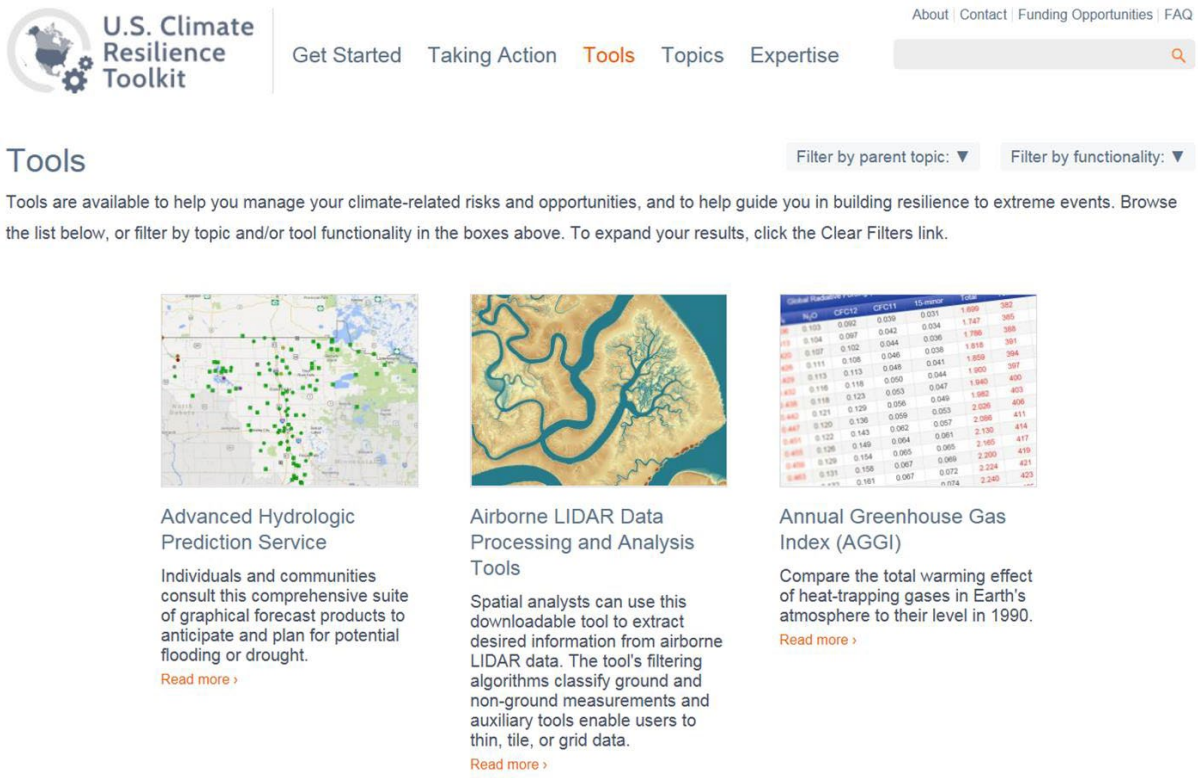
Climate Resilience Toolkit To Aid Planners and Decisionmakers

In response to President Obama's Climate Action Plan, the Administration unveiled the web-based U.S. Climate Resilience Toolkit in November to help "leaders and others contend with climate impacts and build healthy and resilient communities." The toolkit, developed by a partnership of federal agencies led by the National Oceanic and Atmospheric Administration (NOAA), "provides for the first time easy, intuitive access to dozens of Federal tools that can directly help planners and decision makers across America conduct their work in the context of a changing climate," explained the Council on Environmental Quality.

The toolkit provides information and expertise to help people manage climate-based risks and opportunities, and improve communities' resilience to extreme events. For example, the toolkit includes the Climate Explorer – a visualization tool that offers maps of climate stressors and impacts and interactive graphics showing daily observations. The toolkit also features a catalog of scientific tools for accessing and analyzing climate data, generating visualizations (e.g., maps), exploring climate projections, and estimating hazards.

The toolkit's catalog contains, for example, ClimateWizard, where one can retrieve maps of weather observations for the past 50 years or projections for temperature and precipitation in the future. The toolkit's ClimateWizard could assist NEPA practitioners in describing the current and expected future state of the affected environment based on available climate information, as recommended by CEQ in its revised draft guidance on consideration of greenhouse gases and climate change. In addition, the toolkit presents more than 20 case studies that feature step-by-step examples of how decision makers have used the featured tools, lessons learned, and best practices.

The toolkit's initial focus is on coastal flood risk and food resilience, but it will be expanded over the next year to more fully address other areas (such as water resources, ecosystem vulnerability, transportation, energy supply and infrastructure, and human health). In addition, information and resources from state and local governments, businesses, academia, and nongovernmental organizations will be added to the toolkit. The toolkit is available at http://toolkit.climate.gov/.



The Toolkit features several tools to help planners and decisionmakers manage climate-related risks.

CEQ Programmatic Guidance

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NEPA review, the agency need only summarize the issues discussed in the broader statement and incorporate discussion from the broader statement by reference and concentrate on the issues specific to the subsequent tiered proposal," CEQ states.

Interim Actions Are Allowable, Provided Conditions Are Met

CEQ addresses concerns expressed by some agencies that undertaking programmatic NEPA reviews could delay ongoing and newly proposed actions. The guidance reminds agencies that the CEQ NEPA regulations enable interim actions to proceed provided certain criteria[1] are met. CEQ states that "Typically, proposed actions of relatively limited scope or scale that would have local utility may be taken as an interim action before completing the programmatic analysis." In addition, CEQ explains that even though the regulations address criteria for interim actions in the context of PEISs, agencies should also use the criteria "in those cases where part of a proposed action needs to proceed while a PEA is being prepared."

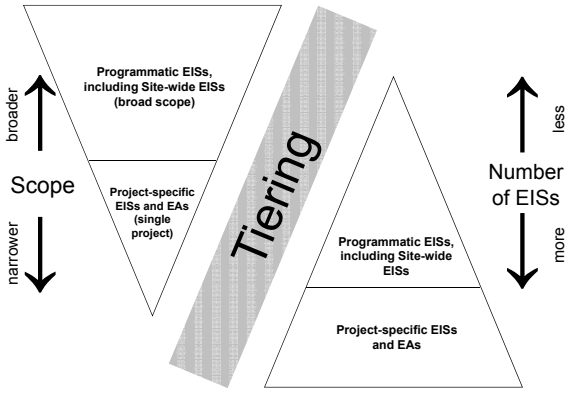
CEQ issued draft guidance on programmatic NEPA reviews for public review and comment in August (79 FR 50578; August 25, 2014). (See *LLQR* September 2014, page 7.) CEQ received 28 public comments on the guidance. The *Federal Register* notice announcing the final guidance addresses the comments that raised policy or substantive concerns (e.g., proper use of tiering, applicability to EAs, the lifespan of programmatic documents). For example, commenters "expressed concern over the timeliness and burden of programmatic NEPA reviews" and "that a tiered approach to review constitutes 'delay.'" CEQ responded that "in many situations there is merit in looking at a proposal on a broad level and then focusing a subsequent, tiered, review on the relevant issues at the site- or project-specific level. The agency responsible for the NEPA review should take the timing of the decisions and the programmatic and subsequent tiered NEPA reviews into account when determining how best to proceed."

CEQ's final guidance is available on the DOE NEPA Website and CEQ's website. LL

[1] For actions that require a PEIS, the CEQ NEPA regulations (40 CFR 1506.1(c)) state that, while preparation of a PEIS is ongoing, agencies shall not undertake in the interim any major federal action covered by the program which may significantly affect the quality of the human environment unless such action is (1) is justified independently of the program; (2) is itself accompanied by an adequate EIS; and (3) will not prejudice the ultimate decision on the program.

DOE's Programmatic NEPA Experience

DOE has prepared more than 70 PEISs for a variety of actions, including: major or new programs (related or similar actions at multiple sites), technology development programs (e.g., clean coal program), site-wide EISs (activities at certain, large multiple-facility DOE sites), and land use plans. In addition, DOE has prepared more than 30 PEAs for a variety of actions such as energy conservation standards and technology demonstration programs. DOE also has prepared hybrid NEPA documents that support both programmatic and project-specific decisions.



Tiering affects the scope and number of EISs and EAs that DOE prepares. For example, PEISs tend to be broader in scope and fewer in number than project-specific EISs.

DOE has issued several PEISs that have supported multiple records of decision (RODs) and have withstood the test of time. For example, in 1997, DOE issued the Final Waste Management PEIS (WM PEIS) that, among other things, supported decisions on where to treat and dispose of low-level and low-level mixed radioactive waste and where to store transuranic and high-level waste. DOE subsequently issued four RODs for different waste types and six amended RODs supported by supplement analyses. In addition, DOE has tiered site- and project-specific EISs from the WM PEIS for activities at several sites throughout the DOE Complex (e.g., Hanford Site, Savannah River Site). (See *LLQR*, June 2003, pages 4-5.)

"A PEIS takes time and costs money, but a PEIS isn't just filed away; it can be used again and again," said Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance.

New Floodplain Standard

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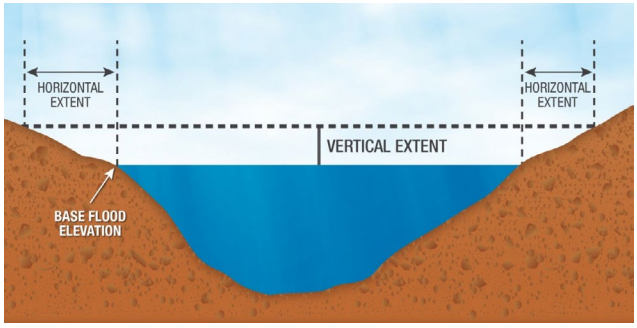
the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative."

E.O. 11988 was issued in furtherance of NEPA and flood protection statutes. The current amendment maintains the connection to NEPA. DOE's implementation of E.O. 11988 is coordinated with NEPA reviews through provisions of the Department's NEPA regulations (10 CFR Part 1021) and its *Compliance with Floodplain and Wetland Environmental Review Requirements* (10 CFR Part 1022). As explained below, DOE will review its floodplain review requirements according to the process outlined in E.O. 13690.

Key Elements of the Federal Flood Risk Management Standard

The principal change in the amended Floodplain Management E.O. is the establishment of the *Federal Flood Risk Management Standard* (FFRMS), "a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains." The FFRMS is built around three key elements intended to improve implementation of E.O. 11988.

- The FFRMS encourages the use of natural features and nature-based approaches in the development of alternatives for federal actions. "This approach, combined with restoration of natural systems and ecosystem processes where appropriate, recognizes the growing role of natural and restored systems and of features engineered to mimic natural processes (generally known as 'green infrastructure') in mitigating flood risk and building the resilience of Federal investments both within and that will affect floodplains," the FFRMS states.
- The FFRMS provides a higher vertical elevation and corresponding floodplain, where appropriate, to address current and future flood risks. The FFRMS explains that this higher flood elevation establishes "the level to which a structure or facility must be resilient – this may include elevating the structure or, where appropriate, designing it to withstand or otherwise quickly recover from a flood event." The higher elevation is intended to "ensure that uncertainties associated with climate change and other future changes are more adequately accounted for" in decision processes for federal actions.
- The FFRMS "gives agencies the flexibility to select one of three approaches for establishing the flood elevation and hazard area they use in siting, design, and construction," explains a Council on Environmental Quality fact sheet.
  - Climate-informed science approach: Utilize the "best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science." The FFRMS identifies this as the preferred approach, and states that federal agencies "should use this approach when data to support such an analysis are available."
  - Freeboard approach: Add two feet to the base flood elevation or, for a critical action, add three feet. The base flood elevation is the area subject to a one percent or greater chance of flooding in any given year, also known as the 100-year floodplain.
  - 500-year flood elevation[1]: Use the area that corresponds to a 0.2 percent chance of flooding in any given year.



E.O.13690 explains that incorporating the FFRMS "will ensure that agencies expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk."

Draft Revised Implementing Guidelines

The Federal Emergency Management Agency (FEMA) is accepting public comments through April 6 on draft *Revised Guidelines for Implementing Executive Order 11988, Floodplain Management*. For information on listening sessions that FEMA is hosting to solicit input on implementation of FFRMS, visit FEMA's website.

The draft revised guidelines explain that E.O. 13690 and the FFRMS reflect "a transition beyond a former emphasis on flood control and protection to a broader focus on

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[1] *Current DOE regulations define the critical action floodplain as, at a minimum, the 500-year floodplain (10 CFR 1022.4). Under the FFRMS, federal agencies may use the 500-year floodplain for any type of proposed project.*

New Floodplain Standard

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flood risk management. This includes an array of methods for managing floodwaters to reduce the risk of flooding and managing and regulating floodplain development to reduce the impacts of flooding. Changes in terminologies from 'protection' to a broader focus on resilience and risk management reflect the recognition that floodwaters cannot be fully controlled, full protection from floods cannot be provided by any measure or combination of measures, and risk cannot be completely eliminated. Instead, management techniques involving coordinated efforts of individuals, property owners, businesses, and Federal, State and Local governments can be used to manage the level of risks in a floodplain."

The draft revised guidelines expand on the key elements of the FFRMS. For example, they encourage agencies to consider nature-based approaches – alone or in combination with other methods – early in their planning processes. "Nature-based systems can include both natural and engineered features. This could include restoration of a system's natural processes, for example, lowering or removing levees to allow water to flow naturally, restoring wetland functions along a coastal or riverine system, or creating living shorelines [i.e., using plants, stone, sand fill, and other organic materials to protect, restore, or enhance a shoreline]," FEMA explains.

The emphasis on early planning also arises elsewhere in the draft revised guidelines. "Where multiple Federal agencies are jointly engaged in an action, they should begin to coordinate early in the process to select the most appropriate approach for determining the flood elevation and flood hazard area that will be applied to the action. Agencies maintain the responsibility and flexibility to tailor their procedures to meet their prescribed missions while fulfilling the requirements of [E.O. 11988]."

The draft revised guidelines include an updated 8-step process that reflects the decisionmaking process outlined in E.O. 11988. Among the updates are a revised definition of "floodplain" to be consistent with the approaches instituted with E.O. 13690, recognition of critical action determinations by federal agencies, and the use of natural features and nature-based approaches.

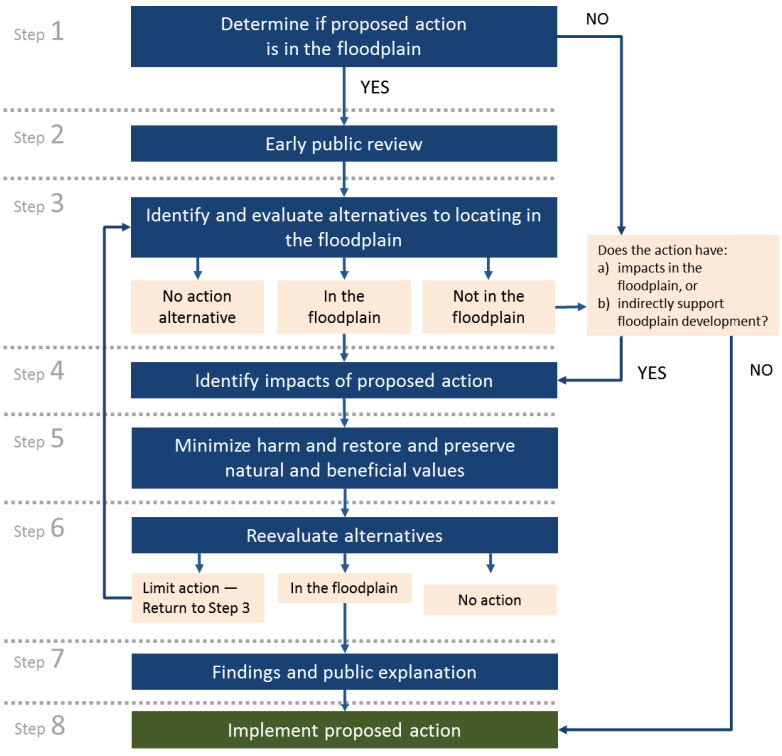
Next Steps

After the comment period on the draft revised guidelines closes, each federal agency has 30 days to submit an implementation plan that contains milestones and a timeline for the agency's implementation of the E.O. and the FFRMS, "as it applies to the agency's processes and mission."

Concurrently, FEMA, in coordination with other federal agencies through the Mitigation Framework Leadership Group (MitFLG), will consider the public comments received on the draft revised guidelines. The MitFLG will then make recommendations to the Water Resources Council, which will issue amended implementing guidelines. After the Water Resources Council has issued amended implementing guidelines, federal agencies are to update their floodplain regulations and procedures, in consultation with the Water Resources Council, Federal Interagency Floodplain Management Task Force, FEMA, and the Council on Environmental Quality.

For additional information, contact Brian Costner, Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov.

Eight-step Decisionmaking Process for E.O. 11988



Source: FEMA's draft revised guidelines (Figure 1)

CEQ Issues NEPA Pilot Projects Report and Recommendations

"NEPA's purpose is not to generate paperwork . . . but to foster excellent action." (40 CFR 1500.1(c))

The Council on Environmental Quality (CEQ) launched its NEPA Pilot Program in March 2011 to identify innovative NEPA strategies and disseminate them to practitioners. (See *LLQR*, June 2011, page 11.) CEQ received 37 nominations from the public and private sectors, and selected 5 pilot projects that further "transparency and informed decisionmaking in a more timely and effective manner."

This January, CEQ released a report and supporting documents on these pilot projects, including lessons learned and recommendations for broad application of their benefits across the NEPA community. In the report, CEQ points out that NEPA continues to serve as the touchstone for environmental protection and public engagement in federal decisionmaking.

NEPA Information Technology (IT) Tools (National Park Service's Planning, Environment, and Public Comment (PEPC) System, and Forest Service's electronic Modernization of NEPA (eMNEPA)) (*LLQR*, December 2011, page 11): PEPC and eMNEPA were selected for "greatly improving efficiency through reduced costs and time to process reviews." As part of the pilot, CEQ collaborated with the Office of Management and Budget and the General Services Administration to integrate PEPC with the Federal Infrastructure Permitting Dashboard in late 2011. This integration enabled users to track federal permitting and the environmental review process for expedited infrastructure projects. Once this integration was complete, CEQ convened a NEPA Information Technologies Working Group (ITWG). Representatives from over 20 agencies shared experiences developing and implementing NEPA IT tools, and developed NEPA Metric Recommendations for tracking major infrastructure projects.

Based on this pilot, CEQ and the ITWG recommend that agencies develop a suite of NEPA IT tools to meet the varied needs of specific projects, and that they collaborate with other agencies to leverage existing tools and ensure compatibility whenever possible. DOE is already pursuing these goals with recent upgrades of NEPAnode that will not only facilitate communication and collaboration on DOE and other agency NEPA projects, but will be expanded to address issues in workflow and information management (*LLQR*, December 2014, page 6).

Best Practice Principles for Environmental Assessments (EAs) (*LLQR*, December 2011, page 11): The National Association of Environmental Professionals (NAEP) analyzed over 30 years of EAs and surveyed NEPA practitioners from the public and private sectors to identify practices that cut costs, save time, and focus on environmental issues relevant to decisionmaking. CEQ recently released the final NAEP report that identified seven practices, each focused on a different part of the EA process, with the greatest potential to accomplish these goals. A related article in this issue of *LLQR* discusses these practices (page 11). CEQ recommends that agencies review the principles and incorporate them into their standard practices. In addition, CEQ asked agencies to provide comments on which principles should be incorporated into CEQ guidance.

Environmental Protection Agency's NEPAssist (*LLQR*, December 2011, page 11): NEPAssist is a web-based Geographic Information System (GIS) platform where users can access datasets from all levels of government, and share findings with team members through customizable reports and maps. As part of the pilot, NEPAssist was made publically accessible, and further integrated ecological, water, air, socioeconomic, infrastructure, and climate data layers through a new *GIS Inventory for Environmental Professionals*. EPA believes that agencies and the public both benefit from early access to information that can facilitate decisionmaking at all stages of NEPA. CEQ encourages project managers and NEPA practitioners to use NEPAssist, and asks agencies to ensure their IT tools are compatible with NEPAssist.

Department of Transportation's Northeast Corridor (NEC) – Tier 1 EIS (*LLQR*, March 2012, page 7): The NEC is a regional and national infrastructure priority stretching from Boston's South Station to Washington, DC's Union Station. The project's large geographic scope and broad range of stakeholders require an innovative approach to engagement and collaboration. The Federal Railroad Administration used early in-person meetings to establish trust among participating agencies, and sought stakeholder input earlier than in the traditional NEPA process. The typical NEPA Memorandum of Understanding (MOU) was reduced to a concise Statement of Principles that didn't require the complex process required to adopt a formal MOU. According to CEQ, these approaches, and others in the NEC best practices report, can serve as a model for large-scale, multi-state, tiered decisionmaking.

U.S. Forest Service's Four Forest Restoration Initiative (4FRI) and Fivemile-Bell Project (*LLQR*, March 2012, page 7): For the fifth NEPA pilot, CEQ selected two Forest Service projects that represent different approaches to restoration management. The Forest Service prepared

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Guidance on Best Practice Principles for Environmental Assessments: Report on a CEQ Pilot Project

The Council on Environmental Quality (CEQ), on January 26, 2015, issued a report and recommendations on its NEPA Pilot Program to identify innovative NEPA strategies (related article, page 10). One pilot project, proposed and conducted by the National Association of Environmental Professionals (NAEP), was to identify best practice principles and develop guidance for preparing timely, cost-effective environmental assessments (EAs) that focus on environmental issues relevant to the decisionmaking process. NAEP's *Guidance on Best Practice Principles for Environmental Assessments* is included in the supporting documentation for CEQ's Pilot Program report.

In distributing the Pilot Program report, CEQ recommended that federal agencies review the best practice principles and incorporate them into their EA practices. Further, CEQ requested agencies to provide comments to CEQ on which EA best practice principles should be incorporated into CEQ guidance.

Best Practice Principles and Recommendations

NAEP surveyed more than 1,000 NEPA practitioners, including the NAEP membership and federal agency NEPA liaisons; about 30 percent responded. Survey questions addressed EA strengths and inadequacies, selected topics for inclusion in EAs, and potential implementation of best practice principles.

The NAEP team[1] analyzed and grouped responses into seven "Priority One" best practice principles, and reviewed how these principles are addressed in the CEQ NEPA regulations, agency and state-level guidance, case law, and peer-reviewed literature on NEPA practice. The team also reviewed recent EAs.

For each best practice principle, the NAEP report presents background information, discusses survey responses, provides implementation recommendations, and identifies resources. Some highlights are summarized below.

Description of purpose and need. The NAEP report recommends that purpose and need, whether expressed as separate concepts or as a combined statement, should be neither too broad nor too narrow. Agencies should "[c]onsider a collaborative approach when working with cooperating agencies, agencies with regulatory authority over some aspect of the Proposed Action, or other parties." For an EA for an applicant-proposed action (e.g., for financial support or a permit), the agency should consider "the underlying purpose and need of the applicant, in addition to the purpose and need from the public interest perspective."

Description of proposed action and range of alternatives. Survey responses suggest that an adequate EA includes a well-defined, detailed project description; a clear alternatives analysis, including the "no-action" alternative; discussion of comparative impacts for each alternative; and logical explanation of the reasons for including or dismissing an alternative from consideration. The NAEP report's recommendations include evaluating "a larger range of action alternatives" for EAs that address "broad actions or [those] with unresolved conflicts concerning alternative uses of physical, cultural, or natural resources." "If a stakeholder or other interested party suggests an alternative, practitioners should evaluate the alternative in detail or provide a well-reasoned explanation for why the alternative is being dismissed."

EA contents. The NAEP report provides model formats and recommends that "an EA's length should vary with the scope and scale of potential environmental problems" as well as the extent to which the significance of impacts would rely on mitigation. The report incorporates recommendations from CEQ's *Guidance on Efficient and Timely Environmental Reviews*: only briefly discuss insignificant issues, incorporate relevant analyses by reference to avoid repetition, and use clear language.

Cumulative effects assessment and management. The survey responses included concern about failure to address specific types of impacts, including cumulative impacts. The NAEP report recommends that "every EA should address cumulative effects," and that agencies should "designate spatial and temporal (past to future) boundaries to be considered for the resources to be addressed by the cumulative effects assessments."

Regulatory consultation and coordination. The NAEP recommendations on this topic include to identify and consult early with all entities that are candidates for collaboration, and to "develop schedules and milestones that accommodate and align [their processes] and major decision points with the NEPA process."

Determination of environmental impact significance. Survey responses identified "no clear delineation of impact significance" as the most important factor contributing to inadequate EAs, while "clarity and a defensible and logical significance determination" are associated with adequate

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[1] Ron Deverman; P.E. Hudson, Esq.; Karen Johnson, CEP; Ronald Lamb, CEP; Professor Daniel R. Mandelker; Stephen Pyle, Esq.; and Dr. Robert Senner. The team thanks Dr. Larry Canter, David Keys, CEP, and Paul Looney, CEP, for their significant planning of the survey and initial report.

What Didn't Work – And Making It Work Next Time: Keeping NEPA Documents on Schedule

By: Ralph Barr, Office of NEPA Policy and Compliance

This series highlights reasons why things "didn't work" in the NEPA process, and what can be done to avoid such problems in the future. In this issue, we discuss schedules – factors that inhibit timely completion of NEPA documents and how potential problems can be avoided.

In more than 50 comments over the past 4 years, Lessons Learned Questionnaire respondents identified many challenges to keeping NEPA documents on schedule. (Questionnaire responses appear at the end of each issue of *LLQR*.) These comments generally fall into six categories: scope changes, contractor management, consultation logistics, data collection and analysis, public participation, and review process. Below, we present examples of what didn't work well and tips to make it work better next time.

In a nutshell: Understand the project's data, staffing, and public participation needs before you set the schedule, and be ready for change.

Scope Changes

Why it didn't work:

- The scope was poorly defined at the start.
- Project descriptions, design, and priorities often changed, sometimes so much that re-scoping was needed.
- Initial project findings required new analysis, new data, or NEPA document revision.

Making it work:

- Ensure that the scope is clearly defined and realistically scheduled from the start; NEPA Document Managers should attend all project planning meetings.
- Build time into the initial schedule to allow for unforeseen changes.
- Establish a system for dealing with scope changes. For example:
  - Sections of the NEPA document may require new data or analysis. Involve the document preparation team to identify changes and discuss opportunities to adjust workflow and schedules.

Contractor Management

Why it didn't work:

- Deliverables were late because contractor staff was insufficient or unavailable to complete the work on time.
- Deliverables had to be sent back for revisions because of quality assurance/quality control (QA/QC) issues.

Making it work:

- Avoid schedule slips by keeping the contractor informed of potential work interruptions, expedited deliverables, or scope changes. Most contractors assign staff to several contracts at a time, and may be unable to allocate necessary resources without advance notice. If kept informed, the contractor can ensure that the appropriate staff is available when needed.
- Include quality specifications for deliverables in NEPA related contracts. Discuss your QA/QC expectations with the contractor at the start of the process.

Consultations

Why it didn't work:

- Merging NEPA processes from different agencies slowed progress.
- Tribal consultation took longer than expected.

Making it work:

- Before preparing the schedule, discuss review processes with each agency requiring consultation during the preparation of the document as well as cooperating agencies, and determine how to accommodate their requirements in one master timeline.
- Discuss expectations for document review turnaround and seasonal staffing limitations (e.g., due to fire management). Consider memorializing these commitments and the timeline in an interagency document such as a memorandum or statement of understanding.
- Before preparing the schedule, consult with experienced NEPA Document Managers or your local tribal liaison to learn what local tribes expect from consultation and what processes have worked (or haven't) in the past. For example, determine whether government-to-government consultation has occurred on a one-on-one basis, or if Indian tribes are comfortable participating in meetings with other Indian tribes. Identify any tribe-specific procedural requirements that may extend the review timeline. For example, some Indian tribes require tribal council approval of agreements (e.g., Programmatic Agreements), which may add months to a project timeline.

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Schedules

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Data Collection and Analysis

Why it didn't work:

- The schedule did not realistically estimate the time needed to gather and analyze data.
- Problems with data-sharing logistics delayed analysis.

Making it work:

- Before preparing the schedule, identify the data that will be needed to complete the NEPA document and ask the people who will be providing, collecting, and analyzing data for realistic estimates of the amount of time they will need. If the project will require multistep analyses, include sufficient time in the schedule.
- At the start of the project, consider establishing a central data repository. This can let staff access data quickly, and may prevent delays and duplicate data collection or analysis.

Public Participation

Why it didn't work:

- Public meetings conflicted with regularly scheduled public forums or community activities, resulting in a reduced number of stakeholders in attendance.
- Unanticipated controversy resulted in an extension of the timeline to respond to stakeholder concerns.
- DOE didn't provide a layman's explanation of technical project details.

Making it work:

- Know your audience. Keep abreast of the local media, including publications and correspondence produced by special interest groups. Be aware of controversial issues and proposed alternatives – these may require extra steps in the process that should be included in the schedule.
- Consider workshops or poster sessions at public meetings and make technical experts available to answer questions from public.
- For tips on scheduling public involvement during the scoping process, see *LLQR*, December 2014, page 1.

Review Process

Why it didn't work:

- Internal review of the NEPA document took more time than expected.
- The poor quality of the initial NEPA document increased review time significantly.
- The NEPA document was delayed by management due to higher priority projects.

Making it work:

- Undertake a rigorous QA/QC process. Establish a revision control system and a comment response system to ensure the NEPA document is adequate. This will speed up the review and reduce the number of review comments you will have to respond to later.
- The NEPA Document Manager should review the NEPA document and determine if it is of sufficient quality before forwarding to program management and General Counsel (GC) staff for review.
- Meetings involving the document manager, document drafter(s), and reviewers to discuss reviewer comments, as well as planned revisions or other responses to those comments, will likely expedite resolution.
- Expect delays; your NEPA document is not the only one under review, and schedule changes, priorities, and management decisions may give other projects higher priority. Keep management and GC informed of your schedule throughout the NEPA process and especially prior to submitting a document for review. If you have the opportunity to submit a NEPA document for review earlier than expected, do so.

Keeping NEPA documents on schedule can be a challenge, particularly as the documents go through the review process. Providing advance notice to reviewers about upcoming requests for review and response would assist them in their workload planning; this, in turn, can help ensure their availability when needed.

– Jeanie Loving
NEPA Compliance Officer
Office of Environmental Management

Using these shared strategies can help make scheduling "work" for you in the NEPA process. Please contact Ralph Barr at ralph.barr@hq.doe.gov with suggestions for other scheduling strategies or topics for future articles in this series.

Cooperating Agencies Contribute to Most DOE EISs

All five of the new EISs for which DOE issued a notice of intent in fiscal year (FY) 2014 are being prepared with cooperating agencies. Of the 31 ongoing EISs for which DOE is the lead or co-lead agency, 26 (84 percent) are being prepared with cooperating agencies. These are among the findings contained in DOE's latest Cooperating Agency Report to the Council on Environmental Quality (CEQ), submitted in February. DOE also reported that 5 of the 15 EAs that it completed during FY 2014 were prepared with cooperating agencies.

This annual report is part of CEQ's ongoing effort to encourage federal agencies to involve cooperating agencies – at the federal, state, local, and tribal government levels – in NEPA reviews. CEQ guidance identifies the benefits of involving cooperating agencies, including disclosure of relevant information early in the analytical process, access to technical expertise and staff support, avoidance of duplicative reviews, and establishing a mechanism for addressing inter- and intra-governmental issues.

In addition to involving other agencies in DOE's EISs and EAs, DOE participates as a cooperating agency in other agencies' NEPA reviews where DOE has jurisdiction or special expertise. At this time, DOE is a cooperating agency in 23 EISs and 7 EAs being prepared by the Bureau of Land Management, Bureau of Reclamation, Department of State, Federal Energy Regulatory Commission, Federal Highway Administration, and U.S. Forest Service.

Cooperating Agencies

A cooperating agency participates in the preparation of an EIS based on its jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action (or reasonable alternative) (40 CFR 1508.5). The responsibilities of a cooperating agency include participating in the NEPA process at the earliest possible time, participating in scoping, and – on request of the lead agency – assuming responsibility for developing information and preparing analyses for matters in which the cooperating agency has special expertise (40 CFR 1501.6(b)).

Responding to CEQ's question on improving future reporting, the Office of NEPA Policy and Compliance recommended that CEQ add a request for recommendations on how to work effectively with cooperating agencies.

If you have any tips or lessons learned from working with cooperating agencies, or for additional information on DOE's report, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov.

Best Practice Principles for EAs

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EAs. The NAEP report's overall recommendation is that EAs should "document the use of [40 CFR 1508.27, the definition of significance in the CEQ NEPA regulations] to support their significance determinations." "Clarity and logic are possible only if an agency uses a disciplined procedure, in which the important issues that determine significance are considered."

Extent of public involvement. The survey responses indicated that public involvement is of high value to an EA's adequacy. The NAEP report recommends that "agencies should use the elements of public involvement on a sliding scale," potentially including scoping, public meetings, and providing public comment opportunity for a draft EA. The NAEP report recommends that "at a minimum, the agency must provide a notice of the availability to interested or affected parties and the public."

EcoINFORMA Provides Web Access to Environmental Information

The U.S. Department of the Interior (DOI) announced the availability of EcoINFORMA, in support of the Climate Data Initiative (a key feature of President Obama's Climate Action Plan), in December. EcoINFORMA is "designed to facilitate assessments of the impact of climate change, pollution and other stressors on ecosystems, biodiversity and ecosystem services, as well as assessments of management responses to these stressors," explained DOI. (See text box on page 6 regarding a related web-based tool – the U.S. Climate Resilience Toolkit.)

The primary components of EcoINFORMA are its resource hubs. For example, Biodiversity Information Serving Our Nation (BISON), a web-based geographic information system (GIS) tool being developed by DOI's U.S. Geological Survey (USGS), serves as EcoINFORMA's biodiversity resource hub.

BISON offers more than 209 million records of living species nationwide and is integrating millions more records from other sources each year, explains USGS on the BISON website. It provides records on the occurrence[1] of species within the United States and its territories. The records have been gathered from several hundred data providers, including federal agencies, universities, and non-profit organizations. BISON can help determine whether a proposed project may be located near an occurrence of a species, including endangered and threatened species, and support modeling and analysis for a particular species considered in a NEPA document. BISON's website notes that the absence of data for any species does not prove or indicate that the species is not present.

EcoINFORMA currently provides access to the biodiversity resource hub and two other resource hubs: ecosystem services and land cover dynamics. EnviroAtlas, a web-based tool consisting of maps, graphs, and analysis tools, and information about ecosystem services for the contiguous United States, is the ecosystem services resource hub. The Multi-Resolution Land Characteristics Consortium, which provides land cover information at the national scale for a variety of environmental, land management, and modeling applications, is the land cover dynamics resource hub. EcoINFORMA also includes a map viewer for visualizing and integrating geospatial data (from the EcoINFORMA resource hubs and a sampling of other spatial layers) and an open data catalog containing more than 230 datasets. Additional resource hubs are anticipated in the future.

CEQ NEPA Pilot Projects

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an EIS for the 4FRI, which seeks to restore fire adapted ecosystems in Arizona. CEQ reports that this is the largest project-level NEPA analysis ever undertaken by the Forest Service, covering about one million acres. According to the pilot project report, the Forest Service prepared an EA for the 7,000-acre Fivemile-Bell landscape management project in Oregon. "Though these projects differ dramatically in scale and scope, they share the common goal of forest restoration and employ innovative approaches to NEPA by fully engaging a suite of different stakeholders in the environmental review process," CEQ concluded. CEQ recommends that agencies examine the best practices identified in the pilot project reports (appendices C and D of the supporting documents). CEQ also recommends that agencies use collaborative stakeholder groups for developing and monitoring project effects and mitigation effectiveness.

The Fivemile-Bell Landscape Management Project utilized early stakeholder involvement that will continue through implementation and mitigation monitoring. This helped diminish potential controversy and led to new strategies for solving problems. Source: Ecotrust

Transitions: Retiring NEPA Compliance Officers

Four long-serving NEPA Compliance Officers (NCOs) have recently or will soon retire from DOE: Drew Grainger, NCO for the Savannah River Operations Office; Gary Hartman, NCO for the Oak Ridge Office; Jeff Robbins, NCO for the National Nuclear Security Administration's (NNSA's) Albuquerque Complex; and David Caughey, NCO for NNSA's Kansas City Field Office. On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance offers Drew, Gary, Jeff, and David best wishes for their future endeavors.

Valedictory from Drew Grainger, Savannah River Operations Office

Drew Grainger, NCO at the Savannah River Operations Office, is retiring March 31, 2015.

When Carol Borgstrom invited me to write a note for *LLQR* as I prepared to retire, I was happy to take the opportunity. I've been with DOE for 25 years, 20 as the NCO at the Savannah River Operations Office, serving both the Office of Environmental Management and the National Nuclear Security Administration. Before that I worked for a contractor where one of my first jobs was characterization of the proposed salt repository site in Deaf Smith County, Texas. That was before Congress figured out that Nevada, with only one vote in the House, was the ideal host for a waste repository. The rest, as they say, is … unfortunate.

Before I get to a few brief lessons learned, just a couple of things about the NCO position. My first division director told me that in my position I should never read something in the paper (and he did mean an actual newspaper) about any project at Savanah River that I didn't already know about. I took this advice to heart. As NCO you have your fingers in everybody's business – certainly a great way to meet people, some of whom may not consider you their best friend, at least at first. But given that the penalty for doing a poor job on a NEPA review is an opportunity to do better the second time, they will come to realize that you really are there to help. As an NCO I have come to know and respect colleagues who are also there to help, in particular my counterparts in other DOE field offices.

Carol's office, by any name, has always been committed to helping the DOE NEPA community in every way imaginable. What other Office has ever issued "Dating Guidance"?[1]

So, a few Lessons Learned. Remember, the exception proves the rule.

Trust but verify. An NCO has to be skeptical and questioning. Many NCOs, myself included, are not engineers. We have to ask many, many questions to understand the environmental implications of programs and projects. One particular engineer and mission development contractor taught me to translate.

Me: Rick, can we do that?
Rick: Of course we can.
Translation: With enough time and money we can build a ladder to the moon.

Me: Rick, have we ever done that before?
Rick: Yes, many times.
Translation: We have completed many projects that obey the laws of physics. This one will, too.

You have to ask a lot of questions for at least two reasons. First, without somewhat detailed knowledge of the program or project, you cannot provide good advice on the appropriate NEPA strategy. Second, the public is going to want to know about your program or project, not just about the NEPA process and the environmental analysis. In your role in preparing the NEPA document, you need to be able to convert project information into meaningful information for environmental analysis and public understanding.

NEPA carries the ball. The NEPA review is often the only vehicle that conveys to the public the available engineering, scientific, and policy information on a program or project. The NEPA review becomes the public face of the project, a situation I believe is at the root of many challenges that we NCOs face – contentious, unfocused public meetings, encyclopedic EISs (and jumbo EAs), and esoteric technical analysis that may not help differentiate among alternatives on the basis of potential environmental and human health impacts. This is especially the case when we undertake NEPA review at the right time, early in the planning process. Other agencies seem to be more open in regard to program and project information. DOE could improve its credibility by moving in that direction.

"NEPA decisions" very rarely are. They are program or project decisions. While the requirement for a record of decision is found in the CEQ NEPA regulations, it is clear that the intent was to have the "statement" accompany the project documentation on its trek to the decisionmaker,

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[1] *The Office of NEPA Policy and Compliance issued* Guidance on Dates for NEPA Documents *(February 23, 1998) intended to standardize DOE's practice in assigning and referencing dates of NEPA documents.*

Retiring NCOs

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with the record of decision to follow the agency's determination. The NEPA process is often blamed for holding up decisions, when in practice the reverse is true.

Don't be parochial. DOE is a large complex of specialized facilities staffed by some of the best scientists and engineers in the world. Your site may not always have the best experience or facility to carry out a particular new mission or to tweak or upgrade an existing mission. An alternative may be perfectly reasonable even if it can't be done by your organization. I believe certain programs have suffered from a belief on the part of a site's staff and contractors that a mission can and must be performed at their site. Get to know the DOE Complex, its missions and its capabilities. As a corollary, remember that every site tries to sell itself. Fall back on lesson #1: trust but verify.

Tell the story. Clear writing is not dumbed down writing. It is writing that conveys information logically and accurately and fulfills the needs of your audience. In the NEPA world, former Deputy Assistant General Counsel Janine Sweeney put it best (*LLQR*, March 2002, page 15): "Every NEPA document must tell the story of how the need for agency action arose, what alternative means are available for addressing the problem, and what potential environmental impacts may result." We tend to concentrate on the data analysis. Unfortunately, accurate and sophisticated analysis is meaningless if it isn't put in the proper context. Without a clear story the analysis will convey neither meaningful information nor your message.

Thanks for listening. Keep smiling and remember public service is an honor.

Farewell to Gary Hartman, Oak Ridge Office

Gary Hartman, NCO at the Oak Ridge Office since 2005, is retiring on April 3, 2015, with 41 years of federal service. He worked for the Tennessee Valley Authority (TVA) for 15 years, then with DOE for the remainder of his career. He has been working in the NEPA compliance arena since 1979.

Gary's Parting Message

I have thoroughly enjoyed working with all of you in the DOE NEPA Community. I have been blessed to be able to work in a career that I actually love and believe in, and still maintain that NEPA is the best legislation ever written.

Some of the milestones of my career include:

- TVA's Raccoon Mountain Pumped-Storage Project (I met my wonderful wife there!)
- TVA's proposed Columbia Dam (My fiddling Uncle Clyde introduced me to Bluegrass music.)
- TVA's western uranium mineral rights program, including Edgemont Uranium Mill Decommissioning (and an all-night survey for the endangered Black-footed Ferret)
- Winter bird survey for an EIS for a proposed underground mine in northwest New Mexico (Getting paid to watch birds for a week – it just doesn't get much better than this!)
- TVA Nuclear Licensing and Browns Ferry Nuclear Plant (My daughter was born during this time, and the project was my springboard to DOE's Oak Ridge Office, Enriching Operations Division.)
- DOE's Formerly Utilized Sites Remedial Action Program (the best program I've ever been a part of)
- NEPA Document Manager for the Y-12 Site-Wide EIS (including public meetings with environmental activists in costume)
- Completion of almost 1,000 NEPA reviews for the Energy Efficiency and Conservation Block Grant program (possibly the most stressful, painful, and rewarding project ever)
- Training, training, and more training (They keep trying to train me… what's up with that?)
- DOE Earth Day Photo Competition[1] (Is it open to retirees? ☺)

My recommendations are pretty straightforward: Eschew obfuscation, and enjoy your career. I have consistently stated "I love my job!" and I really mean that (most of the time). And don't lose sight of what is really important: faith, family, and friends.

I wish all of you the success, happiness, and job satisfaction that I have experienced. I am thankful that I have had the opportunity to work with the NEPA compliance programs at two federal agencies (TVA and DOE). DOE, in particular, has consistently made me feel needed and appreciated, and I am thankful that they gave me the opportunity to succeed. Many of you are aware of my interests in photography, birding, and music. I plan to continue all of these with vigor. Good luck and best wishes to you all! Can I be a stakeholder now?

[1] *Gary Hartman's entries into the DOE Earth Day Photo Contest won recognition in 2013 and 2014. He shared tips for success in LLQR, June 2014, page 12.*

More Farewells

Albuquerque: Jeff Robbins

Joseph (Jeff) Robbins recently retired, after serving with the Albuquerque Operations Office (now National Nuclear Security Administration, Albuquerque Complex) since 1991 and as its NCO since 1994. He also served at times as the NCO for the Amarillo Site Office at the Pantex Plant. Mr. Robbins was a regular contributor to NEPA rulemaking and guidance initiatives and a member of the team that established the second set of DOE-wide NEPA support contracts. He hosted the 1997 NCO meeting in Albuquerque and, at the May 2000 NCO meeting (celebrating the 10th anniversary of the establishment of NCOs), he led a session on managing the EA process.

Kansas City: David Caughey

David Caughey recently retired after serving since 1989 in various environment, safety, health, and operational positions at the National Nuclear Security Administration's Kansas City Field Office. He served as NCO from 1995 through 2005, and from 2009 through 2014. In 1995, as a member of the Environmental Assessment Process Improvement Team, he received a Secretary of Energy NEPA Team Award.

Transitions: New NEPA Compliance Officers

Office of Science, Fermi Site Office: Rick Hersemann

Rick Hersemann has been designated NCO for the Fermi Site Office (FSO), which oversees the Fermi National Accelerator Laboratory (Fermilab) located in Batavia, Illinois. Mr. Hersemann joined FSO in January 2010 as the NEPA Coordinator assisting the NCO for the Office of Science, Chicago Office. He also serves as Fermilab's Environmental Manager. Mr. Hersemann has 35 years of experience as a project manager and environmental scientist for the U.S. Environmental Protection Agency and as an environmental consultant. He earned a Bachelor of Science in Physical Geography/Geology and has extensive continuing education and training in NEPA compliance and environmental regulations. He can be reached at rick.hersemann@science.doe.gov or 630-840-4122.

Office of Science, Integrated Support Center: Jim Elmore, Katatra Vasquez

James (Jim) Elmore has been designated NCO for the Office of Science Integrated Support Center at the Oak Ridge Operations Office. (The Integrated Support Center, comprised of the combined capabilities of the Chicago and Oak Ridge Offices, provides administrative, business, and technical services to support Office of Science site offices and national laboratories.) Dr. Elmore earned a PhD in Ecology from the University of South Florida and in 1980 began his environmental career in the Environmental Sciences Division at the Oak Ridge National Laboratory. After serving for several years as a NEPA contractor to the Oak Ridge Operations Office, he joined DOE in 1991, and a year later was designated as alternate NCO. He also serves as the Integrated Support Center's Endangered Species and Floodplain/Wetland Coordinator. For the Oak Ridge Reservation, he has served as the Environmental Monitoring Program Coordinator, Wildlife Management Coordinator (for deer and turkey hunts, migratory bird efforts, and other wildlife issues), and a member of the Management Team. In his spare time, Jim enjoys powerlifting, orchid growing, and maintaining a 135-gallon coral reef aquarium. He can be reached at james.elmore@science.doe.gov or 865-576-0938.

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New NCOs

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Katatra Vasquez has been designated as the alternate NCO for the Integrated Support Center, and also serves as its Historic Preservation and Environmental Justice Coordinator. She joined the Oak Ridge Operations Office in 2000, after earning a Bachelor of Science in Environmental Science/Natural Resource Management from Tuskegee University. Since then, she has provided subject matter expertise on several high-level projects across the DOE Complex and has served as the Black Employment Program Manager, Operational Experience and Lessons Learned Coordinator, Equal Employment Opportunity Counselor, and Annual Site Environmental Report Coordinator. (In the summer of 2003, as part of the DOE Technical Intern Program, Katatra spent the summer on a rotational assignment with the Office of NEPA Policy and Compliance. Her reflections on that experience are found in *LLQR*, December 2003, page 14.) She can be reached at katatra.vasquez@science.doe.gov or 865-576-0835.

Dr. Elmore and Ms. Vasquez have also been designated, respectively, as NCO and alternate NCO for the Nuclear Energy Oak Ridge Site Office, the Thomas Jefferson Site Office in Newport News, Virginia, and the Berkeley Site Office.

Transitions: New Staff in the NEPA Office

The Office of NEPA Policy and Compliance welcomed two Environmental Protection Specialists to its staff in January.

Bill Ostrum

Bill Ostrum came to the NEPA Office from the Federal Highway Administration's (FHWA's) Office of Project Development and Environmental Review. At FHWA headquarters, Bill worked on NEPA analysis for major transportation projects, and efforts aimed at streamlining FHWA's environmental review process. He also led development of eNEPA (FHWA's online project development and collaboration tool) and managed a national Every Day Counts initiative team to promote use of this and other environmental tools among state departments of transportation and resource agencies. Bill received his bachelor's degree from the College of William and Mary and his master's degree in Environmental Resource Policy from the George Washington University.

Under the NEPA Office's Science/Nuclear Unit, Bill will serve as the lead on defense and nuclear issues at Y-12 and the Savannah River Site, in addition to working on the Final Supplemental Environmental Impact Statement for Tritium Production. Bill can be reached at william.ostrum@hq.doe.gov or 202-586-4149.

Emily Orler

Prior to joining the NEPA Office, Emily Orler spent almost 5 years with the U.S. Department of Agriculture, Rural Utilities Service (RUS) as an Environmental Protection Specialist. During her time at RUS, Emily managed the NEPA and Section 106 of the National Historic Preservation Act (NHPA) review of thousands of electric and telecommunications infrastructure projects providing affordable and reliable service to rural America. She led the environmental staff's information technology and process improvement initiatives, and contributed to interagency working groups. Emily was also detailed for six months to the U.S. Department of the Interior, Bureau of Land Management to work on interagency transmission permitting efficiency efforts. Emily received her bachelor's degree in Political Science and Environmental Studies from Tulane University. She will begin pursuing her Juris Doctor part-time at Georgetown University Law Center in the fall.

Under the Science/Nuclear Unit, Emily will serve as the lead for Lawrence Livermore National Laboratory and the Nevada National Security Site. She will also provide support reviewing transmission line projects. Emily can be reached at emily.orler@hq.doe.gov or 202-586-4239.

Training Opportunities

The listing of any privately sponsored conferences or training events should not be interpreted as an endorsement of the conference or training by the government.

Climate Change/Climate Justice 2015 Environmental Justice Conference

"Enhancing Communities Through Capacity Building and Technology Assistance" is the theme of the 2015 National Environmental Justice Conference and Training Program, a 3-day event sponsored jointly by DOE, other federal agencies, the Howard University School of Law, and private industry partners. The conference, which is free to government employees, community organizations, students, and faculty, will be held in Washington, DC, on March 11–13.

Congressman James Clyburn and Dr. Jonathan Pershing, Principal Deputy Director of DOE's Office of Energy Policy and Systems Analysis, will present keynote addresses. Melinda Downing, DOE Environmental Justice Program Manager, will present opening and closing remarks, and Denise Freeman, Office of NEPA Policy and Compliance, will participate in a workshop on leveraging NEPA for environmental justice advancement.

Other agenda sessions of potential interest to the NEPA community will cover environmental justice methodologies in NEPA reviews, an overview of climate change and federal government response, and engaging nontraditional partners. Additional information, including an agenda, is available on the conference website.

National Association of Environmental Professionals 2015 Conference

The National Association of Environmental Professionals (NAEP) will host its 40th annual conference April 13–16 in Honolulu, with the theme *Mauka to Makai: Environmental Stewardship from the Mountains to the Sea*. Co-hosted by the NAEP Hawaii Chapter, the conference will offer sessions on NEPA regulatory developments, guidance, litigation outcomes, public involvement, and analytical techniques. The NEPA sessions will feature practitioners showcasing diverse case studies.

Two training workshops are offered on April 13. One workshop is an introduction to NEPA fundamentals (to attain a working knowledge of NEPA regulations, legal interpretations, and typical federal agency practices). The other covers topics of importance to environmental career development.

Registration is open to environmental professionals in all levels of government, academia, and the private sector. Discounts are offered to speakers and government employees. Registration information and the advance program are available on the NAEP website.

U.S. Institute for Environmental Conflict Resolution Offers NEPA-Related Training

The U.S. Institute for Environmental Conflict Resolution is offering a course in Spring 2015 that may be of interest to DOE's NEPA Community. *Collaboration in NEPA*, scheduled for May 5–6 in Arlington, Virginia, is an intermediate course on effective integration of collaboration into environmental planning and review under NEPA. This training is based on CEQ's *Collaboration in NEPA: A Handbook for NEPA Practitioners*. Registration information is available on the Institute's website.

The Institute, an independent federal agency established by Congress in 1998, provides services, including training, to assist parties in resolving environmental, public lands, and natural resource conflicts that involve federal agencies or interests.

EAs and EISs Completed October 1 to December 31, 2014

EAs[1]

Bonneville Power Administration
DOE/EA-1946 (11/25/14)
Salem-Albany Transmission Line Rebuild Project, Polk, Benton, Marion, and Linn Counties, Oregon
Cost: $197,000
Time: 26 months

Office of Energy Efficiency and Renewable Energy
DOE/EA-1991 (10/22/14)
10 CFR 433, "Energy Efficiency Standards for the Design and Construction of New Federal Commercial and Multi-Family High-Rise Residential Buildings" and 10 CFR 435 "Energy Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings"
Cost: $10,000
Time: 53 months

Office of Fossil Energy
DOE/EA-1942 (11/5/14)
Cove Point Liquefaction Project, Lusby, Maryland
EA was adopted; therefore cost and time data are not applicable to DOE. [Federal Energy Regulatory Commission (FERC) was the lead agency; DOE was a cooperating agency.]

Golden Field Office/Office of Energy Efficiency and Renewable Energy
DOE/EA-1968 (12/11/14)
Site-Wide Environmental Assessment, U.S. Department of Energy National Renewable Energy Laboratory South Table Mountain Campus, Golden, Colorado
Cost: $195,000
Time: 35 months

Western Area Power Administration
DOE/EA-1611-S1 (12/15/14)
Supplemental Environmental Assessment, Request for Modification of Interconnection Agreement for the Colorado Highlands Wind Project, Logan County, Colorado
The cost for this supplemental EA was paid by the applicant; therefore, cost data are not applicable to DOE.
Time: 9 months

DOE/EA-1966 (10/7/14)
Sunflower Wind Project, Morton and Stark Counties, North Dakota
The cost for this EA was paid by the applicant; therefore, cost data are not applicable to DOE.
Time: 16 months

EISs

Office of Fossil Energy
DOE/EIS-0487 (79 FR 61303, 10/10/14)
(Draft EIS EPA Rating: EC-2)
Freeport LNG Liquefaction Project, Brazoria County, Texas
EIS was adopted; therefore cost and time data are not applicable to DOE. [FERC was the lead agency; DOE was a cooperating agency.]

Western Area Power Administration
DOE/EIS-0478 (79 FR 72677, 12/8/14)
(Draft EIS EPA Rating: EC-2)
Antelope Valley Station to Neset Transmission Project, Mercer, Dunn, Billings, Williams, McKenzie, and Mountrail Counties, North Dakota
EIS was adopted; therefore cost and time data are not applicable to DOE. [Rural Utilities Service was the lead agency; DOE was a cooperating agency.]

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

Adequacy of the EIS
Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate
(For a full explanation of these definitions, see the EPA website at *www.epa.gov/compliance/nepa/comments/ratings.html*.)

[1] *EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.*

NEPA Document Cost and Time Facts[1]

EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 3 EAs for which cost data were applicable was $195,000; the average was $134,000.
- For this quarter, the median completion time for 5 EAs for which time data were applicable was 26 months; the average was 28 months.
- Cumulatively, for the 12 months that ended December 31, 2014, the median cost for the preparation of 15 EAs for which cost data were applicable was $197,000; the average was $598,000.
- Cumulatively, for the 12 months that ended December 31, 2014, the median completion time for 20 EAs for which time data were applicable was 19 months; the average was 24 months.

EIS Cost and Completion Times

- There were no EISs completed during this quarter for which cost or time data were applicable.
- Cumulatively, for the 12 months that ended December 31, 2014, the cost for the preparation of 1 EIS for which cost data were applicable was $1,980,000.
- Cumulatively, for the 12 months that ended December 31, 2014, the median and average completion times for 2 EISs for which time data were applicable were 42 months.

[1] For EAs, completion time is measured from EA determination to final EA issuance; for EISs, completion time is measured from the Federal Register *notice of intent to the EPA notice of availability of the final EIS.*

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports.

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

Scoping

What Worked

- *Good meetings*. The public scoping meetings had good attendance, facilitated interaction with interested parties, and were very productive.
- *Early involvement of subject matter experts*. Several subject matter experts were identified early and were involved in the NEPA scoping process to ensure that all potential activities, improvements, and projects and proposed actions for the site were identified.
- *Comments addressed*. Scoping comments were received from several agencies and local governments, as well as a local nonprofit organization. All scoping comments were considered and addressed during preparation of the EA.

What Didn't Work

- *Changing proposed action*. The EA's proposed action experienced several revisions and required several reviews. Since the EA was a site-wide document covering all proposed activities, improvements, and projects anticipated over the next five to ten years, it took longer than expected to determine the proposed action and to articulate a proper purpose and need.

Data Collection/Analysis

What Worked

- *Use of sliding-scale*. As a site-wide document, no resource area was excluded from analysis in the EA. A sliding-scale approach was used to determine the level of detail and analyses for each resource area.
- *Most data readily available*. The various resource impact analyses presented in the EA were mostly supported by existing and readily available data sets, surveys, and studies such as avian and bat mortality studies, wildlife surveys, wetlands assessments, and water usage. New studies were initiated as needed to collect other data.

What Didn't Work

- *Design changes*. Project design changes were not always distributed to all EA team members in a timely manner which sometimes made needed data collection for new potentially impacted areas challenging.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Regular team meetings*. Regular team meetings to keep staff aware of schedules and document status facilitated timely completion of the EA.
- *Good communication*. Weekly communication between the project manager and the NEPA Document Manager facilitated timely completion of the EA.
- *Weekly status meetings*. Weekly status meetings throughout the EA process with the EA contractor and DOE kept the project moving forward and tracked completed tasks, action items, due dates, issues, and discussion points.
- *Schedule management*. The NEPA Document Manager was responsible for setting and driving the schedule, and the EA contractor was responsible for updating the schedule. This proved to be effective schedule management.
- *Realistic schedule*. Monthly communication among program, Headquarters, and contractor staff to ensure a realistic schedule facilitated timely completion of the EA.

Factors that Inhibited Timely Completion of Documents

- *Tribal consultations*. The completion of consultations with multiple Indian tribes took longer than anticipated.
- *Programmatic agreement*. The National Historic Preservation Act Section 106 process led to the

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

establishment of a programmatic agreement. However, the agreement was not finalized within the original schedule.

- *Staff support*. The same personnel supported the preparation of the EA and the Section 106 process. Because the Section 106 process was more complicated than anticipated, resources were limited for the development of other parts needed for the completion of the EA.
- *Coordinating with other agencies*. Coordinating with other agencies, all of whom had a vested interest in the project and the outcome of the NEPA process, was challenging. Since each agency had its specific goals and ideas about the NEPA process and the project itself, coming to consensus on decisions took significant effort.

Teamwork

Factors that Facilitated Effective Teamwork

- *Contractor authority*. Contractor staff were given the authority to contact other team members independently. Not having to use DOE staff to obtain approval for contact or gain access to information facilitated quicker response times and enhanced communication among the team members.
- *Good NEPA Document Manager coordination*. The NEPA Document Manager had regular and clear communication with the project's EA preparation team and addressed issue resolution as needed during the EA process.
- *Subject matter experts*. Several DOE personnel and subject matter experts were identified early and involved throughout the NEPA process to ensure that all topics were addressed properly. This contributed to the success of keeping the EA on schedule.

Factors that Inhibited Effective Teamwork

- *Contractor availability*. Contractor personnel's location off-site and out of state inhibited team communication and hampered their ability to be fully versed in site operations.

Process

Successful Aspects of the Public Participation Process

- *Public comments*. Public comments received on the draft EA were clear and consideration of them enhanced the final document.
- *Public concern*. Many people expressed concern regarding how the proposed project would impact their property. These comments were addressed in the final EA.
- *Response to public comments*. The NEPA Document Manager responded quickly to the local nongovernmental organization's scoping comments to ensure that they understood the NEPA process and also kept them updated on the EA progress.
- *Positive public comment*. A positive comment was received from a local governmental organization on our sensible approach and public outreach during the EA process.

Unsuccessful Aspects of the Public Participation Process

- *Low public meeting attendance*. Despite extra efforts to advertise the informational meeting, we had low attendance. Given the extensive outreach to the public, we attribute the low attendance to either a lack of controversy or no interest in the proposed action.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Plan development*. The EA process supported the development of an access road plan that minimizes impacts to wetlands and other resources and also provides potential support to future projects in the area.
- *Informed decision*. The EA process helped the decisionmakers understand positive and negative impacts to various resources by the proposed action

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

components, therefore helping them make an informed decision.

- *Future NEPA support*. The EA process helped decisionmakers understand the value of a site-wide document to analyze reasonably foreseeable activities and projects at the site, provide a foundation to tier from, and streamline future NEPA analyses for potential activities, improvements, and projects at the site.

Enhancement/Protection of the Environment

- *Property protection*. Cultural and historic properties were set aside for protection as a result of NEPA and the Section 106 processes.
- *Mitigation of environmental impacts*. Conservation and mitigation measures were developed during the EA process to address any adverse impacts to natural resources.
- *Protection of environment*. The EA lists several committed measures to avoid, minimize, or mitigate environmental impacts during potential activities and operations at the site.

Other Issues

Guidance Needs Identified

- *Property transfers*. Additional guidance is needed regarding the applicability of categorical exclusions versus the need to prepare EAs for property transfers.

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 EA questionnaire responses were received, 2 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the NEPA process allowed the decisionmakers to make an informed decision regarding the proposed action.
- A respondent who rated the process as "3" stated that the NEPA process was for a rebuild project that was greatly needed. There was not really another decision to be made. The NEPA process did identify impacts to resources that had to be addressed/mitigated.
- A respondent who rated the process as "1" stated that the project's decision was political and mostly made outside of the NEPA process.