National Environmental Policy Act

NEPA

LESSONS LEARNED QUARTERLY REPORT
4TH QUARTER FY1994

Office of NEPA Oversight
U.S. Department of Energy

December 1, 1994

INTRODUCTION

To foster continuing improvement of the Department's National Environmental Policy Act (NEPA) compliance program, the Secretarial Policy Statement on NEPA, issued June 13, 1994, requires the Office of Environment, Safety and Health to solicit comments from the NEPA Document Manager, the NEPA Compliance Officer, and team members after completing each environmental impact statement and environmental assessment on lessons learned in the process, and to distribute a quarterly summary to all NEPA Compliance Officers and NEPA Document Managers.

On August 12, 1994, the Office of NEPA Oversight distributed an interim/draft lessons learned questionnaire to NEPA contacts to be used for reporting on environmental impact statements and environmental assessments approved between July 1 and September 30, 1994. This first quarterly report summarizes the responses, which in many respects are immediately useful. For example, the respondents made clear that effective communication and teamwork greatly facilitate DOE's NEPA process, and also that resource limitations have hindered the process in some cases. More important, perhaps, is that the data presented in these quarterly reports, over time, may show patterns and trends. In that respect, these data will also facilitate the Office of Environment, Safety and Health's on-going effort to measure progress under the Secretarial Policy Statement and to consider what additional improvements may be necessary.

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

The next quarterly report will cover environmental impact statements and environmental assessments completed during the first quarter of fiscal year 1995 (October 1 through December 31, 1994). The Office of NEPA Oversight plans to issue a revised questionnaire in January 1995. In the interim, please continue to report on environmental impact statements and environmental assessments as they are completed (use the current questionnaire until a revision is provided). Questionnaires for all such documents completed between October 1 and December 31, 1994, are due by February 1, 1995. Completed questionnaires should be mailed or faxed (202-586-7031) directly to the Office of NEPA Oversight. The next quarterly report will be issued March 1, 1995.

ABOUT THE FIRST LESSONS LEARNED QUARTERLY REPORT

According to Office of NEPA Oversight records, the Department of Energy (DOE) completed 14 environmental assessments and 5 environmental impact statements during the final quarter of fiscal year 1994 (from July 1 to September 30, 1994). For the purposes of this report, the approval of a final environmental impact statement or the NEPA decision for an environmental assessment represent project completion.

As of November 29, 1994, the Office received 37 questionnaires covering 12 of the 14 environmental assessments and all 5 of the environmental impact statements. Questionnaire respondents included 10 NEPA Compliance Officers, 6 NEPA Document Managers, 6 Project Managers and 15 others (i.e., team members, Office of NEPA Oversight staff, contractors).

NEPA DOCUMENT PREPARATION TIMES

The median time reported for the completion of an environmental assessment (from the NEPA determination to the Finding of No Significant Impact) was 9 months; the completion times ranged from about 2 months to about 32 months (see chart on right).

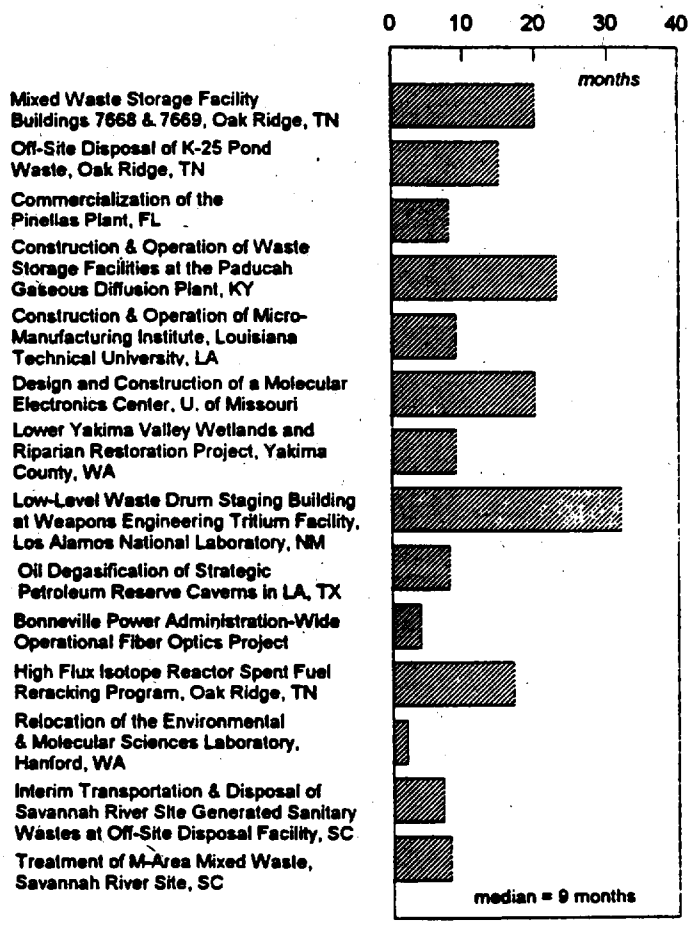
The median time reported for completion of an environmental impact statement (from publication of the notice of intent to the approval of the final environmental impact statement) was 26 months. The range for this interval was about 8 to about 50 months (see chart on right).

Questionnaire respondents indicated that of the 17 total projects reported on for this quarter, 5 environmental assessments and all 5 environmental impact statements were completed on schedule; 7 environmental assessments were not completed on schedule. Also, for 3 environmental assessments and 3 environmental impact statements, the NEPA review was initiated early enough to avoid being on the critical path. For 4 environmental assessments, questionnaire respondents disagreed as to whether the NEPA review had begun early enough, some (for each project) reporting that the NEPA review had begun in time, and some that it had not.

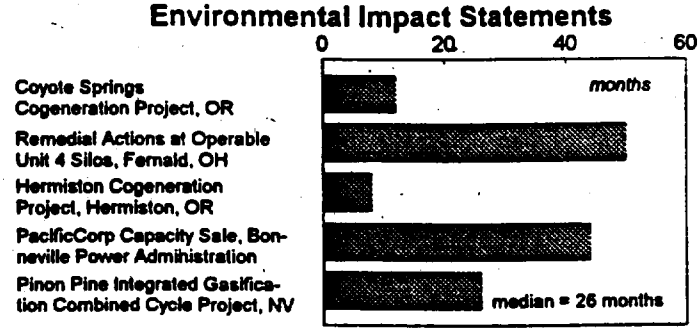
Respondents identified the following as measures that facilitated timely completion of their NEPA documentation:

- ♦ frequent and open communication among all involved/affected parties was cited most often (30 percent of respondents);

Completion Time for Environmental Assessments



Completion Time for Environmental Impact Statements



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- effective teamwork (27 percent);
- delegation of approval authority (14 percent);
- clearly developed expectations (including defined deadlines) and organizational techniques (11 percent);
- responsive contractor support (8 percent); and
- use of existing data (8 percent).

One respondent noted that "since there were few comments received on their draft environmental impact statement, a response to comments and errata volume was prepared, and together with the draft document, both comprised the final environmental impact statement. Ultimately, time and money were saved in printing and mailing." This approach is listed in the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500.4(m)) as a measure to reduce paperwork.

Circumstances that were mentioned as hindering timely NEPA document completion were:

- limited time and resources;
- slow, sequential review, revision and concurrence processes;
- problems dealing with specific team members and stakeholders; and
- change of project definition late in the process.

NEPA COST DATA

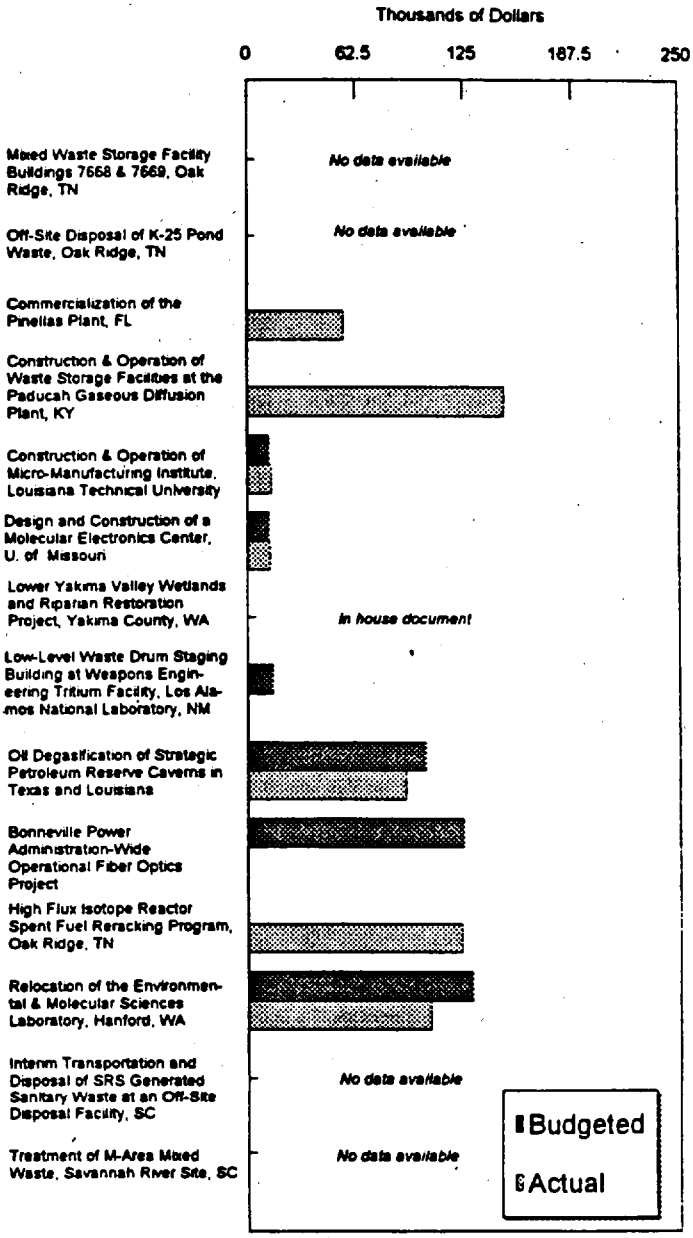
Of the 8 projects for which both NEPA budget and actual cost data were reported, respondents indicated that 2 environmental assessments and 2 environmental impact statements were completed within budget, while 2 environmental assessments and 2 environmental impact statements were reported as over-budget.

Costs reported reflect dollars expended for a support contractor. Of the 7 environmental assessments for which the actual cost data was reported, the average cost for document preparation was $79,000, with a range of $13,000 to $149,000 (see chart on right). Of the 4 environmental impact statements, the average cost for document preparation was $761,000 with a range of $197,000 to $1.9 million (see chart on right).

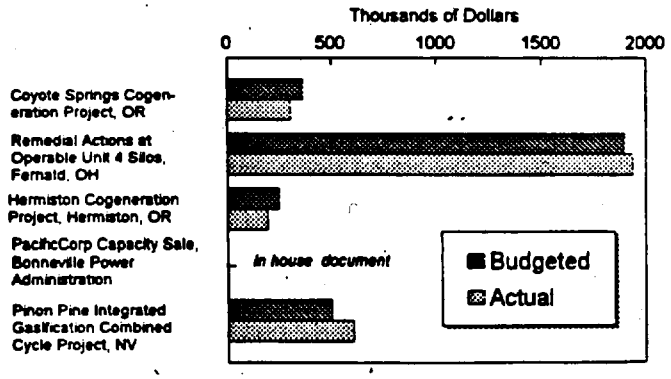
Budget and actual cost data are not available for several of the projects reported on for one or more of the following reasons:

- a project budget was not developed;
- cost data were not accounted for; and/or
- the project was part of a program budget that was not broken down by project.

Costs of Environmental Assessments
Budgeted vs. Actual



Costs of Environmental Impact Statements
Budgeted vs. Actual



NEPA DOCUMENT CONTENT

In response to our request for respondents to describe specific problems and/or innovative approaches used regarding: 1) determining reasonable alternatives, 2) data collection, and 3) impact analysis, a wide variety of helpful information was provided, as discussed below.

Determining Reasonable Alternatives: Respondents noted that a focused purpose and need statement and effective teamwork were most helpful. One commenter emphasized the effectiveness of including project-specific analyses within a programmatic environmental assessment. Such foresight efficiently addressed the program and projects simultaneously, rather than sequentially.

Data Collection: Respondents described the availability of existing data from previous projects as an advantage. Faced with a lack of site-specific knowledge, one preparer drew on tribal expertise, as well as existing information gathered by the Bureau of Indian Affairs.

Impact Analysis: One respondent stated that the integration of NEPA and Comprehensive Environmental Response, Compensation and Liability Act risk assessment processes facilitated successful completion of an impact analysis. Another respondent discussed the problems that can arise when it is mistakenly assumed that: 1) project-specific impacts will be analyzed by a related programmatic NEPA document, and 2) therefore do not need to be included in a project-specific document. (A project-specific NEPA document should include all relevant analyses needed to ensure that the project could be implemented.)

THE DOCUMENT PREPARATION PROCESS

Respondents noted the following as measures that facilitate effective DOE teamwork:

- effective and open communication with all involved parties;
- delegation of approval authority; and
- document ownership.

Factors that hamper NEPA document preparation include:

- lack of document ownership;
- lack of adequate resources; and
- a lengthy internal review process.

With regard to teamwork between DOE and its support contractors, commonly-noted facilitating measures again included consistent, effective, and open communication. Inhibiting factors included the contractor not following "Green Book" guidance (Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements prepared by the Office of NEPA Oversight), a lack of adequate resources, and a large distance between the location of DOE staff and the contractor.

With regard to succesful aspects of public involvement, one respondent stated that involving the public from the project's inception reduced the amount of public concern for and comment on the draft document.

Regarding unsuccessful aspects of public involvement, some commenters suggested that the timeframes allowed for Federal, state, and tribal review were too short. They pointed out that other agencies, stakeholders, and interested parties have their own agendas, and close communication is needed for all parties to coordinate document review deadlines.

Nine of the 37 respondents stated that the public generally supported their projects, and 10 stated that there was little public interest or concern. (Some of these respondents stated that the public generally supported their project although there was little public interest or concern.)

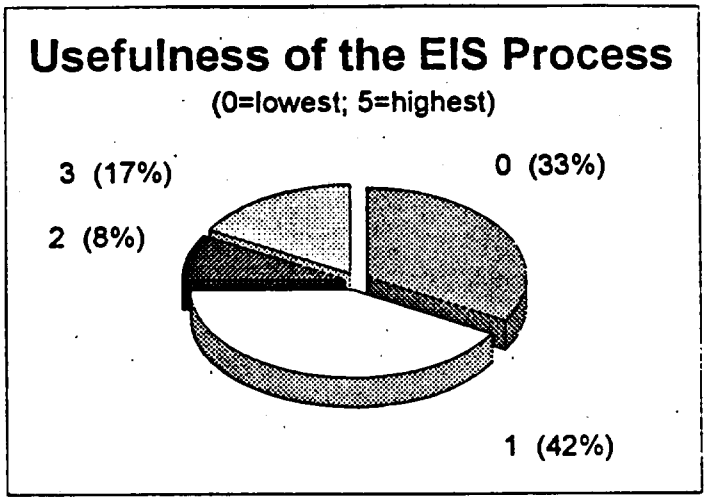
Only 2 of the 37 respondents indicated a need for further guidance relating to the preparation of environmental assessments or environmental impact statements. One stated that better guidance on coastal zone management consistency requirements was needed. The other respondent indicated that better guidance on incorporating environmental justice considerations from General Counsel and/or the Office of NEPA Oversight would have been helpful. Additionally, one respondent stated that some NEPA preparers fail to read and apply the existing guidance.

With regard to resources availability, 9 respondents (24 percent) indicated this is a problem, while 22 respondents (59 percent) said resource availability was not a problem. The most often noted deficiency was that insufficient staff time and/or a lack of teamwork precluded quick turnarounds for project elements.

USEFULNESS OF THE NEPA PROCESS

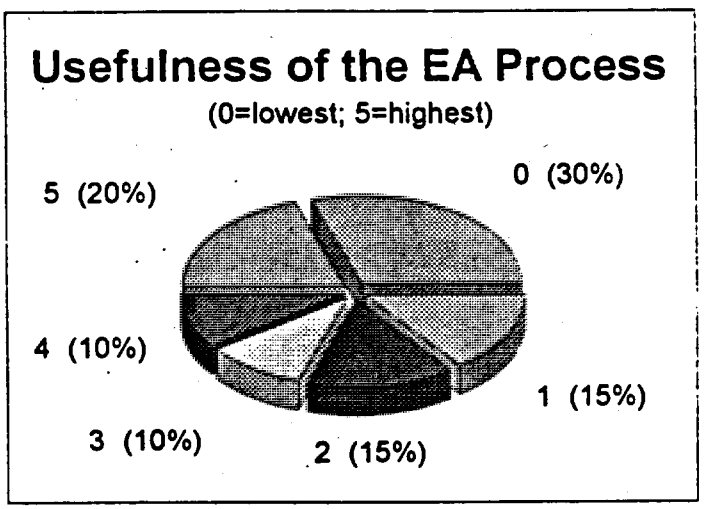
When asked how the NEPA process was used in agency planning and decision making, 10 questionnaire respondents (28 percent) stated that the process was not useful because the project decision had already been made. However, others stated that the process:

- provided an opportunity to consider all valid alternatives (5 respondents);
- generated information that will be useful in implementing the project and planning for future projects (4 respondents).
- resulted in impact avoidance (1 respondent);
- helped the state to complete its own environmental review (1 respondent); and
- was a good way to judge public reaction (2 respondents).



One respondent wrote that "their programmatic document helped to identify potential problems and concerns that could surface on all future program-related projects." The respondent further stated, "the programmatic environmental assessment process resulted in identification of sensitive resource areas which will enable decision-makers to take these areas into consideration when locating and installing their fiber optic cable."

In response to the question asking respondents to rate, on a scale of 0 to 5 ("5" being total involvement, and "0" viewing the NEPA process as "another permit" for a decision already made), the level of the decision maker's involvement in the NEPA document preparation process, most said that the involvement level of the decision maker was minimal (see charts on right).



OTHER LESSONS LEARNED

Some respondents offered miscellaneous comments regarding lessons learned, as described below.

One respondent reported on difficulties in preparing an environmental impact statement in view of changing circumstances, the demands of coordinating with a parallel NEPA review on related issues, and technical challenges regarding the impact assessment. The respondent believes that a late start and the complications of its preparation made the environmental impact statement of little use to the decisionmaker.

In contrast, another respondent stated that, "I worked with an extremely effective and efficient core team and thought that the NEPA process was a worthwhile exercise. The process doesn't mean the paperwork, but the information and the input that everyone gained about the project through this process. One of the keys is to work closely with team members, to communicate on a daily basis, to identify potential concerns up front and anticipate delays...the extra time spent on this programmatic environmental assessment will be a big advantage to future work."

REMINDER: Lessons Learned Questionnaires for all projects completed during the first quarter of FY95 should be submitted as soon as possible after document completion, but no later than February 1, 1995 (Fax: 202-586-7031).

Environmental Impact Statements Completed Between July 1 and September 30, 1994

Environmental Impact Statement (Document Number)	Project Location	Program	EPA Rating
Coyote Springs Cogeneration Project (DOE/EIS-0201)	Oregon	Bonneville Power Administration	EC-2
Remedial Actions at Operable Unit 4 Silos, Fernald Environmental Management Project (DOE/EIS-0195)	Fernald, Ohio	Environmental Management	EC-2
Hermiston Cogeneration Project (DOE/EIS-0204)	Hermiston, Oregon	Bonneville Power Administration	EC-1
PacificCorp Capacity Sale, Bonneville Power Administration Area (DOE/EIS-0171)	Bonneville Power Administration Area	Bonneville Power Administration	LO
Pinon Pine Integrated Gasification Combined Cycle Project (DOE/EIS-0215)	Tracy, Nevada	Fossil Energy	EC-2

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 Impact Statement

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

Environmental Assessments Completed Between July 1 and September 30, 1994

Environmental Assessment (Document Number)	Project Location	Program
Mixed Waste Storage Facility Buildings 7668 and 7669 (DOE/EA-0820)	Oak Ridge, Tennessee	Environmental Management
Off-Site Disposal of K-25 Pond Waste (DOE/EA-0966)	Oak Ridge, Tennessee	Environmental Management
Commercialization of the Pinellas Plant (DOE/EA-0950)	Pinellas, Florida	Defense Programs
Construction and Operation of Waste Storage Facilities at the Paducah Gaseous Diffusion Plant (DOE/EA-0937)	Paducah, Kentucky	Environmental Management
Construction and Operation of Micromanufacturing Institute, Louisiana Technical University (DOE/EA-0958)	Ruston, Louisiana	Energy Research
Design and Construction of a Molecular Electronics Center, University of Missouri (DOE/EA-0931)	St. Louis, Missouri	Energy Research
Lower Yakima Valley Wetlands and Riparian Restoration Project (DOE/EA-0941)	Yakima County, Washington	Bonneville Power Administration
Low-Level Waste Drum Staging Building at Weapons Engineering Tritium Facility, TA-16, Los Alamos National Laboratory (DOE/EA-0874)	Los Alamos, New Mexico	Defense Programs
Oil Degasification of Strategic Petroleum Reserve Caverns in Texas and Louisiana (DOE/EA-0954)	Louisiana, Texas	Fossil Energy
Bonneville Power Administration-Wide Operational Fiber Optics Project (DOE/EA-0951)	Bonneville Power Administration - Wide	Bonneville Power Administration
High Flux Isotope Reactor Spent Fuel Reracking Program, Oak Ridge National Laboratory (DOE/EA-0900)	Oak Ridge, Tennessee	Nuclear Energy
Relocation of the Environmental and Molecular Sciences Laboratory, Hanford Site (DOE/EA-0959)	Richland, Washington	Energy Research
Interim Transportation and Disposal of Savannah River Site Generated Sanitary Waste at an Off-Site Disposal Facility, Savannah River Site (DOE/EA-0989)	Aiken, South Carolina	Environmental Management
Treatment of M-Area Mixed Waste, Savannah River Site (DOE/EA-0918)	Aiken, South Carolina	Environmental Management

National Environmental Policy Act

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LESSONS LEARNED QUARTERLY REPORT
1ST QUARTER FY 1995

Office of NEPA Policy and Assistance
U.S. Department of Energy

March 1, 1995

INTRODUCTION

To foster continuing improvement of the Department's National Environmental Policy Act (NEPA) compliance program, the Secretarial Policy Statement on NEPA, issued June 13, 1994, requires the Office of Environment, Safety and Health to solicit comments from the NEPA Document Manager, the NEPA Compliance Officer, and team members after completing each environmental impact statement and environmental assessment on lessons learned in the process, and to distribute a quarterly summary to all NEPA Compliance Officers and NEPA Document Managers.

This second quarterly report summarizes the lessons learned for documents completed between October 1 and December 31, 1994. It is based on responses to the revised questionnaire that was provided for use during January 1995, and includes information on direct and indirect NEPA process costs and on total project costs. Additionally, the report includes a feature story on lessons learned during preparation of the F-Canyon Plutonium Solutions Environmental Impact Statement.

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

In a few instances, the report presents cumulative data for this reporting period and the first period. Relative to the conditions that prevailed before the Secretarial Policy Statement, these data are encouraging.

The next quarterly report will cover environmental impact statements and environmental assessments completed during the second quarter of fiscal year 1995 (January 1 through March 31, 1995). Please report on environmental impact statements and environmental assessments as they are completed. Questionnaires for all such documents completed between January 1 and March 31, 1995 are due by May 1, 1995. Completed questionnaires should be mailed or faxed (202-586-7031) directly to the Office of NEPA Policy and Assistance. The next quarterly report will be issued on June 1, 1995.

ABOUT THIS LESSONS LEARNED QUARTERLY REPORT

According to Office of NEPA Policy and Assistance records, the Department of Energy (DOE) completed 15 environmental assessments and 3 environmental impact statements during the first quarter of fiscal year 1995 (from October 1 to December 31, 1994). For the purposes of this report, the approval of a final environmental impact statement or the NEPA decision for an environmental assessment represent document completion.

As of February 27, 1995, the Office received 25 questionnaires covering 13 of the 15 environmental assessments and all of the environmental impact statements. Questionnaire respondents included 11 NEPA Compliance Officers, 6 NEPA Document Managers, 1 Project Manager and 7 others (i.e., team members, Office of NEPA Policy and Assistance staff, contractors, and NEPA specialists).

NEPA DOCUMENT PREPARATION TIMES

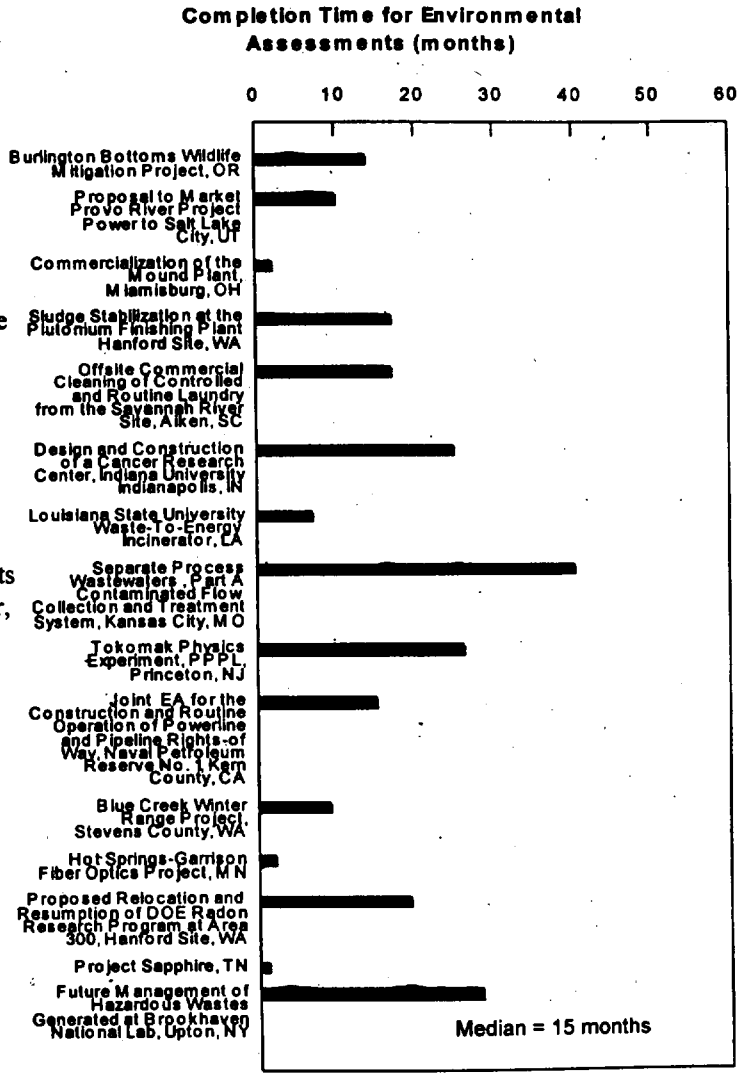
The median time reported for the completion of 15 environmental assessments (from the NEPA determination to the Finding of No Significant Impact) was 15 months; the completion times ranged from about 1 month to about 40 months (see chart on right). For the July 1 to September 30, 1994 reporting period and this reporting period, cumulatively, the median time to prepare 29 environmental assessments was 15 months.

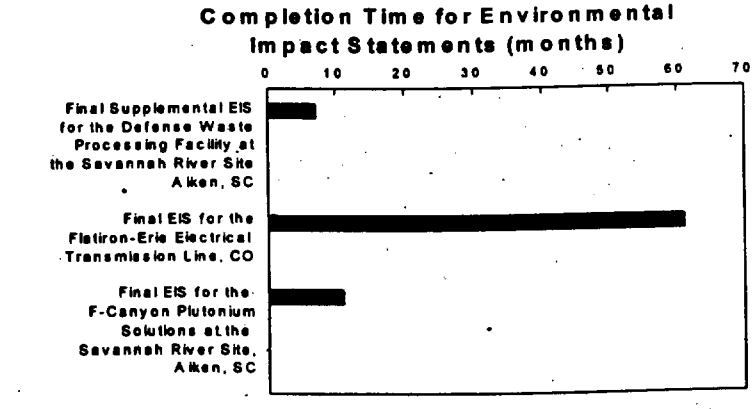
For this reporting period, the times reported for completion of the 3 environmental impact statements (from publication of the notice of intent to the approval of the final environmental impact statement) were 7 months, 61 months, and 11 months (see chart on right). For the July 1 to September 30, 1994 reporting period and for this reporting period, cumulatively, the median time to prepare 8 environmental impact statements was 19 months.

Questionnaire respondents indicated that of the 15 total documents for which scheduling information was reported on for this quarter, 5 environmental assessments and 1 environmental impact statement were completed on schedule; 7 environmental assessments and 2 environmental impact statements were not completed on schedule. Also, for 6 environmental assessments and 1 environmental impact statement, the NEPA process was initiated early enough to avoid being on the critical path. For 3 environmental assessments and 1 environmental impact statement, questionnaire respondents disagreed as to whether the NEPA process had begun early enough, some (for each project) reporting that the process had begun in time, and some that it had not.

Respondents identified the following as measures that facilitated timely completion of their NEPA documentation:

- concurrent review;
- frequent and open communication with team members;





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- conference calls;
- effective guidance from Headquarters project offices; and
- meetings with all involved parties.

Circumstances that were mentioned as hindering timely NEPA document completion were:

- the need to develop a strategy and policy to deal with a special issue (i.e., electromagnetic fields);
- public controversy over proposed action;
- changes in scope of proposed action; and
- too many reviewers, reviews not performed quickly enough.

NEPA COST DATA

Document Managers and one NEPA Compliance Officer reported cost data for 7 of the 15 environmental assessments and all 3 of the environmental impact statements completed during the reporting period. Of the 7 projects for which NEPA budget data were reported, respondents indicated that 2 environmental assessments and 1 environmental impact statement were completed within budget, while 2 environmental assessments and 2 environmental impact statements were reported as over budget.

For the purposes of this report, NEPA process costs are defined as the costs that would not have been incurred except for the NEPA process. Direct costs are defined as the total dollars expended for NEPA support contractors. Indirect costs are defined as any other costs incurred (e.g., travel), and include total program office and field office Federal staff resources (FTE-years).

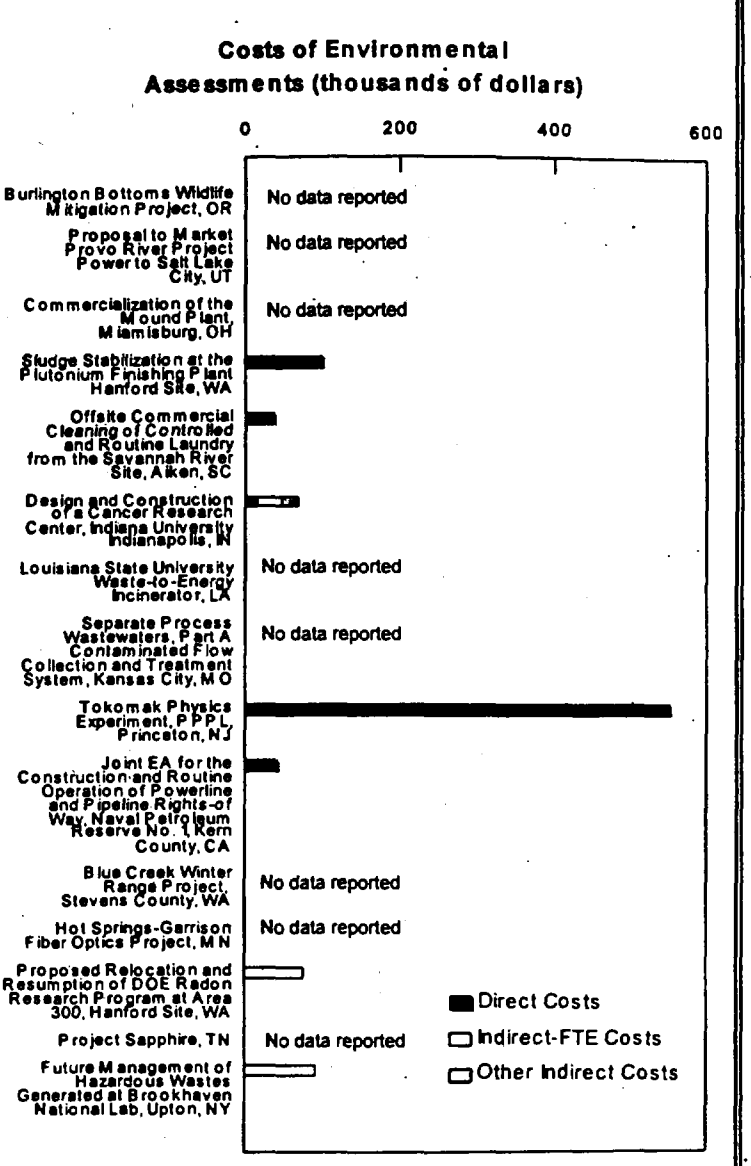
Of the 5 environmental assessments for which direct cost data were reported, the median direct cost was $40,000 and the average direct cost was $123,000, with a range of $11,000 to $550,000. Total project costs were reported for only 2 environmental assessments. Of these, the NEPA process costs reported represented 0.1% and 0.3% of the total project costs.

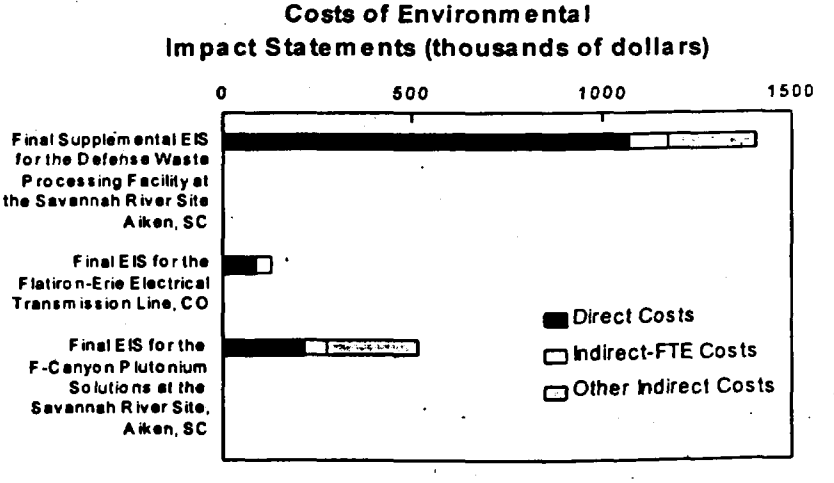
Of the 3 environmental impact statements for which direct cost data were reported, the costs were $1,067,000, $87,000 and $215,000. The corresponding indirect costs were $338,000, $45,000, and $298,000. NEPA document costs represented 0.05%, 8.4% and 0.3% of the total project costs, respectively.

Cost data are not available for several of the documents for reasons including:

- accounts not specific for environmental assessments; and/or
- document budget not developed.

Using the direct cost data gathered for both this and the first (July 1 to September 30, 1994) reporting period, the median direct cost for preparation of 12 environmental assessments was $58,000 and for preparation of 7 environmental impact statements was $305,000.





NEPA DOCUMENT CONTENT

In response to our request that respondents describe specific problems and/or innovative approaches used regarding 1) determining reasonable alternatives, 2) data collection, and 3) impact analysis, a wide variety of helpful information was provided, as discussed below.

Determining Reasonable Alternatives: DOE held joint scoping meetings for three Savannah River Site environmental impact statements. Two commenters stated that discussing several related environmental impact statements together at scoping meetings helped the public to understand the relationship among the documents and reduced the cost of holding the meetings.

Scoping was accomplished in two phases. First, workshops were held early in the scoping period to educate the public about the proposed documents and the Savannah River Site in general. These workshops were informal and interactive, with small discussion groups; the workshops gave DOE a good early indication of what types of scoping comments might be received. Second, formal scoping meetings were held close to the end of the scoping period. This overall approach was beneficial because public concerns were similar for all three projects, and public concerns and suggestions were brought to the forefront early. Thereby, DOE was better able to address concerns and incorporate suggestions. Several positive letters from public groups recognized DOE's attempts to communicate and incorporate suggestions.

Data Collection: One respondent stated it was advantageous to decentralize the data collection process by forming teams responsible for specific parts of documents. Another respondent noted that early planning meetings conducted by Project Teams helped to identify data/analysis needs. Indian tribe data and resource experts were also effectively used.

Impact Analysis: One commenter reported a positive experience using local Indian tribes and resource experts to help assess impacts. Another respondent reported that impact analysis was confusing because it involved a large number of alternatives and addressed many different materials.

THE DOCUMENT PREPARATION PROCESS

Respondents noted the following as measures that facilitate effective DOE teamwork:

- frequent and effective communication with all team members;
- dedicated teams and specific points of contact;
- document managers empowered to make key decisions; and
- committed senior DOE managers.

Factors that hamper DOE teamwork include:

- lack of communication; and
- multi-agency/party review.

With regard to teamwork between DOE and its support contractors, commonly-noted facilitating measures included concurrent review of documents by DOE and contractors, extensive use of electronic mail, and conference calls.

With regard to successful aspects of public involvement, one respondent stated that getting the public involved early in the planning stages increased the public's knowledge of the proposed action and made the involvement successful. Another encouraged holding public meetings in an informal format (without barriers like tables or podiums), using videos to introduce the project, and using non-traditional locations to "bring DOE to the public." Regarding unsuccessful aspects of public involvement, one commenter stated that rigidly formal public scoping meetings do not work well.

Thirteen of the 25 respondents stated that the public responded favorably to the NEPA process, and one stated that the public was discouraged by the NEPA process in general. (Some of these respondents stated that the public was initially hostile but became more supportive after learning more about the proposed plans.)

Eight of the 25 respondents indicated a need for further guidance relating to the preparation of environmental assessments or environmental impact statements. One respondent stated that there is a need for NEPA regulations to be more specific regarding incineration projects. Another respondent suggested that NEPA considerations should be implemented at the very beginning of the grant cycle/conceptual stage.

With regard to the availability of resources, 7 respondents indicated this was a problem, while 10 respondents said resource availability was not a problem. The most often noted deficiency was in qualified personnel to work on the documents.

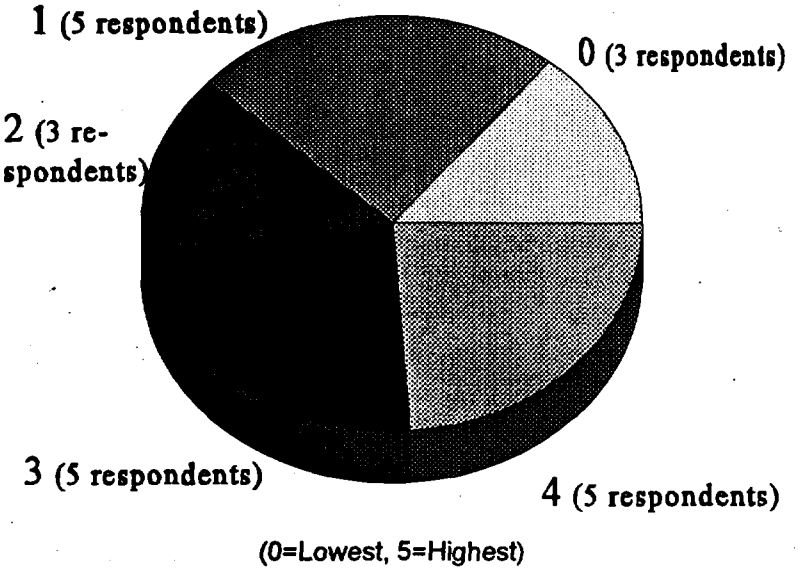
EFFECTIVENESS OF THE NEPA PROCESS

When asked how the NEPA process was used in agency planning and decision making, 8 questionnaire respondents stated that the process was not useful or was only minimally useful. These respondents stated that the NEPA process was not effective, only used because it was required, or not used at all. However, 13 others stated that the process was useful for a variety of reasons including:

- it instigated thorough examination of alternatives, sometimes resulting in lower costs;
- it constituted the entire agency planning and decision making process; and
- it kept the public well informed.

One respondent wrote that the NEPA process was "very useful in identifying the proposed route and that an existing Right-of-Way for a water pipeline was currently under trespass on Bureau of Land Management administered lands." The respondent further stated, by utilizing the NEPA process and looking at realistic alternatives, DOE was able to rule out various options and alternatives and justify on the basis of environmental impacts...the preferred route; additionally, this was the most cost effective route."

Effectiveness of the NEPA Process



(0=Lowest, 5=Highest)

The pie chart above illustrates how respondents rate the effectiveness of the NEPA process with respect to influence on decision making on a scale of 0 to 5 ("5" using NEPA as an important planning tool, and "0" viewing the NEPA process as "another permit" for a decision already made).

OTHER LESSONS LEARNED

Some respondents offered miscellaneous comments regarding lessons learned, as described below.

One respondent reported, "this environmental assessment was an excellent example of teamwork at its best." The respondent further stated, "this environmental assessment was developed in record time, and proved to be a valuable decision making tool."

Another respondent noted several lessons learned pertaining to document quality and public participation. Regarding document quality the respondent stated, "The Operations Office should perform some level of quality control before transmitting drafts to the headquarters review team. This will allow more efficient focus of the review on substantive rather than editorial comments." Additionally, "When the review team is not dedicated solely to one review, care should be taken to balance the need for quick turnaround with the need for realistic time to read, consider and develop the comments. The reviewers cannot do justice to the draft in too brief a time."

Regarding public participation and the scope of public concern at the Defense Waste Processing Facility (Savannah River Site, SC), the same respondent noted, "The public is not just concerned with latent cancer fatalities, which is normally the only radiation effect we discuss. They suspect that nonlethal cancers and birth defects are more prevalent."

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the second quarter of FY 95 should be submitted as soon as possible after document completion, but no later than May 1, 1995. (Fax: 202-586-7031)

FEATURE STORY

The F-Canyon Plutonium Solutions Environmental Impact Statement Savannah River Site*

In July of 1994, after issuing the Notice of Intent (3/94) to prepare an Environmental Impact Statement (EIS) on Interim Management of Nuclear Materials at the Savannah River Site, the Department of Energy determined that potentially significant safety concerns existed associated with approximately 85,000 gallons of solutions containing plutonium-239 and uranium-238 at the F-Canyon chemical separations facility at the Savannah River Site. Accordingly, the Department decided to prepare, on an urgent schedule, a separate EIS for the proposed stabilization of these solutions, which had been stored much longer than intended under the design and routine operation of the canyon. The proposed action was to process F-Canyon plutonium solutions into forms that could be stored with less risk to the public and worker health and safety and to the environment. Alternatives evaluated included: no action, processing to plutonium metal, processing to plutonium oxide, and vitrification.

The F-Canyon Plutonium Solutions EIS was successfully completed in 5 months (from EIS determination (7/29/94) to issuance of the final EIS (12/30/94) and Record of Decision (2/1/95)) at a cost of approximately $560,000. The preparation process was streamlined by relying heavily on existing data and analyses for impact estimates. Additionally, the Savannah River team, composed of federal and contractor employees, completed their review requirements by organizing a single integrated, five-day review session, with headquarters staff from affected organizations. During this five-day session effective use of administrative support to make revisions and reprints of documents overnight allowed the next day's work to proceed quickly and efficiently.

The EIS itself incorporated a number of effective approaches that implement "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements" (May 1993). Alternatives were compared to "Other Decision Factors" considered to be relevant or of interest, such as the implementation schedule, new facilities required, and the sensitivity of the resulting material form with respect to the Department's policy on nonproliferation of nuclear weapons. The Affected Environment chapter confined the discussion to those resources where impacts might be expected to occur and eliminated detailed discussion of those resource areas where impacts would not occur. The Environmental Impacts chapter paralleled that discussion. These techniques helped sharply define the issues and provide a clear basis for choice among alternatives.

Two additional lessons were learned during the preparation of the EIS. The first is that the early involvement of budget and finance staff is essential. Budgets drive schedules and it is difficult to generate accurate environmental data, particularly cumulative impact information for reasonably foreseeable actions, without planning information from budget and finance personnel. Also, information needed as a basis for estimating impacts should be verified before being used and publishing the results. Good data are necessary for impact analysis, and different numbers published in different contexts confuse the public and decision makers, and result in a need to explain the differences and possibly reevaluate impacts.

* Based on information provided by Drew Grainger, R.T. Brock, and Karl Waltzer, Savannah River Site, and the Office of NEPA Policy and Assistance.

Environmental Impact Statements Completed Between September 1 and December 31, 1994.

Environmental Impact Statement (Document Number)	Project Location	Program	EPA Rating
Final Supplemental EIS for the Defense Waste Processing Facility at the Savannah River Site (DOE/EIS-0082-S)	Aiken, South Carolina	Environmental Management	EC-2
Final EIS for the Flatiron-Erie Electrical Transmission Line (DOE/EIS-0159)	Boulder, Colorado	Western Area Power Administration	EC-2
Final EIS for the F-Canyon Plutonium Solutions at the Savannah River Site (DOE/EIS-0219)	Aiken, South Carolina	Defense Programs/ Environmental Management	EC-2

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 Impact Statement

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

Environmental Assessments Completed Between September 1 and December 31, 1994

Environmental Assessment (Document Number)	Project Location	Program
Proposal to Market Provo River Project Power to Salt Lake City (DOE/EA-0999)	Salt Lake City, Utah	Western Area Power Administration
Commercialization of the Mound Plant (DOE/EA-1001)	Miamisburg, Ohio	Environmental Management
Sludge Stabilization at the Plutonium Finishing Plant, Hanford Site (DOE/EA-0978)	Richland, Washington	Environmental Management
Offsite Commercial Cleaning of Controlled and Routine Laundry from the Savannah River Site (DOE/EA-0990)	Aiken, South Carolina	Defense Programs
Design and Construction of a Cancer Research Center, Indiana University (DOE/EA-0965)	Indianapolis, Indiana	Energy Research
Burlington Bottoms Wildlife Mitigation Project (DOE/EA-0928)	Oregon	Bonneville Power Administration
The Louisiana State University Waste-To-Energy Incinerator (DOE/EA-0952)	Baton Rouge, Louisiana	Energy Efficiency and Renewable Energy
Separate Process Wastewaters, Part A Contaminated Flow Collection and Treatment System, Kansas City Plant (DOE/EA-0859)	Kansas City, Missouri	Defense Programs
Tokamak Physics Experiment at the Princeton Plasma Physics Laboratory (DOE/EA-0889)	Princeton, New Jersey	Energy Research
Blue Creek Winter Range Project (DOE/EA-0939)	Stevens County, Washington	Bonneville Power Administration
Hot Springs-Garrison Fiber Optics Project (DOE/EA-1002)	Montana	Bonneville Power Administration
Proposed Relocation and Resumption of the DOE Radon Research Program at Area 300, Hanford Site (DOE/EA-0921)	Richland, Washington	Energy Research
Project Sapphire	Oak Ridge, Tennessee	Fissile Materials Disposition
Future Management of Hazardous Wastes Generated at Brookhaven National Laboratory (DOE/EA-0808)	Upton, New York	Environmental Management
Joint Environmental Assessment for the Construction and Routine Operation of a 12 kV Overhead Powerline Right-of-Way, and Formal Authorization for a 10-Inch and 8-Inch Fresh Water Pipeline Right-of-Way, Naval Petroleum Reserve No.1 (DOE/EA-0962)	Kern County, California	Fossil Energy

LESSONS LEARNED QUARTERLY REPORT 2ND QUARTER FY 1995

Office of NEPA Policy and Assistance
U.S. Department of Energy

June 1, 1995

INTRODUCTION

To foster continuing improvement of the Department's National Environmental Policy Act (NEPA) compliance program, the Secretarial Policy Statement on NEPA, issued June 13, 1994, requires the Office of Environment, Safety and Health to solicit comments from the NEPA Document Manager, the NEPA Compliance Officer, and team members after completing each environmental impact statement and environmental assessment on lessons learned in the process, and to distribute a quarterly summary to all NEPA Compliance Officers and NEPA Document Managers.

This quarterly report summarizes the lessons learned for documents completed between

January 1 and March 31, 1995. It is based primarily on responses to the revised questionnaire that was provided for use during January 1995, and includes information on direct and indirect NEPA process costs and on total project costs. The report also includes a feature story that compares the techniques used to analyze environmental justice in the preparation of three environmental impact statements (EISs): the Savannah River Waste Management Draft EIS, the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS, and the Draft EIS on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel.

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

The next quarterly report will cover environmental impact statements and environmental assessments completed during the third quarter of fiscal year 1995 (April 1 through June 30, 1995). Please report on environmental impact statements and environmental assessments as they are completed. Questionnaires for all such documents completed between April 1 and June 30, 1995 are due by August 1, 1995. Completed questionnaires should be mailed or faxed (202-586-7031) directly to the Office of NEPA Policy and Assistance. Please be sure to use the revised questionnaire issued during January 1995. The next quarterly report will be issued on

September 1, 1995.

REPORT CONTENTS

ABOUT THIS LESSONS LEARNED QUARTERLY REPORT

According to Office of NEPA Policy and Assistance records, the Department of Energy (DOE) completed 21 environmental assessments and adopted one environmental impact statement during the second quarter of fiscal year 1995 (from January 1 to March 31, 1995). For the purposes of this report, the approval or adoption of a final environmental impact statement or the NEPA decision for an environmental assessment represents document completion.

As of May 30, the Office received 21 questionnaires covering

13 of the 21 environmental assessments as well as the one environmental impact statement. Questionnaire respondents included: four NEPA Compliance Officers, three NEPA Document Managers, one Project Manager, one NEPA Contact, and 12 others (i.e. contractors, NEPA specialists, Office of NEPA Policy and Assistance staff).

NEPA DOCUMENT PREPARATION TIMES

Based on Office of NEPA Policy and Assistance records, the median time for the completion of 21 environmental assessments (from the NEPA determination to the Finding of No Significant Impact) was 24 months; the completion times ranged from about one month to about 57 months (see Figure 1 on page 4). For the previous two reporting periods (July 1 to September 30, 1994 and October 1 to December 30, 1994) and for this reporting period, cumulatively, the median time to prepare an environmental assessment was 16 months.

Questionnaire respondents indicated that of the eight environmental assessments for which scheduling information was reported for this quarter, three environmental assessments were completed on schedule and five were not. Also, for six environmental assessments and the environmental impact statement, respondents stated that the NEPA process was initiated early enough to avoid being on the critical path. For three environmental assessments, questionnaire respondents disagreed as to whether the NEPA process had begun early enough, some (for each project) reporting that the process had begun in time and some that it had not.

Circumstances that were mentioned as hindering timely NEPA document completion were:

- changes in the project proponent's proposal;
- lack of documentation coordination for all reviewing organizations;
- initial document preparation organization being replaced midstream; and
- logistics of getting all team members together for team meetings.

Respondents identified the following as measures that facilitated timely completion of their NEPA documents:

- effective coordination between Site Office and NEPA Office;
- cooperation between NEPA Compliance Officer at Headquarters, field, and Office of NEPA

Policy and Assistance;
- working closely with project sponsor and project management staff;
- environmental assessment team concept - team members committed to project by going the extra mile to complete the project on time; and
- delegation of environmental assessment approval authority.

Respondents suggested the following as especially effective procedures to keep the document schedule:

- contractor prepared to make changes to the draft as comments were given by use of laptop computers - good technical editor who can work with contractor to incorporate written comments by the next day; and
- cooperation, absence of rigorous formality; field was liaison with proponent and lead federal agency.

NEPA COST DATA

Document Managers, Project Managers, and one contractor reported NEPA process cost data for 12 of the 21 environmental assessments (see Figure 2 on page 4). NEPA process cost data were not reported for the adopted environmental impact statement. Of the four projects for which NEPA budget data were reported, two environmental assessments were completed within budget. For the purposes of this report, NEPA process costs are defined as the costs that would not have been incurred except for the NEPA process. Direct costs are defined as the total dollars expended for NEPA support contractors. Indirect costs are defined as any other costs incurred (e.g., travel), and include total program office and field office Federal staff resources (FTE-years).

Of the 12 environmental assessments for which direct cost data were reported, the median direct cost was $225,000 and the average direct cost was $282,290, with a range of $8,980 to $892,800. Because the reported costs for at least two environmental assessments appeared high compared with other Department environmental assessment preparation costs, we explored the basis for the reported costs further. Based on the best information available to the NEPA Document Manager for two environmental assessments (Maybell and Naturita), reported figures include significant project costs that are unrelated to NEPA; the true costs to prepare the environmental assessments were approximately $300,000 and $400,000 less than reported. Taking account of these best estimates, the median and average direct costs of the 12 environmental assessments were $210,700 and $224,000.

Total project costs were reported for three environmental assessments. Of these, the NEPA process costs reported represented .01%, .4%, and .14% of the total project costs. Using the direct cost data gathered for both this and the first two reporting periods (July 1 to September 30, 1994 and October 1 to December 31, 1994), the median direct cost for preparation of 23 environmental assessments was $92,000 (and remains $92,000 taking into account the cost discrepancy indicated above). However, it should be noted that direct cost data were provided for only 48% of the environmental assessments completed during this nine month period.

Respondents were unable to provide NEPA process cost data for several NEPA documents. One respondent suggested that all NEPA costs, including direct contractor costs and indirect costs for DOE staff time (Headquarters, program office, field counsel, general counsel) should be tracked as the environmental assessment process progresses, resulting in an accurate accounting for the project. This would allow future budgets to actually represent realistic costs.

NEPA DOCUMENT CONTENT

In response to our request that respondents describe specific problems and/or innovative approaches used regarding 1) determining reasonable alternatives, 2) data collection, and 3) impact analysis, a wide variety of helpful information was provided, as discussed below.

Determining Reasonable Alternatives: One respondent experienced excessive delays in the NEPA process because the project was not evaluated completely in the early stages of development. The respondent suggested that thorough planning early in the process would significantly aid in preventing midstream modifications.

Data Collection and Impact Analysis: Several respondents from one project indicated that consultation with other agencies such as the Corps of Engineers, the State Historic Preservation Office, and the Soil Conservation Service proved to be helpful in the evaluation process. Using data that were available from these sources saved considerable time and resulted in a more accurate and consistent analysis.

THE DOCUMENT PREPARATION PROCESS

Respondents noted the following as measures that facilitated effective DOE teamwork:

- delegation of environmental assessment approval authority which facilitated quick coordination and reaction time;
- team members who were knowledgeable in the NEPA process and had the right mix of experience;
- technical information provided when requested; and
- exchange of comments via E-Mail.

Factors that hampered DOE teamwork included:

- not properly preparing the Assistant Secretary level for the project which impeded timely forwarding of documents; and
- reviews by DOE field office and DOE headquarters done sequentially and not concurrently resulting in multiple rounds of comments and revisions.

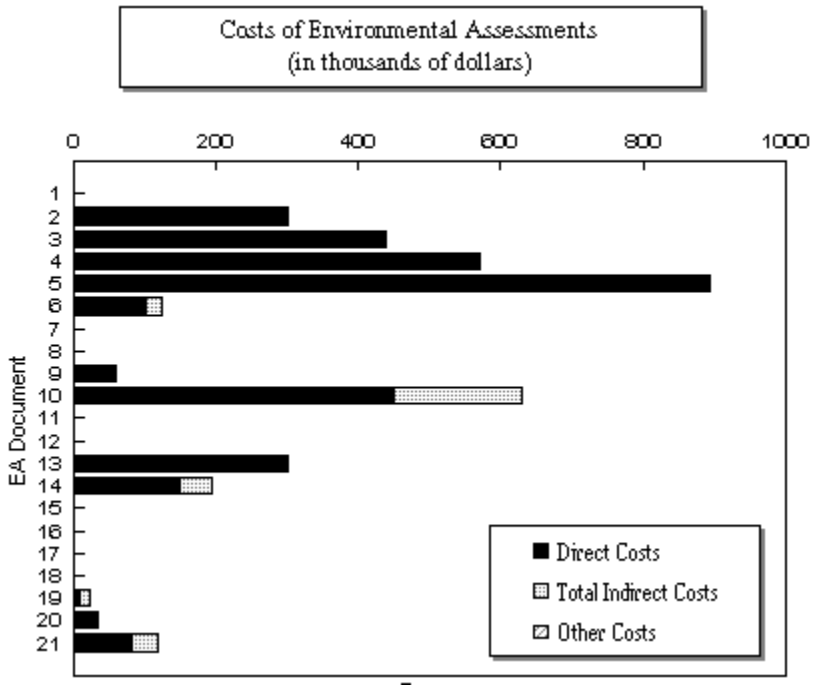
Regarding the facilitation of effective teamwork between DOE and its support contractors, one respondent for the General Purpose Heat Source environmental assessment at Sandia National Laboratory noted that teamwork was effective because the contractor was very knowledgeable about the site and NEPA requirements, extremely cooperative, and responsive to DOE changes.

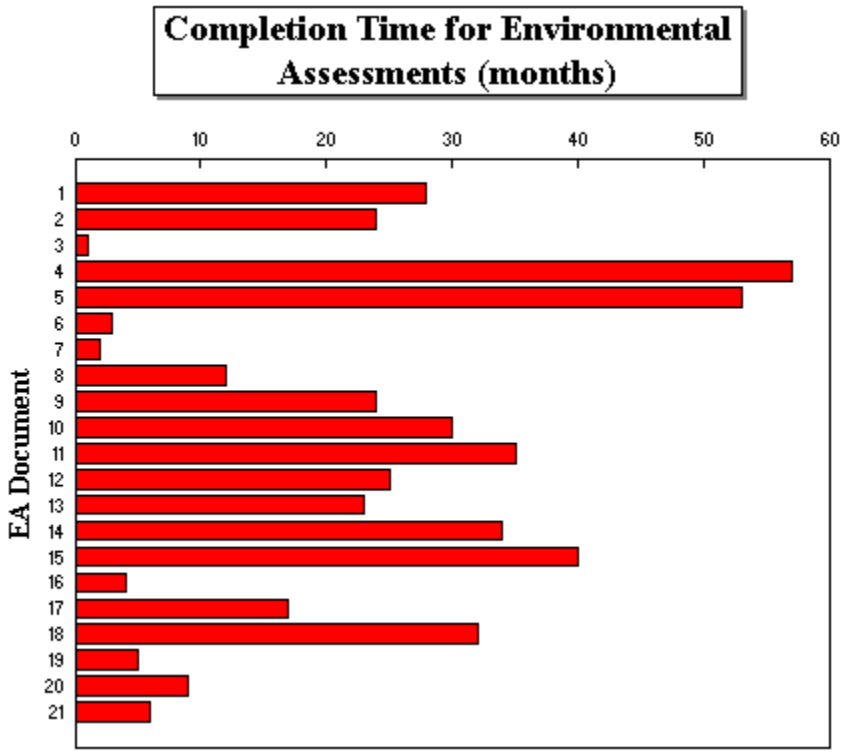
Regarding the successful aspects of the public participation process, one respondent commented, “periodic updating of the public through the site’s ‘Environmental Bulletin’ helped to minimize negative stakeholder comments/response during the predecisional draft EA review and comment process.” Similarly, another respondent noted that monthly DOE bulletins and early presentation to the public helped to minimize adverse public concerns and comments. Regarding unsuccessful aspects of the public participation process, one respondent stated that the public perceived that each federal agency has its own policy and procedures for the NEPA process rather than a federally mandated one. Another respondent mentioned that not enough time was allowed for the public to comment.

Four respondents stated that the public responded favorably to the NEPA process, while four others reported negative public reactions. One respondent reported a strong reaction from a Yakama Indian Nation representative that the impacts of a no-action alternative were not emphasized enough. Additionally, four respondents reported minimal or no public response to the NEPA process.

Regarding the availability of resources, two respondents indicated that this was a problem, while 13 respondents stated that resource availability was not a problem. Deficiencies included time constraints placed on staff, e.g., short turn-around times for reviews scheduled by the lead agency.

COMPLETION TIME AND COST INFORMATION FOR ENVIRONMENTAL ASSESSMENTS





Albuquerque Operations Office

1 = Relocation of Weapons Component Testing Facility, LANL, Los Alamos, New Mexico
2 = Actinide Source Term Test Program, LANL, Los Alamos, New Mexico
3 = Remedial Action at the Slick Rock Uranium Mill Tailings Sites, Slick Rock, Colorado
4 = Remedial Action, Uranium Mill Tailings Project, Maybell, Colorado*
5 = Remedial Action, Uranium Processing Site, Naturita, Colorado*
6 = Impact Tests of Simulated Heat Source at 10,000 Feet Rocket Track, SNL, Albuquerque, New Mexico

Bonneville Power Administration

7 = Supplemental Snake River Sockeye Salmon Sawtooth Valley Conservation and Rebuilding Project, Idaho
8 = Hellsgate Big Game Winter Range Project, Okanogan and Ferry Counties, Washington

Chicago Operations Office

9 = Radioactive Waste Handling Building at Fermi National Accelerator Laboratory, Batavia, Illinois

Idaho Operations Office

10 = Construction and Operation of a Waste Characterization Facility (WCF), INEL, Idaho Falls, Idaho

Nevada Operations Office

11 = Construction and Operation of North Las Vegas Facility (Nevada Support Facility), Las Vegas, Nevada
12 = Sewage Lagoon System, Area 5, Nevada Test Site, Mercury, Nevada

Oak Ridge Operations Office

13 = Construction and Operation of Retrievable TRU Mixed Waste Storage Facility, ORNL, Oak Ridge, Tennessee
14 = Construction and Operation of a Solid Waste Landfill at Paducah Gaseous Diffusion Plant, Paducah, Kentucky

Oakland Operations Office

15 = Tritium Filling Station (TFS) at the Laboratory for Laser Energetics, University of Rochester, Rochester,
New York

Richland Operations Office

16 = Characterization of Stored Defense Production Spent Nuclear Fuel and Associated Materials, Hanford Site, Richland, Washington
17 = Tank 241-C-106 Sluicing, Hanford Site, Richland, Washington
18 = Radioactive Liquid Waste Line Replacement for the 222-S Laboratory Site, Hanford, Richland, Washington

Savannah River Operations Office

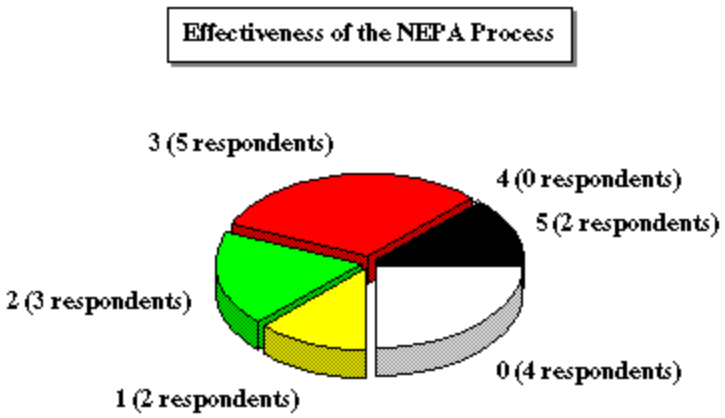
19 = DOE Permission for Offloading Activities to Support the Movement of a Radiologically Contaminated Barge Across Savannah River Site, SRS, Aiken, South Carolina
20 = Upgrade of the Site Road Infrastructure at the Savannah River Site, Aiken, South Carolina

Strategic Petroleum Reserve Project Office

21 = Leasing of the St. James Terminal, St. James Parish, Louisiana

* The NEPA Document Manager reports that a significant fraction of these reported costs were project costs unrelated to NEPA (i.e., the project would have incurred these costs even if no environmental assessment was being prepared). Although accounting systems reportedly do not allow these non-NEPA costs to be broken out, best available estimates are that the actual costs of preparing these environmental assessments were $300,000 and $400,000 less than the reported figures for the Maybell and Naturita environmental assessments, respectively.

EFFECTIVENESS OF THE NEPA PROCESS



(0 = Not Effective; 5 = Highly Effective)

When asked how the NEPA process was used in agency planning and decision making, 10 respondents stated that the process was useful for the following reasons:

- it helped to minimize potential impacts to floodplains and wetlands by identifying needed modifications to the project scope;
- it verified that there would be no significant impact from safety tests to be performed on essential space mission hardware;
- it identified and addressed potential safety issues; and
- it assisted the agency in deciding on the appropriate action to take.

Six questionnaire respondents stated that the process was not useful or was only minimally useful. One of these respondents stated that the NEPA process was not perceived to have any direct relationship with planning and decision making.

The figure to the right illustrates how respondents rated the effectiveness of the NEPA process with respect to influence on decision making on a scale of 0 to 5 (“5" using NEPA as an important planning tool, and “0" viewing the NEPA process as “another permit” for a decision already made).

OTHER LESSONS LEARNED

Some respondents offered miscellaneous comments regarding lessons learned in the process of completing NEPA documentation. One respondent identified a lesson learned as the “need to make sure that the Assistant Secretary is made aware of and is comfortable with signing off on a document before the document is ready for signature.”

Regarding NEPA process budget/cost issues, a respondent noted: “The technical support services costs for this NEPA process are estimated on a level-of-effort prorated basis for a task that included related work (such as market analysis and preparing business strategy, proposed action and solicitation specifications and language) to plan leasing Strategic Petroleum Reserves’ pipelines and terminal to industry. Cost reporting for future NEPA processes would be facilitated by structuring each NEPA review as a separate task.”

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the third quarter of FY 95 (April 1 to June 30, 1995), should be submitted as soon as possible after document

completion, but no later than August 1, 1995.
(Fax: 202-586-7031)

PROCEDURES FOR EIS DISTRIBUTION AND *FEDERAL REGISTER* DOCUMENTS

Two procedures that are essential to the environmental impact statement process are the distribution of the draft and final environmental impact statement to the public, and publication of Notices in the *Federal Register*, such as Notices of Intent and Records of Decision. These procedures can be cumbersome and time consuming. Accordingly, the Office of NEPA Policy and Assistance is developing ways to make these procedures more efficient, and will issue guidance on these topics shortly that would update information provided in Volume 1 of the NEPA Compliance Guide. The following outline may assist those seeking to complete these processes in the interim.

Distribution of Environmental Impact Statements

An environmental impact statement must be distributed to both public officials and the general public before the document may be filed with Environmental Protection Agency (EPA) Headquarters. Please refer to the Directory of Potential Stakeholders for Department of Energy Action Under NEPA (updated periodically by the Office of NEPA Policy and Assistance (EH-42)) to supplement any local list of interested stakeholders. Further, as a matter of protocol, the distribution team should send packages to key government officials (members of Congress, governors, heads of tribes and Indian tribal associations) first. All letters to such government officials require concurrence by the Assistant Secretary for Congressional and Intergovernmental Affairs and are normally signed by the Assistant Secretary for Environment, Safety and Health (EH-1). For specific information on the signature process, contact the Office of NEPA Policy and Assistance.

Once the distribution has been completed, (i.e., copies of the environmental impact statement have been mailed) the Office of NEPA Policy and Assistance will file five copies of the document with EPA Headquarters. The official start of the comment period for a draft environmental impact statement is the date that the EPA Notice of Availability is published in the *Federal Register.* This Notice is published on the Friday of the week following the filing of the environmental impact statement with EPA Headquarters (e.g., the Notice for a document filed on Monday, May 22, 1995, would be published on Friday, June 2, 1995). Any DOE Notice of Availability should be published on the same day as the EPA Notice, if possible, although this is not a requirement.

Program staff should plan the distribution with their counterparts from the Office of NEPA Policy and Assistance. The program office is responsible for writing and producing the transmittal letters and packaging the documents. Office of NEPA Policy and Assistance staff are available to facilitate this process by (1) reviewing a draft of all transmittal letters to be signed by DOE Headquarters, and reviewing their associated mailing lists, (2) obtaining EH-1 and EH-42 signatures on appropriate letters, and (3) filing the document with EPA.

Publishing Department of Energy Information in the Federal Register

Most Notices begin with a series of headings that identify the issuing agency and the subject matter of the document. These headings include: Billing code, Agency, Action (Title), Summary, Dates, Addresses, For Further Information Contact, and Supplementary Information. Format and content requirements differ with respect to the specific category for publication (e.g., Rules and regulations, Proposed rules, Notices, etc.). *Federal Register* Notice requirements are detailed in the Document Drafting Handbook issued by the Office of the *Federal Register* (1991).

DOE's NEPA process requires several *Federal Register* Notices, including a Notice of Intent to Prepare an EIS (signed by the Assistant Secretary for Environment, Safety and Health) and a Record of Decision (normally signed by a Program Secretarial Officer). The document must receive concurrence from the Assistant General Counsel for Regulatory Law. The document must then be submitted to Ms. Rita Rosen of the Office of Rulemaking Support, who will then submit the publication to the *Federal Register* office. Please be advised that in order to ensure timely publication, due to processing time requirements, Ms. Rosen should receive the document no later than seven working days before its expected publication in the *Federal Register*. The Office of Rulemaking Support advises that only in the event of a true emergency can a document be published in less than seven working days. In the event of an emergency please contact both the Office of NEPA Policy and Assistance and the Office of Rulemaking Support for assistance.

Any further questions regarding the preparation of a document for publication in the *Federal Register* may be directed to

Ms. Rosen at (202) 586-3277. Additionally, Ms. Rosen has prepared drafting guidance entitled "Guidelines for Processing *Federal Register* Documents," copies of which may be obtained by calling the above number.

UPDATE ON THE DOE NEPA WEB

In October 1994, the Department of Energy made its corporate NEPA information available via the World Wide Web on the Internet. The DOE NEPA Web contains reference and project-related information that can be retrieved by DOE NEPA practitioners. In addition to DOE NEPA information, the DOE Web (Home Page) provides a link to the Council on Environmental Quality Web, which includes a database containing regulations and guidance. Increased utilization of these resources will result in NEPA cost and time savings. A future issue of the Lessons Learned Quarterly Report will provide information on how the DOE NEPA Web may be used in environmental analyses and their dissemination.

The DOE NEPA Web's Uniform Resource Locator (URL) address is http://www.eh.doe.gov/nepa/nepa.htm>

For further information, contact Lee Jessee via the Internet at lee.jessee@hq.doe.gov or at (202) 586-7600. To report lessons learned on the DOE NEPA Web, or other Internet resources, contact either Lee Jessee at the above address or Joanne Geroe at joanne.arenwald@hq.doe.gov or (202) 775-8397.

DATA SOURCES AVAILABLE ON THE DOE NEPA WEB

NEPA Announcements
- Public participation opportunities

Department of Energy NEPA Analyses
- Environmental Impact Statements
- Environmental Assessments
- Full-text retrieval of the Department's baseline environmental, safety and health information

NEPA Tools
- Department of Energy regulations and guidance

- Gateway to Council on Environmental Quality regulations and guidance

- Environmental Law & Related Documents from Indiana University Law Library

NEPA Process Information
- Department of Energy Annual Planning Summaries
- DOE NEPA Planning and Management Chart

ANALYZING ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS

Executive Order (E.O.) 12898 requires federal agencies to identify and address disproportionately high and adverse effects of their programs, policies, and activities on minority and low-income populations. In coordination with an interagency Federal Working Group on Environmental Justice convened by the Environmental Protection Agency (EPA), DOE has developed an environmental justice strategy (April 1995) which provides a framework for integrating environmental justice principles into DOE's operations. This strategy does not currently discuss methods for environmental justice analyses in NEPA documents. The Office of NEPA Policy and Assistance expects to issue such guidance by October 1995.

In the absence of definitive guidance in this area, the Department has used several approaches. We report here on three approaches used in three environmental impact statements (EISs): the Savannah River Site Waste Management (SRS) Draft EIS, the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs (SNF), and the Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (FRR).

Table 1 compares the approaches used in analyzing environmental justice issues in the three EISs. The analysis shows how differences in definitions of certain key parameters used in environmental justice analyses may affect the outcome. Although these approaches differed, each demonstrated that the respective alternative actions did not have the potential to result in disproportionately high and adverse effects on minority and low-income populations. Although we do not recommend a particular approach at this time, please note that in its written comments, the Environmental Protection Agency (EPA) Region IV commended the SRS EIS for its environmental justice analysis. Also, in written comments on the SNF EIS, EPA indicated that, in contrast to programmatic EISs, a proportionately greater level of detail for environmental justice analyses in project or site-specific EISs may be appropriate. Further, in accordance with the “sliding scale” principle discussed in the Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, a more detailed level of quantification may be appropriate if analyses showed a potential for adverse impacts.

The SRS EIS analyzed disproportionate adverse effects on minority and low-income populations in three areas: (1) air emissions, (2) impacts from transportation of wastes off-site, and (3) impacts from consuming fish and game. Low-income and minority communities within an 80 kilometer radius of SRS were identified by **census tract**. The area within the 80 kilometer radius was then divided into 22.5 degree sectors with concentric rings arranged from 16 to 80 kilometers. The 80 kilometer radius was selected because the expected dose levels beyond that distance are very small. Predicted average radiation doses were calculated and totaled for census tracts within each ring. This total was divided by the total community population to obtain a mean per capita dose for areas within each ring. The dose predicted for each census tract was compared to the mean dose. The same procedure was used to analyze potential impacts from transportation of wastes off-site and from consuming fish and game.

The SNF environmental impact statement also used an 80 kilometer radius as the zone of potential

impact. This radius was selected because it was judged to encompass all of the impacts that may occur. The environmental impact statement identified minority and low-income populations using **census tracts**. Human health and environmental impacts were analyzed for the population as a whole within the radius, i.e., the area within the radius was not divided into sectors, as in the SRS EIS. In cases where the census tract lay partially within the area being analyzed, tracts were included in the analysis if 50% of the tract fell within the radius. The doses for relevant census tracts were compared to the dose within the radius.

The FRR environmental justice analysis states that the largest radiological effects would usually be expected to occur within roughly a 16-kilometer radius. Thus, the distribution of minority and low income populations is described for circular areas defined by a 16-kilometer radius, centered at each candidate port of entry. Minority and low-income populations were identified at the **block group** level instead of using census tracts. In cases where the block group lay partially within the area being analyzed, it was assumed that the general population and the minority population were distributed uniformly. Therefore, the analysis included the fraction of the low-income or minority population that corresponded to the fraction of the census block group that fell within the radius. An environmental justice analysis was conducted for communities surrounding transportation routes from potential ports of entry to interim management sites; potential impacts were analyzed for populations within 800 meters of roads and rail routes that might be used. Environmental justice impacts were not quanitified at potential interim storage sites because it was determined that any potential impacts would be to site workers and not to the general population.

The EISs use different definitions and different statistical measures to identify low-income and minority populations. For instance, the SRS and SNF EISs use the **EPA** definition of **“low-income population”** while the FRR EIS uses the **Department of Housing and Urban Development (HUD)** definition. Also, the EISs use different definitions of **“minority population”** (See Table 1). Both the SRS and SNF EISs use **census tracts** as statistical measures to identify minority and low-income populations, while FRR uses **block groups**. As noted, in each case the analysis failed to identify any disproportionately high or adverse effects on minority and low-income populations.

For further information on environmental justice, contact John Pulliam at (202) 586-4597.

Table 1 Definitions and Statistical Measures For Environmental Justice Analyses

	Savannah River Environmental Impact Statement	SNF Environmental Impact Statement	FRR Env Impact
Definition of “Low-Income Population” Used	EPA - A group of people and/or community experiencing common conditions of exposure or impact in which 25% or more of the population is characterized as living in poverty. F.R. 1993, 58 F.R. 231. Poverty is defined by the U.S. Bureau of Census as a classification of persons whose income is less than a “statistical poverty threshold” which is a	EPA - See Savannah River and U.S. Bureau of Census	HUD - An a the median income is the median income for metropolit statistica (urban) or (rural).

	weighted average based on family size and the age of persons in the family. The baseline threshold for the 1990 census was an income of $8,076 for a family of 2 during the previous year.		
Definition of "Minority Population" Used	Communities of people of color who, over the region of analysis, consist of higher than average percentages of people of color. Higher than average percentages are defined as between 35 and 50 percent (or greater) of the total population in the tract.	Census tracts within the zone of impact for which the percent minority population (non-White) exceeds the average of all census tracts within the zone of impact or where the percent minority population exceeds 50% of the spacial area for any given census tract. In the case of migrant or dispersed populations, a minority population consists of a group that is greater than 50% minority.	Individua by the U. the C Negro/Bl American Asian a Islande Indians, and othe persons. popula affected number of residing who are minori
Statistical Measure Used to Identify Minority and Low-Income Communities	Census Tract - Areas defined for the purpose of monitoring census data that are usually comprised of between 2,500 and 8,000 persons, with 4000 persons being ideal.	Census Tract	Block Gr defined fo of monit data tha consists o and 550 h
Findings of Environmental Justice Analysis	No disproportionately high and adverse effects	No disproportionately high and adverse effects	No dispro high and a

Environmental Impact Statement Completed Between January 1 and March 31, 1995

Environmental Impact Statement (Title and Document Number)	Program
Southeast Regional Wastewater Treatment Plant Facilities Improvements Project and Geysers Efficient Pipeline Project, Lake County, California (Adopted by DOE)	Energy Efficiency and Renewa

Environmental Assessments Completed Between January 1 and March 31, 1995

Environmental Assessment (Title and Document Number)	Operations Office	P
Relocation of Weapons Component Testing Facility, LANL, Los Alamos, New Mexico (DOE/EA-0972)	Albuquerque Operations Office	Defense
Remedial Action at the Slick Rock	Albuquerque Operations Office	Environm

Uranium Mill Tailings Sites, Slick Rock, Colorado (DOE/EA-0339)		Manageme
Remedial Action, Uranium Mill Tailings Project, Maybell, Colorado (DOE/EA-0347)	Albuquerque Operations Office	Environm Manageme
Remedial Action, Uranium Processing Site, Naturita, Colorado (DOE/EA-0464)	Albuquerque Operations Office	Environm Manageme
Actinide Source Term Test Program, LANL, Los Alamos, New Mexico (DOE/EA-0977)	Albuquerque Operations Office	Environm Manageme
Impact Tests of Simulated Heat Source at 10,000 Feet Rocket Track, SNL, Albuquerque, New Mexico (DOE/EA-1025)	Albuquerque Operations Office	Nuclear
Supplemental Snake River Sockeye Salmon Sawtooth Valley Conservation and Rebuilding Project, Idaho (DOE/EA-0934)	Bonneville Power Administration	Bonnevil Administ
Hellsgate Big Game Winter Range Project, Okanogan and Ferry Counties, Washington (DOE/EA-0940)	Bonneville Power Administration	Bonnevil Administ
Radioactive Waste Handling Building at Fermi National Accelerator Laboratory, Batavia, Illinois (DOE/EA-1000)	Chicago Operations Office	Environm Manageme
Environmental Assessment (Title and Document Number)	Operations Office	P
Construction and Operation of a Waste Characterization Facility (WCF), INEL, Idaho Falls, ID (DOE/EA-0906)	Idaho Operations Office	Environm Manageme
Construction and Operation of North Las Vegas Facility (Nevada Support Facility), Las Vegas, Nevada (DOE/EA-0955)	Nevada Operations Office	Defense
Sewage Lagoon System, Area 5, Nevada Test Site, Mercury, Nevada (DOE/EA-1026)	Nevada Operations Office	Environm Manageme
Construction and Operation of Retrievable TRU Mixed Waste Storage Facility, ORNL, Oak Ridge, Tennessee (DOE/EA-0349)	Oak Ridge Operations Office	Environm Manageme
Construction and Operation of a Solid Waste Landfill at Paducah Gaseous Diffusion Plant, Paducah, Kentucky (DOE/EA-1046)	Oak Ridge Operations Office	Environm Manageme
Tritium Filling Station (TFS) at the Laboratory for Laser Energetics, University of Rochester, Rochester, New York (DOE/EA-0731)	Oakland Operations Office	Defense
Characterization of Stored Defense Production Spent Nuclear Fuel and Associated Materials, Hanford Site, Richland, Washington (DOE/EA-1030)	Richland Operations Office	Defense
Tank 241-C-106 Sluicing, Hanford Site, Richland, Washington (DOE/EA-0933)	Richland Operations Office	Environm Manageme

Radioactive Liquid Waste Line Replacement for the 222-S Laboratory Site, Hanford, Richland, Washington (DOE/EA-0944)	Richland Operations Office	Environm Manageme
DOE Permission for Off-Loading Activities to Support the Movement of a Radiologically Across Savannah River Site, SRS, Aiken, South Carolina (DOE/EA-1009)	Savannah River Operations Office	Environm Manageme
Upgrade of the Site Road Infrastructure at the Savannah River Site, Aiken, South Carolina (DOE/EA-1032)	Savannah River Operations Office	Environm Manageme
Leasing of the St. James Terminal, St. James Parish, Louisiana (DOE/EA-1003)	Strategic Petroleum Reserve Project Office	Fossil E

National Environmental Policy Act

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LESSONS LEARNED QUARTERLY REPORT

3RD QUARTER FY 1995

Office of NEPA Policy and Assistance
U.S. Department of Energy

September 1, 1995

INTRODUCTION

To foster continuing improvement of the Department's National Environmental Policy Act (NEPA) compliance program, the Secretarial Policy Statement on NEPA, issued June 13, 1994, requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents from the NEPA Document Manager, the NEPA Compliance Officer, and team members after completing each environmental impact statement (EIS) and environmental assessment (EA), and to distribute a quarterly summary to all NEPA Compliance Officers and NEPA Document Managers.

This quarterly report summarizes the lessons learned for documents completed between April 1 and June 30, 1995. It is based primarily on responses to the revised questionnaire that was provided for use during January 1995, and includes information on direct and indirect NEPA process costs and on total project costs. The report includes a Question and Answer section as well as guidance on selected topics.

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

The next quarterly report will cover EISs and EAs completed during the fourth quarter of fiscal year 1995 (July 1 through September 30, 1995). Please report on EISs and EAs as they are completed. Questionnaires for all such documents completed between July 1 and September 30, 1995 are due by November 1, 1995. Completed questionnaires should be mailed or faxed (202-586-7031) directly to the Office of NEPA Policy and Assistance. Please be sure to use the revised questionnaire issued during January 1995. The next quarterly report will be issued on December 1, 1995.

REPORT CONTENTS

ABOUT THIS LESSONS LEARNED QUARTERLY REPORT

According to Office of NEPA Policy and Assistance records, the Department of Energy (DOE) completed 29 EAs and four EISs during the third quarter of fiscal year 1995 (from April 1 to June 30, 1995). For the purposes of this report, the approval or adoption of a final EIS or the NEPA decision for an EA represents document completion.

As of August 15, 1995, the Office received 49 questionnaires covering 28 of the 29 EAs and all of the EISs. Questionnaire respondents included: 21 NEPA Compliance Officers, 14 Document Managers, and 14 others (e.g., contractors, legal counsel, Office of NEPA Policy and Assistance staff).

NEPA DOCUMENT PREPARATION TIMES

Based on information provided to the Office of NEPA Policy and Assistance, the median time for the completion of 29 EAs (from the NEPA determination to the Finding of No Significant Impact) was 17 months; the completion times ranged from about 2 months to about 41 months (see Figure 3 on page 5). For the previous three reporting periods (July 1 to September 30, 1994; October 1 to December 30, 1994; and January 1, 1995 to March 31, 1995) and for this reporting period, cumulatively, the median time to prepare 79 EAs was 17 months.

The median time for completion of four environmental impact statements was 41 months; the completion times ranged from about 30 months to about 77 months (See Figure 1 on page 4). For the previous three reporting periods (July 1 to September 30, 1994; October 1 to December 31, 1994; and January 1 to March 31, 1995) and for this reporting period, cumulatively, the median time to prepare 11 EISs was 32 months.

Note: The number of EAs completed each quarter and, especially of EISs, is too small to attempt to discern a trend from the above data. Moreover, many of the EAs and most of the EISs completed during the last 12 months were initiated before process improvements directed by the Secretarial NEPA Policy of June 1994 took full effect. Therefore, the data presented above do not measure results under the improved practices. The Office of NEPA Policy and Assistance is separately examining DOE's experience with NEPA documents that were begun after June 1994.

Questionnaire respondents indicated that of the 21 EAs for which a time schedule was established for this quarter, 12 EAs were completed on schedule and 9 were not. Of the two EISs for which scheduling information was reported, one was completed on schedule and one was not. Also, for 23 EAs and 2 EISs, respondents stated that the NEPA process was initiated early enough to avoid being on the critical path. Questionnaire respondents for one EA disagreed as to whether the NEPA process had begun early enough, one respondent reporting that the process had begun in time and one that it had not.

Circumstances that were mentioned as hindering timely NEPA document completion were:

- the draft coincided with the passing of the Energy Policy Act of 1992, which directly affected analysis, requiring a rewrite;
- a significant level of Congressional interest in the project;
- late management involvement and input in the draft EA;
- change of purpose and need;
- high political visibility;
- numerous review cycles and general informality of the review;
- the project was not a management priority;
- the project design was a moving target;
- difficulty getting required information from the State; and
- distant contractor - a lot of effort made by telephone and fax.

Respondents identified the following as measures that facilitated timely completion of their NEPA documents:

- early involvement of Office of NEPA Policy and Assistance, Program Office, State, and other interested parties;
- schedule driven by a court order;
- aggressive NEPA Document Manager;
- commitment from the Senior Manager;
- a cooperating agency with a lot at stake;
- well planned public involvement so that the public knew about the proposal before the EA went out for comment;
- having and following a project management plan and including the EA as part of the project to be managed;
- management interest in the completion of the document;
- preparation of detailed schedule, adherence to and frequent review of schedule;
- prompt issue identification and resolution;
- close coordination with the Office of NEPA Policy and Assistance, General Counsel and others; and
- Document Manager given direct control.

Respondents suggested the following as especially effective procedures to keep the document schedule:

- the "Executive Committee" concept resulted in excellent coordination (teamwork) among Field, Program, and Office of NEPA Policy and Assistance;
- early review of EA drafts by stakeholders;
- setting realistic goals for deliverables and providing on-going "unofficial" working drafts to analysts, preparers

and customers; and

- conducting short "plan of the day" meetings and a NEPA Document Manager providing natural leadership.

NEPA COST DATA

NEPA Compliance Officers and Document Managers reported NEPA process cost data for 25 of the 29 EAs (see Figure 4 on page 5) and 3 of the 4 EISs (See Figure 2 on page 4). Of the 10 projects for which NEPA budget data were reported, 3 EAs were completed within budget. For the purposes of this report, NEPA process costs are defined as the costs that would not have been incurred except for the NEPA process. Direct costs are defined as the total dollars expended for NEPA support contractors. Indirect costs are defined as any other costs incurred (e.g., travel), and include total program office and field office Federal staff resources (FTE-years). Printing costs were the only charge to the Government for one EIS prepared to determine the issuance of a Presidential permit.

Of the 23 EAs for which direct cost data were reported, the median direct cost was $65,000, with a range of $3,600 to $450,000. Using the direct cost data gathered for both this period and the first three reporting periods (July 1 to September 30, 1994; October 1 to December 31, 1994; and January 1 to March 31, 1995), the median direct cost for preparation of 47 EAs was $78,500 (average cost of $146,000).

Of the three EISs for which direct cost data were reported, the median direct cost was $1,200,000, with a range of $675,000 to $40,900,000. Using the direct cost data gathered for both this period and the first three reporting periods (July 1 to September 30, 1994; October 1 to December 31, 1994; and January 1 to March 31, 1995), the median direct cost for the preparation of 10 EISs was $640,000 (average cost of $4.7 million).

It should be noted that direct cost data were provided for 58% of the EAs and 83% of the EISs completed during this one year period. The wide disparity between median and average costs typically reflects a few documents that have exceptionally high costs.

Total project costs were reported for eight EAs and none of the EISs. Of the EAs, the NEPA process costs reported represented an average of 2.7% of the total project costs, with a range of .1% to 11.5%.

Completion Time And Cost Information For EISs

FIGURE 1

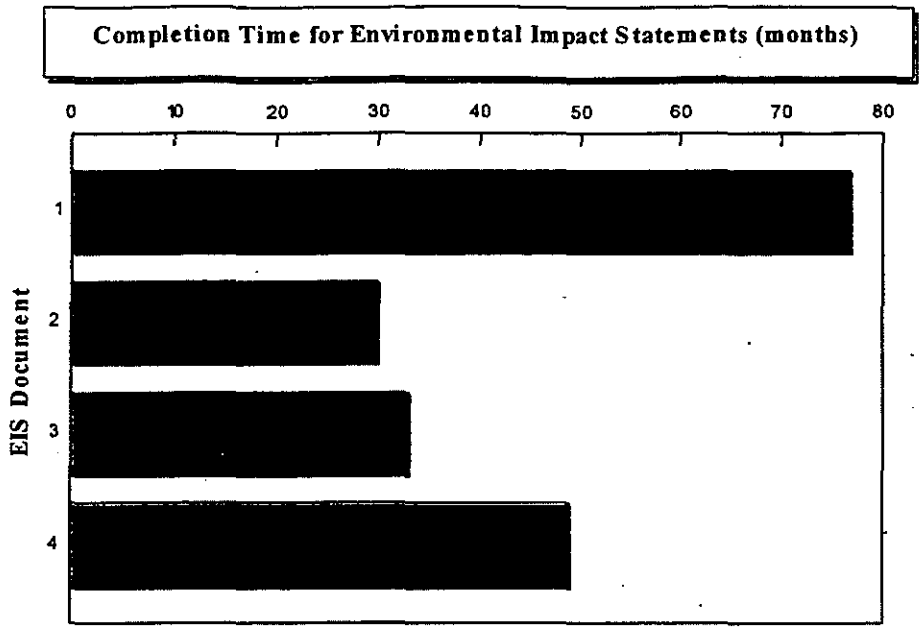
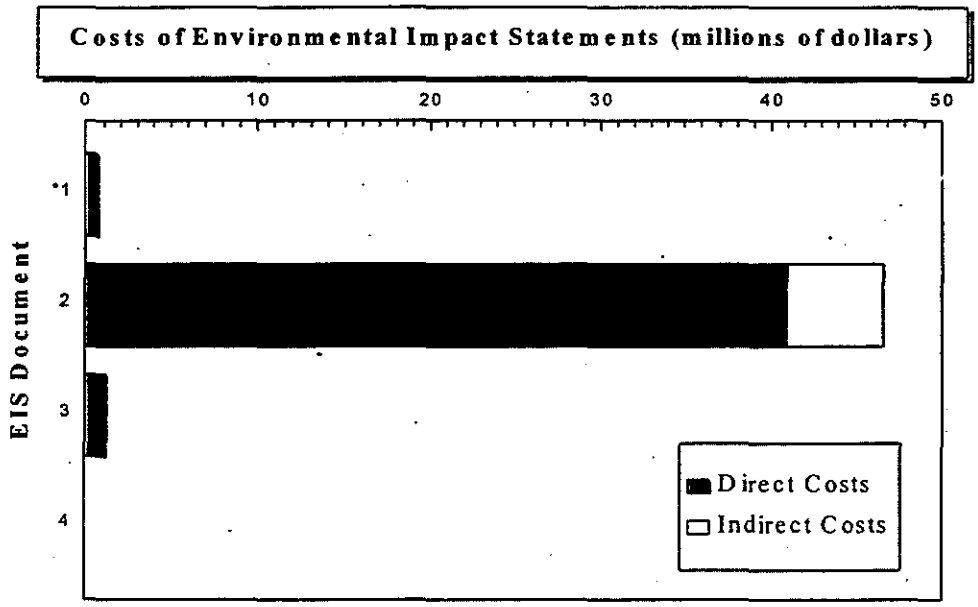


FIGURE 2



* Indirect cost = $1500

Fossil Energy

1 = Bangor Hydro-Electric Transmission Line, Bangor, Maine

Idaho Operations Office

2 = Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Idaho Falls, Idaho

Morgantown Energy Technology Center

3 = York Energy Partners 227 MW Coal-Fired Circulating Fluidized Bed Cogeneration Demonstration Project, York County, Pennsylvania

Western Area Power Administration

4 = Energy Planning and Management Program, Western Area Power Administration (Programmatic EIS)

Completion Time And Cost Information For EAs

Please refer to Page 6 for the list of EAs that corresponds to the graphs below.

FIGURE 3

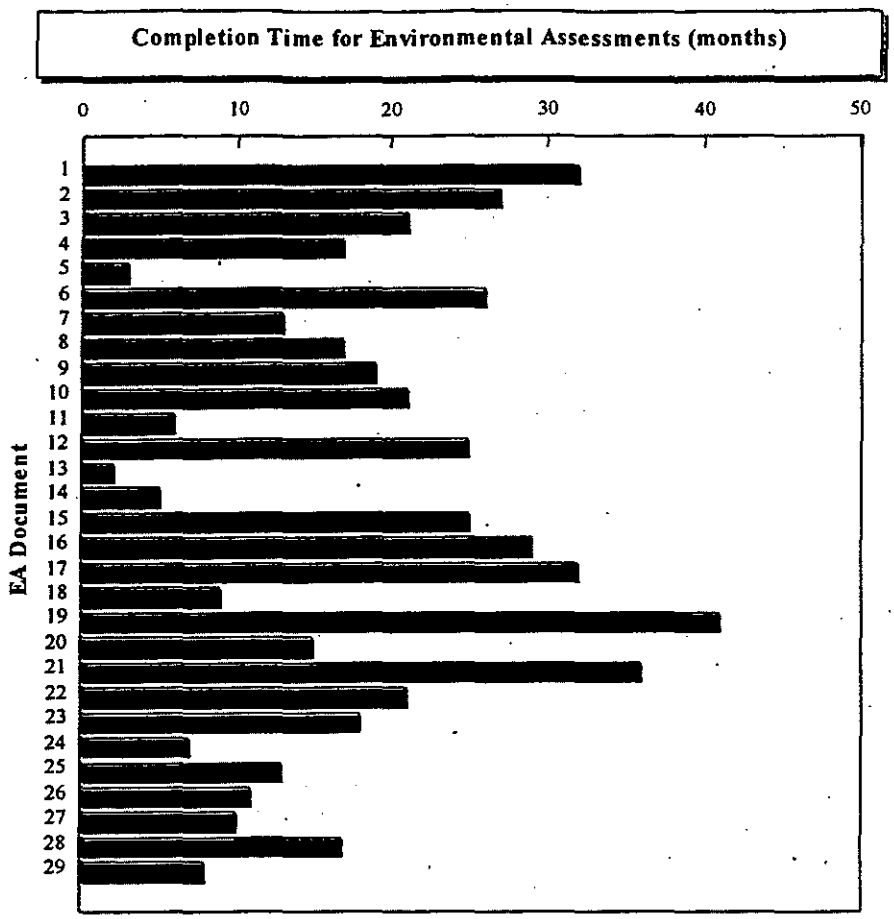
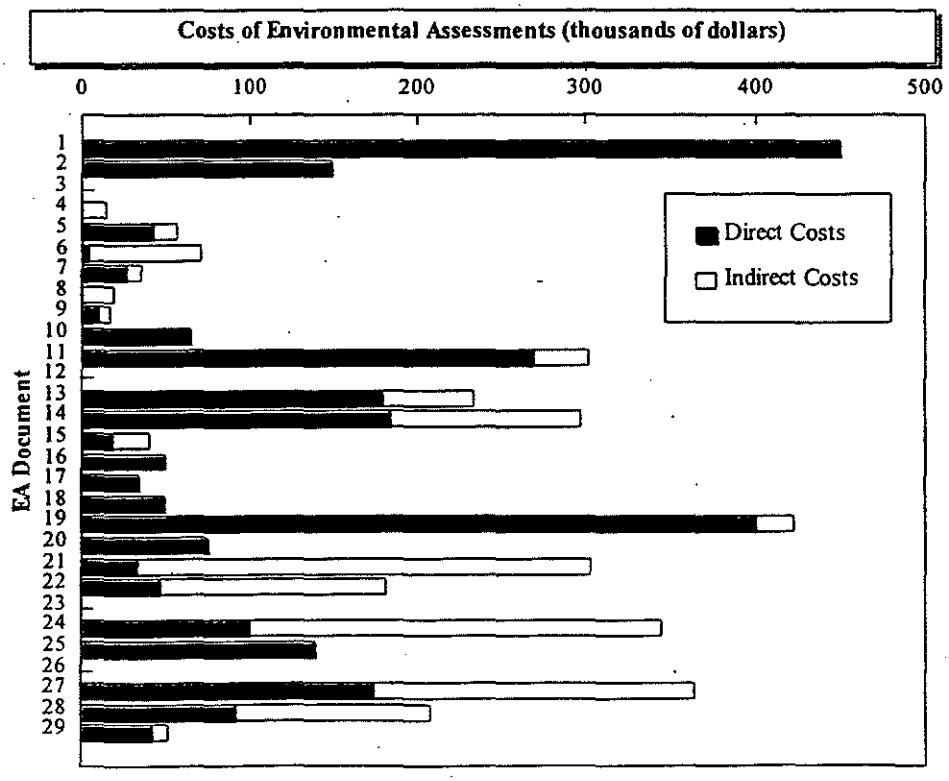


FIGURE 4



Environmental Assessments

Albuquerque Operations Office

1 = Low Energy Accelerator Laboratory (Formerly Accelerator Prototype Laboratory), Los Alamos National Laboratory, Los Alamos, New Mexico

2 = Corrective Action, Northeast Site, Pinellas Plant, Pinellas, Florida

3 = Construction of the Sand Dunes to Ochoa Power Line Project, Carlsbad, New Mexico

Bonneville Power Administration

4 = Amazon Basin/Willow Creek Wildlife Habitat Mitigation Management Plan, Lane County, Oregon

5 = Lower Columbia River Terminal Fisheries Research Project, Oregon, Washington

6 = Dworshak Wildlife Mitigation Project, Idaho

Chicago Operations Office

7 = Casey's Pond Improvement Project, Fermi National Accelerator Laboratory, Batavia, Illinois

8 = Design and Construction of a Center for Advanced Industrial Processes, Washington State University

9 = Design and Construction of a Diagnostic Instrumentation Analysis Laboratory, Mississippi State University, Starksville, Mississippi

Idaho Operations Office

10 = Health Physics Instrument Laboratory Replacement, Idaho National Engineering Laboratory, Idaho Falls, Idaho

Morgantown Energy Technology Center

11 = Warren Station Externally Fired Combined Cycle Demonstration Project, Warren, Pennsylvania

Nevada Operations Office

12 = Device Assembly Facility Operations, Nevada Test Site, Nye County, Nevada

Oak Ridge Operations Office

13 = Disbursement of $65 Million by the U.S. Department of Energy to the State of Texas for Construction of a Regional Medical Technology Center at the Former Superconducting Super Collider Site, Waxahatchie, Texas

14 = Disposition of Highly Enriched Uranium Obtained from the Republic of Kazakhstan, Y-12 Plant, Oak Ridge Reservation, Oak Ridge, Tennessee*

15 = Melton Valley Storage Tank Capacity Increase Project at Oak Ridge National Laboratory, Oak Ridge, Tennessee

Oakland Operations Office

16 = Construction and Operation of the Explosive Waste Storage Facility, Site 300, LLNL, Livermore, California

17 = Construction and Operation of a Genome Sequencing Facility, Building 64, LBL, Berkeley, California

18 = Proposed Human Genome Laboratory, Lawrence Berkeley Laboratory, Emeryville, California

Ohio Field Office

19 = Decontamination and Decommissioning Projects, Mound Plant, Miamisburg, Ohio

Richland Operations Office

20 = Disposition of Stored Alkali Metals and Facilities, Hanford Site, Richland, Washington

21 = 300 Area Process Sewer Piping Upgrade & 300 Area Treated Effluent Disposal Facility Discharge to the City of Richland Sewage System, Hanford Site, Richland, Washington

22 = Inert/Demolition Landfill (Pit 9) Hanford Site, Richland, Washington

23 = N-Reactor Facilities Stabilization, Hanford Site, Richland, Washington

24 = Disposition and Transportation of Surplus Low Specific-Activity Nitric Acid to Great Britain, Hanford Site, Richland, Washington

25 = Shutdown of the Fast Flux Test Facility, Hanford Site, Richland, Washington

Rocky Flats Office

26 = Actinide Solution Processing at the Rocky Flats Environmental Technology Site, Golden, Colorado

27 = Consolidation and Interim Storage of Special Nuclear Material at Rocky Flats Environmental Technology Site, Golden, Colorado

Savannah River Operations Office

28 = Operation of the HB-Line Facility and Frame Waste Recovery Process for Production of Pu-238 Oxide at the Savannah River Site, Aiken, South Carolina

Southwestern Power Administration

29 = Vegetation Management on Rights of Way and Radio and Substation Sites, Programmatic EA (OK, AR, MO)

* This EA was approved by the Office of Fissile Materials Disposition.

NEPA DOCUMENT CONTENT

In response to our request that respondents describe specific blems and/or innovative approaches used regarding determining reasonable alternatives, 2) data collection, and 3) impact analysis, a wide variety of helpful information was provided, as discussed below.

Determining Reasonable Alternatives: A respondent reported that program personnel went to the local Citizen's Advisory Board to gauge the level of interest in the project and the EA before the EA was started. This helped not only to determine the level of interest, but to educate one of the groups that would be commenting on the EA. The respondent noted that thorough involvement of the local Citizen's Advisory Board in the development of the purpose and need for the project before the EA is written is becoming the norm for controversial proposals.

Another respondent noted the value of preparing an outline of proposed EA scope and having early concurrence from EA preparation team leaders.

Data Collection: A respondent reported on a case in which several of the sites potentially involved in the proposed action were not DOE owned or operated. The owners of these sites were extremely cautious about providing the requested data, which could potentially result in the release of sensitive business information, and would require work and expense without guaranteed payback.

Another respondent stated that technical guidelines prepared by the subject technical specialists for agreed-to uniform data collection and analysis were very worthwhile.

Another respondent noted that a Forest Service EIS provided useful data for a DOE NEPA document.

Impact Analysis: Several respondents noted that an annotated outline that all parties had agreed upon helped the team to focus on the major issues and facilitated completion of the document.

Another respondent praised the red team/blue team approach (i.e., development teams and challenge teams), similar to an academic peer review process.

THE DOCUMENT PREPARATION PROCESS

pondents noted the following as measures that facilitated effective DOE teamwork:

- EA panel sessions, which served to establish good communications among field office internal stakeholders and to resolve concerns openly;
- electronic text transmission to the Office of NEPA Policy and Assistance for review and comment; and
- regular conference calls to discuss responses to stakeholder concerns.

Factors that hampered DOE teamwork included:

- team members at distant locations;
- DOE review team changing personnel throughout the review cycle, which lacked continuity and was inefficient;
- excessive number of concurrence review cycles for documents; and
- documents referenced in an EA were not readily available for internal and external reviewers, resulting in the inability to perform a complete review.

Regarding the facilitation of effective teamwork between DOE and its support contractors, one respondent noted the success of a close working relationship between the DOE PA Document Manager and the contractor's EA project nager. The respondent also noted the successful use of a technical editor to weed out confusing wording and mysterious terms, and identify needs for clarification. Other factors that facilitated effective teamwork include clear roles and responsibilities defined in a project plan and the use of E-Mail.

Respondents also commented on factors that inhibited effective teamwork between DOE and contractors. One respondent noted that a lack of deadlines within which the contractor should produce work resulted in the contractor taking a longer time than necessary. Additionally, a respondent noted that Headquarters staff bypassed the program and provided direction directly to the contractor, thereby confusing document writers.

Regarding successful aspects of the public participation process, one respondent commented: "The draft EA was sent to one intervenor group and several individuals (more than for most EAs) responded to a notice of availability with requests for copies. Preparation of comment responses strengthened the EA." Several respondents stated that stakeholder involvement (including input on content and word usage) at all stages of the process produced a document more responsive to stakeholder needs. Additionally, one respondent notified local newspapers in three States about a planned EA that involved land in those States.

Respondents reported unsuccessful aspects of the public participation process as well. One commenter stated: "potentially affected States were given an opportunity to review the EA, but didn't unless the preferred [transportation]

route came through the State; then when the preferred route changed, States wanted more time to review or stop shipments." Another respondent stated that public hearings were much too formal and intimidating to the public.

One respondent commented that the EA did not receive a broad enough public distribution, resulting in a number of critical comments about time constraints. Even though the EA distribution exceeded regulatory requirements, the respondent said that a timely distribution of the document to interested individuals and organizations (beyond the States and Indian tribes) would have resulted in greater trust of the department. [Editor's note: Council on Environmental Quality regulations require Federal agencies to involve the public to the extent practicable during the preparation of EAs [40 CFR 1501.4(b)], and, to the fullest extent possible, to encourage and facilitate public participation in decisions that affect the quality of the human environment [40 CFR 1500.2(d).] The Secretarial NEPA Policy of June 1994 states: "Whenever possible, the Department of Energy will provide enhanced opportunities for public involvement in the environmental assessment process...." The "Gold Book" ("Effective Public Participation under the National Environmental Policy Act," issued by the Office of NEPA Policy and Assistance in December 1994), provides additional guidance on public participation in the EA process.]

Thirteen respondents stated that the public responded favorably to the NEPA process, while three reported negative public reactions. One respondent commented: "Those who didn't see the process as a roadblock delaying a necessary action (and many did) seemed pleased with the scoping meetings and meetings on the pre-approval EA." Another respondent emphasized that most of the public participants were grateful for DOE's effort to consider alternatives. Additionally, five respondents reported minimal or no public response to the NEPA process, while one reported that public responses ranged from "cynicism to functional engagement in useful comment."

Regarding the availability of resources, four respondents indicated that this was a problem, while 24 respondents stated that resource availability was not a problem. Deficiencies noted included shortages of staff, delays in project activities and milestones, and lack of appropriate funding.

Several respondents identified needs for guidance. One respondent noted: "Additional guidance regarding the scope of an accident analysis would be useful. Examples of accident analyses in approved EAs could be references and serve as guides/models for conducting future analyses." Another respondent identified the need for further guidance on environmental justice. "For our project, and in an EA format, we seemed to be 'force feeding' something that perhaps did not belong there." Other needs identified included guidance on each topical discussion in an EIS, how to provide early and consistent involvement of government representatives, impact analysis (specifically for radiological effects and risk assessment), and formalized procedures for adopting another agency's EA (including public involvement in the process) [Editor's note: see page 12].

EFFECTIVENESS OF THE NEPA PROCESS

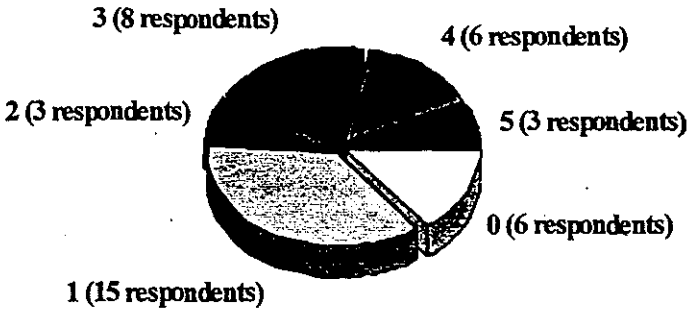
When asked how the NEPA process was used in ncy planning and decision making, respondents stated that the process was useful, for the following reasons:

- the action had a lot of political interest - Congress was involved in developing some of the alternatives and the NEPA process seemed to be the bargaining area;
- the NEPA process helped to ensure construction of the project in a location with the least impact on the environment;
- the process was helpful in developing a wildlife management plan and in identifying disagreements between future resource management authorities (State and Indian tribe);
- the EA process convinced stakeholders that DOE explored all reasonable options before making the decision (DOE had originally issued a categorical exclusion);
- the NEPA process was useful "only for deciding how to carry out the action;" and
- a lot of change in the scope of the document.

One respondent suggested that NEPA needs to be a true part f DOE's up-front planning and that full consideration of the sible negative effects of a proposed project needs to be explored at the onset.

Twenty-four questionnaire respondents stated that the process was not useful or was only minimally useful. One respondent commented that the decision impacted was where to construct and not if; therefore, NEPA review could be perceived as

Effectiveness of the NEPA Process



[0 = Not Effective; 5 = Highly Effective]

"another permit" to hurdle. Another respondent replied: "The EA was not done to evaluate environmental effects; it was used to 'bullet proof' DOE-HQ." The NEPA process was perceived by one respondent as only playing a role during the design and construction phase of a project.

The above figure illustrates how respondents rated the effectiveness of the NEPA process with respect to influence on decision making on a scale of 0 to 5 ("0" viewing the NEPA process as "another permit" for a decision already made, and "5" using NEPA as an important planning tool).

OTHER LESSONS LEARNED

NEPA Reviews Involving Multiple Sites (A recommendation from the Office of NEPA Policy and Assistance)

Several recent experiences suggest that DOE needs to improve its communications with stakeholders for NEPA reviews that involve multiple sites. In such cases, consultations with local cognizant NEPA Compliance Officers could avoid problems in scheduling public meetings and in providing States, Indian tribes and other potentially affected parties opportunities to comment on NEPA documents. One example concerns a State that was not notified in advance of a scoping meeting for an EIS in which a DOE site in that State was being considered as an alternative to the proposed site. In planning the meeting, Program Office staff reportedly referred the State's point of contact to the *Federal Register* for information about scoping meetings, rather than providing the information immediately and putting the contact on the mailing list. On other occasions, DOE has not provided this State opportunities to review an EA for proposals that may affect it that were prepared by a Program Office or a Field Office in another State. In a case involving a different State, scoping meetings for two major DOE EISs were scheduled for the same day in the vicinity of a major DOE site, but at locations distant from one another. Stakeholders interested in both EISs could not easily attend both meetings.

Document Managers could have avoided such problems by consulting with the local NEPA Compliance Officer and the local DOE public affairs staff. Together they are best able to coordinate NEPA-related activities with stakeholders, advise on potential conflicts in scheduling public meetings, and ensure that local issues and concerns are considered in preparing DOE NEPA documents.

Some respondents offered miscellaneous comments regarding lessons learned in the process of completing NEPA documentation.

One respondent stated: "Savings of time and money would be appreciable if letters transmitting EISs to Congress were abolished. This requirement is generally considered a useless waste of time and money by customers. A simple printed card transmitting the EISs would suffice." Likewise, another respondent claimed: "Obtain NEPA savings by completely eliminating the current procedures (personalized letters) for distributing the Draft and Final EIS. Simply prepare a standard letter that's distributed to everyone." One respondent stated: "Time is money in NEPA. This EA took 16 months. During that time base data changed and new information had to be incorporated. Scope changed requiring several recalculations of data." Another respondent identified distant contractors and a lack of involvement by the cognizant NEPA Compliance Officer as contributing to substantial cost exceedances.

Lessons Learned in Preparing the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS (SNF/INEL EIS)

On June 28, 1993, the U.S. District Court of Idaho ordered the Department of Energy to prepare a comprehensive, site-wide EIS for all actions involving the transportation, receipt, processing and storage of spent nuclear fuel at INEL and enjoined the Department from any further transportation, receipt, processing and storage of spent nuclear fuel at INEL until the completion of the EIS. The Court further ordered a Record of Decision by June 1, 1995. To meet the order, the Department prepared a comprehensive EIS that addressed both complex-wide programmatic spent fuel management issues and comprehensive environmental restoration and waste management site-wide issues at the INEL. The EIS also evaluated in detail five alternative Department sites for managing spent nuclear fuel. The Department met all the court-ordered deadlines with extraordinary coordination and teamwork by the EIS Project Office in Idaho, five Field Offices, several Program Offices, the Offices of Environment, Safety and Health and General Counsel, and senior Department officials.

The Idaho Project Office recognized the value of capturing and sharing lessons learned in preparing the SNF/INEL EIS, and therefore prepared the five reports listed below:

1. "Path Forward and Lessons Learned in NEPA Stakeholder Involvement for the SNF and INEL ER&WM EIS," Tom Wichmann, October 6, 1994.

2. "Lessons Learned from the R-2 Phase of the SNF and INEL ER&WM EIS," Tony Rutz, October 24, 1994.

3. "Report on Public Comment Meetings," EIS Project Office, December 1994.

4. "Lessons Learned from the INEL Project Office," Kathleen Whitaker, April 1995.

5. "Lessons Learned for the EIS Comment Response Process," Tom Armour, May 2, 1995.

(continued)

The numerous comments and suggestions in these reports primarily represent the views of the EIS Project Office. Two methods that effectively served to support schedule compliance are noteworthy, and have been adopted by other NEPA Document Managers preparing large or complex EISs. These are: 1) forming an EIS Advisory Group to resolve technical issues referred by technical teams, and an Executive Committee of senior Program Office officials to resolve policy and managerial issues; and 2) preparing and obtaining concurrence on technical guidelines for environmental analysis of key disciplines (e.g., accident analyses, health effects, water resources, etc).

In addition to the lessons learned reports, the EIS Project Office generated the following information that may help others avoid "reinventing the wheel:"

1. Fact Sheets (e.g., the general NEPA process, spent nuclear fuel)
2. EIS Procedures Handbook (specific to the SNF/INEL EIS, but may be useful to others)
3. Technical Guidelines (by discipline)
4. The EIS distribution database

For more information or to obtain copies of the materials listed above, please contact:

Kathleen Whitaker
Department of Energy, Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563
202-526-1062

LESSONS LEARNED QUESTIONS AND ANSWERS

***Lessons Learned Questions and Answers* is a new addition to the Lessons Learned Report. The Office of NEPA Policy and Assistance invites you to send questions to the address located at the end of this article.**

Question: How should DOE address public comments received on a final EIS?

Answer: Comments DOE receives on a final EIS before the Record of Decision has been issued should be reviewed to first determine whether the comments present "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." If it is clear that the comments do present such information, then a supplemental EIS is required [40 CFR 1502.9(c) and 10 CFR 1021.314(a)]. If it is unclear whether the comments present such information, then a Supplement Analysis must be prepared [10 CFR 1021.314(c)].

If it is clear that the comments do not require a supplemental EIS, or such a determination is made based on a Supplement Analysis, then DOE may issue a Record of Decision. The Department's approach has been to address such comments in the Record of Decision. This need not be an exhaustive treatment, but should include the conclusion that none of the comments necessitate the preparation of a supplemental EIS. Comments that are not adequately covered in the final EIS should be addressed; otherwise, DOE may refer the commenter to the appropriate section in the final EIS.

Comments on a final EIS that DOE receives after a Record of Decision has been issued should be considered in light of the regulatory requirements cited above, and responded to as appropriate in the normal course of business. [Also see 10 CFR 1021.315(d): DOE may revise a ROD at any time.]

Question: May DOE adopt another agency's EA and Finding of No Significant Impact if DOE was not a cooperating agency?

Answer: Any Federal agency may adopt another Federal or State agency's EA and is encouraged to do so when such adoption would save time or money. In deciding that adoption is the appropriate course of action, DOE (as adopting agency) must conclude that the EA adequately describes DOE's proposed action and in all other respects is satisfactory for DOE's purposes. Alternatively, DOE may add necessary information by adding a cover sheet. [For example, the originating agency's action may be to issue a permit for a proposed activity, whereas DOE's action may be to fund the activity.] Once DOE determines that the originating agency's document is adequate for DOE's purposes, possibly after adding information, DOE would assign an EA number and transmit the EA to the State(s), Indian tribes, and, as appropriate, the public for preapproval review and comment, unless the originating agency has already done so equivalently through its public involvement process. In the latter case, it would be prudent to consult with States and Indian tribes to ensure that they agree that they have been provided an adequate preapproval review opportunity. DOE, after considering all comments received, would issue its own Finding of No Significant Impact, if appropriate. All records should be archived as with any other EA.

Question: The "Green Book" (Recommendations for the Preparation of EAs and EISs, May 1993) recommends that NEPA documents should provide estimates of potential health effects from chemical or radiological exposure to workers who would be involved in the proposed action. However, accurate estimates are extremely difficult to make for involved workers located inside buildings, and many dispersion models do not apply close to release sources. Should the "Green Book" be revised to drop this recommendation?

Answer: The recommendation is appropriate. The "Green Book" recommends application of the sliding scale approach in which impacts are analyzed in proportion to their significance. For many DOE proposals, potential impacts to involved workers under routine and accident conditions may be an important factor in discriminating among alternatives or determining the need for mitigation. Such impacts should be estimated using the sliding scale principle. Experience shows that when document preparers understand the need to provide such estimates early in the document preparation process, they are able to make credible evaluations. In some cases, such estimates must necessarily be semi-quantitative or qualitative in nature, taking into account estimates of the number of workers involved and judgments about consequences to them under routine and accident conditions. Where standard dispersion models won't work, credible estimates based on simplifying assumptions are usually possible and sufficient for describing the likely impacts (e.g., "the five workers who would be directly involved with the activity would be unlikely to experience any serious permanent health effects," or "the three workers who would normally be close to the accident would most likely suffer serious injury or death, while the remaining two or so workers who would be nearby probably could escape").

Question: Several recent programmatic, site-wide and other EISs have been issued with "Affected Environment" chapters that contain different, potentially inconsistent descriptions of the same DOE sites. Would this apparent

(continued)

lack of consistency of description invalidate otherwise adequate EAs that tier from or reference the Affected Environment chapter in such an EIS?

nswer: Such EAs would not be considered inadequate. Differences (other than errors) among the various treatments of "Affected Environment" may be appropriate because each NEPA document should be up-to-date and focused on the components of the environment that may be affected by the specific proposed actions and alternatives that document addresses. As discussed in the "Green Book," the extent of the "affected environment" may not be the same for all potentially affected environmental components. For example, traffic may increase within four kilometers of a proposed landfill (the extent of the affected environment with respect to transportation impacts), whereas groundwater may extend only two kilometers from the proposed landfill (the extent of the affected environment with respect to groundwater impacts). Clearly, too, emissions from a large industrial facility such as a nuclear reactor may affect air resources over a greater area than would a typical laboratory operation. In general, site-wide EISs should provide the most complete descriptions of the affected environment because site-wide analyses consider a wide range of uses of a site.

Although differences among "Affected Environment" chapters may be appropriate, the chapters should not be reinvented when valid existing NEPA documents could be referenced, incorporated, or updated if necessary, reducing document preparation time and costs. Experience with recent programmatic and other NEPA documents that involve multiple facilities suggests that problems and costs would be minimized if NEPA Document Managers would: 1) consult with the cognizant NEPA Compliance Officer for each site during the internal scoping process about the usefulness of previously prepared materials or those currently being prepared; 2) limit the description of the existing environment to information that directly relates to the proposed action and alternatives whose impacts are to be analyzed; and 3) establish the appropriate (i.e., sufficient, but not excessive) level of detail to be presented.

Send your questions to:

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Office of NEPA Policy and Assistance (EH-42)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585
Telephone: 202-586-8397
Fax: 202-586-7031
Internet: Joanne.Arenwald@hq.doe.gov.

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the fourth quarter of FY 95 (July 1, 1995 to September 30, 1995) should be submitted as soon as possible after document completion, but no later than November 1, 1995. (Fax: 202-586-7031) The Lessons Learned Questionnaire is now available on the DOE NEPA Web [http://www.eh.doe.gov/nepa] on the Internet.

EISs COMPLETED BETWEEN APRIL 1 AND JUNE 30, 1995

EIS (Title and Document Number)	Field Office	Program Office	EPA Rating
Bangor Hydro-Electric Transmission Line, Bangor, Maine (DOE/EIS-0166)	_____	Fossil Energy	LO
Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Idaho (DOE/EIS-0203)	Idaho Operations Office	Environmental Management	*EO-2, EC-2, EO-2, EC-2
York Energy Partners 227 MW Coal-Fired Circulating Fluidized Bed Cogeneration Demonstration Project, York County, Pennsylvania (DOE/EIS-0209)	Morgantown Energy Technology Center	Fossil Energy	EC-2
Energy Planning and Management Program, Western Area Power Administration, Programmatic EIS (DOE/EIS-0205)	_____	Western Area Power Administration	EC-2

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 Impact Statement
- Category 1 -- Adequate
- Category 2 -- Insufficient Information
- Category 3 -- Inadequate

* EPA rated each of the alternatives separately because the Draft EIS did not have a preferred alternative.

EAs COMPLETED BETWEEN APRIL 1 AND JUNE 30, 1995

EA (Title and Document Number)	Field Office	Program Office
Low Energy Accelerator Laboratory (Formerly Accelerator Prototype Laboratory), Los Alamos National Laboratory, Los Alamos, New Mexico (DOE/EA-0969)	Albuquerque Operations Office	Defense Programs
Corrective Action, Northeast Site, Pinellas Plant, Pinellas, Florida (DOE/EA-0976)	Albuquerque Operations Office	Environmental Management
Construction of the Sand Dunes to Ochoa Power Line Project, Carlsbad, New Mexico (DOE/EA-1109)	Albuquerque Operations Office	Environmental Management
Amazon Basin/Willow Creek Wildlife Habitat Mitigation Management Plan, Lane County, Oregon (DOE/EA-1023)	———	Bonneville Power Administration
Lower Columbia River Terminal Fisheries Research Project, Oregon, Washington (DOE/EA-1040)	———	Bonneville Power Administration
Dworshak Wildlife Mitigation Project, Idaho (DOE/EA-0927)	———	Bonneville Power Administration
Casey's Pond Improvement Project, Fermi National Accelerator Laboratory, Batavia, Illinois (DOE/EA-1075)	Chicago Operations Office	Energy Research
Design and Construction of a Center for Advanced Industrial Processes, Washington State University, Pullman, Washington (DOE/EA-1055)	Chicago Operations Office	Energy Research
Diagnostic Instrumentation Analysis Laboratory, Mississippi State Laboratory, Starksville, Mississippi (DOE/EA-1013)	Chicago Operations Office	Energy Research
Health Physics Instrument Laboratory Replacement, INEL, Idaho Falls, Idaho (DOE/EA-1034)	Idaho Operations Office	Environmental Management
Warren Station Externally Fired Combined Cycle Demonstration Project, Warren, Pennsylvania (DOE/EA-1007)	Morgantown Energy Technology Center	Fossil Energy

EA (Title and Document Number)	Field Office	Program Office
Device Assembly Facility Operations, Nevada Test Site, Nye County, Nevada (DOE/EA-0971)	Nevada Operations Office	Defense Programs
Proposed Texas Regional Medical Technology Center, Waxahatchie, Texas (DOE/EA-1045)	Oak Ridge Operations Office	Field Management
Disposition of Highly Enriched Uranium Obtained from the Republic of Kazakhstan, Y-12 Plant, Oak Ridge Reservation, Oak Ridge, Tennessee (DOE/EA-1063)	Oak Ridge Operations Office	Fissile Materials Disposition
Melton Valley Storage Tank Capacity Increase Project at Oak Ridge National Labs, Oak Ridge, Tennessee (DOE/EA-1044)	Oak Ridge Operations Office	Environmental Management
Construction and Operation of the Explosive Waste Storage Facility, Site 300, LLNL, Livermore, California (DOE/EA-0827)	Oakland Operations Office	Defense Programs
Construction and Operation of a Genome Sequencing Facility, Building 64, LBL, Berkeley, California (DOE/EA-1065)	Oakland Operations Office	Energy Research
Proposed Human Genome Laboratory, Lawrence Berkeley Laboratory, Emeryville, California (DOE/EA-0856)	Oakland Operations Office	Energy Research
Decontamination and Decommissioning Projects, Mound Plant, Miamisburg, Ohio (DOE/EA-0683)	Ohio Field Office	Environmental Management
Disposition of Stored Alkali Metals and Facilities, Hanford Site, Richland, Washington (DOE/EA-0987)	Richland Operations Office	Environmental Management
300 Area Process Sewer Piping Upgrade & 300 Area Treated Effluent Disposal Facility Discharge to the City of Richland Sewage System, Hanford Site, Richland, Washington (DOE/EA-0980)	Richland Operations Office	Environmental Management
Inert/Demolition Landfill (Pit 9) Hanford Site, Richland, Washington (DOE/EA-0983)	Richland Operations Office	Environmental Management

EA (Title and Document Number)	Field Office	Program Office
l-Reactor Facilities Stabilization, Hanford Site, Richland, Washington (DOE/EA-0984)	Richland Operations Office	Environmental Management
Disposition and Transportation of Surplus Low Specific Activity Nitric Acid to Great Britain, Hanford Site, Richland, Washington (DOE/EA-1005)	Richland Operations Office	Environmental Management
Shutdown of the Fast Flux Test Facility, Hanford Site, Richland, Washington (DOE/EA-0993)	Richland Operations Office	Nuclear Energy
Actinide Solution Processing at the Rocky Flats Environmental Technology Site, Golden, Colorado (DOE/EA-1039)	Rocky Flats Office	Environmental Management
Consolidation and Interim Storage of Special Nuclear Material at Rocky Flats Environmental Technology Site, Golden, Colorado (DOE/EA-1060)	Rocky Flats Office	Environmental Management
peration of the HB-Line Facility and Frame Waste Recovery Process for Production of Pu-238 Oxide at the Savannah River Site, Aiken, South Carolina (DOE/EA-0948)	Savannah River Operations Office	Environmental Management
Vegetation Management on Rights of Way and Radio and Substation Sites, Programmatic EA (DOE/EA-1012)	———	Southwestern Power Administration

LESSONS LEARNED QUARTERLY REPORT 4TH QUARTER FY 1995

Office of NEPA Policy and Assistance
U.S. Department of Energy

December 1, 1995

INTRODUCTION

To foster continuing improvement of the Department's National Environmental Policy Act (NEPA) compliance program, the Secretarial Policy Statement on NEPA, issued June 13, 1994, requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents from the NEPA Document Manager, the NEPA Compliance Officer, and team members after completing each environmental impact statement (EIS) and environmental assessment (EA), and to distribute a quarterly summary to all NEPA Compliance Officers and NEPA Document Managers.

This quarterly report summarizes the lessons learned for documents completed between July 1 and September 30, 1995. It is based primarily on responses to the revised questionnaire that was provided for use during January 1995, and includes information on direct and indirect NEPA process costs and on total project costs.

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

The next quarterly report will cover EISs and EAs completed during the first quarter of fiscal year 1996 (October 1 through December 31, 1995). Please report on EISs and EAs as they are completed. Questionnaires for all such documents completed between October 1 and December 31, 1995 are due by February 1, 1996. Completed questionnaires should be sent directly to the Office of NEPA Policy and Assistance by surface mail or fax (202-586-7031) or via Internet (Joanne.Geroe@hq.doe.gov). The next quarterly report will be issued on March 1, 1996.

REPORT CONTENTS

ABOUT THIS LESSONS LEARNED QUARTERLY REPORT

According to Office of NEPA Policy and Assistance records, the Department of Energy (DOE) completed 29 EAs and 7 EISs during the fourth quarter of fiscal year 1995 (from July 1 to September 30, 1995). For the purposes of this report, the approval or adoption of a final EIS or the NEPA decision for an EA represents document completion.

As of November 28, 1995, the Office received 54 questionnaires covering 19 of the EAs and 6 of the EISs. Questionnaire respondents included: 13 NEPA Compliance Officers, 14 Document Managers, and 7 others (e.g., contractors, legal counsel, Office of NEPA Policy and Assistance staff, and other document preparation team members).

NEPA DOCUMENT PREPARATION TIMES

Based on information provided to the Office of NEPA Policy and Assistance, the median time for the completion of 7 environmental impact statements in this reporting period was 20 months; the completion times ranged from about 9 months to about 41 months (See Figure 1 on page 4). For the previous four reporting periods (July 1, 1994 to June 30, 1995) and this reporting period, cumulatively, the median time to prepare 18 EISs was 26 months (average 30 months).

The median time for the completion of 28 EAs (one adopted EA was not included in this calculation) in this reporting period (from the NEPA determination to the Finding of No Significant Impact) was 17 months; the completion times ranged from about 2 months to about 87 months (see Figure 3 on page 5). For the previous four reporting periods (covering July 1, 1994 to June 30, 1995) and this reporting period, cumulatively, the median time to prepare 107 EAs was 17 months (average 18 months).

Note: The number of EAs completed each quarter, and especially of EISs, is too small to discern a trend from the above data. Moreover, many of the EAs and most of the EISs completed during the last 15 months were begun before process improvements directed by the Secretarial NEPA Policy of June 1994 took full effect. Therefore, the data presented above do not readily measure results under the improved practices. The Office of NEPA Policy and Assistance separately examined DOE's experience with NEPA documents that were begun after June 1994 and reported the (inconclusive) results at the Los Alamos NEPA Meeting in September 1995. The Office will continue to study trends and will report results at appropriate opportunities, including in these Quarterly Reports.

Questionnaire respondents indicated that of the 15 EAs for which a time schedule was established for this quarter, 7 EAs were completed on schedule and 8 were not. Of the five EISs for which scheduling information was reported, two were completed on schedule and three were not. Also, for 15 EAs and 2 EISs, respondents stated that the NEPA process was initiated early enough to avoid being on the critical path. Questionnaire respondents for two EAs and one EIS disagreed as to whether the NEPA process had begun early enough, four respondents reporting that the process had begun in time and four that it had not.

Circumstances that were mentioned as hindering timely NEPA document completion were:

- contractor staff that, although technically competent, did not understand the objectives of the NEPA review;
- late but substantial comments from another Federal agency;
- change in the proposed action partly due to lack of communication between programs;
- an alternative not considered in the Draft EIS was identified as part of the preferred alternative in the Final EIS, requiring new technical analysis, substantial revision to the Final EIS, and notification to the public and State;
- incomplete, unclear and constantly changing scope; unclear and nonspecific data requests; and cumbersome communication early in the process;
- initial drafting of EA delayed because higher priority was given to another project;
- change in scope of proposed action resulting in additional analysis being done;
- lengthy workshops held in response to stakeholder request extended the time required for EA completion; and
- extensive interaction with stakeholders and a lengthy public discussion process for a politically sensitive project.

Respondents identified the following as measures that facilitated timely completion of their NEPA documents:

- employees assigned to work on the EIS;
- establishment of a working group and meetings of all team members saved time in conducting draft reviews and obtaining concurrence;
- formation of an excellent multi-disciplinary team;
- coordinating preparation of a Savannah River EIS with two other Savannah River Site NEPA documents allowed combined scoping for all three EISs and more efficient use of contractor technical resources;
- frequent teleconferences and visits to Headquarters for progress updates and comment resolution, and having DOE, Management & Operating contractors, and subcontractor EIS meetings at one location;
- meetings held with the Bureau of Land Management, U.S. Forest Service, Environmental Protection Agency and mine companies;
- frequent communication between DOE and contractor and DOE Management and Review team;
- team members conveniently located onsite and access to e-mail saved time in preparation, reviews and distribution; and
- delegation authority provided to Bonneville Power Administration, which greatly facilitated preparation of the EIS, improved timeliness, and reduced costs.

Respondents suggested the following as especially effective procedures to keep the document on schedule:

- using people who had exceptional skills at key points
- throughout the process, and dedicating personnel to the job;
- direct communication among principal staff;
- parallel reviews of the draft EIS by Headquarters and the site, and management providing adequate support to ensure the EIS had proper priority and resources;
- a list of technical support information, developed early in the process with project proponents, identifying the depth and breadth of quantitative information needed;
- having the NEPA team located onsite;
- completion of a well-instructed NEPA course; and
- a schedule provided to all team members and regular meetings held to monitor both individual and team progress.

NEPA COST DATA

NEPA Compliance Officers and Document Managers reported NEPA process cost data for 16 of the 29 EAs (see Figure 4 on page 5) and 6 of the 7 EISs (see Figure 2 on page 4). Of the 15 projects for which NEPA budget data were reported, 4 EAs and none of the EISs were completed within budget. For the purposes of this report, NEPA process costs are defined as the costs that would not have been incurred except for the NEPA process. Direct costs are defined as the total dollars expended for NEPA support contractors. Indirect costs are defined as any other costs incurred, including total program office and field office Federal staff resources (person-years) and their expenses.

Of the 14 EAs for which direct cost data were reported, the median direct cost was $99,000, with a range of $8,000 to $550,000. Using the direct cost data gathered for both this period and the first four reporting periods (July 1 to June 30, 1995), the median direct cost for preparation of 61 EAs was $78,500 (average cost of $134,000).

Of the 5 EISs for which direct cost data were reported, the median direct cost was $700,000, with a range of $296,600 to $4,433,700. Using the direct cost data gathered for both this period and the first four reporting periods (July 1, 1994 to June 30, 1995), the median direct cost for the preparation of 15 EISs was $675,000 (average cost of $3.7 million).

It should be noted that direct cost data were provided for 55% of the EAs and 75% of the EISs completed during this 15-month period. The wide disparity between median and average costs typically reflects a few documents that have exceptionally high costs.

Total project costs were reported for eight EAs and two EISs. Of the EAs, the NEPA process costs reported represented an average of 1.1% of the total project costs, with a range of .1% to 4.2%. Of the EISs, the NEPA process costs reported represented .01% and 6.6% of the total project costs.

REPORTING INDIRECT COSTS

During the recent Field National Environmental Policy Act (NEPA) Compliance Officers Workshop (Albuquerque,
New Mexico, August 16-17, 1995), the NEPA Compliance Officers recommended that the Lessons Learned questionnaire be revised to reflect only direct costs for contractors.

In response to this, the Office of NEPA Policy and Assistance distributed a memorandum to Field NEPA Compliance Officer Workshop participants and to the Department's NEPA community on November 1, 1995. This memorandum indicated that, although indirect costs may be difficult to estimate accurately, they could represent a significant resource expenditure for NEPA documents, particularly when NEPA documents are prepared predominantly with in-house resources. Documents prepared
in-house may account for an increasing number of projects as funds for NEPA preparation become tighter.

Accordingly, the Lessons Learned questionnaire is being revised so that NEPA Document Managers may report only direct costs when a rough estimate indicates that indirect costs are less than 10% of the total document preparation costs. The revised questionnaire will be distributed in early 1996.

The revised questionnaire will conform with cost tracking and reporting guidance to be included in Phase II of the NEPA Contracting Reform Guidance to be issued later this month. Please use the current questionnaire until the new version is made available.

Completion Time and Cost Information for EISs

Albuquerque Operations Office

1. Dual Axis Radiographic Hydrodynamic Test Facility, Los Alamos National Laboratory, Los Alamos, New MexicoBonneville Power Administration
2. Bonneville Power Administration, Puget Power and Light Northwest Washington Transmission Project, Washington
3. Business Plan, Bonneville Power Administration, Washington
4. Columbia Wind Farm, Goldendale, Washington
5. Resource Contingency Program, Hermiston Power Project, Oregon
6. Washington Windplant, Goldendale, Washington
   Savannah River Operations Office
7. Waste Management at the Savannah River Site, Aiken, South Carolina

*Indirect costs not reported.
** Cost data not reported.

Albuquerque Operations Office

- **Uranium Lease Management Program, Colorado**
- **Construction and Operation of Environmental, Safety and Health Analytical Laboratory, Pantex Plant, Amarillo, Texas**
- **High Explosive Waste Water Treatment Facility at LANL, Los Alamos, New Mexico**
- **Decontamination and Dismantlement of the Pinellas Plant, Pinellas, Florida Bonneville Power Administration**
- **South Fork Snake River Project/Palisades Wildlife Mitigation Project, Idaho Chicago Operations Office**
- **Advanced Technology Research Center, Oklahoma State University, Stillwater, Oklahoma**
- **Adoption of United States Department of Agriculture EA on Management of Wildlife Causing Damage at Argonne National Laboratory - East, Chicago, Illinois**
- **Proposed Upgrade of Waste Storage Facilities at Argonne National Laboratory-East, Chicago, Illinois**
  Nevada Operations Office
- **Solid Waste Disposal Areas 9 and 23, Nevada Test Site, Nye County, NevadaOak Ridge Operations Office**
- **Proposed Replacement and Operation of the Anhydrous Hydrogen Fluoride Supply and Fluidized-Bed Chemical Processing Systems at Building 9212 at the Y-12 Plant, Oak Ridge, Tennessee**
- **Off-Site Disposal of K-25 Pond Waste, Oak Ridge, Tennessee**
- **Storage of Excess Highly Enriched Uranium at Y-12 Plant, Oak Ridge, Tennessee**
- **High Flux Isotope Reactor Spent Fuel Reracking Program, Oak Ridge, Tennessee Oakland Operations Office**
- **Decontamination and Decommissioning of the General Atomics Hot Cell Facility, San Diego, California**
- **Operation of the Dublit III Tokamak Research Facility and Related Research at the General Atomics Plant, La Jolla, California**
- **Construction and Operation of an Office Building at the Stanford Linear Accelerator Center, Stanford, California**
- **Proposed Induction Linac System Experiments in Building 51B at Lawrence Berkeley National Laboratory, Berkeley, California Ohio Field Office**

- **Construction and Operation of a Contaminated Soil Conservation Area, West Valley Demonstration Project, West Valley, New York**
- **Mound Plant Glass Melter Project, Miamisburg, Ohio Pittsburgh Energy Technology Center**
- **Commercial Demonstration of the NOXSO SO2/NOX Removal Flue Gas Cleanup System, Newburgh, Indiana and Charleston, Tennessee**
- **Liquid Phase Methanol Demonstration Project, Kingsport, Sullivan County, Tennessee**
- **Calderon Cokemaking Process Demonstration Project, Alliance, Ohio Richland Operations Office**
- **Relocation of TRIGA Reactor Irradiated Fuel from 308 Building to the 200 West Area, Hanford Site, Richland, Washington**
- **200 Area Sanitary Sewer System, Hanford Site, Richland, Washington**
- **Transfer of Plutonium Uranium Extraction Plant and N Reactor Irradiated Fuel for Encapsulation and Storage at the K Basin, Hanford Site, Richland, Washington Savannah River Operations Office**
- **Natural Fluctuation of Water Level in Par Pond and Reduced Waste Flow in Steel Creek below L Lake at the Savannah River Site, Aiken, South Carolina**
- **Construction and Operation of the Health Physics Site Support Facility at the Savannah River Site, Aiken, South Carolina**
- **Savannah River Site Low-Level Radioactive Waste Volume Reduction, Savannah River Site, Aiken, South Carolina**
- **Independent Waste Handling Facility, 211-F, at the Savannah River Site, Aiken, South Carolina**

*This EA was adopted from the U.S. Department of Agriculture.**

No cost data were reported.

Environmental Assessments

NEPA DOCUMENT CONTENT

In response to our request that respondents describe specific problems and innovative approaches used regarding 1) determining reasonable alternatives, 2) data collection, and 3) impact analysis, a wide variety of helpful information was provided, as discussed below.

Determining Reasonable Alternatives: A respondent reported that numerous meetings with Headquarters, onsite personnel and stakeholders helped define the broad scope of the EIS. Personal meetings and training with stakeholders were very effective, as were concurrent scoping sessions held on three related EISs.

One respondent commented that the main innovative internal scoping approach, which actually encompassed all aspects of content, was to establish an interdisciplinary team. The individuals on the interdisciplinary team each brought a unique perspective to the document.

Another respondent noted the value of public meetings in which all involved Federal agencies participated. These meetings were successful because the public could talk to everyone in the same place.

Data Collection: A respondent reported that a team of Management and Operating contractor technical

specialists was moved to the EIS contractor facility to develop data. This process expedited meeting the EIS contractor's data requests because the flow of information was immediate.

Another respondent noted that obtaining needed data from a U.S. Forest Service/ Bureau of Land Management Plan saved time and money. Additionally, early communication to DOE participants concerning data needs for NEPA analyses facilitated data collection.

Impact Analysis: One respondent described an efficient impact analysis process for each resource category

(e.g., ecological resources) that was used in preparing the Savannah River Waste Management EIS. The process consisted of several steps: developing 30-year minimum, expected, and maximum waste forecasts; screening more than 80 and selecting approximately 20 reasonable waste management technologies; developing treatment, storage, and disposal configurations based on alternative waste management strategies; and describing the affected environment for each resource category. Assessment techniques varied according to the resource category. Impacts to geological, ecological, land use, and cultural resources were evaluated qualitatively and compared among the various combinations of alternatives and waste forecasts. The effect to a particular resource was measured as the amount of land occupied by the resource that would be required for waste management activities under each alternative/waste forecast.

Another respondent noted reduced costs and improved efficiency when cumulative impact studies were shared with another adjacent wind power project.

THE DOCUMENT PREPARATION PROCESS

Respondents noted the following as measures that facilitated effective DOE teamwork:

- regular weekly meetings of a small core group to monitor strategy and the need for changes, as well as analytical problems or processing glitches; willingness of Headquarters Defense Programs and General Counsel staff to offer advice and comments on EAs; close coordination between legal counsel and Document Managers enhanced by electronic technology.
- using e-mail to transfer draft documents and comments, phone conference call minutes, and notification of the NEPA Compliance Officer of the status of the document preparation process; an EA reviewer working closely with the Document Manager to mark up the draft EA sections that needed revisions instead of generating a list of comments on the draft EA and formally transmitting them to the EA writer; and
- informal communications among the review team members enabling the EA writer to develop close working relationships with the EA reviewers. One factor that hampered DOE teamwork was the change of DOE review team personnel throughout the review cycle, which caused a lack of continuity and subsequent inefficiency in document preparation, comment resolution and document completion.

Regarding the facilitation of effective teamwork between DOE and its support contractors, one respondent described guidelines clarifying where DOE and contractor responsibilities began and ended, and appreciated contractors who informed DOE personnel when the personnel moved beyond what the contractors considered their own responsibilities.

Respondents also commented on factors that inhibited effective teamwork between DOE and contractors. One respondent noted that contractors received conflicting comments from different DOE

customers and that comments were received after the EA had already gone to reproduction. “It would have been helpful to have a single DOE coordination point where comments could have been reviewed for redundancy and conflicting direction before being forwarded to the contractor.” [Editor’s Note: This function is a part of the NEPA Document Manager’s responsibilities.]

Another respondent commented on the difficulties in communicating through the Management and Operating contractor when what was needed was to talk to the contractor who wrote the EA. The respondent noted, however, that the situation improved “when formalities were dispensed with and DOE began talking directly to the EA writer.”

Respondents indicated the following as successful aspects of the public participation process:

- making project information readily available to the public in a special place in the facility Reading Room;
- meeting with small groups of people using an open house type of public meeting;
- well-attended joint public meeting held by the U.S. Department of Agriculture (USDA) and DOE to take comments on a draft EA, addressing all comments in the final EA, which was fairly well received, and positive press reports on the USDA/DOE process;
- supplying EAs to libraries and informing the public by public notice that an EA was at a particular library;
- placing an advertisement in the newspaper; and
- holding a well-attended open house at the project site, thereby allowing people to talk on an informal basis and to find out about the project.

Unsuccessful aspects of the public participation process included the DOE’s inability to generate good attendance at public meetings; the lack of formal time limits established for agency response; and public notices published in newspapers that seemed to go unnoticed.

Twelve respondents stated that the public responded favorably to the NEPA process, while four reported negative public reactions. Nine respondents reported minimal or no public response to the NEPA process. One respondent commented: “The public liked the early involvement, informal and friendly public meetings, being kept informed during the EIS process, the different ways they could give their comments, and TV commercials.” Another respondent noted, “Some members of the public were concerned that the process had cost too much and that the EIS was not meaningful or necessary. Relatively few public comments were received. The EIS was not very successful as a public communications tool.”

Regarding the availability of adequate resources to carry out the NEPA process, 10 respondents indicated that this was a problem, while 35 respondents stated that resource availability was not a problem. Deficiencies noted by one respondent included the following: “Personnel were always shifting from the Waste Management EIS to their normal job, which took precedence. Dedicated personnel who have EIS priority or a floating schedule for EIS completion are needed. Funds were insufficient and there was always a scramble to determine how and where to get funding. A computer capable of handling the calculations for the cost and emissions was not available.” Another respondent commented: “There were no dedicated staff until well into the NEPA process. Competition for qualified people on other higher priority projects was a problem. Initial estimates for the project were accurate, but the actual budget was considerably less than what was required.”

Several respondents identified needs for guidance. One respondent noted: “Confusion existed regarding ‘Green Book’ guidance on accident analysis, specifically regarding the meteorological conditions to be

assumed in an accident analysis to be reported in a DOE NEPA document. Existing guidance should be revised." [Editor's Note: The Office of NEPA Policy and Assistance is working on enhanced accident analysis guidance. Also see related comments on

page 15 of this Report.] The respondent also noted the need for further guidance on the assessment of cumulative impacts. Specific guidance needs were identified for the sufficiency of assessing cumulative impacts for only one EIS alternative, the scope of the "other past, present, and reasonably foreseeable future actions" that must be addressed in assembling cumulative impacts, and determining which sources of information on possible future DOE actions should be used as a basis for identifying "reasonably foreseeable" future DOE actions.

Another respondent disclaimed further NEPA guidance needs explaining "...perhaps that was because most of the team and the NCO attended the onsite NEPA training provided last year. Such a course might be worthwhile for all future NEPA teams. Not only did we learn how to avoid doing 'NEPA by rumor,' in general our project was the in-class example which provided us with invaluable resources and strategies."

EFFECTIVENESS OF THE NEPA PROCESS

Click Here for Picture
[0=Not Effective; 5=Highly Effective]

When asked how the NEPA process was used in agency planning and decision making, 32 respondents stated that the process was useful, in the following ways:

- to establish the preferred alternative, which caused real thinking about the direction of the EIS because of the analysis, and led to very focused decision making:
- to decide which treatment process was best from both a technical and cost perspective;
- to focus on and resolve issues with the public and Indian tribes;
- to identify and mitigate potential adverse impacts to the environment (process results will be integrated into future transmission plans);
- to answer a question about whether to continue a leasing program and also resulted in positive public awareness of the program;
- to examine all alternatives;
- as a driving force behind key environmental controls (or modifications) for the project - NEPA made the project more conservative than environmentally risky; and
- to identify the need for additional air pollution control equipment.

The adjacent figure illustrates how respondents rated the effectiveness of the NEPA process with respect to influence on decision making on a scale of 0 to 5 ("0" viewing the NEPA process as "another permit" for a decision already made, and "5" using NEPA as an important planning tool).

One respondent commented that the NEPA process was not effective for a particular project because the EA analysis only helped to support a decision that had, informally, already been made. The NEPA process was described by one respondent as "a regulatory device similar to a permit."

One respondent who gave the NEPA process a high effectiveness rating stated: "NEPA allowed us to focus on the public access and tribal/use issues that made the project objectionable to some groups, and resolve those issues."

Another such respondent noted that integrating the NEPA and applicable State Environmental Policy Act requirements was extremely effective in influencing and speeding the overall environmental review process. Additionally, a respondent considered the NEPA process to be effective because "not only did the NEPA process help DOE make a decision about the leasing program, the decision was made with regard to effects on the environment and public concerns."

One respondent suggested that "NEPA needs to be a true part of the upfront planning in projects taken on by DOE. Full consideration of the possible negative effects that may occur due to a new project need to be explored at the onset." Another respondent stated: "The project was Congressionally directed - DOE didn't initiate any action to request or support the project. Congress directed DOE to make funds available for the project. The NEPA process was simply just another permit for a decision already made by Congress."

OTHER LESSONS LEARNED

Some respondents offered the following miscellaneous comments regarding lessons learned in the process of completing NEPA documentation:

A forceful politically active public can at times request solutions that have greater environmental impact or which cause less vocal citizens to be impacted (e.g., the "not in my backyard (NIMBY)" syndrome). The NEPA process provides a means of objectively reviewing and reporting information. NEPA can be used to reveal those conditions and lead to better overall decisions.

Develop an appropriate tiering strategy for the decisions and actions that lay ahead of the agency. Find the right level of detail for the decisions at hand.

Draft EIS comments received from the Department of Interior after the final EIS had been sent to the printer had to be addressed, which required publication of an addendum to the final EIS. Whenever an agency that has jurisdiction by law or special expertise regarding impacts does not respond during the normal comment period, it would be prudent to contact them regarding their intent to comment before finalizing the document.

An "independent" review of the draft NEPA document was arranged with non-site (objective party) DOE NEPA practioners, who assisted in identifying areas in the draft document that could be strengthened.

Maximize use of teleconferences or video conferencing. Assure team is well represented by various disciplines, but minimize the number of conferences as appropriate to reduce cost and coordination efforts.

A well-defined procedure is needed to keep the document on schedule. Procedures cannot be invented as the process progresses from start to finish.

FEATURE STORIES

Waste Isolation Pilot Plant Supplemental Environmental Impact Statement (SEIS):

Turning a Public Participation Blunder into a Success

by Harold Johnson, NEPA Compliance Officer, Carlsbad Area Office

DISCUSSION

The Carlsbad Area Office demonstrated its sensitivity to stakeholder concerns by providing a previously unscheduled opportunity to comment on the scope of the Waste Isolation Pilot Plant SEIS, in Broomfield, Colorado on October 11, 1995. Several interested groups felt they had not been afforded an adequate opportunity to participate in the originally-scheduled scoping meeting for this project because two other DOE meetings and a Rocky Flats Citizens Advisory Board subcommittee meeting had been scheduled the same day. To correct this blunder, Carlsbad area staff coordinated with local interest groups and the Rocky Flats Office to set up the October 11 meeting, scheduling it to avoid conflicts with other meetings and to suit the schedules of the interest groups.

The meeting was held at the Broomfield Colorado Community Center, a setting in which the stakeholders suggested they would be more comfortable than the customary conference facilities. The setting was informal. DOE staff greeted the stakeholders at the door, and explained the meeting format. Fact sheets and forms for written comments were on a table immediately inside the door.

The DOE representatives included the NEPA Compliance Officer (who chaired the meeting), a public affairs staff member as a facilitator, a transportation expert (transportation was one of the major concerns identified by stakeholders), and note takers. DOE personnel and approximately 20 stakeholders sat interspersed around a large table.

The chairperson opened the meeting by introducing the DOE participants, explained the planned scope of the SEIS, and stated that the purpose of the meeting was to receive comments. At the suggestion of one of the stakeholders, the stakeholder participants introduced themselves and stated what they wanted to gain from the meeting. The chairperson announced that, to ensure all present an opportunity to comment, individual comments would be limited to 10 minutes. Commenting began and proceeded for two hours. DOE representatives asked clarifying questions and answered questions from the stakeholders. While the interaction did not identify new issues or alternatives, it did focus the Carlsbad Area Office's attention on aspects of issues of particular concern to the stakeholders in the Denver area, and will enable them to more clearly address those concerns in the SEIS. At the end of the meeting, several stakeholders expressed their appreciation that DOE had returned to meet with them.

LESSONS LEARNED

The lessons learned from this experience were numerous.

Public Coordination. Identifying and working with interest groups in the vicinity of NEPA meetings is beneficial. The groups will work to get people to come to the meeting, and the people who attend from these groups are likely to represent a wide range of opinion within the community. The local groups helped identify a meeting facility that was comfortable and familiar to them, and much less costly than the usual hotel forum. Community centers or (if a large turnout is anticipated) local school lunchrooms or auditoriums are also comfortable and less costly meeting places.

Appropriate Facilites. Many people come to NEPA meetings as much to hear what others have to say as to make comments themselves. People are less likely to make the same comment if they can hear other people’s comments. A small meeting room without a sound system may suffice if everyone sits around the same table, but for larger meetings some type of sound system is likely to be needed.

Objectivity. Don't try to "sell" the proposed action at the meeting; rather take comments and answer questions. Not only does promoting one alternative call DOE's objectivity into question, it may also

offend some stakeholders and lead to an argumentative atmosphere.

Respect. Treat stakeholders as neighbors. Sit at the same table and dress as they do (no ties on most occasions). Listen to them with respect and show that you are listening by asking them to clarify points you don't understand, or to identify their sources of information. Don't argue with them.

Dual Axis Radiographic Hydrodynamic Test Facility EIS

A Case Study by Diana Webb, NEPA Document Manager, Los Alamos National Laboratory

INTRODUCTION

The Department of Energy (DOE) began conceptual design for the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility at its Los Alamos National Laboratory (LANL) in the early 1980s as part of its nuclear weapons research and design mission. DOE prepared several environmental reviews, intended to satisfy the requirements of the National Environmental Policy Act (NEPA), throughout the 1980s. In 1988, Congress appropriated funding for DARHT, and DOE began construction in 1994. In October 1994, a coalition of citizen interest groups asked why no environmental impact statement (EIS) had been prepared prior to start of construction. In November 1994, DOE issued its Notice of Intent to prepare an EIS for the (by then partially-constructed) facility; at essentially the same time, stakeholders filed a lawsuit seeking an injunction against further construction until, among other things, the EIS was completed. In January 1995, an injunction was granted. DOE completed the EIS in August 1995 and issued its Record of Decision in October 1995. DOE has asked that the injunction be lifted and the court is considering this matter.

The "lessons learned" from the DARHT EIS project fall into three categories: 1) how DOE found itself in the predicament of having started construction of a major project without, in retrospect, an adequate NEPA review; 2) how DOE prepared a high-quality environmental impact statement in 10 months; and 3) how DOE used this NEPA process to support its role of environmental stewardship.

PAST ENVIRONMENTAL REVIEW FOR DARHT

Background. DOE's environmental review of DARHT began soon after preliminary design was started in the early 1980s. At that time, for projects that were clearly expected to result in insignificant environmental impacts, DOE's NEPA procedures provided that a memorandum to file (MTF) could be written and no further NEPA review was required. Unlike an EA, a MTF did not identify alternatives to the proposed action. In 1990, DOE rescinded the use of MTFs as NEPA reviews, partly because the agency had accumulated enough NEPA history to expand its list of CXs, and partly because DOE felt that MTFs were being used improperly in lieu of EAs.

Earlier Reviews for DARHT. The DARHT facility of the 1990s is far different from the DARHT facility envisioned in the early 1980's. Initially, plans called for a small x-ray machine, about the size of a semi-truck trailer, to be installed near an existing small x-ray machine. DOE/AL executed a corresponding MTF in 1983 after seeking DOE/Headquarters concurrence. In 1984 the project was revised to provide for a new stand-alone facility at a different location, and procuring two new x-ray machines instead of using an existing machine. One new x-ray machine was to be fixed, and the other mounted on a moveable "carriage" on a track; both would be about the same size as the 1982 version. The MTF was revised to describe the new project and DOE concluded that the impacts would be no different than originally discussed. In 1987 the project was again revised to include linear induction technology to power the two x-ray machines; the machines would be housed in halls about 250 feet long

at a slightly different location. DOE again determined that the impacts were substantially unchanged. In response to a DOE/Headquarters request to all field offices, in

1989 DOE/AL reviewed all then-recent MTFs and confirmed that the MTF for DARHT was appropriate and that no further NEPA review was required. In April 1994, DOE began constructing the two 250 foot-long, 3-story accelerator halls and procuring and assembling accelerator equipment.

Lessons Learned. In 1990, DOE rescinded the use of MTFs as a NEPA review device because it was often misapplied and did not allow for analysis of alternatives, "the heart of the NEPA process." A second lesson applies to reviews done under current procedures, and relates to changes in the proposed action. DARHT is a classic case of incremental changes to an original proposal leading to a vastly different project from that originally envisioned and reviewed. For various reasons, DOE often takes many years to implement a project. While NEPA review should properly be done early enough in the process to assist with agency decision making, in the event of a project delay or incremental change, DOE should take a last look before implementing a project to ensure that the NEPA review is still adequate.

DARHT EIS

Background. In late October 1994, three citizens groups wrote to the Secretary of Energy requesting, among other things, that construction be halted until DOE prepared an EIS on the DARHT facility. After considering the options, and noting that if the project were starting anew that an EIS would probably be prepared, DOE decided in mid-November 1994 to prepare an EIS. To preserve project schedules, however, DOE decided to continue with construction while the EIS was underway. However, in the interests of expediency, DOE decided to prepare the DARHT EIS as quickly as possible and developed an aggressive 11-month schedule to reach a ROD.

On November 16, 1994, two citizens groups filed suit to enjoin DOE from proceeding with the DARHT project until it completed an EIS and subsequent ROD. On November 22, 1994, DOE published its Notice of Intent to prepare the DARHT EIS in the

Federal Register and began the public scoping process for the EIS. The public scoping period ran until January 10, 1995, about two weeks longer than the minimum 30 days to accommodate the holiday break. On January 27, 1995, the Court issued a preliminary injunction stopping DOE from further construction and related work, such as procurement, pending completion of the DARHT EIS and ROD. DOE immediately decided to shave an additional six weeks off of the already-tight EIS schedule (some of this time was eventually added back to the schedule).

Before the DARHT EIS, no EIS had been prepared for a project at LANL for over 15 years. A Sitewide EIS had been completed in 1979, but the environmental baseline and facility descriptions were sketchy and out-of-date. Although many EAs had been prepared for projects at LANL, and a data-collection effort had begun for a new Sitewide EIS, no environmental baseline information had been compiled for the DARHT project area. Therefore, the DARHT EIS had to be prepared from a blank slate.

Organization. The EIS project was managed from DOE/LAAO with general oversight from DOE/AL. Support services were provided by Battelle Memorial Institute through its Albuquerque office and its Pacific Northwest Laboratory (PNL) in Richland, Washington. The DOE Document Manager set up a matrix organization: LANL prepared non-analytical baseline project and environmental information; DOE prepared policy material, such as the purpose and need chapter; PNL provided environmental analysis; and Battelle/AL provided overall project management support and document integration.

Importance of the Project. DOE had determined that it needed to achieve the capability provided by DARHT as quickly as possible; therefore, DOE needed to make the most efficient use of its time to prepare the DARHT EIS as quickly as possible. At the same time, in an era of budget cuts, DOE could not afford to spend a great deal of money on preparing the EIS.

Lessons Learned. The DARHT EIS is considered by most reviewers to be a quality document. The EPA gave the draft EIS a "Lack of Objections" rating and wrote a letter in support of the final EIS. The Department of Justice, in preparing material to request that the injunction be dissolved, indicated that the final EIS and its accompanying comment response document were more than adequate. To achieve the goal of preparing a quality EIS on the DARHT facility in a very short time DOE had to make every day count, and take no missteps that would cause delays. To accomplish this, DOE put into place many recommendations from the various NEPA quality process management teams from the past few years.

Teamwork. The success of the DARHT EIS is one of teamwork. Over the course of preparing the EIS, over 100 DOE and laboratory people worked on the document at some point in time, in addition to the support services contract staff. The matrix organization served to cut through management layers to focus expertise on the appropriate subject matter at the appropriate time. The collegial approach built trust among participants, and led to a sense of ownership of the process and the document by all concerned. This approach also integrated the NEPA process with the DOE and LANL program and project management elements of DARHT.

Concurrent Review. The operations office and Headquarters staff review was collapsed into a one-week on-site concurrent review for the draft EIS instead of proceeding in sequence. DOE/AL and DOE/Headquarters were willing to commit experienced reviewers to provide an intensive, quick turn-around effort. Battelle provided real-time revisions, and the PNL and LANL subject matter experts were available for ongoing "breakout sessions" to discuss specific topics with reviewers. Using this approach, the team revised the entire text twice in one week.

Project Office. The on-site team (including DOE, LANL, and Battelle personnel) worked in a dedicated office space away from their regular office assignments. This allowed people to focus on the project, provided opportunity for frequent interactions, and established a recognized place for dispute resolution. As people from different organizations worked closely together, they got to know and trust each other.

Process Ownership. The Document Manager was given the responsibility for making sure that a quality document was produced to meet the schedule. To make this happen, the Document Manager had to "own," rather than "administer," the process. This entailed early identification of problems, and quickly identifying and pursuing alternative approaches to keep the project on track.

DOE as Author. DOE was primary author of all policy sections, such as the purpose and need chapter, which accounted for about one-third of the document. This sped review and approval of the document. It is unreasonable to expect that an external support services contractor could adequately describe internal policy issues unique to DOE without a great deal of direction and review.

Classified Material. DOE prepared a classified supplement to the DARHT EIS. DOE took the additional step of making the draft classified supplement available to cleared reviewers of other agencies responsible for protecting the health and welfare of the general population; in this case, the state, the regional office as well as the Headquarters office of the EPA, and various American Indian tribal governments. DOE issued an unclassified summary of the environmental impacts from the draft classified supplement, and included these in the final EIS. This helped to dispel other agency concerns regarding the project.

Contracting. To meet the aggressive schedule, DOE determined that there was no time to put the EIS contract out for competitive bid, and no justification to go through a sole source contract. DOE was able to task Battelle for EIS support services through a Pacific Northwest National Laboratory management contract. Although this arrangement was very successful, to meet the tight timeframe for the DARHT EIS, DOE would have more flexibility over the long run by establishing EIS contracting mechanisms ahead of time with more than one source, in case a given contractor were unavailable to accept a specific job.

Budget. DOE was able to keep costs well under the initial budget estimate because the DARHT EIS was prepared so quickly, DOE made efficient use of LANL and DOE personnel, and the support services contractor was willing to take cost-saving measures to stay within budget.

Quality Driver. In spite of extremely tight schedules, preparation of the DARHT EIS was quality-driven, not schedule-driven. In every case, schedule took second priority to "doing it right." This helped build trust in the process. However, the team adopted the DP tenet of "better is the enemy of good enough" in order to come to timely closure on content and editorial matters.

ENVIRONMENTAL STEWARDSHIP

Background. In addition to the procedural provisions that give rise to the EIS process, NEPA promotes efforts to prevent damage to the environment. The DARHT project provided means for DOE to provide leadership in environmental stewardship in two specific areas: cultural resource management, and threatened and endangered species habitat management.

With about 2,000 documented cultural resource sites, LANL is rich in prehistoric ruins, including early American Indian pueblos. DOE was aware that cultural resource sites were in the vicinity of the DARHT and specifically oriented the facility to protect one especially important site. LANL archaeologists had consulted with local tribes regarding other cultural resource sites near DARHT, and DOE and LANL have begun regular consultations with local tribes to ensure protection and access to culturally-important sites under the American Indian Religious Freedom Act.

The day that the draft DARHT EIS was issued, during ongoing field surveys LANL biologists discovered a pair of Mexican spotted owls in the vicinity of the DARHT facility. Accordingly, DOE and LANL carried out the entire Endangered Species Act consultation process with the U.S. Fish and Wildlife Service (USFWS) during the already-minimal public comment period on the draft EIS. By working closely together, which had not occurred in the past, DOE and USFWS were able to agree on specific mitigation measures to protect threatened and endangered species. One key provision was an agreement to prepare a laboratory-wide management plan to protect all threatened and endangered species. (During the consultation process, the owls successfully raised two owlets.)

Lessons Learned. The DARHT EIS process provided a successful vehicle for interagency coordination on environmental stewardship issues affecting LANL. In addition, the DOE landlord program office, in this case Defense Programs (DP), acknowledged that the benefit of environmental stewardship activities accrue to the site as a whole, although they may be triggered by a specific project. To ensure continuity of focus and funding, DP included key environmental stewardship provisions in the DARHT ROD and carried these through the Mitigation Action Plan. The result will be better management of these resources across the entire site, and better relations with sister agencies.

UPDATES FROM THE OFFICE OF NEPA POLICY AND ASSISTANCE

The Need for Consistency in Accident Analyses

An important inconsistency in the accident analyses of two draft environmental impact statements was discovered shortly before these high-visibility documents were to be issued within a month of each other during this quarterly reporting period. Although both were prepared by the same contractor and examined, in part, the management of the same type of material in the same facility, the documents were prepared with substantially different estimated consequences to members of the public from the maximum reasonably foreseeable facility accident. One document based the accident analysis on an existing Safety Analysis Report while the other postulated new accident scenarios and made different assumptions regarding source term and meteorological conditions.

Although both results may be technically defensible, the analyses, ideally, should have been identical. The proposed operation of the facility at issue is highly controversial and such an apparent inconsistency might have posed problems. Ultimately, the Department stood behind both sets of results and provided an explanation of the differences in the later document.

This example highlights the need for NEPA document preparers to coordinate with and draw upon related work in progress, or that has been recently completed, to promote efficiency and to ensure an appropriate degree of consistency. Regarding accident analyses please note that the Office of NEPA Policy and Assistance is working on enhanced accident analysis guidance.

Secretarial Policy on Enhanced Public Involvement in the EA Process -- a Reminder

Based on information provided to the Office of NEPA Policy and Assistance, it appears that Field Offices often do not provide the public enhanced opportunities to participate in the EA process that are required by the June 1994 Secretarial Policy Statement on NEPA.

Section V.A. of the Secretarial NEPA Policy requires NEPA Document Managers to take appropriate action to encourage and facilitate public participation throughout the NEPA process. Section V.B. of the Policy states: "**Whenever possible**, the Department of Energy will provide enhanced opportunities for public involvement in the environmental assessment process, which **ordinarily** will include **at a minimum**:

1. Early public notice of the Department of Energy's intent to prepare an environmental assessment (concurrent with state/tribal notification); and
2. Opportunity for interested parties, on request, to review environmental assessments (concurrent with state/tribal review) prior to Department of Energy approval." (emphasis added)

A variety of methods may be used to meet the minimum requirements of the Secretarial Policy: publishing brief notices of the availability of EAs and information about proposed projects in local newspapers and various newsletters, providing information to public libraries, and discussing proposed projects and EAs at community meetings. Readers are encouraged to share their own experiences and suggestions.

Guidance on enhanced public involvement is available in Effective Public Participation under the National Environmental Policy Act, (also known as "the gold book") issued by the Office of NEPA Policy and Assistance in December 1994, and Questions and Answers on the Secretarial Policy Statement on the National Environmental Policy Act," (Qs & As) questions 42 through 44 issued by the Office of NEPA Policy and Assistance in June 1994.

Although this reminder focuses on meeting the minimum requirements of the Secretarial NEPA Policy, additional (beyond the minimum) public involvement opportunities are often appropriate. The response to question #43 in the Qs & As states: "these minimum opportunities for public involvement should always be appropriate absent extraordinary circumstances...The amount of any additional public involvement in an environmental assessment depends on the circumstances, including the potential impacts of the project, public interest in the project, and the similarity of the proposed action to others requiring preparation of an environmental impact statement." The Council on Environmental Quality NEPA regulation requires agencies to involve the public in the preparation of an environmental assessment "to the extent practicable" [40 CFR [[section]] 1501.4(b)], and points out that, "depending on the circumstances, this could include seeking input on the scope of the document (including alternatives and potential impacts), meetings, workshops, or document reviews."

Upcoming Changes to the Stakeholders Directory

We are revising the Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act (also known as "the yellow book") and will issue the Fifth Edition in January 1996. There will be several changes, but want to inform the Department's NEPA community of two of those now. First, the Occupational Safety and Health Administration (OSHA) has requested that we remove them from the Directory. Departmental elements should not routinely send copies of NEPA documents to OSHA for their review, unless OSHA specifically requests. Second, when providing NEPA documents to the State of Tennessee, send three copies to each of the two contacts listed in the Directory within the Tennessee Department of Environment and Conservation (Dodd Galbreath and Earl Leming). These primary contacts will then inform the Department by facsimile which of 13 secondary Tennessee Agency contacts should receive a copy of the document. Comments from the secondary contacts on Draft Environmental Impact Statements will be coordinated by the primary contacts listed in the Directory. Preapproval review comments on Environmental Assessments are coordinated on a case-by-case basis.

Document Distribution

Recent experience highlights two concerns regarding the distribution of NEPA documents. First, NEPA Document Managers should assure that all appropriate Federal agencies receive copies for review, especially agencies with jurisdiction by law [40 CFR 1021.301]. In one recent case, the Department was just barely able to forward a Draft EIS to agencies (that were mentioned in the Draft EIS as having jurisdiction, but were not sent copies of the document) in time that their reviews did not delay the project. Second, DOE has not consistently sent the Department of the Interior the number of copies of NEPA documents for review that they have requested. (The requested number varies with the location of the proposed action.) Interior's requested procedures are provided in the Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act (see above). Department of the Interior organizations frequently play significant roles in DOE’s plans and operations, and obtaining their timely comments on NEPA documents can be important to meeting our objectives.

LESSONS LEARNED QUESTIONS AND ANSWERS: Please remember that you may send questions to be answered in the Lessons Learned Report to:

Joanne Arenwald Geroe
Office of NEPA Policy and Assistance (EH-42)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Telephone: 202-586-8397
Fax: 202-586-7031
E-mail: joanne.geroe@hq.doe.gov

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the first quarter of FY 96 (October 1, 1995 to December 31, 1995) should be submitted as soon as possible after document completion, but no later than February 1, 1996. (Fax: 202-586-7031) The Lessons Learned Questionnaire is now available on the DOE NEPA Web [http://www.eh.doe.gov/nepa] on the Internet.

EISs COMPLETED BETWEEN JULY 1 AND SEPTEMBER 30, 1995

EIS (Title and Document Number)	Field Office	Program Office
Dual Axis Radiographic Hydrodynamic Test Facility, Los Alamos National Laboratory, Los Alamos, New Mexico DOE/EIS-0228	Albuquerque Operations Office	Defense Programs
Bonneville Power Administration, Puget Power and Light Northwest Washington Transmission Project, Washington DOE/EIS-0173	_____	Bonneville Power Administration
Business Plan, Bonneville Power Administration, Washington DOE/EIS-0183*	_____	Bonneville Power Administration
Columbia Wind Farm, Goldendale, Washington DOE/EIS-0206	_____	Bonneville Power Administration
Resource Contingency Program, Hermiston Power Project, Oregon DOE/EIS-0230	_____	Bonneville Power Administration

Washington Windplant, Goldendale, Washington DOE/EIS-0205		Bonneville Power Administration
Waste Management at the Savannah River Site, Aiken, South Carolina DOE/EIS-0217	Savannah River Operations Office	Environmental Management

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 Impact Statement

Category 1 -- Adequate

Category 2 -- Insufficient Information

Category 3 -- Inadequate

***** This EIS was completed during the third quarter of 1995, but was omitted from the last Lessons Learned Report. Therefore, it is being included in this report.

****** As of December 1, 1995, EPA has not provided a rating.

EAs COMPLETED BETWEEN JULY 1 AND SEPTEMBER 30, 1995

EA (Title and Document Number)	Field Office	Prog
Uranium Lease Management Program, Colorado DOE/EA-1037	Albuquerque Operations Office, Grand Junction Project Office	Environm Manageme
Construction and Operation of Environmental, Safety and Health	Albuquerque Operations Office, Amarillo Area Office	Defense

Analytical Laboratory, Pantex Plant, Amarillo, Texas DOE/EA-0970		
High Explosive Waste Water Treatment Facility at LANL, Los Alamos, New Mexico DOE/EA-1100	Albuquerque Operations Office, Los Alamos Area Office	Environm Manageme
Decontamination and Dismantlement of the Pinellas Plant, Pinellas, Florida DOE/EA-1092	Albuquerque Operations Office, Pinellas Area Office	Environm Manageme
South Fork Snake River Project/Palisades Wildlife Mitigation Project, Idaho DOE/EA-0956	_____	Bonnevil Administ
Advanced Technology Research Center, Oklahoma State University, Stillwater, Oklahoma DOE/EA-0936	Chicago Operations Office	Energy R
Adoption of United States Department of Agriculture EA on Management of Wildlife Causing Damage at Argonne National Laboratory - East, Chicago, Illinois DOE/EA-1128	Chicago Operations Office	Energy R
Proposed Upgrade of Waste Storage Facilities at Argonne National Laboratory-East, Chicago, Illinois DOE/EA-1073	Chicago Operations Office	Environm Manageme
Solid Waste Disposal Areas 9 and 23, Nevada Test Site, Nye County, Nevada DOE/EA-1097	Nevada Operations Office	Waste Ma
Proposed Replacement and Operation of the Anhydrous Hydrogen Fluoride	Oak Ridge Operations Office	Defense

Supply and Fluidized-Bed Chemical Processing Systems at Building 9212 at the Y-12 Plant, Oak Ridge, Tennessee DOE/EA-1049		
Off-Site Disposal of K-25 Pond Waste, Oak Ridge, Tennessee DOE/EA-0966	Oak Ridge Operations Office	Environm Manageme
Storage of Excess Highly Enriched Uranium at Y-12 Plant, Oak Ridge, Tennessee DOE/EA-0929	Oak Ridge Operations Office	Defense
High Flux Isotope Reactor Spent Fuel Reracking Program, Oak Ridge, Tennessee DOE/EA-0900	Oak Ridge Operations Office	Nuclear
Decontamination and Decommissioning of the General Atomics Hot Cell Facility, San Diego, California DOE/EA-1053	Oakland Operations Office	Environm Manageme
Operation of the Dublit III Tokamak Research Facility and Related Research at the General Atomics Plant, La Jolla, California DOE/EA-1076	Oakland Operations Office	Energy R
Construction and Operation of an Office Building at the Stanford Linear Accelerator Center, Stanford, California DOE/EA-1107	Oakland Operations Office	Energy R
Proposed Induction Linac System Experiments in Building 51B at Lawrence Berkeley National Laboratory, Berkeley, California	Oakland Operations Office	Energy R

DOE/EA-1087		
Construction and Operation of a Contaminated Soil Conservation Area, West Valley Demonstration Project, West Valley, New York	Ohio Field Office	Environm Manageme
DOE/EA-1072		
Mound Plant Glass Melter Project, Miamisburg, Ohio DOE/EA-0821	Ohio Field Office	Environm Manageme
Commercial Demonstration of the NOXSO SO2/NOX Removal Flue Gas Cleanup System, Newburgh, Indiana and Charleston, Tennessee	Pittsburgh Energy Technology Center	Fossil E
DOE/EA-1080		
Liquid Phase Methanol Demonstration Project, Kingsport, Sullivan County, Tennessee DOE/EA-1029	Pittsburgh Energy Technology Center	Fossil E
Calderon Cokemaking Process Demonstration Project, Alliance, Ohio DOE/EA-1091	Pittsburgh Energy Technology Center	Fossil E
Relocation of TRIGA Reactor Irradiated Fuel from 308 Building to the 200 West Area, Hanford Site, Richland, Washington DOE/EA-0985	Richland Operations Office	Environm Manageme
200 Area Sanitary Sewer System, Hanford Site, Richland, Washington DOE/EA-0986	Richland Operations Office	Environm Manageme
Transfer of Plutonium Uranium Extraction Plant and N Reactor Irradiated Fuel for Encapsulation and Storage at the K Basin, Hanford	Richland Operations Office	Environm Manageme

Site, Richland, Washington DOE/EA-0988		
Natural Fluctuation of Water Level in Par Pond and Reduced Waste Flow in Steel Creek below L Lake at the Savannah River Site, Aiken, South Carolina DOE/EA-1070	Savannah River Operations Office	Environm Manageme
Construction and Operation of the Health Physics Site Support Facility at the Savannah River Site, Aiken, South Carolina DOE/EA-1022	Savannah River Operations Office	Environm Manageme
Savannah River Site Low-Level Radioactive Waste Volume Reduction, Savannah River Site, Aiken, South Carolina DOE/EA-1061	Savannah River Operations Office	Environm Manageme
Independent Waste Handling Facility, 211-F at the Savannah River Site, Aiken, South Carolina DOE/EA-1062	Savannah River Operations Office	Environm Manageme

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. Department of Energy

Quarterly Report

March 1, 1996

For 1st Quarter FY 1996

Inside *LESSONS LEARNED*

Welcome to the newly-revised Quarterly Report of Lessons Learned in the NEPA process. In response to reader suggestions, we have expanded the scope of the report to provide a wider variety of NEPA-related information, and enhanced the format for better clarity and overall readability. This Quarterly Report includes:

- NEPA lessons learned at the Hanford Site - Page 1
- Mini-guidance on the preparation of EIS summaries, properly eliminating alternatives and impacts from detailed analysis, application of DOE NEPA regulations to procurement, and NEPA questions and answers - Pages 3-6
- Updates on the proposed amendments to DOE's NEPA regulations, NEPA Contracting Reform Guidance and an upcoming workshop, the Federal Environmental Quality Awards program, and a Lessons Learned alert - Page 7
- First quarter FY 1996 Lessons Learned Questionnaire results, including EIS and EA cost and time reports, and the cumulative median cost of EAs - Pages 8-15

Please let us know what you think of the format and content of this report by completing the evaluation form on page 17 and returning it to us.

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

As a result of analyses conducted during the NEPA process, DOE decided not to construct six new high-level waste tanks similar to these shown under construction at Hanford during the 1970's, saving over $400 million.

A NEPA SUCCESS STORY:
Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes

A key stakeholder in the Pacific Northwest has praised the DOE NEPA staff for "a job well done" in the preparation of the environmental impact statement for the Safe Interim Storage of Hanford Tank Wastes.

In a recent letter from the Confederated Tribes of the Umatilla Indian Reservation to John Wagoner, Manager, Richland Operations Office, and Mary Riveland, Director, Washington State Department of Ecology (Ecology), the tribal organization commended the management of the Hanford tanks EIS process as an "excellent example" for others to follow.

The EIS process differed from typical DOE NEPA planning processes, according to the tribal program manager, J.R. Wilkinson, in at least two regards: the EIS staff "actually changed the scope of their proposed project in response to criticism" from the public, and the EIS staff "made concrete, enforceable commitments to specific mitigation actions" in the Record of Decision.

The enthusiastic stakeholder appreciation of the NEPA process for Safe Interim Storage of Hanford Tank Wastes is one feature of this successful case history, which provides important lessons on NEPA's influence on decision-making, the benefits of full and open stakeholder participation, and practical aspects of managing the NEPA process. Moreover, as a result of reevaluations of the project in the course of the NEPA process, the Department has decided not to construct six new waste tanks, resulting in a savings of $435 million.

Carolyn Haass of the DOE Richland Operations Office and Geoff Tallent of Ecology managed a combined NEPA/State Environmental Policy Act (SEPA) process in coordination with Paul Dunigan, Richland's NEPA Compliance Officer.

A NEPA success story (Continued)

Their staffs met an aggressive schedule for preparing a Final EIS, Record of Decision, and Mitigation Action Plan. They also addressed tribal and other stakeholder concerns, which resulted in DOE changing its preferred alternative in the Final EIS and making commitments in the Record of Decision to enforceable mitigation strategies.

NEPA's Impact on Decision Making

When the Draft EIS was issued in July 1994, the preferred alternative was to construct up to six new high-level waste storage tanks. Political support for the alternative was strong, as speedy completion of the EIS would meet Tri-Party (DOE, Environmental Protection Agency, State of Washington) Agreement milestones, and the socioeconomic impacts of the $435 million proposal looked very beneficial. Dr. Don Alexander was the Richland NEPA Document Manager at that time, and, faced with public skepticism of a predetermined outcome and an analysis that did not support the preferred alternative, he and Ms. Haass championed a change in course. Through Dr. Alexander's direction, reevaluations of waste volume projections and management practices led DOE to abandon its preferred alternative and pursue renegotiation of the Tri-Party Agreement. This change would save the Department hundreds of millions of dollars in construction and operations costs. Ms. Haass and Robert Lober, Project Manager, then developed the new preferred alternative for safe tank waste management, consisting of a replacement cross-site transfer system with continued use of mixer pumps in the hydrogen-generating tank SY-101. This became the preferred alternative presented in the Final EIS and chosen in the Record of Decision.

Mitigation Commitments Reassure Stakeholders

State and Federal fish and wildlife agencies both acknowledged Richland Operations Office's cooperation in developing an effective Mitigation Action Plan. "The U.S. Fish and Wildlife Service considers the development of this plan to be a significant positive indication of DOE's increasing awareness and stewardship of the invaluable natural resources it manages at Hanford. . . . We commend the Safe Interim Storage project staff for their coordination efforts with natural resource agencies since the early phases of the project, and their responsiveness to our suggestions," wrote Philip Laumeyer, Field Supervisor.

Tribal stakeholders, too, were reassured by the mitigation commitments. Mr. Wilkinson wrote that the staff "deserve recognition for demonstrating the integrity to make concrete, satisfactory commitments to mitigation in their NEPA Record of Decision."

EIS Manager Carolyn Haass confers with J.R. Wilkinson, Program Manager, Confederated Tribes of the Umatilla Indian Reservation, regarding the Safe Interim Storage Environmental Impact Statement.

Process Streamlining and Contracting Efficiency

The DOE and Ecology EIS Document Managers exploited opportunities to reduce process overlaps, saving both time and money:

- ☑ Scoping meetings and Notices of Intent were combined for the Safe Interim Storage and the Tank Waste Remediation System EISs.
- ☑ DOE and Ecology agreed to co-prepare a single EIS for Safe Interim Storage, satisfying both the NEPA and SEPA processes.
- ☑ This EIS project established a Hanford resource library that will support the efficient preparation of future Hanford EISs. Preparers of the Hanford Plutonium Finishing Plant EIS are using this resource to reduce research costs and preparation time.

Cost and time savings were attributed to the use of a general support services contractor, with the following advantages:

- ☑ The support services contractor had been selected through a competitive process before the start of this EIS, thus avoiding the delay and costs of a separate procurement process.
- ☑ The NEPA support contractor did not have a steep learning curve because of its familiarity with the Hanford Site and its contractors, its expertise in NEPA, and its access to qualified local and national resources.

The Summary: What Everyone Reads

The Summary is a key section of an EIS because it provides the sharpest definition of the issues and basis for choice among options. For many readers the Summary forms their first and last impression of the document (i.e., it is the only section that many people read).

In view of its importance, we present here lessons learned in preparing an EIS summary.

The EIS Summary provides the sharpest definition of the issues and basis for choice among options...

- The Council on Environmental Quality's NEPA regulations (40 CFR 1502.12) state that the purpose of the Summary is to adequately and accurately summarize the environmental impact statement. The regulations require the Summary to emphasize major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The Summary normally should not exceed 15 pages.

- The Summary should not introduce ideas, information, or conclusions that are not otherwise in the EIS. To the greatest extent practicable, the Summary should use material from the body of the EIS as a means of assuring strict consistency. When the Summary requires new writing to meet editorial requirements, be sure such writing merely summarizes and does not change the EIS.

- The most successful summaries (and EISs) focus on the key issues and make effective use of graphics and tables to present and compare the environmental impacts of the proposal and the alternatives. Less effective summaries carry forward trivial impacts that tend to obscure the real issues.

- In summarizing complex information, some EIS preparers have oversimplified presentations and thereby misled the reader. The challenge is to convey both the absolute and relative importance of each impact. If an impact is at a trivial level for each alternative, then relative differences are not important. [Example: If all alternatives would generate less than $10 of socioeconomic impact, it does not matter that one alternative would generate 5 times as much as another. Rather, all alternatives would have essentially no impacts.]

- One should also guard against "rolling-up" impacts that readers (including decision makers) may value differently, such as risks to workers vs. risks to the public, or (near-term) risks from facility operations vs. delayed (long-term) risks from disposal. Similarly, impacts should not be combined when their uncertainties are very different, such as estimated deaths from construction accidents (well-established frequency) vs. estimated deaths from certain nuclear materials handling accidents (relatively much less certain).

- Because of the difficulties expressed in the two preceding paragraphs, several well-motivated simplification attempts have not succeeded, such as ranking alternatives according to their environmental impacts, and using bar charts or circle displays that Consumer Reports has successfully applied to significantly different circumstances. These efforts were not published in NEPA documents because they were too subjective or incomplete, and therefore potentially misleading.

- It may be useful to have “fresh eyes” prepare the Summary, as a check on how well the EIS is “telling its story,” and to identify any gaps or inconsistencies in the EIS.

The Summary should not introduce ideas, information, or conclusions that are not otherwise in the EIS...

- For an EIS being prepared under a contract, the Summary is one of several sections that may be suited to a fixed-price arrangement because the requirements for a summary are easy to specify. Readers are referred to “National Environmental Policy Act Contracting Reform Guidance: Phase II,” issued by the Office of NEPA Policy and Assistance in December 1995.

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the second quarter of FY 96 (January 1, 1996 to March 31, 1996) should be submitted as soon as possible after document completion, but no later than May 1, 1996. (Fax: 202-586-7031) The Lessons Learned Questionnaire is now available on the DOE NEPA Web [http://www.eh.doe.gov/nepa] on the Internet.

Eliminating Alternatives or Impacts from Detailed Analysis: Need for Care

By eliminating unreasonable alternatives or unimportant impacts from detailed analysis, NEPA documents can be made shorter and more focussed. Council on Environmental Quality regulations state that impacts should be discussed in proportion to their significance, with only a brief discussion of other than significant issues [40 CFR 1502.2(b)], and that brief discussions of the reasons for eliminating alternatives from detailed consideration should be provided [40 CFR 1502.14(a)].

Preparers of certain recent NEPA documents made good judgments regarding which alternatives or impacts to dismiss from detailed consideration, but stated the reasons poorly. For example, a recent EIS was drafted to say: "The potential impacts associated with off-site waste disposal sites are not evaluated in detail as the potential impacts would provide additional adverse consequences beyond those addressed here." [sic]

A different EIS was drafted containing a list of criteria used to screen candidate alternatives that the public recommended during the scoping process. The first criterion listed was: "Is the alternative within the scope of the EIS?" This criterion could be interpreted as dismissing any alternative that DOE had not previously included in the scope, which would defeat the purpose of the public scoping process. A separate criterion stated that a proposed new alternative must be substantially different from those already included in the scope of the EIS to qualify for further consideration, which would foreclose consideration of improvements that were not substantially different.

EIS Distribution: Common Sense Approaches

Is the Department required to distribute an entire draft or final EIS to all? We could save money and time by distributing only the Summary.

Several practical considerations bear on this question. The costs of printing and distributing large documents are significant, and agencies have been loudly criticized for sending such documents to people who did not want or need them. On the other hand, DOE wants to provide full information promptly to those who do want it. Council on Environmental Quality regulations (40 CFR 1502.19) state the requirements for distributing EISs. Generally, agencies must circulate the entire draft and final EIS; if the EIS is unusually long (many EISs fit in this category), agencies may circulate the Summary instead.

There are exceptions to this rule, however.

An entire draft EIS must be sent to:

1. Any Federal Agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, state, or local agency authorized to develop and enforce environmental standards.

2. The applicant, if any.

3. Any person, organization or agency requesting the entire draft EIS.

The rules are the same for final EISs, plus: an entire EIS must be sent to anyone who may have provided "substantive comments" on the draft EIS. If in doubt, we recommend providing the entire document or consulting the Office of NEPA Policy and Assistance for advice when that may not be appropriate (e.g., see hint below regarding letter-writing campaigns).

EIS managers should keep in mind that, for both draft and final EISs, 40 CFR 1502.19 requires that, "if the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period."

Helpful Tips

- To save time and money, several EIS managers have asked potential EIS reviewers whether they want to receive the entire EIS, only the Summary, or certain volumes. Post card solicitations have worked well; solicitations at scoping meetings have also been successful. We recommend that solicitations describe each EIS volume, including its page length, so that people can informedly decide what they want to receive.

- Transmittal letters distributing the Summary should identify the make-up of the full EIS, the size of each part, and how to obtain the parts one may want.

- Although not necessarily required, stakeholders affected by the preferred alternative and major environmental interest groups generally should be sent the entire document unless they have said they do not want it.

(Continued on next page)

EIS Distribution (Continued)

- If hundreds of persons send virtually identical letters to DOE expressing a simple opinion on the proposed action (e.g., “Not in my backyard”), then it may be inappropriate to send each of them the entire EIS. Send a Summary and a transmittal letter describing the remaining available documents, as discussed above, and make it very convenient to request and promptly obtain additional information.

Application of DOE NEPA Regulations Regarding Procurement

Section 1021.216 of the Department's NEPA regulations applies to competitive and limited-source procurements, to awards of financial assistance by a competitive process, and to certain joint ventures entered into as a result of competitive solicitations. (Parts of section 216 apply as well to sole-source procurements and joint-ventures and to non-competitive awards of financial assistance.) These provisions, used successfully in the past in the Clean Coal Technology Program, enable the Department to make progress in procurement before completing the NEPA process.

The Department increasingly is exploring contracting opportunities that allocate more of the economic risk of its proposed actions to the private sector than in the past. Such “privatization” approaches pose challenges in integrating the NEPA and procurement processes because, in many cases, only the candidate vendors can provide information that may be needed to complete the NEPA process. On the other hand, it will often be appropriate to complete the NEPA process before proceeding with the procurement -- for example, to support decisions on the procurement objectives.

A further challenge in integrating the NEPA and procurement processes is rooted in the tendency of procurement activities to limit the choice of reasonable alternatives or prejudice programmatic decisions. An attempt to complete the NEPA process before the procurement by covering all possible approaches in a so-called “bounding” NEPA analysis might yield an inadequately detailed analysis or one that misses a tecnology that a vendor might later propose; in such cases, the NEPA document may then need to be supplemented or redone. Alternatively, section 216 enables the Department to make progress in the procurement by considering environmental factors in the selection process as follows:

- When relevant in DOE's judgment, DOE specifies in its solicitation that offerors submit in their proposals environmental information reasonably available to them.

- DOE independently verifies the accuracy of the information and, for offers in the competitive range, prepares an “environmental critique” based on an offeror’s data or supplemental information. The critique is subject to the confidentiality requirements of the procurement. See section 216(f) and (g) for details.

- DOE prepares a publicly available environmental synopsis, based on the critique, to document the consideration given to environmental factors. After selection is made, the synopsis shall be filed with the Environmental Protection Agency.

- DOE prepares an EA or EIS, as appropriate, before taking any action pursuant to the contract or award of financial assistance (except for allowable interim actions) and incorporates the environmental synopsis into that document. If the NEPA process is not completed before contract award, then the contract should be contingent.

Keys Points for the Request for Proposals

- Require needed environmental data and analyses to be provided as a part of the offeror’s proposal.

- Indicate that environmental factors will be among the factors to be considered in contract award.

- If the NEPA process is not completed before contract award:

  -- Limit contracted activities to only those allowable under Council on Environmental Quality and DOE NEPA regulations regarding interim actions (40 CFR 1506.1 and 10 CFR 1021.211, respectively) until the NEPA process is completed.

  -- As appropriate, require offerers to submit further data to support DOE's completion of the NEPA process.

Questions and Answers

Q: Must the no action alternative be assessed in DOE environmental assessments (EAs)?

A: Yes. DOE NEPA regulations are clear about this: "...In addition to any other alternatives, DOE shall assess the no action alternative in an EA even when the proposed action is specifically required by legislation or a court order." (10 CFR 1021.321(c)). Council on Environmental Quality regulations explicitly require assessment of the no action alternative only for EISs, which may explain why this question arises at DOE from time-to-time.

Q: What is the appropriate timeframe for which environmental impacts should be analyzed? We analyzed the impacts that would occur during the 10-year horizon for reasonably foreseeable actions in our site-wide EIS, and lost time when we were asked to go back and analyze impacts over a longer timeframe.

A: In general, impacts should be analyzed for as long as they are reasonably expected to occur.

This question reflects confusion regarding reasonably foreseeable actions and their reasonably foreseeable resulting impacts. To illustrate, consider sitewide EISs in which the Department has used, as a point of departure, a 10-year horizon or window within which it is reasonable to project activities that may occur and whose impacts should be analyzed. If a project were proposed to start during the 8th year, however, and is estimated to have a duration of 15 years, it would not make sense to analyze operational impacts for only 2 years. In such a case, operational impacts should be analyzed for at least 15 years (13 years beyond the 10-year horizon). In addition, impacts such as those related to decommissioning may need to be considered beyond the operational lifetime, and waste disposal impacts may occur hundreds or thousands of years from the time that disposal activity took place. [Note: readers may wish to refer to the top of page 21 of the "Green Book" (*Recommendations for Preparing Environmental Assessments and Environmental Impact Statements*) for further information on the relationship between project duration and time periods for assessing health effects.]

Q: Is there a need for a DOE NEPA document to assess local impacts associated with the ongoing operation of an already-licensed off-site vendor facility to which DOE proposes to send waste for treatment or disposal?

A: Yes. The vendor's action regarding DOE's waste would be connected to DOE's action, and analysis of impacts from the vendor's action therefore is within the scope of DOE's NEPA review obligation (see 40 CFR 1508.25(a)).

Ideally, DOE should assess the impacts no differently than if DOE operated the facility. Such analysis should be guided by the "sliding scale" principle described in *Recommendations for the Preparation of Environmental Impact Statements and Environmental Assessments*; i.e., the level of detail should be commensurate with the importance of the impacts or issues related to the impacts. If DOE's proposed waste load would be a small part of the facility's throughput and the facility would operate well within its established standards, then the vendor's part of DOE's proposal would be low on the scale, and a statement of this context could adequately characterize the impacts. More detailed analysis might be needed, however, when such conditions do not apply. DOE may then need to obtain adequate information from the candidate vendor(s) (perhaps under the provisions of 10 CFR 1021.216, as discussed on page 5 of this Lessons Learned Report) or conduct the NEPA review with incomplete or unavailable information (see 40 CFR 1502.22 for applicable requirements).

Updates from the Office of NEPA Policy and Assistance

Proposed Amendments to DOE NEPA Regulations Published

The proposed amendments to DOE's NEPA regulations (10 CFR 1021) were published in the February 20, 1996, Federal Register for a 45-day public comment period ending April 5, 1996. The Office of Environment, Safety and Health distributed the proposed amendments widely to the Department's NEPA community and to external stakeholders. DOE is not scheduling any public meetings on the proposed amendments, but will arrange a public meeting if the public expresses sufficient interest.

Issuance of the final rule, scheduled for June 1996, will fulfill a critical milestone of Secretary O'Leary's Strategic Alignment Initiative 29, and is part of an overall plan to save $26 million over 5 years by streamlining the Department's NEPA process without compromising quality. Ray Clark, Associate Director for NEPA Oversight, Council on Environmental Quality, praised the amendments as "an excellent effort at streamlining the Department's NEPA process...without sacrificing environmental quality."

For further information or questions or to request copies of the proposed amendments, please contact John Pulliam, Office of NEPA Policy and Assistance by phone (202) 586-4597 or fax (202) 586-3915, or by electronic mail to the following internet address: neparule@spok.eh.doe.gov.

NEPA Contracting Reform Workshop

Establishing New Contracts
Managing Support Contracts

Register now for the
NEPA Contracting Reform Workshop
March 21-22, 1996
Forrestal Building, Washington D.C.

Contact Carolyn Osborne, Office of NEPA Policy and Assistance, 202-586-4596, fax 202-586-7031, or e-mail to nepa.contracting@spok.eh.doe.gov.

Contractor Performance Evaluation is a New Requirement

To create incentives for good performance and to help in awarding future assignments, the DOE NEPA Order (DOE 451.1) requires a NEPA Document Manager to evaluate contractor performance at the conclusion of each EIS and EA. With proper planning and coordination, this evaluation can also meet the Contracting Officer's new responsibilities under the 1995 amendments to the Federal Acquisition Regulation. Detailed procedures and the evaluation form may be found in section 7 of NEPA Contracting Reform Guidance; Phase II, of December 1995. Questions may be addressed to Yardena Mansoor, Office of NEPA Policy and Assistance, fax (202) 586-7031or e-mail to nepa.contracting@spok.eh.doe.gov.

CEQ Awards Program

The Council on Environmental Quality and the National Association of Environmental Professionals cosponsor the Federal Environmental Quality Awards for excellent NEPA actions and agency NEPA programs. Last year, DOE received the award for best agency NEPA program. We do not intend to nominate the Department's NEPA program again this year, but we encourage you to nominate any actions or programs that should be recognized. We have supplied the nomination form to NEPA Compliance Officers. Nominations are due April 1, 1996.

Questions may be addressed to Stephen Simpson, Office of NEPA Policy and Assistance, 202-586-0125, fax 202-586-7031, or e-mail to stephen.simpson@eh.doe.gov.

Lessons Learned Alert: Public Participation for Environmental Assessments

Recently, a stakeholder complained that the local newspaper had announced a 14-day environmental assessment comment period 4 days into that period. Apparently, there had been no previous public notification regarding the pending EA.

As discussed in the fifth Quarterly Report of Lessons Learned, issued December 1, 1996, DOE's policy is to issue an early public notice of the Department's intent to prepare an environmental assessment (concurrent with state/tribal notification) and to provide an opportunity for interested parties, on request, to review environmental assessments (concurrent with state/tribal review) before approval. By planning appropriately, it should be easy to ensure that the public and interested stakeholders are notified before or at the beginning of the comment period.

First Quarter FY 1996 Questionnaire Results

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between September 1 and December 31, 1995. It is based on responses to the revised questionnaire dated January 19, 1996 and to the previous questionnaire dated January 12, 1995.

Editor's Note: Some of the material presented here reflects the personal views of individual questionnaire respondents, which (appropriately) may be inconsistent. Therefore, unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.

NEPA Document Content

Questionnaire respondents described the following problems and innovative approaches used in scoping, collecting data and analyzing impacts for EAs and EISs.

Scoping

➔ Problems included the need to rescope in light of new information and the discovery that information presented to the document team was inaccurate.

➔ Providing focused information fostered beneficial public participation. It is also important to include project engineers in all public and state meetings.

➔ Informational public workshops before formal scoping meetings aided in educating the public on scope of the EIS before formally soliciting input on the EIS scope. Follow-up meetings with key stakeholders on their comments were also useful.

Collecting Data

➔ **Problem:** Inconsistencies in site and program data, such as facility emissions.

Solution: The EIS contractor recalculated emissions from available engineering data and resolved inconsistencies by independent analysis.

Analyzing Impacts

➔ Key related documents were evolving (e.g., Preliminary Safety Analysis Report) as the EIS was being prepared. This posed challenges in ensuring an adequate analysis of accidents.

Document Preparation Process

Respondents offered the following comments on aspects of the NEPA document preparation process:

DOE Teamwork

➔ NEPA Compliance Officer and Document Manager roles and responsibilities were not clear, resulting in conflicts.

➔ Interdisciplinary project team made of Field and Headquarters members was active over extended periods of time, thus retaining valuable "corporate memory."

Teamwork between DOE and Contractors

➔ Dispute between DOE and [the applicant] over the scope of the EA (whether construction was to be included) led to conflicting direction to the contractor (who was being paid by [the applicant]) until the dispute was settled.

Public Reactions to NEPA Process

➔ Some interest groups and Tribes believed that DOE funding was essential for them to participate effectively in the process.

Adequacy of Resources

➔ Competing DOE requests upon knowledgeable Management and Operations Contractor staff hindered NEPA document preparation.

➔ To a certain degree the process could have been expedited by additional Federal staff.

➔ Manager expected instant attention from all staff on the team, conflicting with other workloads.

First Quarter FY 1996 Questionnaire Results

Further Guidance Needs

➔ According to respondents, specific approaches for dealing with environmental justice and accident effects on "involved workers" need to be identified. Also, specific approaches for accident effects on the environment need to be identified and coordinated with Safety Analysis Report requirements. [**Editor's note:** See guidance provided in Lessons Learned Quarterly Reports dated June 1, 1995 (environmental justice) and September 1, 1995 (involved workers). Also, an "update" in the December 1, 1995 issue, highlighted the need to coordinate NEPA document preparation and Safety Analysis Reports.]

Protection/Enhancement of the Environment

A new question was added to the latest version [Revision II, dated January 14, 1996] of the Lessons Learned Questionnaire asking if the environment was protected or enhanced as a consequence of the NEPA process.

➔ Several commentors indicated that the NEPA process had protected the environment or had minimized further risk, without jeopardizing project needs. For one respondent, however, the NEPA process had little or no impact on the environment because no impacts were anticipated in the first place.

Public Participation Process

What was successful?

➔ Asking participants to complete post cards indicating which documents they wanted saved time and money.

➔ Describing environmental issues and alternatives before requesting public participation establishes credibility and provides something concrete for the public to improve upon.

➔ It was useful to conduct consolidated information workshops on multiple (3) EISs before separate, formal scoping meetings.

➔ Face-to-face meetings with principal public commentors helped DOE to interpret their comments and to modify or expand the analyses and discussions in the EIS.

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What was not?

➔ A press release was sent out announcing the availability of the EA for review, but this was not published in any area newspapers.

➔ Notices were sent to a tribe at a time of the year when members were involved in cultural preparations for tribal concerns, and no response was received. This highlights the importance of being sensitive to tribal concerns in scheduling NEPA activities.

➔ Technical terms need to be defined for the general public.

Effectiveness of the NEPA Process

Ratings

0 = Not effective at all
1 = Not very effective
2 = Somewhat effective
3 = Effective
4 = Very effective
5 = Highly effective

Questionnaire respondents were asked to rate the effectiveness of the NEPA process using a scale of 0 (NEPA process was not effective at all) through 5 (NEPA process was highly effective). Many respondents gave the NEPA process a high rating. One commented that the NEPA process was instrumental in a decision to select an appropriate subalternative. The fact that the NEPA Compliance Officer was well integrated with project management and that NEPA was understood by the engineering staff was also helpful. Another respondent concluded that without an EIS, a more expensive and unnecessary solution would have been selected.

In another case, a respondent indicated that an EIS led to several technical, economic and resource utilization studies that historically might not have been performed. This greatly improved DOE's basis for the decisions made as well as the Department's overall credibility. One commentor noted that major program decisions were made or changed based on the NEPA process, including a decision not to spend $435 million on an initially preferred alternative.

For a respondent who gave the NEPA process a moderate rating of 3, the insignificance of the impacts was obvious from the start. Another respondent stated that the NEPA process helped inform the agencies and supported decision making, and that it was the primary or only mechanism for getting to the ultimate action.

Respondents gave several reasons for low NEPA effectiveness ratings, one being that the final outcome of the NEPA document was influenced primarily by budget reductions and not by the NEPA process. Another reason was that the decision to pursue the general action had already been made by the line organization and the NEPA process only served to refine the scope of the action.

Seventy-six percent of respondents stated that the NEPA process effective (rating 3 or higher) in agency planning and decision making, in the following ways:

- ☑ Led to technical, economic and resource utilization studies
- ☑ Improved DOE's basis for decisions/ improved DOE's credibility
- ☑ Facilitated understanding of project needs and public interest
- ☑ Established ongoing communications
- ☑ Supported agencies' responses to Endangered Species Act consultation

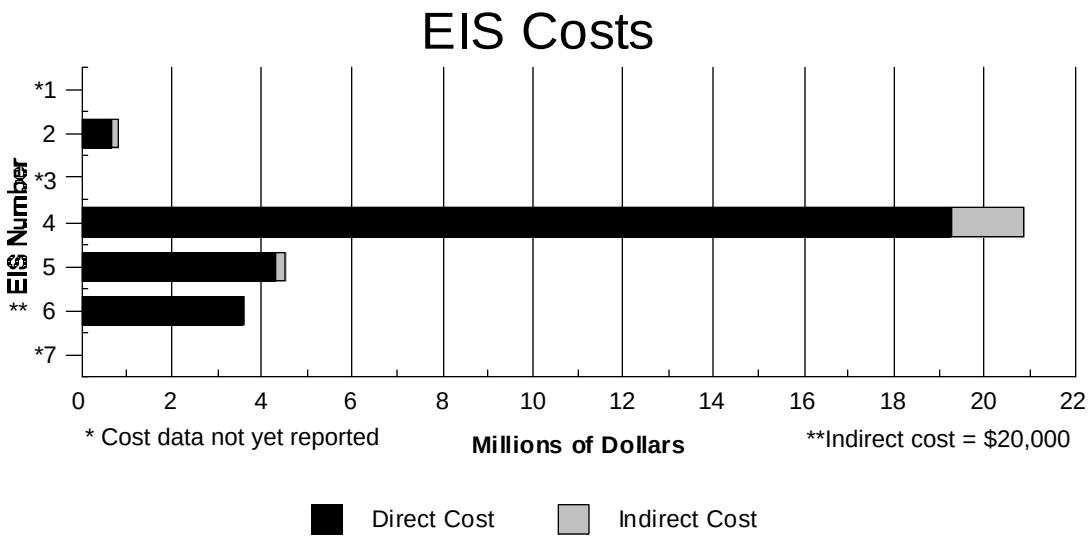
NEPA Effectivness Rating	# of Respondents	% of Respondents
0	1	3%
1	4	13%
2	2	7%
3	7	23%
4	7	23%
5	9	30%

Editor's note: Although it is difficult to be sure, respondents seem to be evaluating the NEPA process as more effective recently than they had earlier. In this reporting period and the last, more than 70% of respondents evaluated the effectiveness as 3 or higher. In each of the four previous periods, however, less than half of the respondents rated NEPA effectiveness as 3 or higher. We hope this trend continues.

EIS Cost Data

Facts

- NEPA process cost data were reported for 4 of the 7 EISs completed in this quarter.
- Budget data were reported for 2 EISs, neither of which were completed within budget.
- Direct cost data were reported for 4 EISs; the median direct cost was $3.9 million.
- Cumulatively (over this and the previous five reporting periods), the median direct cost for the preparation of 19 EISs was $700,000; the average direct cost was $4.2 million.
- Total project costs were reported for 2 EISs for which NEPA process costs represented .1% and 1% of the total project costs.



Note: For this reporting period, direct costs are defined as costs paid to contractors who prepare NEPA documents and indirect costs are defined as other costs, including costs incurred by Federal staff. Future Lessons Learned Reports will be based on definitions and reporting methods presented in NEPA Contracting Reform Guidance: Phase II, issued December 1995.

EISs Completed

Bonneville Power Administration

1 = Columbia River System Operation Review EIS, DOE/EIS-0170, EPA rating: EC-2

2 = Resource Contingency Program, DOE/EIS-0230, EPA rating: EO-2

3 = Delivery of Canadian Entitlement, DOE/EIS-0197, EPA rating: EC-2

Defense Programs

4 = Tritium Supply and Recycling Programmatic EIS, DOE/EIS-0161, EPA rating: EC-2

Savannah River Site/Environmental Management

6 = Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina, DOE/EIS-0220, EPA rating: EC-1

Western Area Power Administration

7 = Salt Lake City Area Integrated Projects Electric Power Marketing EIS , DOE/EIS-0150, No rating

Richland Operations Office/Environmental Management

5 = Safe Retrieval, Transfer and Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS-0212, EPA rating: LO

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS:

Adequacy of the Impact Statement
Category 1 — Adequate
Category 2 — Insufficient Information
Category 3 — Inadequate

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

EIS Completion Times

Facts

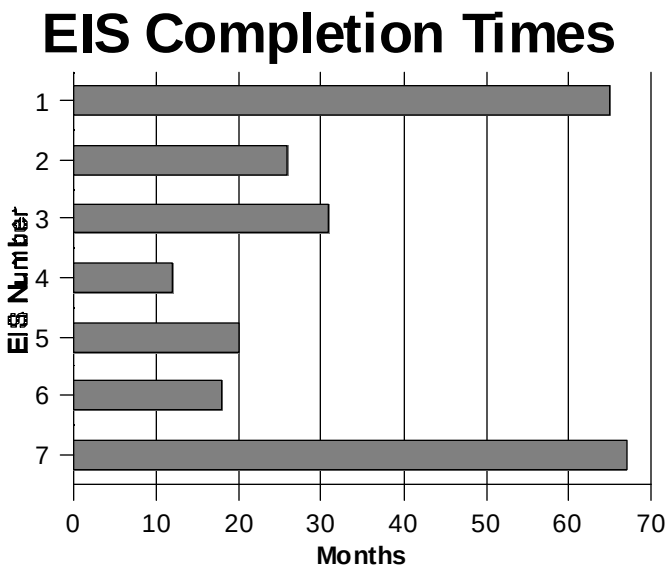
- The median completion time for 7 EISs was 26 months (range:12 to 67 months).
- Cumulatively (over this and the previous five reporting periods), the median completion time for 25 EISs was 26 months.
- 2 out of 6 EISs reporting scheduling information were completed on schedule; 4 were not.
- For 4 EISs the NEPA process was initiated early enough to avoid being on a critical path; for 1 EIS it was not. Respondents for 2 EISs did not report on this question.

Respondents submitted the following comments on EIS completion time:

➔ Defining the required types of information early in the process facilitated timely completion of EISs.

➔ Complex scope, controversial issues associated with many alternatives, three equal lead agencies, and inconsistency in site and program data inhibited timely completion of EISs.

➔ Centralized mailing processing and distribution and establishment of technical workgroups were effective in keeping the document on schedule.



EISs Completed

Bonneville Power Administration

1 = Columbia River System Operation Review Final EIS, DOE/EIS-0170
2 = Resource Contingency Program, DOE/EIS-0230
3 = Delivery of Canadian Entitlement, DOE/EIS-0197

Defense Programs

4 = Tritium Supply and Recycling Programmatic EIS, DOE/EIS-0161

Richland Operations Office/Environmental Management

5 = Safe Retrieval, Transfer and Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS-0212

Savannah River Site/Environmental Management

6 = Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina, DOE/EIS-0220

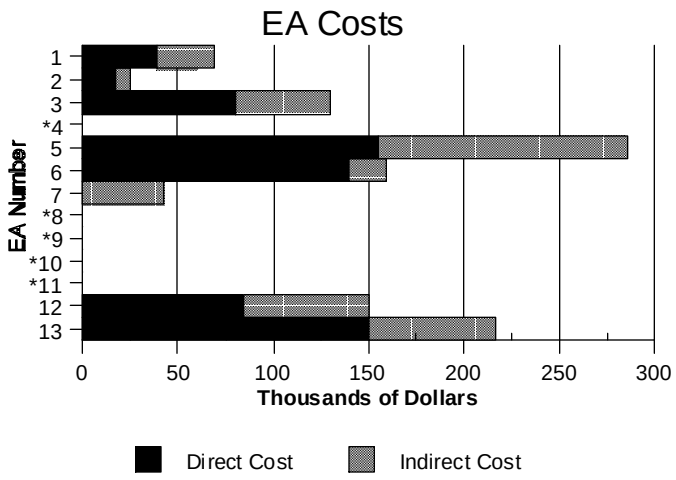
Western Area Power Administration

7 = Salt Lake City Area Integrated Projects Electric Power Marketing EIS , DOE/EIS-0150

EA Cost Data

Facts

- Thirteen EAs were completed this quarter; NEPA process cost data were reported for 8 EAs.
- Budget data were reported for 7 EAs, 3 of which were completed within budget.
- Direct cost data were reported for 8 EAs; the median direct cost was $82,500.
- Cumulatively (over this and the previous five reporting periods), the median direct cost for the preparation of 70 EAs was $80,000; the average direct cost was $126,000.
- Total project costs were reported for 4 EAs; NEPA process costs represented .2%, 2.4%, 2.9% and 3.2% of the total project costs.



* Cost data not yet reported

** Direct cost = $0

EAs Completed

Albuquerque Operations Office
Carlsbad Area Office

1 = Carlsbad Environmental Monitoring and Research Center, Carlsbad, New Mexico, DOE/EA-1081

Los Alamos Area Office

2 = Neutron Tube Target Loading Operations at Los Alamos National Laboratory, DOE/EA-1131

3 = Radioactive Source Recovery Program, Los Alamos National Laboratory, Los Alamos, New Mexico, DOE/EA-1059

Chicago Operations Office/ Energy Research

4 = Proposed Construction and Operation of the National Spherical Tokamak Experiment (NSTX), Princeton Plasma Physics Laboratory, Princeton, New Jersey, DOE/EA-1108

Naval Petroleum Reserves (Colorado, Wyoming, Utah)

5 = Sitewide Environmental Assessment for Continued Development of Naval Petroleum Reserve Number 3 (NPR-3), DOE/EA-1008

Ohio Field Office/Environmental Management

6 = Treatment of Low-level Waste and Low-level Mixed Waste, West Valley Demonstration Project, West Valley, New York, DOE/EA-1071

Bonneville Power Administration

7 = Conforth Ranch Wildlife Mitigation Project, Oregon, DOE/EA-1016

Richland Operations Office/Environmental Management

8 = Shipment of Uranium Billets to the United Kingdom, Richland, Washington, DOE/EA-1123

9 = Sludge and Residue Stabilization at the Plutonium Finishing Plant, Hanford Site, Richland, Washington, DOE/EA-1112

10 =Solid Waste Retrieval Complex-Phase 1 and Enhanced Radioactive/Mixed Waste Storage Phase 5 Facility, Hanford Site, Richland, Washington, DOE/EA-0981

Rocky Flats Field Office

11 =Protected Area Reconfiguration Project, DOE/EA-1132

Savannah River Operations Office

12 =Construction and Operation of Three Rivers Authority Office, DOE/EA-1079

Strategic Petroleum Reserve Project Office/ Fossil Energy

13 =Decommissioning of the Strategic Petroleum Reserve, Weeks Islands Crude Oil Storage Facility, Louisiana, DOE/EA-1051

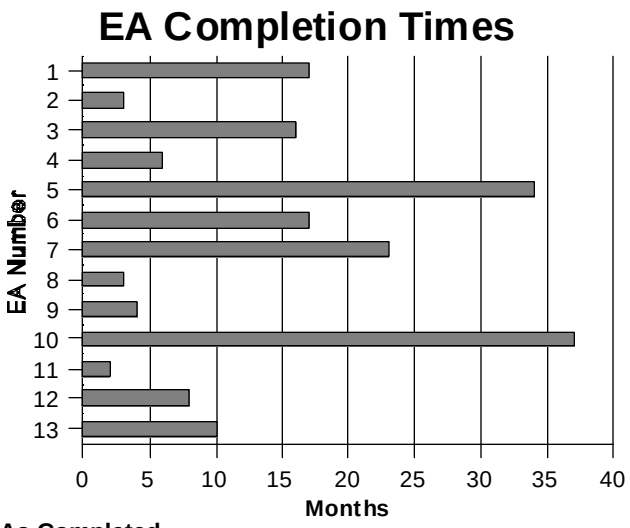
EA Completion Times

Facts

- The median completion time for 13 EAs was 9 months (range: 2 to 37 months).
- Cumulatively (over this and the previous five reporting periods), the median completion time for 120 EAs was 16 months.
- 2 out of 9 EAs for which scheduling information was reported were completed on schedule; 7 were not.
- For 8 EAs the NEPA process was initiated early enough to avoid being on a critical path; for 2 EAs it was not. Respondents for 3 EAs did not report on this question.

Respondents submitted the following comments on EA completion time:

- ➔ A simple proposed action and an uncomplicated EA analysis facilitated timely completion of EAs.
- ➔ An overly-optimistic original schedule based on a project that was not fully scoped inhibited timely completion of one EA.
- ➔ Reviewing the "Green Book," an effective and experienced group leader, and prompt responses from the line organization were effective in keeping the document on schedule.



EAs Completed

Albuquerque Operations Office
Carlsbad Area Office

1 = Carlsbad Environmental Monitoring and Research Center, Carlsbad, New Mexico, DOE/EA-1081

Los Alamos Area Office

2 = Neutron Tube Target Loading Operations at Los Alamos National Laboratory, DOE/EA-1131

3 = Radioactive Source Recovery Program, Los Alamos National Laboratory, Los Alamos, New Mexico, DOE/EA-1059

Chicago Operations Office/ Energy Research

4 = Proposed Construction and Operation of the National Spherical Tokamak Experiment (NSTX), Princeton Plasma Physics Laboratory, Princeton, New Jersey, DOE/EA-1108

Naval Petroleum Reserves (Colorado, Wyoming, Utah)

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6 = Treatment of Low-level Waste and Low-level Mixed Waste, West Valley Demonstration Project, West Valley, New York, DOE/EA-1071

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Savannah River Operations Office

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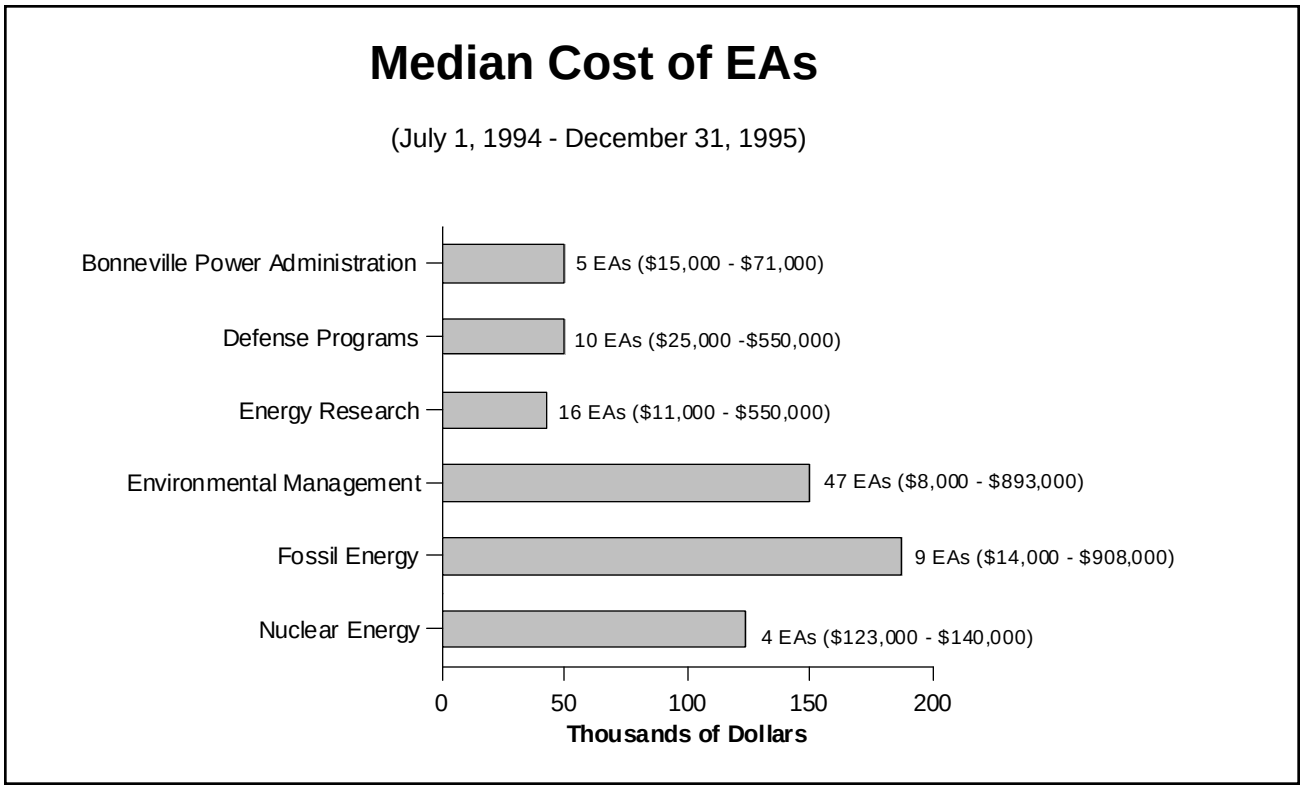
Strategic Petroleum Reserve Project Office/Fossil Energy

13 =Decommissioning of the Strategic Petroleum Reserve, Weeks Island Crude Oil Storage Facility, Louisiana, DOE/EA-1051

Food for Thought: EA Costs by Program Office

This chart illustrates the median EA cost for each Program Office for the period covering July 1, 1994 to December 31, 1995, based on only those completed EAs for which cost information is available. (Field Management, Fissile Materials Disposition and Southwestern Power Administration each completed one EA for which cost information was reported, and they are not shown on the chart.)



This chart should be intepreted very cautiously. For example, Document Managers have not applied cost estimation instructions uniformly and the instructions themselves have changed during the period represented in the chart. Secondly, some Program Offices may need to spend more on EAs than others because of differences in their proposed actions, the impacts, or necessary costs of obtaining pertinent subject matter expertise. Finally, the data, for the most part, are quite marginal statistically.

Nevertheless, these data may provide clues that, upon further examination, will suggest ways that DOE may reduce EA costs while maintaining adequate quality. The data are presented here to stimulate such examinations. The Office of NEPA Policy and Assistance will continue to study available data in consultation with NEPA Compliance Officers, and will report from time to time on the results.

N E P A

National Environmental Policy Act

LESSONS LEARNED

U.S. Department of Energy Quarterly Report

June 3, 1996 For 2nd Quarter FY 1996

NEPA and Contracting Communities Take Action Following Workshops

Innovative ideas for improving the Department's NEPA contracting process emerged from the first gathering of field office and headquarters NEPA and procurement specialists at a workshop sponsored by the Office of NEPA Policy and Assistance, in partnership with the Office of Human Resources and Administration and the Office of General Counsel. The March 1996 NEPA Contracting Reform Workshop explored the theme of "Do It Right the First Time," the central recommendation of the Phase II NEPA Contracting Reform Guidance that the Assistant Secretary for Environment, Safety and Health issued in December 1995. The March Workshop's purpose was to identify contracting actions that can achieve NEPA process cost savings through better management of existing contracts and better approaches for new contracts. A second Workshop was held in Albuquerque on May 22-23, to plan the acquisition strategy for one or more NEPA task order contracts to be shared among multiple field offices. Based on the many comments received from attendees, the workshops were breakthroughs in bringing together the Department's NEPA and procurement communities to work more effectively to achieve the NEPA cost savings identified in Strategic Alignment Initiative 29.

March Workshop participants offered lessons learned based on their contracting experience:

- There is a need for teamwork and cross-training among NEPA specialists and procurement specialists; Document Managers need training in both NEPA requirements and project management; NEPA Compliance Officers could provide coordination and perspective.
- A sliding scale approach applies to NEPA process management; complex and important environmental impact statements, for example, should be managed more intensively than narrowly-focused environmental assessments.
- Early interdisciplinary planning to define the purpose and need of the NEPA review, as well as early acquisition planning, are necessary to manage contracts effectively.

continued next page

Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report of Lessons Learned in the NEPA process. Many of you responded positively to the revised format and content of the previous edition. This Quarterly Report includes:

I encourage all of you to continue to forward suggestions for this report to us by completing the Evaluation Form on page 19.

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Better Planning and Coordination Needed for Field Office Project Environmental Impact Statement

The approval process for a recently issued draft EIS was encumbered by problems that could have been avoided by better planning and teamwork between Headquarters and the Field Office that prepared the EIS. The principal process deficiency was not involving the decision maker early in the preparation of the EIS.

The Secretarial Officer, who had been well aware of the proposed action, was not alerted to the timing and details of the draft EIS until it was presented for approval. The Secretarial Officer immediately noted that the proposal involves issues of national significance that the EIS did not appear to address adequately, and directed a high-level review of the matter. Several months and substantial resources were needed for EIS improvements. This situation could have been avoided had the following lessons been put into practice:

- It is important to involve the decision maker early in the EIS process. Decision makers will not always agree with staff about what the key issues are and how to address them.

- Establishing and maintaining good communications among Field and Headquarters EIS preparation team members, management, and the decision maker is essential. For high-profile and urgent EISs, an executive committee type of management structure promotes efficient preparation of the EIS and avoids last minute disruptions and wasted effort. Successful strategies have included an Executive Committee (the decision maker and affected/involved Secretarial Officers), and one or more technical and management teams. LL

In the example at issue, further difficulties were encountered in distributing the draft EIS after approval. For example, Members of Congress that should have been briefed before completing the general distribution were unavailable because of a holiday recess. This highlights the need to:

- **Coordinate early with the Office of Public Affairs and the Office of Congressional and Intergovernmental Affairs.**

- **Develop a communications plan early with appropriate milestones identified. Don't underestimate the need for such planning.**

Workshops (continued from page 1)

- Preparing a good performance-based statement of work is key to a successful process; a more detailed model would be helpful. DOE's expectations must be clear to support contractor performance evaluations.

- Performance incentives—financial awards, recognition, prospects for future assignments—should be an integral part of the contracting process.

- Task order contracting established in advance enables a timely start of a contractor's work. Shared task order contracts (multi-office) may provide a "Center of Excellence" for NEPA, quick-response options, and other cost-saving corporate benefits. Multi-awards also have advantages.

The March Workshop identified directions for further efforts during Phase III of NEPA Contracting Reform (to extend through December 1996), which are being carried out as follows: (1) The May Workshop. Twenty NEPA and procurement specialists from eight field offices, assisted by headquarters NEPA and procurement staff, projected contracting needs and strategies, and formed work groups on request for proposals, statement of work, and contract administration. The participants will share work products in July and meet again in early August 1996, with a goal of awarding one or more task order contracts by October 1997.
(2) Guidance for Document Managers. A team of seven NEPA Compliance Officers and Document Managers has begun drafting guidance for managing the NEPA process as a project. The team plans to provide draft guidance to the NEPA and procurement communities for review in late summer, and to complete the work by December 1996.

For information on NEPA Contracting Reform Phase III activities, please contact Carolyn Osborne (202-586-4596 or e-mail to carolyn.osborne@hq.doe.gov). LL

Using Bounding Analyses in DOE NEPA Documents

DOE NEPA documents sometimes estimate impacts by means of a"bounding" analysis; i.e., an analysis that uses simplifying assumptions and analytical methods that are certain to overestimate actual environmental impacts. While bounding analysis can be efficient, and is sometimes necessary, DOE should take care to use that approach only in appropriate circumstances; i.e., where the differences among alternatives would not be obscured. The purpose of this mini-guidance is to describe appropriate and improper uses of bounding analysis.

Neither the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR Parts 1500-1508) nor the DOE NEPA regulations specifically address bounding analyses in NEPA documents, but there are situations where the bounding approach is helpful. These situations include:

- Where information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (*See* 40 CFR 1502.22), bounding analysis may provide an efficient, practical solution. In such cases, DOE must make reasonable, conservative assumptions for purposes of analysis, which should produce estimates that bound the impacts to a reasonable degree. For example, cumulative impacts would need to be bounded in a site-wide EIS for a site that is being considered in another EIS as an alternative (i.e., not proposed/ preferred) location for a new activity. Including the best available information regarding the impacts of the potential new activity in the cumulative impacts for the site would account for all reasonably foreseeable actions, but would overstate the probable impacts. The EIS being prepared for operations of the Pantex Plant, for example, includes in its cumulative impacts analysis several functions for Pantex that are being considered (short of being preferred) in several other EISs that are in preparation.

- Where DOE is evaluating the potential environmental impacts of a program or a broad agency action, simplifying assumptions may be necessary to perform the analysis. While the assumptions may be conservative and the impacts estimated may be substantially higher than those that would actually occur, the *relative* differences in the impacts among the alternatives should be discernible for the analysis to be useful in informing the choice among alternatives.

- Where a simple conservative analysis is sufficient to show that an impact is insignificant and doesn't warrant further investigation, bounding analysis may be efficient, though not necessary. This approach is useful for both EAs and EISs.

In sum, using conservative assumptions and analytical methods to bound an impact may be appropriate and even necessary in some cases. Nevertheless, bounding analyses should not be used where more accurate and detailed assessment is possible and would better serve the purposes of NEPA. Therefore, when using bounding analysis:

- DOE must ensure that the analysis is not so broad and all-encompassing as to mask the distinctions among alternatives, or to hinder consideration of mitigations.

- Even where overall impacts are small, detailed analysis for each alternative may be needed where differences in impacts may help to decide among alternatives or to address concerns the public has expressed, as sometimes applies when DOE must select sites or transportation routes and methods for conducting its operations.

- It is never appropriate to "bound" the environmental impacts of potential future actions (not yet proposed) and argue later that additional NEPA analysis is unnecessary because the impacts have been bounded by the original analysis. LL

Questions and Answers

Q. When can draft material (in preparation) be used to support analyses in a NEPA document?

A. The issue here is not so much whether the material is a draft as whether the information it provides is reliable enough to support the use that would be made of it in the NEPA document. The answer to this question relies on technical judgment. If the draft material is sufficiently reliable and is referenced in a NEPA document, then the material--labelled DRAFT--must be made available to the public, such as by placement in appropriate public reading rooms.

Q. When is it appropriate to add material as an appendix to a NEPA document; when is it appropriate to incorporate material by reference?

A. These important issues affect the utility of the document as a decision making tool and the cost and time for its preparation. CEQ has regulatory instructions on EIS appendices (40 CFR 1502.18) and references (1502.21), and has provided guidance on their application (see below). When a complex NEPA analysis is involved, the DOE document preparation team should consider these matters early, taking account of any stakeholder preferences, the CEQ regulations and guidance, and advice from legal counsel. The team may also consult several recently issued comparable NEPA documents as examples.

The CEQ's guidance regarding its requirements is published as a response to Question 25 of the "Forty Most Asked Questions on CEQ's National Environmental Policy Act Regulations" (46 FR 18026, March 23, 1981, as amended), and is reprinted here for the reader's convenience:

> *The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decision-maker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.*
>
> *Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.*
>
> *Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commenters upon request.*

Finally, DOE's NEPA regulations (10 CFR 1021.340(b)) provide that DOE shall, to the fullest extent possible, segregate information that is exempt from disclosure requirements, such as classified information, into an appendix to allow public review of the remainder of a NEPA document. LL

Reminder: Make Reference Materials Publicly Available

Recently, a Program Office conducting a public participation process on an environmental assessment of a controversial proposal did not make key references publicly available, after having stated that such references were available at public reading rooms in notices announcing the 45-day public comment period and at two public meetings. At the meetings, opponents of the proposal called attention to the missing references and the Department eventually decided it needed to reopen the public comment period. Please make sure that appropriate reference material is made publicly available, such as by placing copies in public reading rooms and libraries.

Suggestions from the Document Manager of the Hanford K-Basins Spent Fuel EIS

The Richland Operations Office's Final EIS on the Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, completed in 11 months, can be considered an important success for the Department. Completion of the EIS enabled the Department to begin construction of a new storage facility for 2,300 tons of highly radioactive and corroding fuel that are in water-filled basins that sit precariously close to the Columbia River.

Dr. Phillip G. Loscoe, the NEPA Document Manager, has provided practical advice for other NEPA Document Managers, based on his experience:

- Verify all published telephone numbers. Some of the phone numbers listed for libraries or reading rooms were incorrect (for example, the number listed for Gonzaga University's library turned out to be that of Little Caesar's Pizza in Spokane.)
- Use a dedicated 800 line for recording telephone requests for copies of the EIS or for registering to speak at public hearings.
- Unless they wish to speak at a public hearing or want to receive a copy of the final EIS, individuals should not have to identify themselves on the sign-up list. Some people find this threatening.
- Ensure that local ads include a point of contact for requesting a copy of the EIS. The ads used only indicated where comments could be sent and where reference copies were available.
- An integrated plan for the preparation of the EIS should be prepared early, covering the activities of all parties providing either material or reviews.
- Having more than six reviewers (not including the Chairperson) greatly slows the review process without adding to the quality of the review. Reviewers should read the document before the review session.
- Communication among all participants in the preparation of the EIS must be open and frequent.
- Techniques such as redlining, strikeout or change bars should be used to keep reviewers (and preparers) focused on changes.
- Reviews should be focused on technical adequacy, and not on editorial improvement.

Contractor Performance Evaluation is a Requirement

To create incentives for good performance and to help in awarding future assignments, the DOE NEPA Order (DOE 451.1) requires a NEPA Document Manager to evaluate contractor performance at the conclusion of each EIS and EA. With proper planning and coordination, this evaluation can also meet the Contracting Officer's new responsibilities under the 1995 amendments to the Federal Acquisition Regulation. Detailed procedures and the evaluation form may be found in section 7 of NEPA Contracting Reform Guidance: Phase II, of December 1995. Questions may be addressed to Yardena Mansoor, Office of NEPA Policy and Assistance, fax (202) 586-7031 or e-mail to nepa.contracting@spok.eh.doe.gov.

A Toll-Free Way to Involve the Public

Provide a mechanism that would maximize public involvement:

This was the goal of the Office of Fissile Materials Disposition for the Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials (DOE/EIS-0229). A toll-free number was established that was automatically capable of receiving faxes and oral comments. The oral comments were transcribed for analysis and resolution.

Recording oral comments turned out to be the mechanism most frequently used by the public to transmit their comments to the Department. Of 188 responses received on the document, 108 were recorded on the toll-free number. More importantly, a significant fraction of the people who left comments on the toll-free number did not list themselves as members of organizations and were not on the list of over 2000 stakeholders in the program's database. This suggests that the ease of leaving a phone message prompted people to comment who might not have otherwise, and who had not been involved in the project before the toll-free number was available. Lesson Learned: Provide the public with a well-publicized toll-free number for recording oral comments in order to glean comments from a wider segment of the public.

For more information contact: Bert Stevenson, Document Manager, Office of Fissile Materials Disposition at (202) 586-5368. LL

Lessons Learned: Using Video Conferencing for Public Hearings

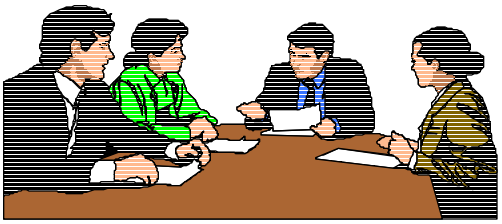
The Office of Environmental Management recently made extensive and successful use of video conferencing for the public hearings held for the Draft Waste Management Programmatic Environmental Impact Statement. The program has prepared a document summarizing the format options considered for the hearings, the hearings plan, the process used for setting up the videoconferences, public and DOE evaluations, and the lessons learned as measured against the plan. The document also provides contact points for further information.

Environmental Management's analysis indicates that video conferencing is useful in keeping meeting costs down, while allowing members of the document preparation team, who would not otherwise have attended the meetings, to hear firsthand the public's views and answer questions. The video conferencing format also allowed members of the public at different locations to hear the comments of others.

Copies of "Lessons Learned: Use of Video Conferences for Public Hearings on the Draft Waste Management Programmatic Environmental Impact Statement" are available from David F. Hoel, Document Manager, Waste Management PEIS, Office of Waste Management, Environmental Management at (202) 586-3977 (See page 9 for an example of the successful use of *telephone* conferencing). LL

Editor's Note: Video conferencing may not always be a good format for public meetings. In a different case, stakeholders told DOE that they viewed use of video conferencing as an attempt to limit rather than enhance public participation. We suggest consulting with stakeholders when planning public meetings.

Alternative Dispute Resolution and the NEPA Process

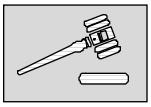


The Council on Environmental Quality has observed that the NEPA and alternative dispute resolution (ADR) processes "have mutually consistent goals, including decisionmaking that is well informed, credible, broadly supported, and durable." CEQ conducted a seminar in early May 1996 to encourage Federal agencies to study successful ADR methods and to consider using neutral facilitators or mediators, where appropriate, to improve the usefulness of the NEPA process in achieving their goals.

Following CEQ's lead, DOE's Office of Alternative Dispute Resolution and the Office of NEPA Policy and Assistance co-sponsored an informal seminar at DOE Headquarters on the potential benefits of integrating ADR techniques into the NEPA process. (ADR techniques include dialogue, negotiation, facilitation, mediation, and arbitration.) The May 21 seminar featured a presentation by RESOLVE, Inc., a not-for-profit center for environmental dispute resolution based in Washington, DC. The presentation focussed on potential ways in which ADR techniques can supplement the NEPA process, both to build consensus before decisions are made and later, in the event of litigation. RESOLVE presented several lessons learned from their case experience, including:

- ADR techniques can help focus the NEPA review on the most significant issues, make sure that correct parties are at the table, and open communication among parties.
- Reluctance to use ADR can stem from unwarranted fear of relinquishing the government's authority; all parties need to begin with the attitude that they will find a win/win solution or there will be no deal.
- People who come to the table (including the Federal agency personnel) have to represent their constituency, and be able to obtain agreement from their decision makers.
- The earlier ADR techniques are applied in the NEPA process, the better; if applied too late, the agency may have to retrace its steps.

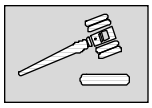
For further information on the seminar or the use of ADR techniques, please contact Phyllis Hanfling, Director, Office of Alternative Dispute Resolution at (202) 586-6972 or Stephen Simpson of the Office of NEPA Policy and Assistance by phone (202-586-0125) or by electronic mail (ccMail: Stephen Simpson at EH-09; Internet: stephen.simpson@hq.doe.gov). LL



Legal Updates

NEPA Litigation at Sandia National Laboratory

The Department of Energy was recently sued in the U.S. District Court for the District of New Mexico on the alleged lack of NEPA review for the operations of a DOE national laboratory. On April 15, 1996, Isleta Pueblo and the Southwest Information and Research Center asked the court to require the Department to prepare a Sitewide EIS for Sandia National Laboratory/New Mexico. In 1977, the Department issued a Sitewide EA for Sandia. The plaintiffs allege that the NEPA reviews for proposed actions at Sandia since 1977 have not adequately analyzed the cumulative impacts of other past, present, and reasonably foreseeable future actions at Sandia and that, based on substantial changes in environmental law and significant new information regarding environmental conditions at Sandia, the court should require the Department to prepare a Sitewide EIS. The Department has until mid-June to answer the complaint. LL



Legal Updates (cont'd.)

Construction of the Dual Axis Radiographic Hydrodynamic Test Facility (DARHT) to Resume

The Department has successfully resolved a lawsuit under NEPA that teaches important lessons in NEPA compliance. On April 16, 1996, Judge Edwin Mechem, of the U.S. District Court for the District of New Mexico, ruled that the Final EIS for the Dual Axis Radiographic Hydrodynamic Test Facility adequately serves the purposes of NEPA and that DARHT may proceed as an interim action while the Programmatic EIS for Stockpile Stewardship and Management and the Sitewide EIS for Los Alamos National Laboratory are being prepared. The court had enjoined construction of DARHT pending preparation of an EIS. In his written opinion, Judge Mechem pointed out some faults with the DARHT EIS (use of three-year old data in the Affected Environment section, assuming for the baseline of analysis that the Laboratory is currently in compliance with environmental laws, and depending on the opening of the proposed Waste Isolation Pilot Plant), but concluded that the EIS is "essentially adequate" as an action-forcing document. Judge Mechem further noted that the EIS "represented a good faith analysis of DARHT in the spirit of NEPA," praising the Department's consideration of public comments and modifications to the proposed project based on those comments. He also cited the DARHT EIS as appropriately using a classified supplement to fully evaluate the impacts of a proposal. In considering the criteria for valid interim actions, Judge Mechem found that the Department adequately demonstrated that DARHT would be useful notwithstanding the range of alternatives considered in the two programmatic EISs. Essentially, the injunction was lifted because the Department prepared an EIS that adequately analyzed impacts of the proposed action and alternatives and demonstrated open and honest consideration of public comments. [Editor's Note: See article on DARHT as a NEPA case study in Lessons Learned Quarterly Report issued December 1, 1995, page 12.]

Brief Notes

- The Natural Resources Defense Council and the Energy Research Foundation have given the Secretary notice of their intent to sue if DOE introduces new materials for processing in the F- or H-Canyon facilities at the Savannah River Site before completing an earthquake safety analysis and determining, based on the analysis, whether a supplemental EIS is required. DOE issued Records of Decision regarding use of these facilities in December 1995 and February 1996. Subsequently, the operating contractor announced that the buildings may be more susceptible to damage from a major earthquake than had been previously determined.

- Organizations concerned about proliferation of materials for nuclear weapons have asked a Federal District Court to temporarily restrain DOE from conducting an electrometallurgical process demonstration on spent fuel from the Experimental Breeder Reactor-II at Argonne National Laboratory-West in Idaho. The Office of Nuclear Energy completed an EA for the proposed demonstration and issued a Finding of No Significant Impact on May 15, 1996, whereas the complainants had commented that an EIS was required.

DOE Considers Comments on Proposed Amendments to its NEPA Regulations

A team from the Office of NEPA Policy and Assistance and Office of General Counsel is preparing responses to comments on the proposed NEPA rule amendments from approximately 40 sources, including Federal and state agencies, public interest groups, other organizations, and individuals. In many cases, responses to comments will include changes to the earlier proposals. The team has obtained helpful suggestions and information from program and field office personnel, who have been sent copies of the comment letters and a chart collating the comments by issue to facilitate their participation in the final concurrence process.

DOE intends this rulemaking to clarify and streamline certain requirements, thereby reducing its NEPA implementation cost and time. Several commenters supported the proposals, but most commenters expressed concerns, primarily that the changes would reduce public involvement and information opportunities and that various proposed categorical exclusions are not valid.

DOE proposed the amendments to its NEPA regulations (10 CFR Part 1021) on February 20, 1996 (61 CFR 6414), and established a public comment period ending April 5, 1996. In response to several requests for a hearing, DOE reopened the comment period until May 10, and held a public hearing in Washington, DC on May 6, 1996. A panel including staff of the Office of NEPA Policy and Assistance and the Office of General Counsel was on hand to ask and answer clarifying questions. Commenters elsewhere were able to arrange in advance to give statements by telephone conference call from a nearby DOE facility. Distant participants included representatives of the Nevada Nuclear Waste Task Force, the Oak Ridge Reservation Local Oversight Committee, and several individuals. The seven participants provided comments and voiced their appreciation for DOE reopening the comment period and holding the public hearing.

Further, in response to a request from Congressman John T. Doolittle, Chairman, Subcommittee on Water and Power Resources, DOE will reopen the public comment period for only those categorical exclusions that apply specifically to power marketing activities and will solicit comments from state and Federal agencies that have responsibility for environmental review of comparable non-Federal utility operations in the Pacific Northwest.

DOE is undertaking this rulemaking as part of its NEPA cost savings program under Strategic Alignment Initiative 29, with a scheduled completion date (except for the proposed amendments addressing power marketing) of June 1996. Accordingly, the Office of Environment, Safety and Health plans to circulate the proposed final rule to Secretarial Officers and Field Office Managers in early June for an expedited concurrence process.

For further information, please contact John Pulliam, Office of NEPA Policy and Assistance, by phone (202) 586-4597 or fax (202) 586-3915, or by electronic mail to the following internet address: neparule@spok.eh.doe.gov.

Second Quarter FY 1996 Questionnaire Results

What Respondents Found Successful and Unsuccessful in the NEPA Document Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 1996. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

Editor's Note: Some of the material presented here reflects the personal views of individual questionnaire respondents, which (appropriately) may be inconsistent. Therefore, unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.

NEPA Document Content

Impact Analysis/Methodology

- In order to save costs, accident probabilities used in EIS analyses of potential accidents in ports were based on national accident statistics rather than on local accident initiators. Although DOE believed this approach was justified, commenters criticized the DEIS for not adequately or consistently considering local accident initiators, such as earthquakes or hurricanes. This experience demonstrates the importance of explaining in a NEPA document why an analysis that does not incorporate certain alternative-specific factors nevertheless provides a valid basis for comparing alternatives.

NEPA Document Preparation Process

Schedule

Timely Completion of Documents Was Facilitated by:

- Preparing the EA "in-house;" allowing the team to work closely.
- Early internal scoping, including definition of purpose and need, with participation of entire team.

Timely Completion of Documents Was Inhibited by:

- An unusually large and diverse group of Federal "players," including the State Department as a cooperating agency, the Navy, and several different DOE field sites.
- Conflicts with holidays and other work-loads.
- Personnel changes and additional review cycles.

Procedures for Keeping the Document on Schedule:

- Strong support from the policy group and state and tribal managers to keep their staffs to the schedule.
- Aggressive review process, including use of concurrent reviews with "marker board" comment resolution meetings.
- Knowing the leave schedule of managers on the concurrence chain, so they could be briefed and possibly concur on documents.

continued next page

NEPA Document Preparation Process (cont'd.)

Factors that Inhibited DOE Teamwork

- A NEPA Document Manager asked DOE reviewers not to request significant changes in order to maintain the schedule. Instead of having the desired effect of encouraging reviewers to cooperate, reviewers were less likely to consider themselves members of the project team.
- The project sponsor never attended team meetings.
- The NEPA process required DOE to consider siting alternatives that knowledgeable staff believed would never be chosen. It was difficult to get cooperation from staff at those sites who viewed such options as hypothetical.

Public Participation Process

Successful Aspects of the Public Participation Process:

- One-on-one meetings with stakeholder groups; "open-house" type meetings on the revised draft EIS; newsletters; work group to plan interpretive facility at a proposed fish hatchery.
- Only a single public hearing was held on the draft EIS, resulting in cost savings. Other hearings would have been scheduled upon request.
- Posting announcements as newspaper advertisements as opposed to press releases; posting the documents on the operations office home page on the World Wide Web.
- Meeting with State oversight personnel to explain the purpose and scope of the document.
- Monthly reports on the EA status in the operations office Environmental Bulletin, which is widely distributed to stakeholders.

Public Reactions to the NEPA Process

- Participants at several of the draft EIS public hearings complained about the way public participation was conducted, including: (1) insufficient publicity for a hearing; (2) inappropriate scheduling/location of the hearing (e.g., holding the hearing in the nearest large city instead of in the potential host community, holding the hearing on a Friday evening); (3) failure to enclose instructions when copies of the DEIS were sent to public and university libraries that do not routinely serve as public reading rooms (librarians apparently did not know why they were receiving the DEIS); and (4) objections to an informal "workshop" format for the EIS hearings without provision for transcribing participants' comments.
- Despite extensive analyses and public involvement, vocal members of the public still argue for more, and a Governor has announced his intention to sue.

Further Guidance Needs Identified

- Assessment of cumulative impacts; locating, scheduling, publicizing and conducting public meetings [Editor's Note: See "Effective Public Participation under the National Environmental Policy Act," issued December 1994, available from NEPA Compliance Officers and the Office of NEPA Policy and Assistance]; and sample letters of instruction to non-DOE librarians.
- Response to public comments on a DEIS, especially when there are a large number of comments.
- Guidance on the need to thoroughly cover or not cover impacts associated with the operation of an off-site vendor facility contracted to perform a service. [Editor's Note: See Lessons Learned Quarterly Report issued March 1, 1996, page 6.]

continued next page

NEPA Document Preparation Process (cont'd.)

Usefulness

Agency Planning and Decision Making

- The NEPA process guided the decision makers to a more environmentally conservative approach that resulted in fewer objections to the project.

- The EIS was the agency decision making process for the project. The preferred alternative was selected with minor modifications following analysis of impacts of all alternatives and consideration of comments.

- Excellent internal scoping by the NEPA team helped to better define the issues "up-front," so that data/ information could be made available to all parties early in the process.

- The NEPA process aroused public opposition to using commercial ports, which drove DOE to use more costly military ports. On the other hand, comments from a state caused DOE to speed up a useful analysis of treatment alternatives, which identified several promising new approaches that may save money and time.

Protection/Enhancement of the Environment

- The environment was better protected and construction costs were reduced by the selection of the alternative to complete an existing incomplete facility rather than build a new facility in an area containing State priority habitat.

- The environment was protected because several sensitive environments were identified and potential impacts were mitigated. Also, the environment will benefit further from this NEPA process because the information obtained will help with more informed decision making in the future. LL

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the second quarter of FY 96 (April 1, 1996 to June 30, 1996) should be submitted as soon as possible after document completion, but no later than August 1, 1996. (Fax: 202-586-7031 or Internet: joanne.geroe@hq.doe.gov) The Lessons Learned Questionnaire is now available interactively on the DOE NEPA Web [http://www.eh.doe.gov/nepa] on the Internet. Look for it under NEPA Process Information.

Effectiveness of the NEPA Process

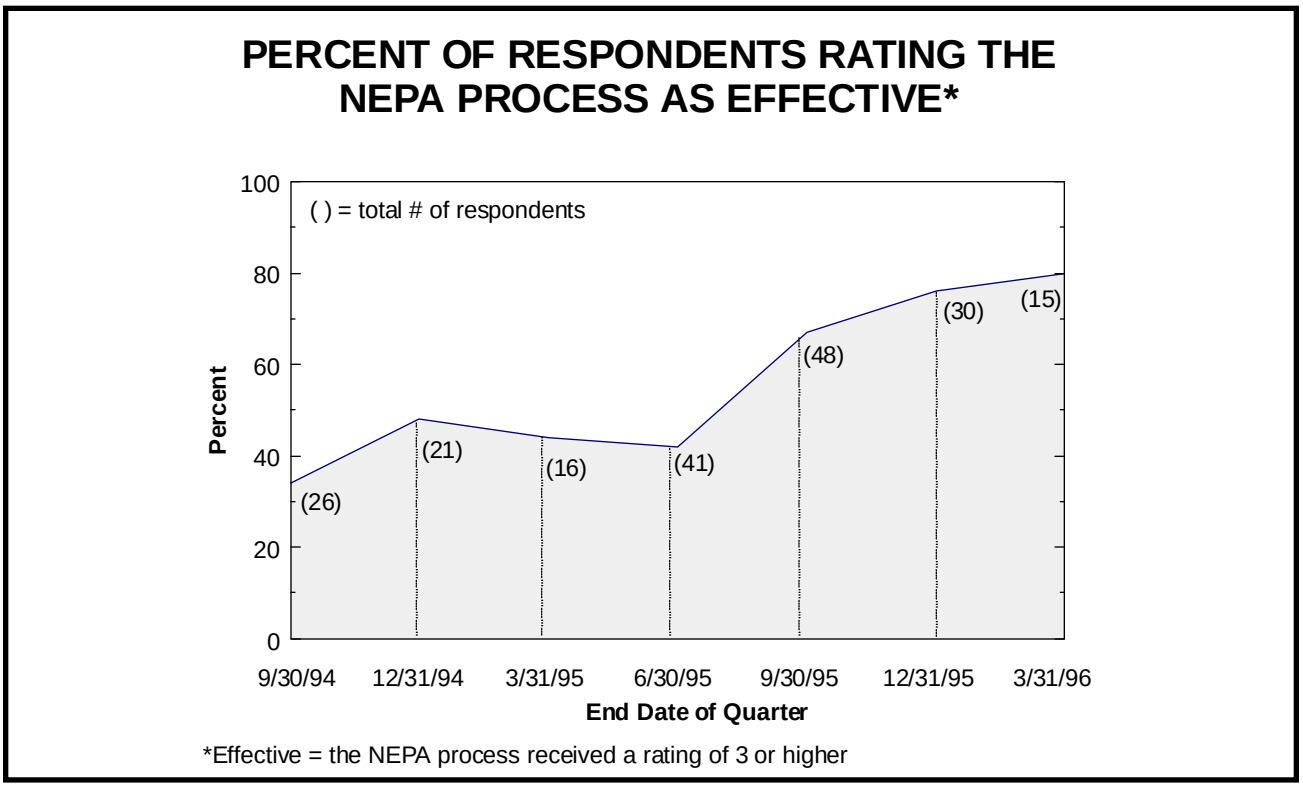


Figure 1

RATINGS

0 = Not effective at all
1 = Not very effective
2 = Somewhat effective
3 = Effective
4 = Very effective
5 = Highly effective

The chart above illustrates an upward trend in the number of respondents who have rated the NEPA process as effective. For purposes of this chart, "effective" means the NEPA process was rated with a 3, 4 or 5 (see adjacent box). The percentage of respondents who consider the NEPA process to be effective is shown from 4th Quarter 1994 to the present and has risen to 80%.

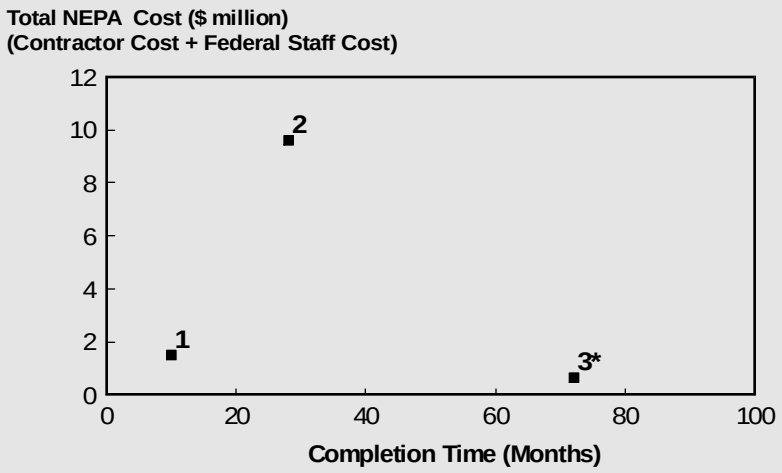
For this quarter, more than half of the respondents gave the NEPA process high ratings of 4 and 5. One commented that NEPA helped in identifying a problem and that the public participation requirements changed many of the Department's views. The respondent noted that while the NEPA process played a key role in decision making, the environmental factors were not important discriminators.

In another case, a respondent indicated that phone calls made to applicants/grantees to request information helped in planning as well as doing the NEPA analysis. This type of exchange developed a good working relationship between the parties. Another respondent stated that the concerns raised during public involvement were critically important to arriving at agreement on a more environmentally conservative approach.

Respondents gave several reasons for low NEPA effectiveness ratings, including that very little public comment was received, and that the proposal was very straightforward and required little thought. LL

EIS Cost and Completion Times Data

EIS Costs and Completion Times



** Federal staff cost only, contractor costs not reported*

Completion Time Facts

- The completion times for the 3 EISs completed during the 2nd quarter of FY1996 were 10, 28, and 72 months.
- None of the 3 EISs was completed on schedule.
- The NEPA process was initiated early enough for 1 EIS to avoid being on a critical path; for 2 EISs it was not.
- Cumulatively over the last year, the median completion time for 21 EISs was 28 months.

Cost Facts

- NEPA process costs for the 3 EISs completed in this quarter were $650,000, $1.5 million, and $9.6 million.
- Budget data were reported for 2 EISs; neither was completed within budget.
- Contractor cost data were reported for 2 EISs; these costs were $9 million for EIS #2 and $1.3 million for EIS #1.
- Total project costs were reported for 2 EISs for which NEPA process cost represented 1.2% and 1.7% of the total project cost.
- Cumulatively over the last year, the median contractor cost for the preparation of 15 EISs was $1.3 million.

Erratum:

The total cost to prepare the Safe Retrieval, Transfer and Interim Storage of Hanford Tank Waste EIS was incorrectly reported on page 11 of the Lessons Learned Quarterly Report issued 3/1/96; the correct cost is $3.5 million.

EISs

Richland Operations Office/ Environmental Management
1= Management of Spent Nuclear Fuel from the K Basins, Hanford Site, Richland, Washington, DOE/EIS-0245, EPA rating: EC-2 ($1.5 million; 10 months)

Environmental Management
2 = Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, DOE/EIS-0218, EPA rating: EC-2 ($9.6 million; 28 months)

Bonneville Power Administration
3 = Yakima River Basin Fisheries Project, Oregon, DOE/EIS-0169, EPA rating: EC-2 ($650,000 (contractor costs not reported); 72 months)

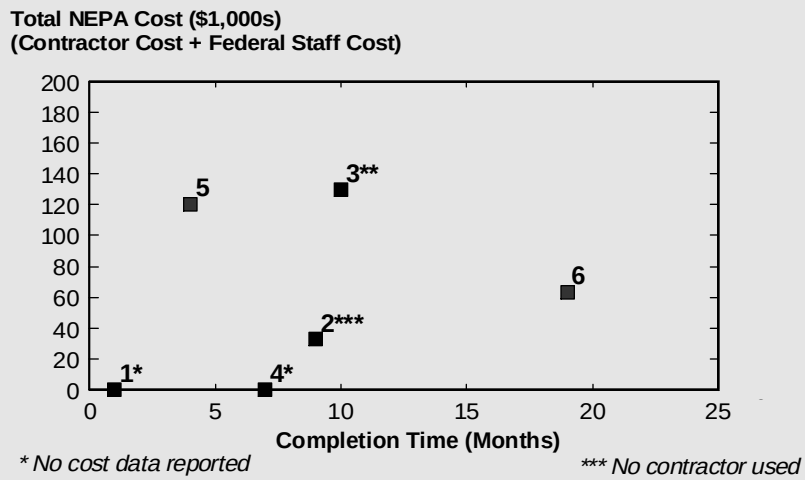
ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

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

EA Cost and Completion Times Data

EA Costs and Completion Times



** No cost data reported*

*** Federal staff cost only, contractor costs not reported*

**** No contractor used*

Figure 3

Completion Time Facts

- The median completion time for 6 EAs completed during 2nd quarter FY1996 was 8 months (range: 1 to 19 months).
- 2 out of 5 EAs for which scheduling information was reported were completed on schedule.
- The NEPA process was initiated early enough for all 6 EAs to avoid being on a critical path.
- Cumulatively for the last year, the median completion time for 77 EAs was 16 months.

Cost Facts

- NEPA process cost data were reported for 4 EAs.
- Of the 6 EAs, budget data was reported for 3 EAs, none of which was completed within budget.
- Contractor cost data were reported for 2 EAs; these costs were $6,670 for EA #5 and $33,000 for EA #6.
- Total project cost was reported only for EA# 2, of which the NEPA process represented .1% .
- Cumulatively for the last year, the median contractor cost for the preparation of 49 EAs was $65,000.

EAs

Albuquerque Operations Office/ Environmental Management
1 = TRU Drum Staging Building, LANL, Los Alamos, New Mexico, DOE/EA-0823
(Costs unreported; 1 month)

Chicago Operations Office/ Energy Research
2 = Proposed Construction of Lied Transplant Center, University of Nebraska Medical Center, Omaha, Nebraska, DOE/EA-1143
($32,500 Federal cost, no contractor used; 9 months)

Energy Efficiency and Renewable Energy
3 = Bison School District Heating Plant Project, Colorado, DOE/EA-1084
($130,000 Federal cost, contractor costs unreported; 10 months)

Oak Ridge Operations Office/ Environmental Management
4 = Management of Spent Nuclear Fuel at the Oak Ridge Reservation, Oak Ridge, Tennessee, DOE/EA-1108
(Costs unreported; 7 months)

Savannah River Operations Office
5 = Off-Site Commercial Cleaning of Lead and Asbestos Contaminated Laundry Generated at the Savannah River Site, DOE/EA-1130
($120,000; 4 months)

Southwestern Power Administration
6 = Vegetation Control at VHF Stations, Microwave Stations, Electrical Substations and Pole Yards, Missouri, Oklahoma, Arkansas, DOE/EA-1110
($63,000; 19 months)

Introduction

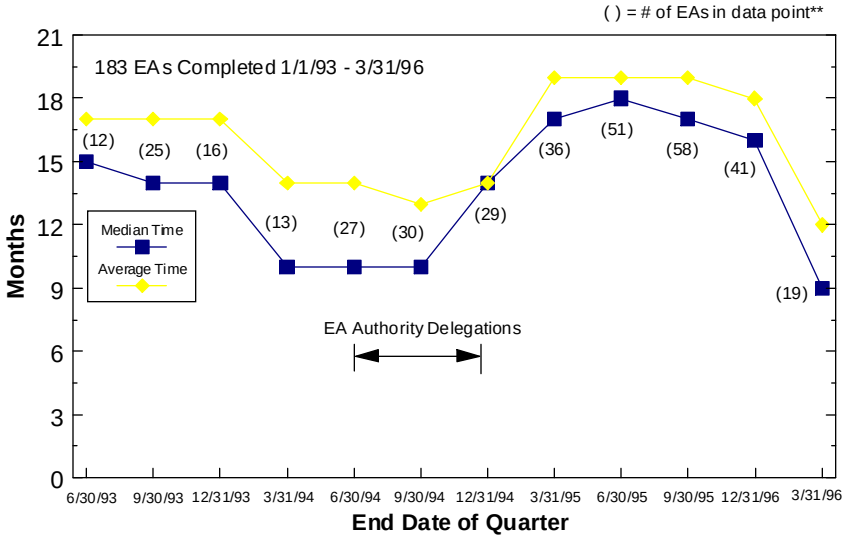
In this section we analyze trends for NEPA process cost and time, two key metrics that reflect the Department's progress in improving its NEPA compliance program. The Office of NEPA Policy and Assistance has been tracking and reporting data on these metrics during the past seven quarters, in accordance with the Secretary's NEPA Policy, and intends from time to time to analyze the data and report on the Department's progress. (For example, please refer to Figure 1 on page 13, which suggests significant improvements regarding a different key metric, the effectiveness of the Department's NEPA process.)

In conducting this trends analysis, we have examined various timeframes, including the period since the Secretary's NEPA Policy Statement (i.e., 7/1/94 to present), the last 12 months, and, in a trendline presentation, the last 6 months. Each period is characterized by different average/ median results, which the reader should take care to distinguish.

EA Completion Times

Conclusions regarding trends based on these data (Figure 4) should be made cautiously in light of the wide range in completion times, as suggested by the differences between the median and average (Also see Figure 6).

The data suggest that after EA approval authority was delegated to field office managers, median EA completion times increased from about 10 months to about 17 months. After approximately one year, median EA completion times appear to have decreased to about 9 months.



* Each data point represents EAs completed within the 6 months period ending on the indicated date. This technique tends to smooth out quarterly changes.
** EAs may be counted in two data points.

Figure 4

- Analysis of the sample of EAs approved in the year after delegation suggests that Field Offices completed the NEPA process for many "old" EAs. Other factors that may have contributed to the completion time increase include: the number of EAs completed increased from about 50 per year for 1993 and 1994 to about 95 for the year following delegation which may have stretched available NEPA expertise and resources available; a "learning curve" period during which several Field Offices reported the need to augment their NEPA staff and refine their EA review and approval procedures; providing enhanced public participation opportunities in accordance with the Secretary's NEPA policy may have lengthened the process in some cases; and, in a few instances, Field Office decision makers found that they needed time to deliberate on controversial decisions that previously would have been made at headquarters.

- Data for EAs initiated after delegation, although incomplete and therefore not presented in Figure 4, strongly suggest an overall decrease in EA completion times to levels at or below predelegation levels. These data better represent recent DOE performance because they do not include the effects of any backlog of "old" EAs. For example, of the 68 EAs started after 1/1/95, the EA process for about 50% of them has been completed; the median completion time for the 68 EAs will be less than about 9 to 10 months (the median for EAs already completed was 4 months). We will continue to study these "new" EAs and report on the results when appropriate.

- Figure 4 also suggests an apparent decrease in EA preparation times from a median of about 14 months in 1993 to about 10 months in 1994. This decrease may reflect several significant cost and time savings recommendations that the Department began to practice almost immediately after issuance in January 1994 of the Report of the Environmental Assessment Process Improvement Team.

EA Costs

- This figure represents only those completed EAs for which costs have been reported, which constitutes 62% of the EAs completed during the period.
- Large differences between the median and average indicate wide cost variations.
- No reliable EA cost data are available for EAs completed before June 1994.
- The data suggest that delegation did not affect the typical EA cost, which has been nearly constant through this period.

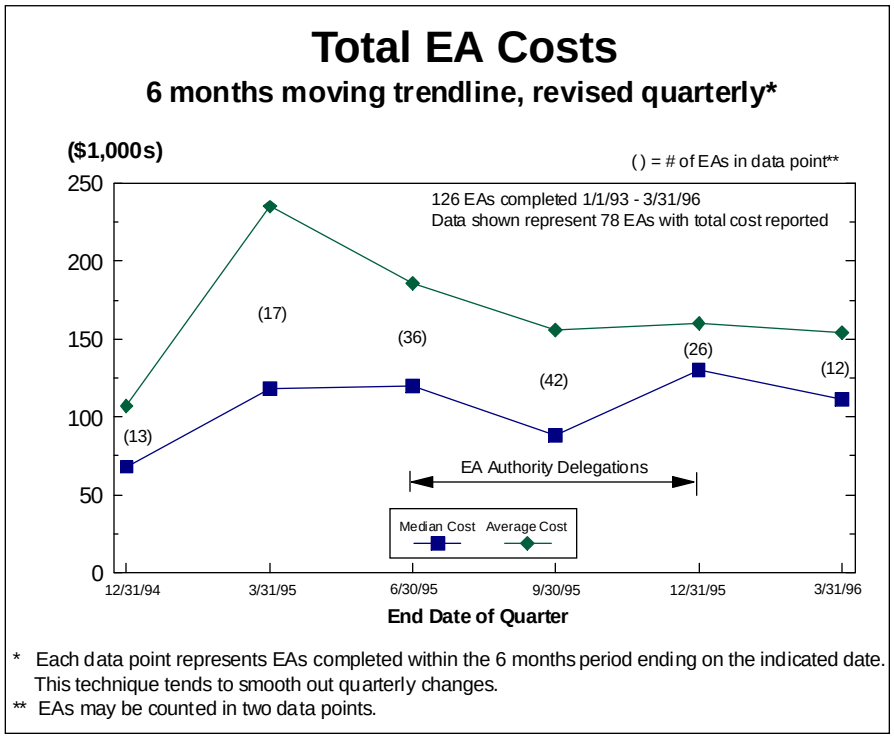


Figure 5

- EA cost variations among different program offices were discussed in the March 1, 1996 edition of the Lessons Learned Quarterly Report.

We intend to further study and report on cost and time data for programs and field offices.

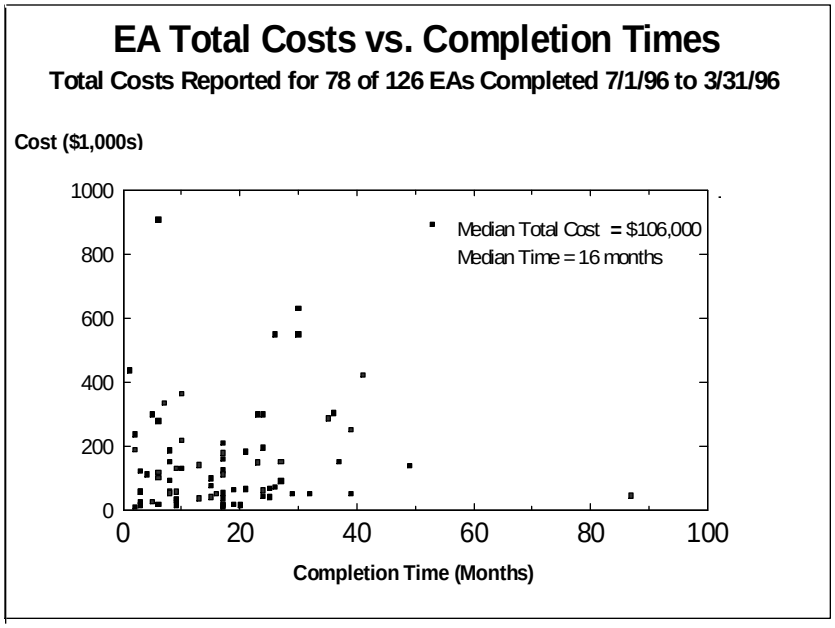


Figure 6

EA Total Costs vs. Completion Times

- Figure 6 illustrates the wide variation in both costs and completion times for EAs.
- These data show that a high proportion of the EAs with relatively long completion times (i.e., greater than 20 months) have relatively high costs (i.e., greater than $200,000), while the overall correlation between EA cost and time is very weak. For example, nearly one-half of the EAs with long completion times cost less that $100,000.

EIS Cost vs. Completion Times

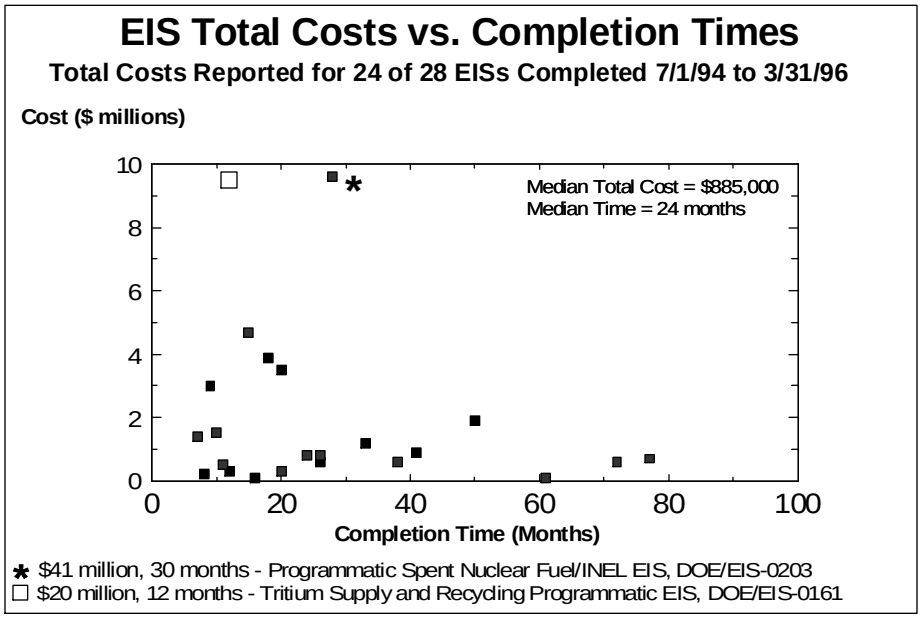


Figure 7

- This figure illustrates that the distribution of EIS costs strongly clusters in the low end of the range; 70% of EISs cost less than $2 million. EISs rarely cost more than $5 million.

- EIS completion times vary widely. These data do not suggest a correlation between completion times and costs. EISs with the longest completion times (greater than 30 months) were among the least costly EISs and none cost more than $5 million.

- We believe analysis of recent DOE performance regarding EIS costs and completion times requires study of EISs initiated after the issuance of the Secretary's NEPA policy in June 1994. Of 15 such EISs, five have been completed to date (completion times of 9, 10, 11, 12 and 19 months), which is too small and biased a sample to enable meaningful trend analysis. We intend to continue to study EIS trends and will report the results as sufficient data become available.

N E P A

National Environmental Policy Act

LESSONS LEARNED

U.S. Department of Energy Quarterly Report

September 3, 1996 For 3rd Quarter FY 1996

Monthly Meetings Foster Teamwork

A Salute to Gary Palmer

Three years ago, Gary Palmer, the Defense Programs' Deputy NEPA Compliance Officer, instituted a program for improving communication and coordination among his office, the Office of NEPA Policy and Assistance, and the Office of the Assistant General Counsel for Environment. Gary proposed that the three offices meet on a regular basis to discuss the status of DP's NEPA activities, existing and pending guidance, and other NEPA-related issues. These meetings have become a monthly mainstay, fostering teamwork among the participants and providing a mechanism for early resolution of issues.

As DP has become more involved in programmatic and site-wide environmental impact statements, its NEPA issues have become more complex, and the list of meeting participants has grown. Monthly videoconference meetings are now routinely attended by members of the Offices of Materials Disposition and

continued next page

Gary Palmer leads videoconference discussion of cross-program issues at monthly NEPA meetings (first row, l-r: Steve Ferguson, GC; Carol Borgstrom and Bob Strickler, EH; Gary Palmer, DP; David Hoel, EM; second row, l-r: Stan Lichtman, Eric Cohen, Jim Daniel and Ted Hinds, EH; Rick Kendle, EM,; Sandy Dodd and Trish Coffin, DP/support).

Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report on Lessons Learned in the NEPA process. This report includes:

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

NEPA's John Pulliam Retires

John J. Pulliam, III, will retire in September after 30 years of service with the Federal Government. A biologist by training, John served his last seven years with DOE's Office of NEPA Policy and Assistance as Unit Leader for Energy Efficiency/ Renewable Energy/Fossil Energy. John's Federal career also included 21 years with the U.S. Fish and Wildlife Service and two years in the U.S. Army. Along with his solid knowledge of NEPA and his popularity as a NEPA workshop leader, John is noted for his expertise on endangered species, floodplain and wetlands issues, and environmental justice. Most recently, John led the effort to streamline the Department's NEPA procedures by amending 10 CFR Part 1021.

Ahead is a new career for John as Assistant Director of International Missions for Luther Rice Seminary in Atlanta, Georgia.

John J. Pulliam, III

Gary Palmer (continued)

Environmental Management, Headquarters' offices in Forrestal and Germantown, and one or more field offices who are included on a rotating or "as needed" basis. Offices without a video capability can participate via a conference call. The meetings are focused by an agenda prepared and reviewed in advance, yet are informal enough to allow for a free exchange of ideas and information not on the agenda.

Gary's attention to detail has made the meetings a success. Always cooperative, he takes a proactive role in running DP's NEPA program. Henry Garson, DP's NEPA Compliance Officer, says Gary makes "order out of chaos."

The monthly videoconferences are extremely useful for both the Headquarters and field NEPA staffs. The Headquarters' personnel hear first-hand about the field's problems, concerns, issues, and success stories. The field and Defense Programs staffs listen to the NEPA Office and General Counsel's views on current or emerging NEPA policy and legal issues.

A regular attendee and supporter of the videoconferences, Bert Stevenson, Office of Materials Deposition, believes that one gets an understanding of what other people within DOE are doing; what works, what doesn't work; what constitutes a good or bad decision; and where the Office of NEPA Policy and Assistance puts its emphasis when reviewing a final versus a draft environmental impact statement.

Martha Crosland, Environmental Management's NEPA Compliance Officer, believes the meetings are a valuable communication tool—they serve to get the right people talking to one another. Steve Ferguson, Office of the Assistant General Counsel for Environment, thinks that the meetings force NEPA practitioners to discuss issues earlier rather than later. This early communication leads to consistency of treatment and assumptions, and issue resolution.

At the July 9, 1996, videoconference, the group discussed 12 environmental impact statements, alternative formats for responding to comments received on draft environmental impact statements, how to analyze specific projects within a programmatic or site-wide environmental impact statement, and public availability of records of decisions.

The Office of NEPA Policy and Assistance endorses this use of multi-program videoconferencing as a productive way to maintain open, effective communications between Headquarters and the field offices, and to save time and money. The NEPA Office salutes Gary Palmer for having the vision to initiate this innovative format and encourages others to establish similar procedures. For further information, please contact Gary Palmer at (202) 586-1785.

Richland's Effective Internal Scoping Process

The Richland Operations Office conducts an effective internal scoping process that helps streamline the NEPA process for their proposed projects. Key features include:

- Meeting early with all appropriate personnel (NEPA Compliance Officer, legal counsel, DOE project staff, and appropriate management and operations and support contractors).
- Using a checklist to identify potential environmental impacts, key issues, any special data needs, and the expected depth of analysis (including page lengths).
- Developing a purpose and need statement and a preliminary range of alternatives.
- Writing an internal scoping report that recommends the initial level of the NEPA document and the NEPA Document Manager. (The NEPA Compliance Officer and project representative sign the report, which the Richland Operations Office Manager uses in making the official determinations.)
- Identifying document preparers and reviewers, planning public participation, and establishing a schedule.

Others may wish to consider whether aspects of Richland's approach might improve the internal scoping procedures each DOE Headquarters and field office has established under DOE Order 451.1, section 5a(3). A Richland internal scoping report, "Internal Scoping for Powerhouse Decommissioning at the Hanford Site (July 1996)," would be a good model to study. (Contact Paul Dunigan, Richland NEPA Compliance Officer, at (509) 376-6667.)

Visual Excellence Conveys the Message

Important decisions require both a sound analysis and effective communication with decision makers. NEPA documents provide a vital link in DOE's decision process. Well-designed visual presentations help to summarize volumes of information or illustrate complex concepts in a simple form.

Visual elements of a document—design of the text, graphics, tables, and maps—may either help or hinder a reader. A friendly design illuminates the message within the data and encourages comparisons of important details. The Office of NEPA Policy and Assistance offers basic advice on the use of graphics and presentation of data in Section 9 of "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements" (the "Green Book" of May 1993).

In addition, the writings and training offered by Edward Tufte, professor of political science, statistics, and graphic design at Yale University, provide more detailed guidance for presenting technical information. Tufte's excellent one-day class covers making effective presentations on paper and in person. His training topics include: complexity and clarity; tables, graphs, and maps; design of information displays in public spaces; and use and abuse of color, type fonts, computers, handouts, overheads, and animation.

This instruction is based on Tufte's books: "The Visual Display of Quantitative Information," "Envisioning Information," and "Visual Explanations." The classroom experience and reading "The Visual Display of Quantitative Information" are particularly relevant and useful for NEPA Document Managers, NEPA Compliance Officers, and others involved in communicating the findings of the NEPA process. For more information, please contact Yardena Mansoor, Office of NEPA Policy and Assistance, at (202) 586-9326.

Send Us Your Examples

The Office of NEPA Policy and Assistance is developing recommendations on effective user-friendly visual presentations: graphs, tables, figures, maps, flow diagrams, layout, and formatting. We intend to produce a reference collection of good and bad examples in a future guidance document. Please send your contributions to Yardena Mansoor, Office of NEPA Policy and Assistance (EH-42), 1000 Independence Ave., SW, Washington, DC 20585-0119.

Responding to Comments on DOE EISs

DOE's final environmental impact statements (EIS) must respond to public comments on the draft EISs. The following guidance explains why DOE must respond to substantive comments and offer suggestions on response formats.

Regulatory Background

The Council on Environmental Quality's (CEQ) NEPA regulations require Federal agencies to assess and consider comments received on a draft EIS. The comments must be considered both individually and collectively. An agency must respond to the comments by modifying EIS alternatives including the proposed action, developing additional alternatives, supplementing or improving the analyses, making factual corrections, or explaining why the comments do not warrant further agency response (40 CFR 1503.4 (a)). All substantive comments received on a draft EIS (or a summary of the comments if they are exceptionally voluminous) should be attached to the final EIS regardless of whether the agency believes they merit individual discussion in the body of the document (40 CFR 1503.4(b)).

In its "40 Most Asked Questions" (Questions 25 and 29a) (46 FR 18026, March 23, 1981), CEQ notes that responses to comments should result primarily in changes to the text of the EIS, "not simply a separate answer at the back of the document." However, CEQ also suggests that specific answers to "each significant comment" be included in the final EIS and may be placed in an appendix. Agencies may group similar comments together and prepare a single answer for each group.

Planning and Content

- Preparing responses to comments can be expensive and time-consuming, so the approach to organizing the responses should be planned carefully, taking into account the complexity of the issues involved, the number of comments anticipated, and other relevant factors.

- Response formats should be user-friendly. Commentors should be able to easily find DOE's responses to their particular statements. Readers should be able to determine which commentor made a particular comment. Comments may be—but are not required to be—reproduced (perhaps reduced in size) and included with the final EIS.

- Responses should be respectful in tone, informative and factual. Responses should state whether, how, and where DOE changed the EIS as a result of comments.

Formats of Responses to Comments

The following describes several different approaches to presenting responses to comments. While there is no "right" or "wrong" approach, one may be better than another for certain circumstances.

1. Address each comment individually

Each comment letter received and each hearing transcript/meeting summary is reproduced verbatim. Frequently, each comment is given a code and the code appears with a marginal bar to indicate the text that is designated as the "comment." A response is prepared for each comment and printed following or adjacent to the comment. No attempt is made to summarize or restate the comments or to group the comments according to subject matter or EIS section.

EIS Example:

Dual Axis Radiographic Hydrodynamic Test Facility, LANL Los Alamos, NM DOE/EIS-0203 (September 1995)

This approach ensures that all comments are addressed and accurately represented. Frequently, however, the same response is given to many similar comments, and this format may make changing such responses difficult. Further, it is difficult to discern an overview of the public comments on a particular issue. This approach is most appropriate when DOE receives a small number of comments or comments on generally different topics.

continued next page

Responding to Comments (continued)

2. Group comments according to EIS section or subject matter

Individual comments from comment letters and hearing transcripts/meeting summaries are organized according to sections of the EIS or by subject matter. Multiple comments on the same section or subject are addressed only once. Responses to similar comments are referenced to avoid repetition.

This approach is readable and efficient. However, by grouping comments, the commentor's original context may be lost.

EIS Example:

Spent Nuclear Fuel Management and INEL Environmental Restoration and Waste Management Programs, Idaho Falls, ID DOE/EIS-0203 (April 1995)

3. Synthesize similar comments into one comment for response

Similar comments on the same issue are synthesized into one comment and one response is provided, which avoids repetition. This enables DOE to respond in one place to commentors with differing viewpoints on the same issue.

However, DOE must include every point raised in the comments for a particular subject. Each comment must be understood in the context of the entire submission and accurately represented in the comment summary. Adequately incorporating all of the comments to capture the commentors' points can be very time-consuming and resource-intensive.

This approach is most appropriate when a large number of comments is received and sufficient time is available to pay careful attention to the inclusion of all comments and the preparation of complete responses.

EIS Example:

Waste Isolation Pilot Plant, Carlsbad, NM DOE/EIS-0026-FS (January 1990)

4. Combination

When appropriate, comments on certain topics can be synthesized and comments on other topics grouped together or responded to individually. This approach is sometimes optimal.

EIS Example:

Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel DOE/EIS-0218 (February 1996)

5. Comment-response document?

A "comment-response document" is not required by either the CEQ or the DOE NEPA regulations and may not be warranted when there are a small number of comments. DOE must nevertheless be able to show that it has in fact "*assess[ed] and consider[ed*]" all comments and made the appropriate changes in the final EIS. LL

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the fourth quarter of FY 96 (July 1, 1996 to September 30, 1996) should be submitted as soon as possible after document completion, but no later than November 1, 1996. (Fax: 202-586-7031 or Internet: joanne.geroe@hq.doe.gov). The Lessons Learned Questionnaire is now available interactively on the DOE NEPA Web [http://www.eh.doe.gov/nepa] on the Internet. Look for it under NEPA Process Information.

Improving Comment Resolution with EPA

By: David Hoel, NEPA Document Manager
Office of Environmental Management

Have you felt disconcerted by an "Insufficient Information" rating from the Environmental Protection Agency (EPA) on your draft EIS? Do you want to receive a friendly concurrence letter on your responses to EPA's comments?

Don't despair! Lessons learned in working with EPA staff on their comments on the Spent Nuclear Fuel Management (SNF) and Waste Management Programmatic EISs (WM PEIS) can help achieve a happy ending for your EIS (environmental assessments too). These same lessons can be applied to other Federal and state agencies, tribal governments, and the Defense Nuclear Facilities Safety Board. The draft SNF PEIS and WM PEIS each received "EC-2" (Environmental Concerns-Insufficient Information) ratings from EPA. However, DOE's final documents (the final WM PEIS is in preparation) address the EPA comments with very positive results.

EPA's comments identified specific areas for which EPA believed there was insufficient information. We identified EPA comments that required changes in the final EIS, those that we did not expect to do so, and those that warranted discussion or clarification. We then contacted EPA to arrange to discuss both of the latter types of comments. This approach focuses discussions on comments that need the most attention. EPA commentors welcomed the opportunity to elaborate on the intent of their comments and to better understand DOE. They offered constructive technical suggestions where developing a technically appropriate response was most difficult.

Clear, effective communication often is key to successful comment resolution. Preparing draft responses before each discussion with EPA helped us to clarify issues and avoid dwelling on editorial rather than substantive aspects of the responses. EPA reviewers were objective and reasonable about withdrawing or otherwise closing a comment wherever DOE could show that the draft EIS adequately addressed the matter.

Once we reached agreement with EPA staff on how to resolve their comments, we provided them a written accounting of the proposed responses. EPA confirmed in writing that the DOE responses adequately addressed their comments and satisfied the environmental concerns indicated in their rating of the draft PEIS. We were very happy to find out before publishing the final EIS that our responses were acceptable to EPA.

We let EPA know we appreciated the time and effort that their reviewers devoted to helping improve our NEPA document. As in any communications, a positive and polite demeanor can make quite a difference in the degree of cooperation received.

"We...are satisfied that [EPA's] environmental concerns...have been adequately addressed....DOE's coordination...has been exceptionally managed and we appreciate the opportunity to...work with the DOE staff."

Richard E. Sanderson
Director, EPA Office of Federal Activities

For more information on these EPA comment resolution experiences or for examples of SNF PEIS and WM PEIS correspondence, please call David Hoel, EM-35, at (202) 586-3977.

[*Editor's Note: See mini-guidance on formats for responding to comments on page 4.*]

EPA Commends DOE for "Model" Pollution Prevention Analysis

The U.S. Environmental Protection Agency (EPA) has praised the analysis of pollution prevention and waste minimization presented in the Pantex draft site-wide EIS as a model for future analyses. Robert D. Lawrence, Chief of the Office of Planning and Coordination in EPA's Region VI, stated: "The EPA would like to commend DOE for [the] Appendix on pollution prevention and waste minimization. We find Appendix G to be comprehensive in scope, informative to the reader, and a model which other DOE NEPA documents may find beneficial."

Appendix G of the draft EIS—which is entitled the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components—offers background information on the Pantex Plant's Pollution Prevention and Waste Minimization program. The Pantex EIS discusses source reduction, process change, pollution prevention opportunity assessments, technology transfer, recycling, treatment, energy and water conservation, and future programs. Current and future potential waste reduction and cost savings are examined, and future goals are reviewed.

For example, the section on source reduction lists 34 specific measures taken at the Pantex Plant to reduce waste at the source. This demonstrates how waste quantities are reduced over time and identifies the associated cost savings. The appendix also presents waste source reduction goals for 1994 to 1999.

Under DOE Order 5400.1, "General Environmental Protection Program," and DOE guidance—provided in the (January 1995). [Note: DOE's Office of Environmental Management also is preparing guidance on addressing pollution prevention in NEPA documents.]

EPIC, DOE's Pollution Prevention Information Clearinghouse on the Internet, provides general DOE

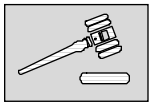
"...comprehensive in scope, informative to the reader, and a model which other DOE NEPA documents may find beneficial..." EPA, Region VI

DOE's 1994 Waste Minimization/ Pollution Prevention Crosscut Plan and the 1996 Pollution Prevention Program Plan—each site is required to develop and maintain site-wide and generator-specific pollution prevention/waste minimization programs. Explanations of applicable programs benefit site-wide NEPA documents and serve as a departure point for presenting project specific pollution prevention/waste minimization information.

Guidance on incorporating pollution prevention principles, techniques, and mechanisms into NEPA documents—provided by the Council on Environmental Quality (January 12, 1993) and the EPA (October 15, 1992)—is included in the Volume II of the 1994 NEPA Compliance Guide. Additionally, EPA issued a pollution prevention check list for NEPA documents

information and links to pollution prevention homepages at specific offices. EPIC's address is: http://epic.er.doe.gov/epic.htm. DOE site pollution prevention reporting under the Toxic Chemical Release Inventory can be found at http://www.eh.doe.gov/nepa by clicking on the "Environmental Data and Reports" section.

Kent Hancock, Chair, Waste Reduction Steering Committee (WRSC), EM-77 (301) 903-1380, Jane Powers, WRSC member, EH-412 (202) 586-7301 and John Marchetti, WRSC member, DP-34 (301) 903-5003 can provide further information on pollution prevention and waste minimization topics. Copies of Appendix G of the Pantex draft site-wide EIS can be obtained from Shane Collins, Office of NEPA Policy and Assistance, at (202) 586-1979. LL



Legal Updates

Department Sued Again Over Foreign Research Reactor Spent Nuclear Fuel; Other Cases of Interest

In the continuing controversy over the receipt of spent nuclear fuel from foreign research reactors, the State of South Carolina has again sued DOE, this time over the adequacy of the EIS issued in February 1996 on the policy. [In an earlier case, the U.S. Court of Appeals for the Fourth Circuit had ruled that DOE's EA for two urgent-relief shipments of foreign research reactor fuel was adequate. South Carolina v. O'Leary, 64 F.3d 892 (4th Cir. 1995).]

The complaint filed by the State on July 29, 1996, alleges that the EIS on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel is deficient in that it "barely discusses" the use of the L-Reactor disassembly basin for storage of the fuel once the Receiving Basin for Offsite Fuels becomes full. The State further alleges that the EIS "utterly fails to make candid disclosure of the known potential environmental and safety hazards" of storage in the basins. The State asked for an injunction prohibiting any shipments of foreign research reactor spent nuclear fuel assemblies to the U.S. until DOE has prepared an adequate EIS.

On August 15, 1996, the U.S. District Court for the District of South Carolina denied the State's motion for a preliminary injunction. The court found that the State is not likely to prevail on the merits of the case and has not proven that any irreparable harm would occur to the workers at the Savannah River Site or to the general population from the proposed shipments. The court has not yet ruled on the merits of the case for purposes of a final ruling.

Sandia Sitewide EIS

In mid-June, DOE moved to dismiss the complaint filed by the Southwest Information and Research Center and Isleta Pueblo to require DOE to prepare a sitewide EIS for Sandia National Laboratory—Albuquerque (SNLA). DOE argued that the plaintiffs have not alleged any violation of NEPA for any particular action and that DOE has considered cumulative impacts as required under NEPA for all recent actions at SNLA. With respect to allegations concerning use of the 1977 sitewide EA for SNLA, DOE argued that it has not tiered from the EA and that preparation of a supplement analysis for the EA is not required. Finally, DOE argued that its policy to prepare sitewide EISs does not, as a matter of law, require the preparation of any particular sitewide EIS, and that the plaintiffs' request is moot because the Department decided in 1992 to prepare a sitewide EIS for SNLA and is committed to start doing so in fiscal year 1997, barring any budget limitations. As of this writing, the court has not ruled on the Department's motion to dismiss.

Electrometallurgical Processing Demonstration

On July 12, 1996, the U.S. District Court for the Northern District of California denied the request of organizations concerned about nonproliferation to temporarily restrain DOE from conducting an electrometallurgical process demonstration on Experimental Breeder Reactor-II spent nuclear fuel. (The Office of Nuclear Energy completed an EA for the proposed demonstration and issued a Finding of No Significant Impact on May 15, 1996.) The organizations had previously amended their complaint to include the demonstration project in ongoing litigation challenging DOE's NEPA review of the Transuranic Management by Pyroprocessing-Separation (TRUMP-S) project. The Department argued its motion for summary judgment in the TRUMP-S litigation on July 13, 1996. As of this writing, the court has not ruled on the Department's motion.

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Recent opinions of interest (not involving DOE) are summarized below:

Connected Actions

The U.S. Army Corps of Engineers does not have to consider continuation of an ongoing juvenile salmon transportation program in an EIS for a proposed flow improvement project in the Columbia River. The Corps would continue the transportation program with or without the flow improvement project, and vice versa. Thus, the two actions have independent utility.

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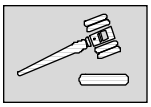

Legal Updates (continued)

To the limited extent that the two actions are interconnected, each could exist without the other, although each would benefit from the other's presence. Northwest Resource Information Center, Inc., v. National Marine Fisheries Service, 56 F.3d 1060 (9th Cir. 1995).

Beneficial Impacts

The Farmers Home Administration is not required to prepare an EIS for a proposed water impoundment and treatment project on Big Fiery Gizzard Creek in Tennessee that would have significant beneficial impacts but no significant adverse impacts. One of the central purposes of NEPA is to "promote efforts which will . . . stimulate the health and welfare of man"; the health and welfare of the affected community will not be "stimulated" by the time and cost involved in preparation of an EIS that would not arguably be required except for the project's positive impacts. Friends of Fiery Gizzard v. Farmers Home Administration, 61 F.3d 501 (6th Cir. 1995).

Methodology

The Forest Service is not required to use a particular scientific methodology to analyze impacts on biodiversity of a proposed Timber Management Plan for two National Forests in northern Wisconsin. The Service extensively analyzed biodiversity impacts in an EIS, but the Sierra Club alleged that the analysis should use principles of conservation biology to address effects of fragmentation of the forest canopy, rather than a "traditional" species-by-species analysis. In its response to the Club's comments on the draft EIS, the Service noted the Club's concern that fragmentation would be detrimental to several species, but decided that the theory of conservation biology had not been applied to forest management in the Great Lakes states, and so was uncertain in application. The court held that an agency is entitled to use its own methodology, unless it is irrational. Sierra Club v. Marita, 46 F.3d 606 (1995).

Response to Comments

The Corps of Engineers unreasonably narrowed the scope of the cumulative impacts analysis in its EIS on a proposed dam in southern Oregon, even though it received comments on the draft EIS from the public requesting that the analysis be broadened beyond that identified during the scoping process. Although the scoping process will normally identify most of the important areas of discussion, the Corps cannot foreclose a factor from the scope of an EIS solely because the factor was not raised as a concern in the scoping process. An agency preparing an EIS has a duty to assess, consider, and respond to all comments, even those relating to environmental factors not mentioned during the scoping process. Oregon Natural Resources Council v. Marsh, 52 F.3d 1485 (9th Cir. 1995).

Transfer of Property

Because a parcel of wetlands in Bear Lake County, Idaho, was used for grazing before being acquired by the Farmers Home Administration and is currently used for grazing by a private party, the Administration's proposed transfer of title to that party for grazing would not alter the status quo and therefore is not subject to NEPA. National Wildlife Federation v. Espy, 45 F.3d 1337 (9th Cir. 1995).

Copies of complete opinions are available from Stephen Simpson, Office of NEPA Policy and Assistance, at 202-586-0125 (e-mail: stephen.simpson@hq.doe.gov). LL

Reminder:

From the DOE Federal Register Liaison: Field Counsel concurrence is required before field office submittal of any document related to NEPA for publication in the Federal Register.

1996 Federal Environmental Quality Award Winners

The Council on Environmental Quality and the National Association of Environmental Professionals recognized both an Army Corps of Engineers environmental impact statement and a Minerals Management Service NEPA program with this year's Federal Environmental Quality Awards.

Project Award

The Army Corps of Engineers Galveston District's supplemental environmental impact statement for the Houston-Galveston Navigation Channels won the 1996 award for an outstanding NEPA review. The EIS evaluates alternatives for improving navigation by widening and deepening the shipping channel.

The Corps originally proposed to deepen the channel to 50 feet. Subsequently, the Corps found, on the basis of its 1995 supplemental EIS, that deepening the channel to 45 feet adequately meets the need for navigation improvements at lower cost with significantly less adverse impacts on fish and wildlife.

Further, the supplemental EIS reveals that the dredged material could be used to create more than 4,000 acres of marsh, a bird island, and other environmental benefits, while reducing disposal costs and impacts.

Program Award

The 1996 NEPA program award commended the Interior Department's Minerals Management Service program for long-term protection of the Flower Garden Banks—a thriving coral reef formation in the northwestern Gulf of Mexico. Since 1973, the Service has ensured that activities associated with nearby development of oil and gas production are conducted in a manner that is compatible with the health of this designated Marine Sanctuary.

In the course of issuing lease sale environmental impact statements, the Service established, in partnership with industry and public interests, a series of mitigation measures that are increasingly protective of the lease tracts closer to the reef. An integrated program of long-term monitoring lowers costs by avoiding duplicative efforts and by allowing an easing of stipulations where monitoring data indicate drilling and production activities do not harm the sanctuary.

The Minerals Management Service was also recognized for its guidance for streamlining environmental impact statements for oil and gas lease. The guidance recommends:

- Including only enough background information to support the "Purpose and Need" for action.
- Shortening and simplifying the analyses for individual resources.
- When comparing alternatives, describing only those impacts that differ from impacts under the proposed action.
- Analyzing significant issues in more detail than minor ones (See discussion of sliding scale in DOE's "Green Book.")
- Incorporating by reference analyses from previous EISs.
- Having professional writers prepare EIS summaries, and strictly conforming to the NEPA regulations (40 CFR 1502.12)
- Eliminating unnecessary appendices.

For additional information on the 1996 Federal Environmental Quality Awards, contact Yardena Mansoor, fax to (202) 586-7031, phone (202) 586-9326 or e-mail to: [yardena.mansoor@hq.doe.gov].

[*Editor's Note: The Department of Energy won the NEPA program award in 1995.*]

For Procurement Contacts:

The Office of NEPA Policy and Assistance invites any of our Lessons Learned Quarterly Report readers who are contracting officers involved in NEPA procurements to provide lessons learned from their experiences to Yardena Mansoor, Office of NEPA Policy and Assistance (EH-42), 1000 Independence Ave., SW, Washington, DC 20585-0119 or (e-mail: yardena.mansoor@hq.doe.gov).

Rule Amendments Streamline DOE's NEPA Process

Extraordinary teamwork enabled DOE to complete its final amendments to DOE's regulations for compliance with NEPA (10 CFR Part 1021) in less than five months after proposal and meet the critical milestone established by the Secretary's Strategic Alignment Initiative Plan. With the assistance of the Department's network of NEPA Compliance Officers, expedited concurrences from Secretarial Officers and Heads of Field Organizations enabled the rule to go forward. The final rule amendments, published July 9, 1996 (61 FR 36222), became effective August 8, 1996.

Highlights of Final Amendments

DOE responded to the public's comments on the proposed amendments by:

- Withdrawing the proposal to publish notices of availability instead of the full text of records of decision in the Federal Register.
- Adding a requirement to include contractor conflict of interest statements in environmental impact statements.
- Withdrawing a proposed categorical exclusion, and narrowing other categorical exclusions.

Ray Clark, Associate Director for NEPA Oversight, Council on Environmental Quality, provided valuable advice and speedy consultation during the rulemaking. In a June 28, 1996 letter to DOE, he commended the Department for its efforts to streamline the NEPA process without sacrificing environmental quality. He further stated that the revisions will reduce costs and time associated with the process while making each analysis more useful to the decisionmaker and the public.

According to one DOE field office manager, the final amendments appropriately balance NEPA process changes with the need to preserve the quality of the NEPA process.

The Department is now working to complete a limited rulemaking for categorical exclusions that pertain primarily to Federal power marketing activities. Subsequently, the Office of NEPA Policy and Assistance intends to publish the entire integrated amended regulation and conform its training modules accordingly.

The rule's final amendments are available on the DOE NEPA Web (Uniform Resource Locator address: [http://www.eh.doe.gov/nepa]). Questions, requests for further information, and requests for reprints of the final rule amendments may be directed to Bob Strickler, Office of NEPA Policy and Assistance, at (202) 586-2410 or fax (202) 586-3915.

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NEPA Office Needs Your Documents

Do you know why DOE Order 451.1, issued on September 11, 1995, requires that a NEPA Compliance Officer provide the Office of NEPA Policy and Assistance (generally within 2 weeks of their availability) five copies and one electronic file of:

- An approved EA and any finding of no significant impact
- A proposed finding of no significant impact
- An approved draft or final EIS (in addition to the five copies filed with the Environmental Protection Agency)
- A record of decision for an EIS
- A mitigation action plan
- An EIS supplement analysis and any determination based on the analysis

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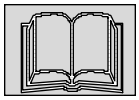
NEPA Documents (continued)

Here's one reason why. The NEPA Office maintains the Department's NEPA Document Archives, the only central file containing all DOE NEPA documents. We use the Archives to answer requests for information from both internal and external sources. Requestors often include document preparers and reviewers who need information on how particular issues have been addressed previously; e.g., what accident scenarios have been evaluated for various kinds of facilities. We also use the Archives to support development of new typical classes of actions (e.g., categorical exclusions) in the NEPA regulations. We can only provide this assistance if we have copies of the documents in the Archives.

The Archives are indexed in a database that contains information such as document number, names of the cognizant offices, affected states, citation for the record of decision, and approval date. The database helps to perform NEPA trend analysis and to locate documents in the Archives.

A version of the 1990-96 EIS Archives database is now available electronically to the NEPA community and the general public on the Department's NEPA Web. The information in the Archives and the database must, therefore, be as complete, accurate, and up-to-date as possible. Please help us in maintaining this valuable tool for all of us in the DOE NEPA community.

Why do we need five copies of each document? One is for the Archives, one for our staff, two for the Office of Scientific and Technical Information, and one helps to get the document onto the NEPA Web.



Book Review

Environmental Impact Assessment, 2nd Edition, McGraw-Hill, 1995

Author: Larry W. Canter

Reviewed by: Linda Thurston, Office of NEPA Policy and Assistance

This college textbook—in clear language and with a logical order—illustrates the tools and techniques for how and why we apply NEPA. The author's presentation will refresh long-time NEPA practitioners and serve as an expert guide for initiates.

Author Larry Canter, a Ph.D. in environmental health engineering, is Director of the Environmental and Ground Water Institute at the University of Oklahoma. His specialties are groundwater protection and pollution source evaluation, soil and groundwater remediation, and air quality and noise management and impact mitigation. Last year he served on the panel on cumulative effects at DOE's Conference Commemorating the 25th Anniversary of NEPA.

This well-referenced text covers environmental factors and regulations that one must consider when assessing environmental impacts. Effective graphic illustrations of the assessment process inspire the reader to simplify and clarify his/her own NEPA document illustrations.

In nearly 700 pages, Dr. Canter presents a functional array of tools and models for producing and following the progress of the environmental document. He includes an objective chronicle of the rationale for NEPA and other related Federal environmental regulations. Readers who may have spent so much time looking at the trees that they have forgotten the forest will enjoy a reminder of our national NEPA goals.

Chapter topics include: • NEPA and its implementation • Planning and management of impact studies • Simple methods for impact identification: matrices, networks and checklists • Description of environmental setting • Environmental indices and indicators for describing the affected environment • Predictions and assessments of impacts on air environment/surface water/the soil and groundwater/biological environment • Habitat-based methods for biological impact prediction and assessment • Prediction and assessment of cultural (architectural, historical, and archaeological)/environmental/visual/ socioeconomic impacts • Decision methods for evaluation of alternatives • Public participation in environmental decision making • Preparation of written documentation and • Environmental monitoring.

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 1996. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

Editor's Note: Some of the material presented here reflects the personal views of individual questionnaire respondents, which (appropriately) may be inconsistent. Therefore, unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.

SCOPING

- We were able to use existing documentation of alternatives in a programmatic EIS to efficiently flesh out potential alternatives in our project EIS.
- Concentrating on the real need to take action, rather than the "project-of-the-moment" or only funded projects, helped us to identify reasonable alternatives and to eliminate unreasonable ones.

DATA COLLECTION/ANALYSIS

- Historic data from the facility production and operation phases are critical for analyses in facility cleanup and stabilization EISs. Face-to-face meetings between the EIS preparation contractor and the management and operations contractor are necessary to ensure that proper data are used and correctly interpreted.
- The use of correct data is critical to impact analyses results.
- EISs should focus on key elements, which in a facility cleanup/stabilization EIS are the impacts to the workers and the public. The impact of waste shipments from the affected site to either the on-site storage area or the final disposal site needs to be closely reviewed.
- Helicopter flights of the proposed electric power line helped everyone (specialists, engineers, coordinator) see exactly what was happening and helped identify the environmental “hot spots."

SCHEDULE

Timely Completion of Documents was Facilitated by:

- Developing a schedule based on several key milestones, keeping the focus on the end points.
- Team members who believed that a schedule worth developing is worth maintaining.
- Conducting bi-weekly status reports and teleconferences to inform all participants of the status of each activity and its relation to the overall schedule.
- The Document Manager maintaining constant vigilance over the project, being able to make corrections, and having solid management backing.
- Timely support from EH, EM and GC staff during the planning and review process, which provided valuable reality checks for the preparation and review teams.

Procedures for Keeping the Document on Schedule:

- Delegation of EIS approval authority.
- Involvement of Headquarters staff in interim reviews was very helpful in providing a Headquarters viewpoint. Reviewers who were not closely involved with the projects also supplied additional perspective.
- Having an aggressive DOE NEPA Document Manager.

continued next page

Third Quarter FY 1996 Questionnaire Results

SCHEDULE (continued)

Timely Completion of Documents was Inhibited by:

- The need to add another alternative between the draft and final EIS because the EIS scope was initially too narrowly defined.
- Delays related to funding problems, which were the major cause of the seven month slippage in the schedule.
- The need to make further characterizations (measurements) after the public comment period.
- Several changes in the scope of the project and the proposed action.
- The NEPA process being put on hold for extended periods due to power marketing contract negotiations with private utilities that had a potential effect on the scope of the proposed project.

Factors that Facilitated Teamwork:

- Having the core DOE Headquarters team (EH, GC, Program) at the lab helped complete the draft quickly.
- Conducting bi-weekly status meetings and teleconferences enabled the DOE operations office, Headquarters and the various contractors to ensure the proper project direction, and saved dollars by eliminating travel to meetings unless truly necessary.
- A strong NEPA Document Manager who actively led the process, defining roles and boundaries of the participating organizations and helping them work together.
- Having a team mentality, defined roles, defined tasks and frequent communication meetings.
- Using a contractor to write the EA who was ex-DOE with a NEPA/Health & Safety background, and who knew the right questions to ask and how to get the most information out of the project teams.

Factors that Inhibited Teamwork:

- Headquarters offices allocating few staff resources to assist with the EIS because approval authority had been delegated to the field office.
- DOE staff reorganization which made it hard to tell who was in charge and whether anyone in DOE still cared about the EA.

Factors that Inhibited DOE Teamwork with Contractors:

- Lack of e-mail connection to contractor for most of the project was a distinct disadvantage.

PUBLIC PARTICIPATION PROCESS

Successful Aspects of the Public Participation Process:

- The most effective public interactions were small meetings with industry and labor union representatives.
- Conducting small group and one-on-one meetings with stakeholders and interested parties from the alternative site communities, which provided key members of the public with the opportunity to more exclusively share their ideas and opinions, personalized the process, and demonstrated the Department's commitment to the affected communities.
- Involving the Citizens Advisory Board, both as a sounding board and as an active reviewer, in an EIS initiated in response to public comments on a draft EA.
- Meeting directly with the few concerned people.
- Using project newsletters and newspaper, radio, and cable TV announcements to keep the public informed about the project and to announce upcoming public workshops.

continued next page

PUBLIC PARTICIPATION PROCESS (continued)

- Impacts of this project were spread over a relatively large area, so public meetings did not make much sense. We focused on letters to a general audience and one-on-one contacts with those who might feel impacted. This worked well.

- At the public workshops, the public provided input on the "weight" factors that DOE applied to resources in comparing routing alternatives.

- The NEPA Compliance Officer was in contact with many of the public participants prior to the public hearing and therefore experienced less hostility regarding the ecological issues.

Unsuccessful Aspects of the Public Participation Process:

- Advertising public meetings in metropolitan area newspapers was the least cost effective way of communicating with the public.

- Failing to gauge the minimum number of public meetings needed from the public response to the meeting announcement.

Public Reactions to the NEPA Process

- Overall the EIS process seemed to be accepted by the public. The EIS for this project immediately followed an EA. Several members of the public questioned why their EA comments had to be resubmitted in order to be incorporated into the EIS record.

- Members of the public at each alternative site were vocal, but believed their input wasn't going to influence the decision because it had already been made.

- The strongest reaction came from a stakeholder group that thanked DOE for finally preparing an EIS for a proposed action and stated that DOE should have started preparing the EIS two years earlier. Once DOE committed to preparing the EIS, public interest and concerns regarding the facility declined.

- Overall good—people felt they had input. At first the tribe felt we had passed them by—but we slowed down and involved them successfully.

FURTHER GUIDANCE NEEDS IDENTIFIED

- Clearer definition of the minimum criteria needed to satisfy NEPA review requirements is needed. The "necessary and sufficient" process needs to be applied to NEPA reviews.

- Guidance is needed on procedures for notifying the congressional delegations and Native American groups, publications of notices in the Federal Register, and document distribution. Since the Federal Register staff needs specific documentation and notices presented in a particular format, guidance on what is needed for these interactions (who to contact, lead time for publication, etc.) needs to be provided. [*Editor's Note*: *See guidance provided in Lessons Learned Quarterly Report, June 1995, page 6.*]

- Assembling the mailing list(s) for an EIS is time consuming and expensive, therefore an accurate and legally complete list is needed. A list should be maintained and updated by DOE Headquarters on the Internet Home Page, saving sites from having to establish and confirm such a list every time they write an EIS. [*Editor's Note: EIS mailing lists must be prepared individually in order to comply with applicable requirements (40 CFR 1502.19 and 1506.6). The Office of NEPA Policy and Assistance semiannually prepares a Directory of Potential Stakeholders for DOE Actions under NEPA. The 6th edition of the Directory, dated July 1996, is available on the DOE NEPA Web. Look for it under "NEPA Tools."*]

USEFULNESS

Agency Planning and Decision Making

- The preparation of this EIS did not aid in planning or decision making. The ROD indicated that nearly all action alternatives were being selected (the tool box approach), which suggests that the alternatives were not properly structured to allow a decision maker to choose one approach over another. LL

Effectiveness of the NEPA Process

The adjacent charts illustrate how respondents rated the effectiveness of the NEPA process. For the purposes of these charts, “effective” means the NEPA process was rated 3, 4 or 5 on a scale from zero to five, with zero meaning "not effective at all" and five "highly effective."

Since the fourth quarter FY 1994, the number of respondents rating the NEPA process as effective for EAs has increased to over 60%. The EIS data do not show a clear trend and should be interpreted cautiously in view of the low numbers of EISs and respondents.

For this quarter, 17 of the 23 respondents for EAs and 2 of the 11 respondents for EISs rated the NEPA process as "effective." One EA respondent commented that part of the value of the assessment process was that it brought the project people (“let’s get everything we can”) and the program people (“let’s figure out what we really need”) together to a mutual point of agreement.

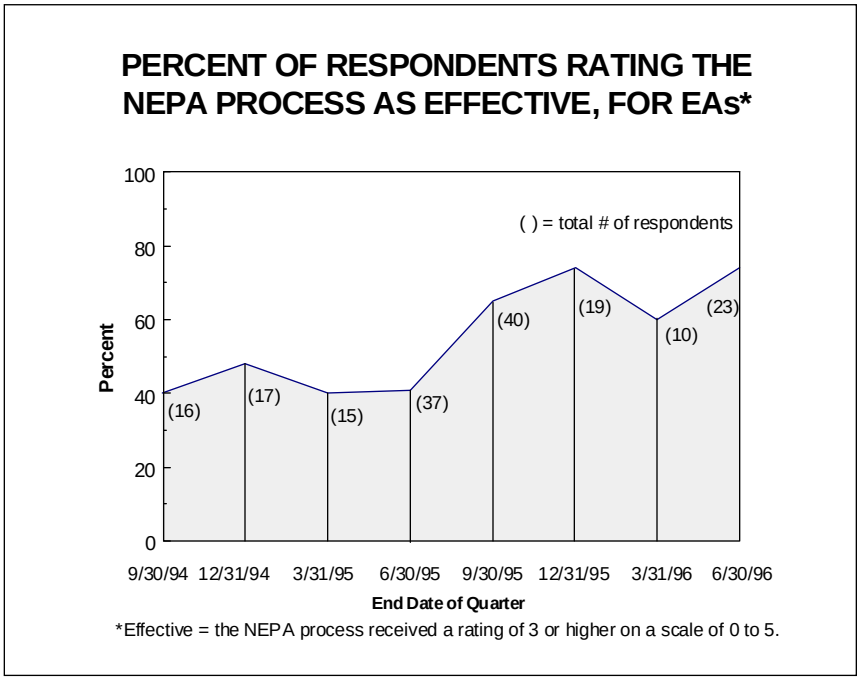


Figure 1

In one case, a respondent indicated that the results of an EA were used to facilitate eventual operation of a facility.

Another respondent indicated that the process provided a mechanism for public input on local issues associated with the proposed project. As a result, the project had a minimal impact on the environmen and, in at least one respect, improved the existing environmental quality.

Respondents gave several other reasons for high effectiveness ratings, including that an EIS provided a vehicle for several areas of planning and a future management tool, and that an EIS allowed the public to take a more active role in the decision making process.

One respondent who gave the NEPA process a low effectiveness rating noted that the NEPA process had little influence on the decision making for the project due to the narrow scope of the project and the lack of impact to sensitive resources.

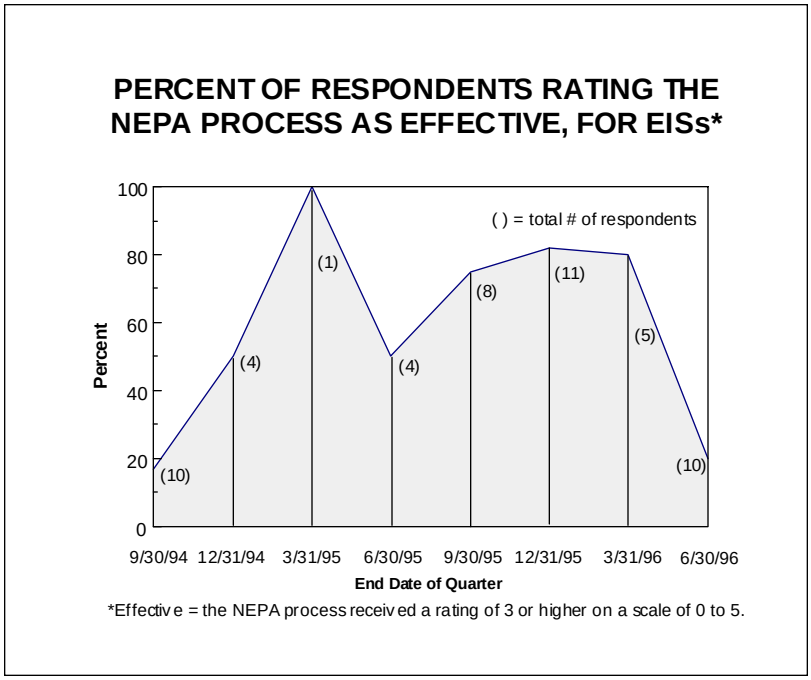
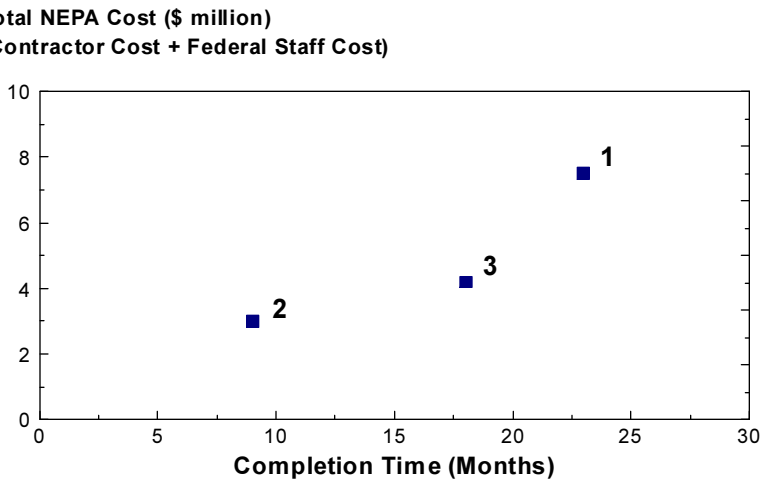


Figure 2

EIS Cost and Completion Times Data



* EIS #4 was adopted from the Navy; therefore, costs and completion time are not reported.

Figure 3

Completion Time Facts

- Three EISs were completed during the third quarter of FY1996, in 9, 18, and 23 months.
- Of 3 EISs reporting scheduling information, 1 was completed on schedule.
- The NEPA process was initiated early enough for 2 of the EISs to avoid being on a critical path. Respondents for 1 EIS disagreed about whether the NEPA process was initiated early enough.
- Cumulatively over the last year, the median completion time for 20 EISs was 22 months; the average completion time was 28 months.

Cost Facts

- Total NEPA process costs for the 3 EISs completed during the third quarter were $7.5 million, $3.0 million, and $4.2 million; corresponding contractor costs were $6.9 million, $2.4 million, and $3.6 million, respectively. A fourth EIS was adopted from the Navy and the cost is not included here.
- Budget data were reported for 3 EISs, one of which was completed within budget. The NEPA process costs for the other 2 EISs exceeded their budgeted costs by 7% and 17%.
- Total project cost was reported only for EIS #2, for which the NEPA process cost represented 10% of the total project cost.
- Cumulatively, over the last year, the median contractor cost for the preparation of 15 EISs was $3.0 million; the average cost was $3.9 million.

EISs

Fissile Materials Disposition
1 = Disposition of Surplus Highly Enriched Uranium, DOE/EIS-0240
EPA Rating: EC-2
($560,000 Federal cost, $6.9 million contractor cost; 23 months)

Nuclear Energy
2 = Medical Isotopes Production Project: Molybdenum 99 and Related Isotopes, DOE/EIS-0249
EPA Rating: LO
($620,000 Federal cost, $2.4 million contractor cost; 9 months)

Richland Operations Office/ Environmental Management
3 = Plutonium Finishing Plant Stabilization, Hanford Site, Richland, Washington, DOE/EIS-0244
EPA Rating: EC-2
($575,000 Federal cost, $3.6 million contractor cost; 18 months)

4 = Disposal of Decommissioned, Defueled Cruiser, Ohio and Los Angeles Class Naval Reactor Plants, Hanford Site, Richland, Washington, DOE/EIS-0259
EPA Rating: LO-1
(Adopted from the Navy)

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

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

EA Cost and Completion Times Data

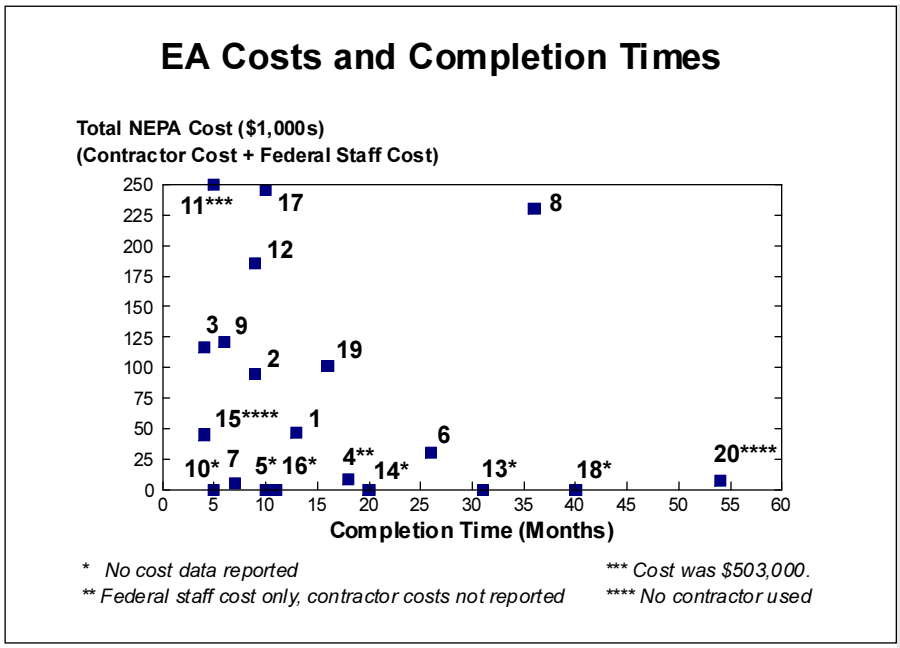


Figure 4

Completion Time Facts

- The median completion time for 20 EAs completed during the third quarter FY1996 was 11 months (range: 4 to 54 months).
- 6 of 14 EAs for which scheduling information was reported were completed on schedule.
- The NEPA process was initiated early enough for 9 EAs to avoid being on a critical path. Respondents for 2 EAs disagreed about whether the NEPA process was initiated early enough.
- Cumulatively for the last year, the median completion time for 69 EAs was 13 months; the average completion time was 18 months.

Cost Facts

- NEPA process cost data were reported for 13 EAs; the median cost was $101,000.
- The median contractor cost for the 11 EAs reporting such costs was $87,000.
- Budget data were reported for 8 EAs, 4 of which were completed within budget.
- Total project costs were reported for 4 EAs, for which the NEPA process costs represented .4%, .8%, 1.1% and 5.5%.
- Cumulatively for the last year, the median contractor cost for the preparation of 37 EAs was $85,000; the average cost was $101,000.

Errata:

On page 15 of the June 1996 Lessons Learned Quarterly Report, the correct completion time for EA#1 is 49 months. The correct cost for EA#5 is $12,000.

EAs

Albuquerque Operations Office/ Los Alamos Area Office

1 = Consolidation of Certain Materials and Machines for Nuclear Criticality Experiments and Training, LANL, Los Alamos, New Mexico, DOE/EA-1104 ($20,000 Federal cost, $27,000 contractor cost; 13 months)

2 = Facility Operations, Grand Junction Project Office, Colorado, DOE/EA-0930 ($23,000 Federal cost, $72,000 contractor cost; 9 months)

3 = Low Energy Demonstration Accelerator, LANL, Los Alamos, New Mexico, DOE/EA-1147 ($29,700 Federal cost, $87,500 contractor cost; 4 months)

Bonneville Power Administration

4 = Lower Red River Meadow Habitat Restoration Project, Idaho, DOE/EA-1027 ($8,000 Federal cost, contractor cost not reported; 18 months)

5 = Olympia South Tacoma Reconductor Project, Washington, DOE/EA-1114 (Costs unreported; 10 months)

Energy Efficiency and Renewable Energy

6 = Programmatic EA for the State Energy Conservation Program (SECP), DOE/EA-1068 ($30,000 contractor cost; 26 months)

7 = Thermal Oxidation System Energy Recovery, Copper Center, Alaska, DOE/EA-1145 ($5,000 contractor cost; 7 months)

Idaho Operations Office

8 = Test Area North Pool Stabilization Project, INEL, Idaho Falls, Idaho, DOE/EA-1050 ($20,000 Federal cost, $210,000 contractor cost; 36 months)

continued next page

EA Cost and Completion Times Data

EAs (continued)

Naval Petroleum Reserves in California

9 = Western NPR-1 3-D Seismic Program at Elk Hills, California, DOE/EA-1124 ($11,000 Federal cost, $110,200 contractor cost; 6 months)

Nevada Operations Office

10 = Double Tracks Test Site, Nevada Test Site, Nye County, Nevada, DOE/EA-1136 (Costs unreported; 5 months)

Nuclear Energy

11 = Electrometallurgical Treatment Research and Demonstration Project in the Fuel Conditioning Facility at ANL-W, Idaho Falls, Idaho, DOE/EA-1148 ($189,700 Federal cost, $313,200 contractor cost; 5 months)

Oak Ridge Operations Office

12 = Proposed Lease of Parcel ED-1 of the Oak Ridge Reservation, DOE/EA-1113 ($65,000 Federal cost, $120,000 contractor cost; 9 months)

13 = Sale of Radioactively Contaminated Scrap Nickel Ingots at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky, DOE/EA-0994 (Costs unreported; 31 months)

Oakland Operations Office

14 = Construction and Operation of the Explosive Waste Treatment Facility, LLNL, Livermore, California, DOE/EA-1106 (Costs unreported; 20 months)

15 = Decontamination and Waste Treatment Facility, LLNL, Livermore, California, DOE/EA-1150 ($45,000 Federal cost, no contractor used; 4 months)

Rocky Flats Operations Office

16 = Radioactive Waste Storage, Rocky Flats Site, Colorado, DOE/EA-1146 (Costs unreported; 11 months)

17 = Solid Residue Treatment, Repackaging and Storage, Rocky Flats Site, Colorado, DOE/EA-1120 ($26,000 Federal cost, $220,000 contractor cost; 10 months)

18 = Surface Water Structures Maintenance Activities, Rocky Flats Site, Colorado, DOE/EA-1093 (Costs unreported; 40 months)

Western Area Power Administration

19 = Estes-Marys Lake 69/115-kV Transmission Line Upgrade and Substation Expansion Projects, Colorado, DOE/EA-1074 ($15,000 Federal cost, $86,000 contractor cost; 16 months)

20 = Weld-Windsor 115-kV Transmission Line Project, Windsor, Colorado, DOE/EA-1095 ($7,500 Federal cost, no contractor used; 54 months)

Analysis Models and Codes Used in DOE EISs and EAs

Gary Palmer, DP Deputy NEPA Compliance Officer, has developed a summary of environmental impact analysis models and computer codes recently used in preparing DOE EISs and EAs. This summary, prepared with support from Los Alamos National Laboratory, identifies what models were used for specific NEPA documents and provides a brief description of each model. Included are models used for analyses of radiological and nonradiological impacts of normal operations and accident conditions, transportation, socioeconomics, and groundwater, and other environmental resources. In some cases, the models are identified as "EPA recommended" for use in certain regulatory applications. DP intends to keep its compilation of models updated and will provide copies, on request. Comments are welcome. For further information and to receive a copy, please contact Gary Palmer at (202) 586-1785 or Ellen Taylor at (301) 916-7732.

N E P A

National Environmental Policy Act

LESSONS LEARNED

U.S. Department of Energy Quarterly Report

December 2, 1996 For Fourth Quarter FY 1996

Continuing Improvement:

Participants at October NCO meeting included (from left to right) Dean Monroe, GC; Reginald Tyler, RF; Drew Grainger, SR; and Roger Twitchell, ID.

Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report on Lessons Learned in the NEPA process. This report includes:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Theme of October NEPA Compliance Officers Meeting

Leading members of DOE's NEPA community shared professional experiences and reflected upon job challenges at the DOE NEPA Compliance Officers (NCO) meeting held in Washington, DC on October 29-30. In addition to 29 NCOs, the participants included staff from the Offices of NEPA Policy and Assistance and the Assistant General Counsel for Environment. The meeting featured informal small group discussions, rather than presentations to a large audience.

The meeting examined NCO and Office of Environment, Safety and Health (EH) roles and responsibilities, NEPA contracting reform, and how to get the most from programmatic NEPA documents. An early brainstorming session elicited aspects of the DOE NEPA compliance program that are going well and "topics of concern" where improvement is needed. The former included: the NEPA teamwork process; the recent process of revising the DOE NEPA regulations; and stakeholder involvement. NCOs suggested that we measure "success" in terms of satisfying customers and protecting the environment. Areas identified as needing work included: misconceptions concerning NCO roles and responsibilities (it may be time to "re-energize" the NCO role); "answer shopping" for a favorable interpretation of NEPA requirements; getting managers to view NEPA more as a tool than an obstacle; and fear (in the Field) of Headquarters involvement.

continued next page

NEPA Compliance Officers Meeting (continued)

In keeping with the Secretarial Policy Statement on NEPA and the Strategic Alignment Initiative, the principle of continuing improvement was an underlying theme throughout the NCO meeting. One challenge in this regard is to track and measure progress toward reducing the cost and time of NEPA compliance without reducing quality. As presented at the meeting, ongoing studies of cost and time for DOE NEPA documents are showing moderately favorable trends. (See related report starting on page 15.) Another ongoing effort involves a study of environmental assessment (EA) quality, evaluating how well a sample of 20 EAs complies with requirements and follows applicable guidance. (See related article on page 7.)

In discussing teamwork and Headquarters/Field relationships, a participant advised NCOs to avoid pressure to "keep the group small," thereby leaving out essential people. It was suggested that the typically broad issues raised by Headquarters should be introduced during internal scoping, although a team should recognize that some issues won't arise until the draft document reaches Headquarters management.

In a guest appearance, Ray Clark, Associate Director for NEPA Oversight at the President's Council on Environmental Quality (CEQ), led a discussion of CEQ's draft Cumulative Effects Handbook, issued for interagency review in September. Some participants said they found CEQ's recommended approaches to be data-intensive, involving more analysis (and therefore more cost) than current approaches. Another remarked that the draft Handbook—which is oriented primarily towards ecological analysis—could be modified to "look more like DOE" by addressing more explicitly such matters as human health effects, nuclear issues, and waste transportation impacts. Mr. Clark agreed with a participant's speculation that the Handbook, although guidance, might have the effect of setting new requirements. (See related article on page 3.)

EH staff shared information and updates on other DOE NEPA matters, emphasizing guidance on addressing environmental justice in the NEPA process (see related article on page 4) and guidance for NEPA Document Managers, both of which were being readied for review. The Office of General Counsel (GC) provided updates on DOE NEPA litigation (involving the Dual Axis Radiographic Hydrodynamic Test Facility EIS and the Programmatic EIS on Foreign Research Reactor Spent Fuel). GC staff also advised the group that the requirements of Executive Order 13007 on Indian Sacred Sites (May 24, 1996), which include avoiding adverse impacts to Indian sacred sites, should be considered in the NEPA process.

Patty Phillips, NEPA Compliance Officer, Oak Ridge Operations Office, shares her experiences in enhancing DOE NEPA compliance activities.

Participants shared insights on ways to enhance DOE NEPA compliance activities, emphasizing the importance of involving decision makers early and often throughout the process. NCOs also recommended that EIS teams include members with incentive to expedite the process. One NCO noted that bringing stakeholders into the scoping process practically "builds the EIS." Participants also referred to a number of Field Office guidance documents and other initiatives, such as guides for project managers and NEPA Document Managers, that could be announced or made available through the DOE NEPA Web.

A panel of EH, Defense Programs, and Environmental Management (EM) participants presented updated information on preparing pollution prevention analyses in NEPA documents, including a display of reference materials. Martha Crosland, EM NCO, announced that the Assistant Secretary for Environmental Management recently issued pollution prevention guidance that builds on Environmental Protection Agency checklists and incorporates NEPA process requirements.

In closing, Carol Borgstrom praised NCOs as the "heart and soul" of the Department's NEPA compliance program and the agency's "conscience." She said that NCOs are also the "brains" behind effective NEPA compliance, and a valuable resource for the Department.

DOE Comments on Council on Environmental Quality's Cumulative Effects Handbook

The Council on Environmental Quality (CEQ) distributed its long-awaited draft Handbook, "Considering Cumulative Effects Under the National Environmental Policy Act," for interagency review on September 26, 1996. The draft Handbook presents the results of research and consultations with Federal agencies and a peer group. It contains sections on general principles, scoping, the affected environment, determining environmental consequences, and methods, techniques, and tools. CEQ stated that the Handbook would not be formal guidance and the recommendations are not intended to be legally binding.

Ray Clark, CEQ's Associate Director for NEPA Oversight, led a lively discussion of the Handbook at the NEPA Compliance Officers meeting in Washington, DC, October 29, 1996 (see article on pages 1-2).

The DOE comments:

1) Urge CEQ to explicitly apply the sliding scale concept, in which the level of analysis is proportional to the significance of the impacts.

2) Point out the difficulty of performing some of the recommended analyses.

3) Express concern that the Handbook may have the unintended effect of setting new requirements.

4) Offer help in addressing issues familiar to DOE, such as human health impacts from transporting radioactive materials, that are not discussed in the draft Handbook.

The Office of NEPA Policy and Assistance distributed the Handbook to NEPA Compliance Officers for review and has prepared comments that will shortly be provided to CEQ.

When completed, the Handbook should help NEPA practitioners to better understand the complex issue of cumulative effects and conduct useful cumulative effects analyses. LL

DOE-wide NEPA Procurement on Target

The Albuquerque Operations Office will solicit and administer multiple task order contracts for NEPA document preparation on behalf of all DOE Offices with NEPA requirements. DOE believes task order contracts for NEPA support services can reduce NEPA document preparation time and cost while maintaining or improving quality (NEPA Contracting Reform Guidance: Phase II, December 1995). The Albuquerque Operations Office plans to issue a draft Request for Proposals in mid-December for DOE and potential bidder comments; the final Request for Proposals is scheduled for early 1997, with contract awards by September 1997. Contracting questions can be directed to Dawn Knepper, Contracting Officer, Albuquerque Operations Office, on 505-845-6215.

Other DOE NEPA Contracting Reform initiatives are in the final phase. In December 1996 the Office of Environment, Safety and Health, in partnership with the Offices of Human Resources and Administration and General Counsel, and in consultation with Program and Field Office staff, will issue a Report on NEPA Contracting Reform activities and final NEPA Contracting Reform Guidance. (The Department's NEPA Contracting Reform initiatives began with the Secretary's Policy Statement on NEPA in June 1994. Phase III began with the issuance of NEPA Contracting Reform Guidance: Phase II, December 1995, and extends through December 1996.)

The Report will highlight Phase III activities, which include acquisition planning for the multiple award, task order contracts for NEPA support discussed above; preparation of guidance for NEPA Document Managers; and conduct and assessment of a pilot program for NEPA contractor evaluation. The final Guidance will improve the Phase II Guidance based on these Phase III activities and on other experiences of the Department's NEPA community this past year.

The Office of NEPA Policy and Assistance plans to transmit a draft report and guidance to NEPA Compliance Officers early in December and coordinate any comments by teleconference soon thereafter. Questions on this report and guidance can be directed to Yardena Mansoor, Office of NEPA Policy and Assistance, on 202-586-9326. LL

Environmental Justice Guidance -- status report

A preliminary draft of the Department of Energy's "Guidance on Incorporating Environmental Justice Principles into the National Environmental Policy Act Process" was discussed at the October NEPA Compliance Officers meeting in Washington, DC and is being prepared for distribution throughout DOE. The NCO's comments helped clarify the guidance and avoid unnecessary analysis.

The draft guidance addresses Executive Order 12898 and the President's accompanying memorandum of February 1994 on incorporation of environmental justice principles into the NEPA process. The guidance presents an efficient method for analyzing environmental justice impacts using a phased approach and the "sliding scale" concept (where the level of analysis is commensurate with the significance of the impacts).

The draft guidance covers environmental justice at each step of the NEPA process: internal scoping, notice of intent, public scoping, and document preparation. Document preparation is further divided into subtopics: alternatives, description of the affected environment, and environmental consequences/impacts. Appendices include techniques for enhancing public participation opportunities for minority and low income communities and an overview of DOE's Environmental Justice Strategy. The Council on Environmental Quality's Draft Guidance for Addressing Environmental Justice under the National Environmental Policy Act (including definitions) and the Executive Order are appended for the user's convenience.

A copy of the draft guidance can be obtained from Linda Thurston (telephone 202-586-1509 or fax 202-586-3915). LL

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Environmental Justice Traveling Display

The Office of NEPA Policy and Assistance has a portable Environmental Justice display available to lend to DOE program and field offices just for the asking. A duplicate of the display used at the October 1996 NEPA Compliance Officers meeting, this portable Environmental Justice package gives examples of background materials and history, guidance, references and other available resources. For more information call Linda Thurston at 202-586-1509 or fax your request to 202-586-3915.

Linda Thurston and John Pulliam of the Office of NEPA Policy and Assistance at the October NCO Meeting, demonstrating their display package for presenting important environmental justice information.

Senate Subcommittee Focuses on NEPA

By: Joanne Arenwald Geroe, Office of NEPA Policy and Assistance

The NEPA decision making process in Federal land management agencies, including the role of the Council on Environmental Quality (CEQ), was the focus of a September 26, 1996, hearing before the Senate Subcommittee on Oversight and Investigations (of the Committee on Energy and Natural Resources). Witnesses were Kathleen McGinty, Chair of CEQ, Jack Ward Thomas, Chief of the United States Forest Service, and Nancy K. Hayes, Chief of Staff and Counselor for the Bureau of Land Management. Attending Subcommittee members were Senator Craig Thomas (Wyoming), Subcommittee Chairman, and Senators Burns (Montana), Domenici (New Mexico), Craig (Idaho), and Akaka (Hawaii). Also present for portions of the hearing were Senators Bradley (New Jersey), Bennett (Utah), and Murkowski (Alaska).

In opening remarks, Senator Thomas emphasized that the purpose of the hearing was to examine the NEPA decision making process and make the statute work better. He stated that "this hearing is not about how to weaken or gut NEPA, as opponents to change so frequently and mistakenly contend." Senator Thomas also indicated that this hearing was an opportunity for the testifying agencies to give a status report on their initiatives to review and streamline their decision making process and reduce costs, and for CEQ to follow up on the status of its initiatives for improving NEPA's effectiveness.

Senator Thomas further stated, "Administrative reforms can only go so far to address the issues associated with NEPA implementation by the Federal agencies. Administrative reforms can attempt to make the process work better, but they cannot fully address the procedural requirements and mandates imposed by the courts. Only Congress can do that. It may be time, after nearly 30 years [since NEPA was enacted], for Congress to look more closely at how courts have interpreted the requirements of NEPA and for Congress to make a decision about whether or not those requirements are consistent with Congressional intent."

Ms. McGinty reviewed the findings of the NEPA effectiveness study CEQ has been working on for two years.

"NEPA reinvention has become a pillar in DOE's overall reinvention strategy."

Kathleen McGinty
Chair, Council on Environmental Quality
September 26, 1996

She stated that "NEPA works," explaining that "agencies must now take a 'hard look' at the environmental consequences of proposed actions, ... must tell the public what they are proposing to do, invite public views on their proposals, and respond to those views." She also noted that two trends are occurring in agency NEPA practice. First, the number of lawsuits against agencies is declining. Second, agencies are preparing many more environmental assessments than environmental impact statements. Ms. McGinty indicated that the draft NEPA effectiveness study would be distributed for interagency review in the near future. [Editor's Note: The interagency review has since been conducted.]

McGinty acknowledged shortcomings in agencies' implementation of NEPA, including that: the NEPA process sometimes is too lengthy and costs too much; some documents are too long and too technical for most people to use; agency officials are inadequately trained, particularly senior officials; and there have been instances of delayed public and interagency involvement. She also noted that often, after a project is approved, agencies fail to collect long-term data on the actual environmental impacts of the project.

Ms. McGinty cited DOE as an agency that has improved NEPA implementation. She stated that "NEPA reinvention has become a pillar in DOE's overall reinvention strategy." Ms. McGinty noted that DOE has recently amended its NEPA regulations to exclude additional actions that clearly have no significant environmental impact and has made other streamlining changes for significant cost savings.

A lively question and answer period followed prepared testimony by Jack Ward Thomas (U.S. Forest Service) and Nancy K. Hayes (Bureau of Land Management). Much of this centered around President Clinton's controversial use of the Antiquities Act to establish a national monument in southern Utah. LL

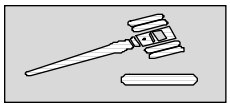
Final Amendments to DOE NEPA Regulations (10 CFR Part 1021) for Power Marketing Activities to Be Published Soon

DOE has completed the required consultation with the Council on Environmental Quality regarding a final rule amending limited portions of the DOE NEPA regulations, and the rule is scheduled to be published in the Federal Register early in December 1996.

The power marketing activities addressed in this rulemaking were initially included in a broader scope NEPA rulemaking that was completed in July 1996. At Congressman John Doolittle's (California) request, however, final action regarding power marketing activities was deferred while DOE polled Federal and State agencies that regulate similar activities.

The final power marketing amendments include modifications to seven categorical exclusions that change the basis for application of the class of action, increase the coverage, or expand the length of the electric powerline that may be constructed, reconstructed, or relocated. Additional clarifying examples were added to one categorical exclusion. Conforming changes were made to four classes of actions. Although these classes of actions are used primarily by the power marketing administrations, they are available for use by any DOE program.

The amendments will take effect 30 days after publication. For a copy of the power marketing amendments, call Bob Strickler at 202-586-2410 (fax 202-586-3915). DOE's NEPA regulations also are available on the DOE Web Site (http://tis-nt.eh.doe.gov/nepa). LL



Litigation Updates

Recent Rulings on Alternatives

By: Stephen Simpson, Office of NEPA Policy and Assistance

The status of NEPA litigation involving the Department of Energy has not changed significantly since the last Lessons Learned Quarterly Report. Two other recent cases concerning reasonable alternatives, however, may be of interest.

Unreasonable Alternatives

The Federal Aviation Administration's rejection of two alternatives to the proposed expansion of an existing runway was not arbitrary and capricious. The construction of an alternative parallel runway was infeasible, because of existing urban land use, rapidly falling terrain, and the need to remove two major Air Force weapons laboratories and storage facilities. The construction of a new airport was infeasible because planners would have to build new facilities and a new infrastructure, extend utilities and freeways, possibly relocate the adjoining Air Force facilities to previously undeveloped land, and address numerous environmental complications. The court ruled that an agency need not analyze the environmental impacts of alternatives in good faith rejected as too remote, speculative, impractical or ineffective. Airport Neighbors Alliance v. United States, 90 F.3d 426 (10th Cir. 1996).

Need for Reasonable Range of Alternatives

The Federal Highway Administration's (FHWA's) EIS for a proposed highway was defective because FHWA narrowed the statement of purpose and need for agency action from the Draft EIS to the Final EIS without rescoping the alternatives. The change was to add a need for a specified Level of Service (a measure of road capacity), which only one of the alternatives could meet. The court held that an agency does not abuse its discretion merely by changing the statement of purpose and need, as long as a range of alternatives remains open to consideration even under the new statement. But if a range of alternatives is developed in conjunction with one statement of purpose and need, and the statement of purpose and need is subsequently changed to eliminate all but one of the initial alternatives, the agency has abused its discretion because there has not been an adequate consideration of a reasonable range of alternatives. City of Carmel-by-the-Sea v. United States Department of Transportation, 95 F.3d 892 (9th Cir. 1996).

Copies of complete opinions are available from Stephen Simpson, Office of NEPA Policy and Assistance, at 202-586-0125 (e-mail: stephen.simpson@eh.doe.gov). LL

Updates from the Office of NEPA Policy and Assistance

Environmental Assessment Quality Study

The Office of NEPA Policy and Assistance is studying recent DOE EAs to foster continuing improvement of the NEPA process by providing feedback (not oversight) on performance to DOE's NEPA community. A further purpose is to provide a quality benchmark for future such studies, in light of DOE's ongoing goal to reduce the cost and time to prepare NEPA documents while maintaining quality.

To provide a snapshot of DOE performance, Office of NEPA Policy and Assistance staff are examining the 20 most recently completed EAs (as of August 1996) against the EA Checklist of required and recommended elements, while judging application of the "sliding scale" concept and keeping an eye open for any particularly commendable or deficient features. Findings will be reported as general trends and lessons learned, and may influence guidance development priorities. When appropriate, cognizant NEPA Compliance Officers will be informed of findings regarding specific EAs.

NEPA Compliance Officers expressed interest in the EA Quality Study during their October 1996 meeting, and suggested expanding the scope of the study to include a review of: 1) the overall EA process (EA determinations and notifications, public participation, and DOE's responses to external comments on EAs); and 2) findings of no significant impact. The Office of NEPA Policy and Assistance will consider such further studies after first taking the steps described above, and welcomes comments and suggestions on all aspects of the study. LL

Guest Article

DOE'S Environmental Management Office Starts Environmental Information Systems Pilot Project

By: Steve Taub, Office of Strategic Planning and Analysis, Environmental Management

The DOE Office of Environmental Management (EM) recently began the Environmental Information Systems Pilot Project to improve environmental information management, and thereby support, strengthen, and streamline the NEPA process. EM set two goals for the Project: (1) improve and integrate site environmental information management, and (2) improve environmental information availability within and outside the Department. EM Assistant Secretary Alvin L. Alm has encouraged EM field operations to propose using geographic information systems to enhance environmental information management. EM headquarters will cooperate with selected field offices in performing and evaluating each pilot project's applicability to other DOE sites.

The pilot program was inspired by work performed in preparing the draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land Use Plan. Hanford consolidated existing information on many aspects of the Site's geography, hydrology, soils, habitats, vegetation, facilities, and contamination into a geographic information system. The Richland Operations Office uses the new system to support a wide range of environmental management activities at the Hanford Site. Moreover, local, state, and tribal governments and regulators use the system to enhance their understanding of the Site, and to independently formulate and evaluate future land use scenarios for Hanford.

EM plans to complete cleanup at most sites within 10 years, although treatment of a few remaining waste streams would continue at a small number of sites. "Complete cleanup" means that land, facilities, and materials are adequately safe to be available for alternative use, based on future land use policy decisions, with a minimum cost for long term surveillance and monitoring. Because many completed sites are likely to require long term stewardship, reliable and easily accessible information will be needed for decades, or even centuries, into the future. The Environmental Information Systems Pilot Project is a step towards meeting these long term needs.

EM is currently evaluating several pilot project proposals. For additional information, contact Steven Taub, Office of Strategic Planning and Analysis (EM-24), at 202-586-7634. LL

Fourth Quarter FY 1996 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 1996. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

SCOPING

- A respondent reported success in involving agencies and tribes in the process from the beginning, explaining that NEPA compliance is a Federal requirement and that DOE would adhere to its principles and intent.

- Combining three separate facilities' activities in one EA reportedly was cost effective and helped focus the project.

DATA COLLECTION/ANALYSIS

- The National Scenic Area Geographical Information System (GIS) database provided almost all the data that needed to be collected, which was an important factor in reducing preparation costs for an EA.

IMPACT ANALYSIS/METHODOLOGY

- A respondent reported successful use of a team approach in a case for which the comparison of impacts was highly technical and complex. The team, which included outside technical experts, the Indian tribes, and DOE staff, reached consensus on how to compare the impacts of the various alternatives to the No Action alternative. The team process was also reported as very useful in identifying appropriate mitigation measures (e.g., habitat improvements, and monitoring) and helped keep the "big picture" in mind.

- GIS maps were used in an EA to display and compare alternative vegetation management practices that would meet project requirements and avoid adverse impacts to resources in the vicinity of electrical power lines.

SCHEDULE

Timely Completion of Documents was Facilitated by:

- Use of an interagency EA document preparation team, including a representative of the U.S. Forest Service.

- Use of a Forest Service GIS database.

- A team approach that allowed for multiple sections to be worked on simultaneously, and also ensured coverage for those who took vacations.

Procedures for Keeping the Document on Schedule:

- Effective use of a writer/editor.

- Holding NEPA meetings with open communication, and keeping the Indian tribe constantly informed as to every action taking place and what to expect. Open, direct, and consistent communication is the key.

- Working up front with county officials and public interest groups to create a better understanding of project goals and impacts, which facilitated and improved the review process.

Timely Completion of Documents was Inhibited by:

- Developing the EIS with the participation of the State Department of Fish and Wildlife and the Confederated Tribes and getting these two entities to recognize NEPA requirements. The two entities changed the proposed action twice, which resulted in significant schedule changes.

continued next page

Fourth Quarter FY 1996 Questionnaire Results

SCHEDULE (continued)

- Difficulty in contacting DOE line project managers. Comments on the EA from the DOE line project managers were sometimes not timely.

Factors that Facilitated Teamwork:

- Hiring a writer/editor to integrate the products of several different authors.

- A DOE NEPA group that compiled comment responses.

Factors that Inhibited Teamwork:

- A NEPA Document Manager who lacked adequate NEPA training and did not understand the NEPA process.

- The line organization, early on, appeared to be schedule driven and uninterested in NEPA suggestions or concerns.

Factors that Facilitated Teamwork with Contractors:

- A detailed contract work statement that helped to define project objectives and method.

- Allowing contractor technical support staff to participate in the EA Review Panel that resolved specific issues.

PUBLIC PARTICIPATION SUCCESS

Successful Aspects of the Public Participation Process:

- Informal, open-house types of meetings, and having the public and agencies work cooperatively towards a common goal.

- Holding separate meetings with the Citizen Advisory Group (CAG) to identify objectives, gather issue related information, and clarify CAG questions, which made the CAG feel like they were part of the process and solution.

Unsuccessful Aspects of the Public Participation Process:

- Inability to obtain Indian tribe participation in the process.

- An additional public meeting was held based on the recommendation of the Citizen Advisory Group and County Commissioners, yet only one new citizen attended.

Public Reactions to the NEPA Process:

- The process worked quite well. Mailing lists, public meetings, and exchanges with the County officials resulted in a successful program.

- Some members of the public wanted to defer the proposed action until new technology would be available that would further reduce the risk.

USEFULNESS

Agency Planning and Decision Making

- The NEPA process helped to develop a clear definition of the project. We addressed issues in the context of the NEPA process.

- The NEPA process provided guidance to the decision makers.

- The NEPA process and project development were integrated. Environmental information was used to define vegetation management practices to avoid impacts, which were incorporated directly in a vegetation control contract. This ensured that environmental information was correctly passed on to those who would carry out the project, and avoided one of the most serious flaws in most NEPA documents — ineffective communication of environmental mitigation to implementors.

- The NEPA analysis helped to solidify plans for the proposed activities that are part of the proposed action; otherwise, decisions were made 2 to 3 years ago. The NEPA analysis should have been done 3 to 4 years ago.

Effectiveness of the NEPA Process

The adjacent charts illustrate how respondents rated the effectiveness of the NEPA process. For the purposes of these charts, "effective" means the NEPA process was rated 3, 4 or 5 on a scale from zero to five, with zero meaning "not effective at all" and five "highly effective."

For this quarter, 8 of the 13 respondents for EAs and all 5 of the respondents for EISs rated the NEPA process as "effective." One EA respondent commented that many of the decisions about the project were influenced by the NEPA process. It was important to make sure that the proposed hatchery would not adversely affect the Wildlife Refuge where it was built.

Another respondent stated: "I think the NEPA folks did a good thorough job, and the project will now undergo construction with a good conscience that the environment had been considered in all decisions."

Two respondents rated the effectiveness of the NEPA process as low because the decisions to implement the action partially were foregone conclusions, and the NEPA process did not enhance the ultimate decision.

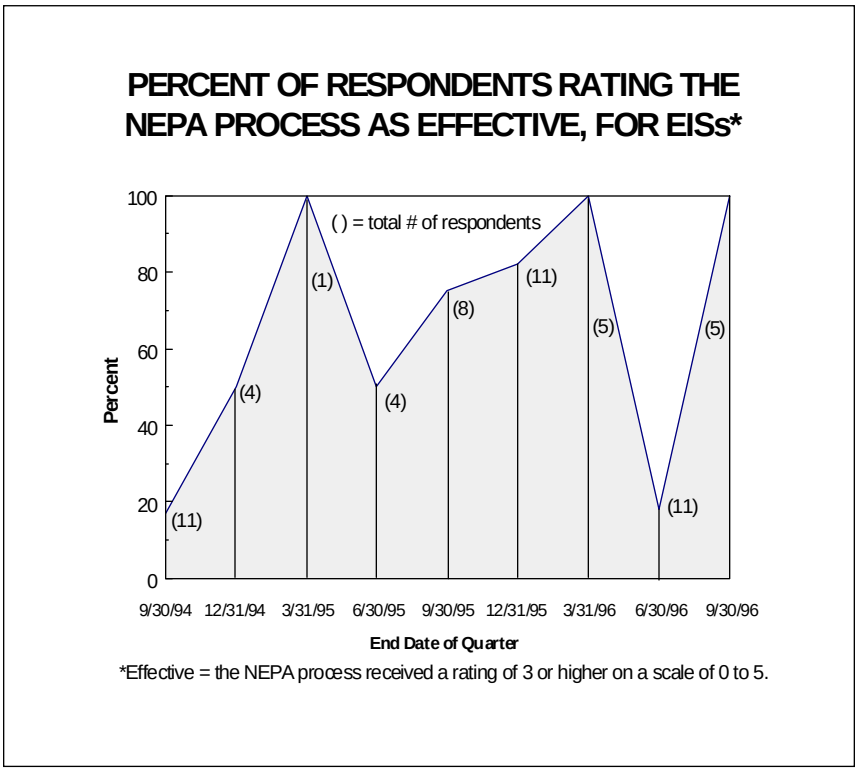


Figure 1

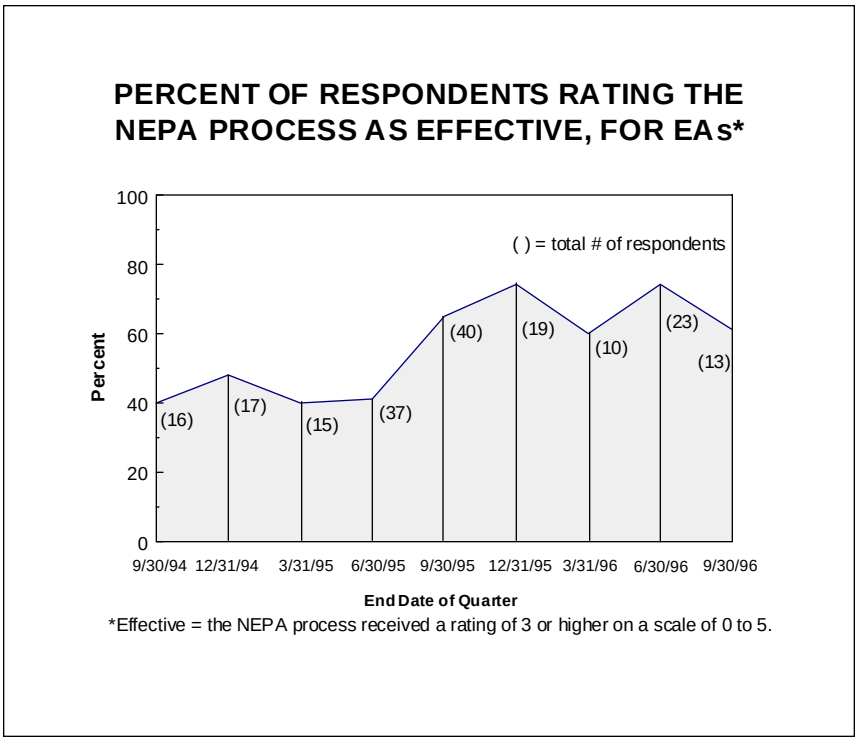


Figure 2

EIS Cost and Completion Times Data

Completion Time Facts

- Three EISs were completed during the fourth quarter of FY1996, in 15, 26, and 31 months.
- One EIS reported scheduling information and it was completed on schedule.
- Cumulatively over the last year, the median completion time for 16 EISs was 25 months; the average completion time was 29 months.

Cost Facts

- Total NEPA process costs, reported for two EISs completed during the fourth quarter, were $25,000 and $14.5 million. The corresponding contractor costs were $12,000 and $14.4 million.
- Budget data were reported for one EIS, for which the NEPA process cost exceeded the original budget by 95%.
- For EIS #1 and #3 respectively, the NEPA process costs represented 0.1% and 0.05% of the total project costs.
- Cumulatively, over the last year, the median contractor cost for the preparation of 11 EISs for which cost data were reported was $3.7 million; the average cost was $5.8 million.

EISs

Bonneville Power Administration

1 = Hood River Fisheries Restoration Project, Hood County, Oregon, DOE/EIS-0241, EPA Rating: LO ($13,000 Federal cost, $11,600 contractor cost; 15 months)

2 = Northwest Regional Power Facility Project, DOE/EIS-0214, EPA Rating: EC-2 (All costs paid by applicant, costs not reported; 26 months)

Richland Operations Office/ Environmental Management

3 = Tank Waste Remediation System (TWRS), Richland, Washington, DOE/EIS-0189, No EPA rating ($100,000 Federal cost, $14.4 million contractor cost; 31 months)

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

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

EA Cost and Completion Times Data

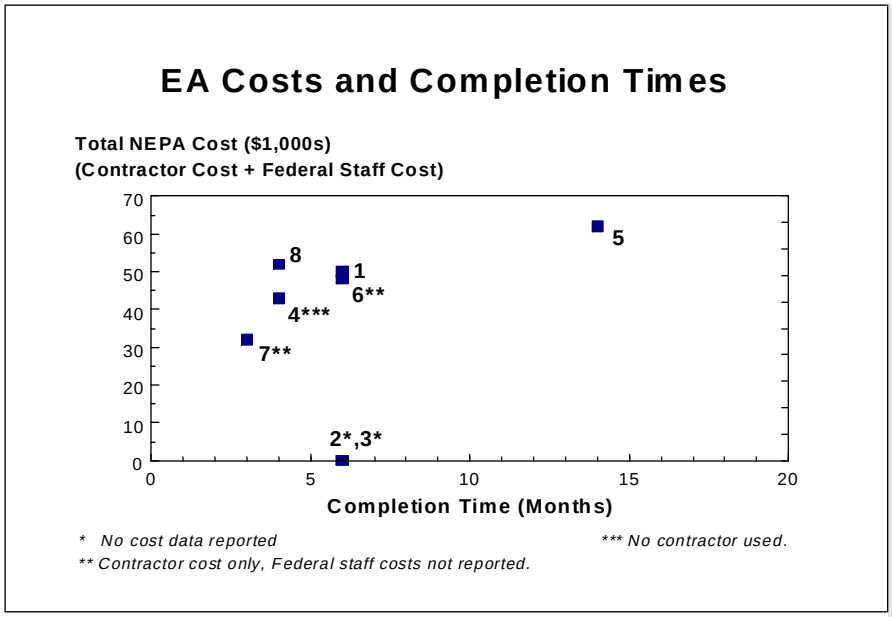


Figure 3

Completion Time Facts

- The median completion time for the 8 EAs completed during the fourth quarter of FY1996 was 6 months (range: 3 to 14 months).
- Five of the eight EAs for which scheduling information was reported were completed on schedule.
- The NEPA process was initiated early enough for 6 EAs to avoid being on a critical path.
- Cumulatively for the last year, the median completion time for 47 EAs was 9 months; the average completion time was 14 months.

Cost Facts

- NEPA process cost data were reported for 6 EAs; the median cost was $49,000.
- Budget data were reported for 3 EAs; 1 was completed within budget, and 2 were not.
- Total project cost was reported for 1 EA, for which the NEPA process cost represented 1%.
- Cumulatively for the last year, the median contractor cost for the preparation of 28 EAs was $54,000; the average cost was $79,000.

EAs

Albuquerque Operations Office/ Los Alamos Area Office/ Environmental Management
1 = Effluent Reduction EA, Los Alamos, New Mexico, DOE/EA-1156 ($10,000 Federal cost, $40,000 contractor cost; 6 months)

Bonneville Power Administration
2 = Columbia River Gorge Vegetation Management, Washington, DOE/EA-1162 (Costs unreported; 6 months)

3 = Kalispel Tribe Resident Fish Project, Pend Orielle, Washington, DOE/EA-1154 (Costs unreported; 6 months)

4 = Northeast Oregon Wildlife Mitigation Project, DOE/EA-1160 ($43,000 Federal cost, contractor not used; 4 months)

5 = Washington Wildlife Mitigation Projects, DOE/EA-1096 ($2,500 Federal cost; $60,000 contractor cost; 14 months)

Idaho Operations Office/ Environmental Management
6 = Closure of the Waste Calcining Facility (CPP-633), DOE/EA-1149 (Federal cost unreported; $48,000 contractor cost; 6 months)

Richland Operations Office/ Environmental Management
7 = Salvage/Demolition of 200 West Area, 300 Area Steam Plants, Hanford Site, Richland, Washington, DOE/EA-1177 (Federal cost unreported, $32,500 contractor cost; 3 months)

Savannah River Operations Office/Environmental Management
8 = Closure of the High-Level Waste Tanks in the F&H Areas at SRS, Aiken, Georgia, DOE/EA-1164 ($6,000 Federal cost; $46,000 contractor cost; 4 months)

Analysis of EA and EIS Cost and Time Outliers

In an effort to identify ways to reduce the cost and time to prepare NEPA documents, the Office of NEPA Policy and Assistance examined the preparation process for EAs and EISs that had unusually high and low costs and completion times. Studying these "outliers" could reveal how management practices and other factors favorably and detrimentally affect document cost and completion time.

Approach

In conducting this analysis, 133 EAs and 27 EISs completed between 1/1/95 and 6/30/96 were sorted by their respective costs and preparation times, and the top and bottom 20 percent of the EISs and 10 percent of the EAs were regarded as "outliers." Lessons learned questionnaires submitted for the outliers were reviewed, and cognizant NEPA Document Managers and NEPA Compliance Officers were interviewed regarding several EAs. Note that cost data were available only for 86 EAs and 23 EISs.

Results

Common factors associated with the outliers are summarized below.

1. Short Completion Times

The 5 EISs completed in the shortest amount of time (less than 11 months) all had:

- aggressive preparation and review schedules
- preparation teams dedicated to only one EIS
- high-level DOE management support

The 13 EAs completed in the shortest amount of time (3 months or less) also all had aggressive schedules. Additional common factors reported for the EAs include:

- excellent teamwork
- little to no public interest, making document revisions based on public comments unnecessary

2. Long Completion Times

Four of the 5 EISs with long completion times (more than 61 months) were Power Marketing Administration (PMA) documents; the fifth involved a non-PMA electrical transmission line project. (These EISs were also among the lowest cost EISs discussed below.) In one case, litigation associated with a proposed marketing plan was cited as the reason for a lengthy delay. For the others, common factors included that the proposals involved:

- wide areas of potential impact
- complex scopes
- multiple actions or decisions
- changing policy
- multiple cooperating agencies

Although no common thread was apparent for 10 EAs with long completion times (more than 40 months), the following factors applied in more than one case:

- staffing problems (insufficient numbers or changes in)
- lack of EA ownership (Note: All 10 EAs were started before the requirement to assign a NEPA Document Manager)
- multiple review cycles
- "EAs that look like EISs"

One NEPA Compliance Officer reported that long EA preparation times may result because a substantial period of time elapses after the EA determination before the EA preparation work begins "in earnest." (Note: EA preparation time starts with the EA determination and ends upon issuance of a determination based on a completed EA.)

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Analysis of EA and EIS Cost and Time Outliers

(continued)

3. Lowest Cost

Four of the 5 EISs with lowest costs (less than $612,000; average cost $287,000) were prepared by PMAs; no common underlying factor was apparent. One PMA EIS document was prepared "in-house," and no contractor costs were incurred. Factors cited for low cost for the non-PMA document include:

- availability of existing data and accident analysis
- efficient multi-document scoping meetings
- positive public reactions (few responses to comments or revisions to the draft EIS were required)

Factors common to several of the 8 EAs costing the least (less than $15,000) include:

- in-house preparation
- preparation by a management and operations contractor for a certain major weapons complex site. [As noted below, however, a NEPA Compliance Officer for a different weapons complex site has reached the opposite conclusion.]

4. Highest Cost

The 4 EISs costing the most (more than $7.5 million) were major programmatic documents, and all involved: a high-level of public interest and a heightened level of technical controversy; broadly-scoped proposals with multiple alternatives; multiple facilities in the DOE weapons complex; extensive data gathering and analytical requirements; and extensive public involvement including multiple nationwide meetings. They were all large documents. In several cases, document managers cited large, cumbersome comment response documents as a contributor to high costs.

No common thread was apparent for the 8 most costly EAs (more than $420,000). More than one-half also had relatively long completion times (more than 26 months), but only one was among the long completion time outlier group. In two cases, the need to respond to public comments and prepare comment response documents was cited as a cost inflator. Finally, as noted above, preparation by a management and operations contractor reportedly contributes to high EA costs at a major DOE weapons complex site.

Summary

A wide range of factors influence the cost and time to prepare NEPA documents, and appear to reflect the wide range of DOE proposals. Heightened technical controversy is frequently involved with proposals at weapons complex sites and is clearly associated with the highest cost documents. For such proposals, management attention to conducting an effective public participation process while responding efficiently to public comments would help to reduce preparation costs. Common factors associated with document preparation times include the degree of dedication of the preparation team and the commitment of higher-level management to the NEPA process.

REMINDER: Lessons Learned Questionnaires for all NEPA documents completed during the first quarter of FY 97 (October 1, 1996 to December 31, 1996) should be submitted as soon as possible after document completion, but no later than February 1, 1997. (Fax: 202-586-7031 or Internet: joanne.geroe@eh.doe.gov). The Lessons Learned Questionnaire is now available interactively on the DOE NEPA Web [http://tis-nt.eh.doe.gov/nepa] on the Internet. Look for it under NEPA Process Information.

EA and EIS Cost and Time Trend Analysis

The Office of NEPA Policy and Assistance reported certain data and conclusions regarding EA and EIS cost and completion time trends at the October NEPA Compliance Officers meeting. This information is now presented here, updated with the latest quarter's results.

EA cost (Figure 4) and completion time (Figure 5) trendlines continue moderately downward.

Cost distributions (not shown here) for EAs prepared in times greater or less than the median completion time were not significantly different. Similarly, completion time distributions for EAs prepared for more versus less than the median cost were not significantly different. These results indicate that, for DOE as a whole, EA cost and completion times are not strongly correlated, which seems counterintuitive. This issue will be revisited as new data increase the statistical power of the sample.

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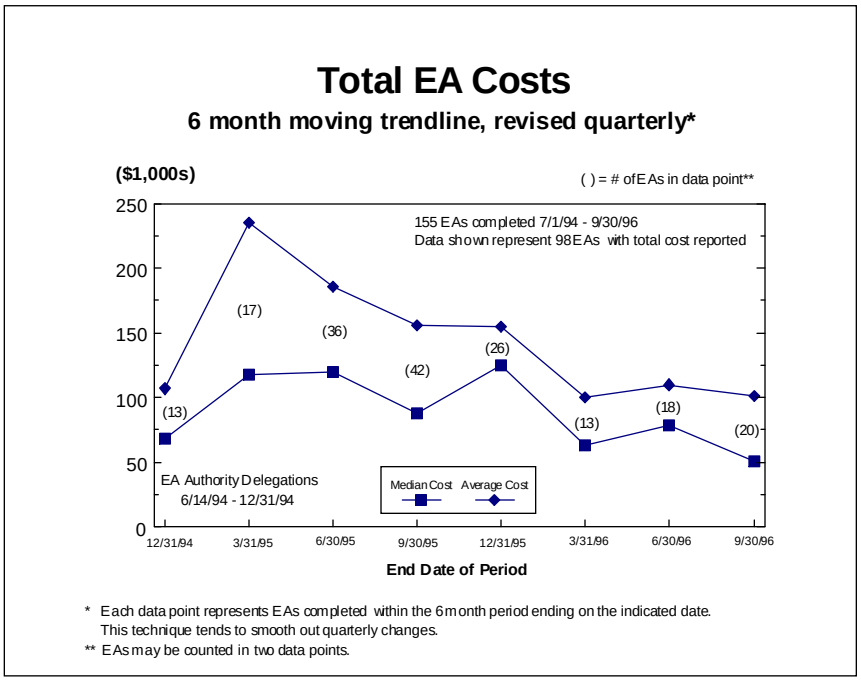

Figure 4

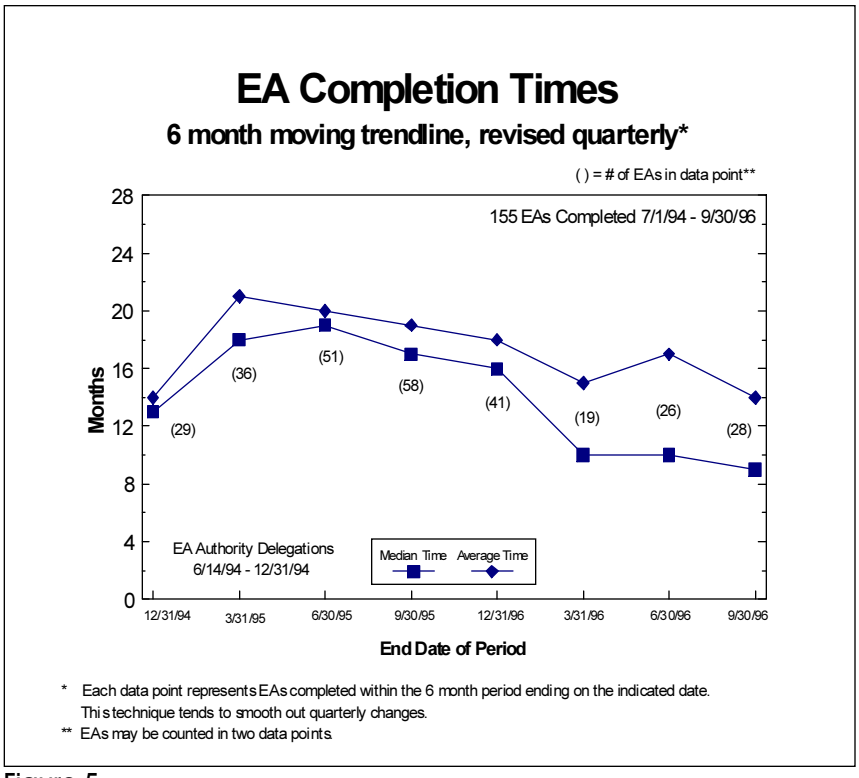

Figure 5

EA and EIS Cost and Time Trend Analysis

Approximately half of DOE's EAs are prepared (by Field Offices) on behalf of proposed actions under the Office of Environmental Management. Figure 6 illustrates the median cost distributions by Field Office. Most Offices have prepared too few EAs to permit meaningful comparisons with the others.

For the Albuquerque and Savannah River Offices, however, the characteristic costs for preparing Environmental Management EAs may well be significantly different. This result does not necessarily mean that one Office is preparing adequate EAs more efficiently than the other, but does suggest that the Offices conduct a benchmarking process to identify the underlying reasons for these apparent cost differences.

Statistical limitations on studying trends for EISs are severe. With this in mind, EIS completion times nevertheless seem to show a moderately favorable downward trend (Figure 7), with a median time for recent EISs of about 20 months. Cost results for EISs have fluctuated too broadly and are statistically too meager to draw any conclusion.

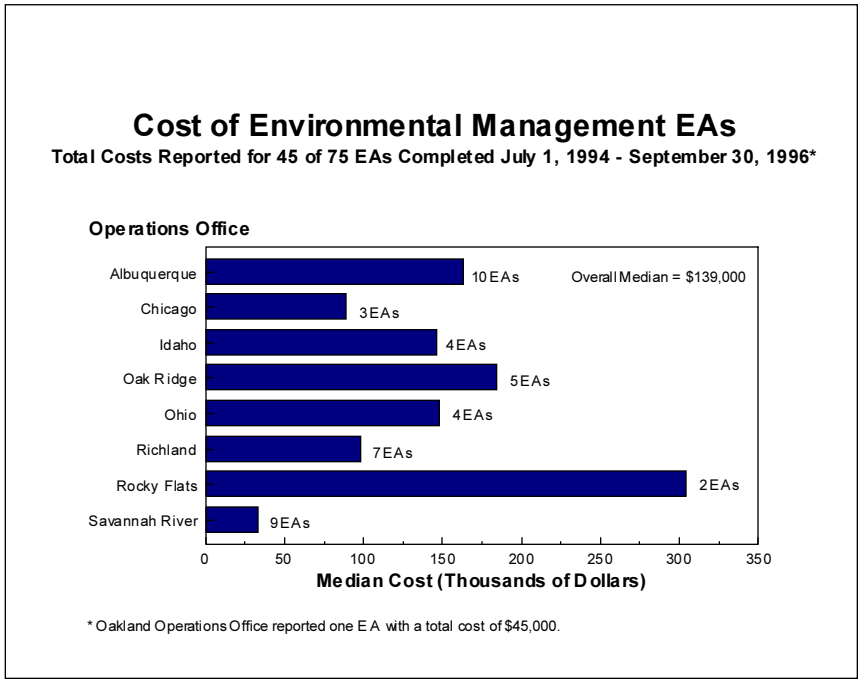

Figure 6

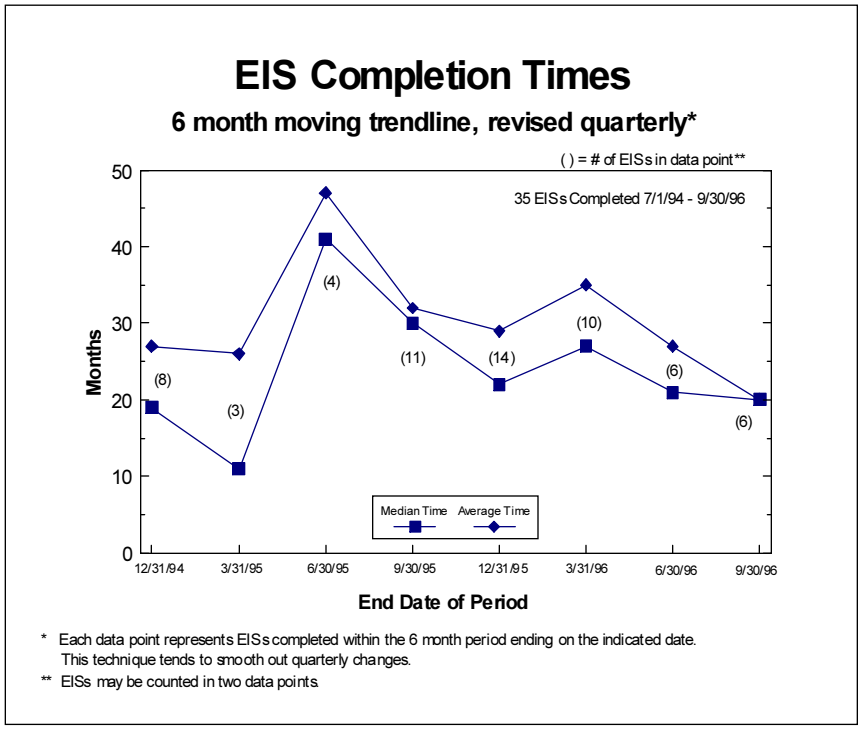

Figure 7

N E P A

National Environmental Policy Act

LESSONS LEARNED

U.S. Department of Energy Quarterly Report

March 3, 1997 For First Quarter FY 1997

CEQ Study: NEPA a "Success" Overall

-- Improved Implementation Needed --
-- DOE Leadership Highlighted --

The President's Council on Environmental Quality (CEQ) issued in January the results of its extensive study on the effectiveness of the National Environmental Policy Act during the statute's 25-year history. From the cover letter by CEQ Chair Kathleen McGinty to its four short appendices, the 50-page booklet entitled *The National Environmental Policy Act—A Study of Its Effectiveness After Twenty-five Years*, provides commentary on the origin, history of implementation, and possible future of the nation's central environmental statute. "Overall, what we found is that NEPA is a success—it has made agencies take a hard look at the potential environmental consequences of their actions, and it has brought the public into the agency decision making process like no other statute," according to Ms. McGinty. On the other hand, CEQ found that "NEPA's implementation at times has fallen short of its goals." In the course of the discussion, exemplary uses of the NEPA process are set out in a dozen case studies involving various agencies, including DOE.

Council on Environmental Quality
NEPA Effectiveness Study Partners

By involving a wide gamut of participants—from the original framers of NEPA and drafters of the CEQ regulations to Federal practitioners, state agencies, attorneys, academicians, businesses, and other stakeholders (11 "cluster groups" in all)—the study "sought to distinguish NEPA's strengths" while, at the same time, it "focussed more effort on identifying limitations to the effective and efficient implementation of the Act."

According to CEQ's report, "NEPA's most enduring legacy is as a framework for collaboration between Federal agencies and those who will bear

continued next page

For Inside *LESSONS LEARNED*
See Page 2

CEQ Effectiveness Study (continued)

the environmental, social, and economic impacts of agency decisions." Indisputably, the Act forever changed the way the government makes decisions potentially affecting the environment.

CEQ's report frankly acknowledges areas in which NEPA implementation needs improvement:

> **(F)requently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use, and training for agency officials, particularly senior leadership, is inadequate. According to many Federal agency NEPA liaisons, the EIS process is still frequently viewed as merely a compliance requirement rather than as a tool to effect better decision-making. Because of this, millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decision making.**

CEQ's report is presented in terms of five "elements" of the NEPA process that were found to be critical to its success. The first element, **strategic planning**, is the extent to which agencies integrate NEPA's framework for collaboration into their internal planning processes at an early stage. The report refers to strategic planning as "an unfilled promise" because the NEPA process is often begun too late to be fully effective, and stresses that agency decision makers need to embrace the benefits of NEPA in early planning.

DOE was cited as exemplary of strategic planning because agency leadership "viewed NEPA as a tool for policy leaders and top managers in decision making—not a routine activity for environmental technicians." As an example, the report describes the efforts of Secretaries Watkins and O'Leary to reinvigorate, streamline, and open up the DOE NEPA process as the Department was undergoing a major transition in its mission. The report noted that DOE received the Third Annual Federal Environmental Quality Award for the best agency NEPA program, given jointly by CEQ and the National Association of Environmental Professionals.

A second critical element, **public information and input**—"the extent to which an agency takes into account the views of the surrounding community and other interested members of the public during its planning and decision making process"—was a "critical innovation" of NEPA that "opened Federal decision making processes." According to the report, "this open process has improved the effectiveness of project design and implementation." Nevertheless, citizens sometimes feel frustrated that their concerns may not have been heard, or that they are being treated as adversaries rather than welcome participants.

With this in mind, CEQ expressed concern that as agencies rely more heavily on environmental assessments (EA), public involvement will be diminished. CEQ estimates that since it issued its NEPA regulations, agencies prepare significantly more EAs (currently about 50,000 per year) and fewer draft and final environmental impact statements (EIS) (from 2000 per year earlier to about 500 currently). Another significant trend, CEQ noted, is the increasing use of "mitigated FONSIs." That is, when agencies discover significant impacts that would require preparation of an EIS, they propose measures to mitigate the effects and issue findings of no significant impact.

"The EA has evolved to the point where it is the predominant way agencies conduct NEPA analyses…(w)hen agencies do not seek interagency and

continued next page

Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report on Lessons Learned in the NEPA process. This report includes:

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

CEQ Effectiveness Study (continued)

public review of an EA, a fundamental opportunity is lost to build trust with the neighboring community," CEQ wrote. "The preparation of an EA, rather than an EIS, is the most common source of conflict and litigation under NEPA," CEQ noted. On the other hand, CEQ stated that EAs "are a promising tool for maintaining public involvement while streamlining the [NEPA] process." For these reasons, CEQ encouraged agencies to be more creative in their EA outreach, and recognized DOE as one of three agencies that provide for public involvement in the EA process (see related article on page 4).

The report suggested that **interagency coordination**—"how well and how early agencies share information and integrate planning responsibilities with other agencies"—has provided "an opportunity for streamlining" environmental review processes. Through scoping and tiering, concurrent preparation of environmental studies and documents, and combined public participation activities, the NEPA process can be used to integrate multiple statutory requirements.

"**Interdisciplinary place-based approach to decision making**" focuses "the knowledge and values from a variety of sources on the decision making needs of a specific place." This approach, advocated in the CEQ report, seeks to improve Federal decision making by integrating the efforts of local, state, and Federal agencies in multi-agency NEPA analyses united by commonality of place, region, or ecosystem. The key to implementing an interdisciplinary place-based approach lies in obtaining adequate environmental baseline data, such as that used in geographic information systems, and the tools to effectively analyze the data: "What is often lacking in EISs is not raw data, but meaning—i.e., a comparison of the potential impacts of choosing particular alternatives at particular locations expressed in clear, concise language."

The fifth critical element, "**monitoring and adaptive environmental management**" through "**science-based and flexible management approaches**" is the "challenge for the future." In the words of the report, the old paradigm of "predict, mitigate, implement" is being replaced by a new paradigm of "predict, mitigate, implement, monitor, and adapt." Adaptive environmental management, the iterative process of adjusting management actions in light of new information (some of which may be derived from project monitoring), allows agencies to deal with the uncertainties of environmental impact prediction by giving them the flexibility to make mid-course corrections.

Overall, the CEQ report offers a positive, multi-faceted, and insightful commentary on 25 years of NEPA policy and practice. As the report points out, the drafters of NEPA showed great foresight in anticipating issues such as sustainable development, government accountability, and enhanced involvement and responsibility for local communities. Similarly, after reading the report, readers may well agree with Kathleen McGinty that "NEPA is a tool with tremendous potential to help build community and to strengthen our democracy."

The Future for NEPA

Following from this effectiveness study, CEQ plans to launch a "major effort" to improve the implementation of NEPA and "reinvent the NEPA process." Over the next several years, CEQ will be proposing specific actions to strengthen the five elements that were crucial to NEPA's effectiveness during its first 25 years: strategic planning, public information and input, interagency coordination, interdisciplinary and place-based decision-making, and science-based and flexible management approaches.

Copies of the CEQ effectiveness study are available from CEQ at (202) 395-5754. The Office of NEPA Policy and Assistance will distribute copies of the report to NEPA Compliance Officers. LL

CEQ Issues Final Handbook:

"Considering Cumulative Effects Under the National Environmental Policy Act"

Issued in late February 1997, the CEQ Handbook outlines principles and provides information on methods of cumulative effects analysis and data sources. CEQ stated that the recommendations in the Handbook do not establish new requirements, are not formal CEQ guidance, and are not intended to be legally binding.

The final Handbook does not differ substantially from the draft, which was issued in September 1996 and discussed in the December 2, 1996 edition of the Lessons Learned Quarterly Report (page 3). The Office of NEPA Policy and Assistance will distribute copies of the Handbook to NEPA Compliance Officers. Copies also may be obtained directly from CEQ at (202) 395-5754.

DOE Sites Enhancing EA Public Participation Efforts

DOE increasingly has recognized the importance of providing opportunities for public participation in the environmental assessment (EA) process, and through several administrations has enhanced its provisions for such opportunities. In 1990 DOE started providing affected states and tribes a notice of DOE's intent to prepare EAs and an opportunity to review EAs before approval. Enhanced public involvement was prominent in the Secretarial NEPA Policy Statement issued in June 1994. In its recently-issued NEPA Effectiveness Study (see related article, page 1), the Council on Environmental Quality (CEQ) recognized DOE's leadership in opening up its NEPA process, including providing for enhanced public participation for EAs.

DOE's NEPA Compliance Order 451.1 directs NEPA Document Managers to "encourage and facilitate public participation through the NEPA process." To assist them, the Office of NEPA Policy and Assistance issued guidance on enhanced public participation: Effective Public Participation under the National Environmental Policy Act ("the Gold Book"), December 1994. DOE program and field offices have made substantial progress implementing the guidance and are providing beyond-the-minimum opportunities when circumstances warrant, such as conducting public workshops to help scope and review EAs.

A key step to enhanced public involvement is providing adequate notice of DOE's intent to prepare an EA, or that an EA is available for review. To foster sharing of information among sites, we asked nine DOE field/ operations offices about their EA notification practices and report the results below. We also report in more detail exemplary practices followed at the Savannah River Site.

Practices at Field/Operations Offices:

DOE Offices routinely use three media for providing information to the public: newspapers, Internet Home Pages, and direct mailings. Richland also notifies city and county governments by letter, and informs the U.S. Fish and Wildlife Service and the Bureau of Reclamation when a draft EA is available for review. Nevada posts its Annual Planning Summary on its Home Page to inform stakeholders of its future NEPA plans; both Idaho and Nevada mail the Summary or notification of its availability to selected stakeholders. When appropriate, Albuquerque's Area Offices, Chicago, Richland, and Rocky Flats hold public workshops to discuss or obtain comments on an EA before approval. Any comments received on a Richland or Oakland EA receive an individual response, while all comments and responses are included in an approved Richland EA. Most of the sites automatically notify their local Citizens' Advisory Boards of EA determinations and availability.

Practices at the Savannah River Site (SRS):

The Savannah River Operations Office sends a monthly newsletter called the *Environmental Bulletin* to more than 3,000 stakeholders who have asked to be kept informed of the Site's environmental activities. The *Bulletin*, prepared for DOE by the Westinghouse Savannah River Company, generally includes a page on the status of EAs and EISs affecting SRS. The *Bulletin* discusses each NEPA document a minimum of three times: for EAs this would include notification of proposed action, availability of draft EA, and availability of final EA and determination. NEPA milestones for major actions affecting SRS, such as the Stockpile Stewardship and Management Record of Decision, may be discussed in detail. The *Bulletin* contains articles on other topics of environmental interest, such as SRS hazardous waste and site remediation activities.

The Westinghouse Savannah River Company's NEPA group maintains a database of currently active NEPA documents that provides information for the *Bulletin*. The database lists each document's purpose, current status, major milestones, cost to date, contacts, etc., and also is used to prepare a monthly report for the SRS Citizens' Advisory Board.

Computer links provide public and internal access to electronic copies of NEPA documents and related documents, the NEPA Monthly Report and the monthly Citizens' Advisory Board report, and to helpful NEPA references, guidelines, training contact lists and the DOE NEPA Website. In addition, the Westinghouse Savannah River Company and Halliburton NUS Corporation maintain toll-free numbers for public requests for NEPA documents or questions about the location of documents on the Web.

For more information on Savannah River's NEPA public participation process, contact Drew Grainger, the NEPA Compliance Officer, at (803) 725-1523.

Secretary O'Leary and Staff Celebrate Signing of Stockpile Stewardship and Management ROD

*Members of the Document Team and then-Secretary Hazel R. O'Leary celebrate the signing of the Record of Decision for the Stockpile Stewardship and Management Programmatic EIS on December 19, 1996. Appearing from left to right: Dr. Dave Crandall, Director, National Ignition Facility Project Office, DP; Lisa Evanson, Office of International Policy and Analysis, NN; Jim Landers, Director, Executive Support, DP; Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH; Steve Ferguson, Office of the Assistant General Counsel for Environment, GC; Mary Anne Sullivan, Deputy General Counsel for Environment and Civilian and Defense Nuclear Programs, GC; Earl Whiteman, Acting Assistant Manager for Energy, Science and Technology, AL; Jay Rose, PEIS Document Manager, DP (**holding ROD**); Secretary Hazel O'Leary (**with staff**); Dr. Victor Reis, Assistant Secretary for DP; and Gary Palmer, Leader, DP NEPA Support Team.* The culmination of years of planning in response to several changes in policy and direction resulting from the end of the Cold War, the Record of Decision enables the Department to implement a smaller, more efficient, and flexible nuclear weapons complex that can maintain the nation's nuclear deterrent without underground testing and without production of new weapons for the foreseeable future. In the Record of Decision DOE decided to: (1) construct and operate the National Ignition Facility and the Contained Firing Facility at the Lawrence Livermore National Laboratory in California and the Atlas Facility at Los Alamos National Laboratory in New Mexico; (2) downsize the existing weapons industrial plants (Y-12 at Oak Ridge, the Kansas City Plant, and Pantex); (3) reestablish the plutonium pit component manufacturing capability at Los Alamos National Laboratory; and (4) transfer a small amount of plutonium-242 material from the Savannah River Site to Los Alamos National Laboratory for stockpile stewardship activities.

Coordinate with Office of Congressional, Public and Intergovernmental Affairs on EIS Distribution

Recent experience managing the approval and distribution of an unusually large number of draft and final environmental impact statements (EISs) in a short time has highlighted the importance of effectively coordinating with the Office of Congressional, Public and Intergovernmental Affairs (CP) on such distributions. Based on lessons learned during this experience, the Office of NEPA Policy and Assistance and CP make the following recommendations:

- NEPA Document Managers should consult with CP staff early about schedules and for help in preparing communications plans and EIS distribution lists. CP should be involved even if approval of the EIS has been delegated to a field office.

- Allow three days for "final" coordination with CP, which should occur after the EIS is approved, normally while the document is being printed. Final coordination may include setting up a precise timeline for congressional notifications, stakeholder outreach and media activities; media spokespeople should be identified as well. Note that CP-1 concurrence is

continued on page 18

The EPA Rating System - Consistent or Unpredictable?

By: Joanne Arenwald Geroe, Office of NEPA Policy and Assistance

"Environmentally unsatisfactory (EU) - inadequate (3) impact statement." This is the rating those who have worked on a draft environmental impact statement (EIS) least want to see in the Environmental Protection Agency's (EPA) comment letter. But how does EPA decide the ratings for EISs, and promote consistency of ratings on projects nationwide?

EPA's 1984 manual titled *Policy and Procedures for the Review of Federal Actions Impacting the Environment* guides the EIS reviews that EPA performs in accordance with its duties and responsibilities under NEPA and Section 309 of the Clean Air Act, as amended. According to the EPA manual, the objective of EPA's EIS reviews is to ensure that the EPA's environmental expertise, as expressed in its comments and other interagency liaison activity, is considered by other agencies' decision makers. It is EPA's policy to: (1) participate early in an agency's planning process to identify significant environmental issues that should be addressed in completed documents; (2) follow-up where EPA has identified significant environmental impacts to ensure that the sponsoring agency fully understands the issues and applies appropriate corrective actions; and (3) identify environmentally unsatisfactory proposals and consult other agencies to achieve timely resolution of the major issues and problems.

An EPA Regional Office normally performs EPA's review of an EIS for a proposed action in the region. EPA intends its manual to provide uniform methods and standards for such reviews. A number of circumstances lead to inconsistencies in the EPA's ratings, however. EPA regions may pay special attention to issues that are locally contentious, or have received political or media interest. Further, there are only a handful of NEPA/309 reviewers in each EPA Regional Office (they range in number from 2 to 8 per region), and competing workload demands may affect the level of review a document receives.

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SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTIONS *

Environmental Impact of the Action

LO — Lack of Objections
The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal . The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC — Environmental Concerns
The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO — Environmental Objections
The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU — Environmentally Unsatisfactory
The EPA review team identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality.

Adequacy of the Impact Statement

Category 1 — Adequate
EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 — Insufficient Information
The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3 —Inadequate
EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the Council on Environmental Quality.

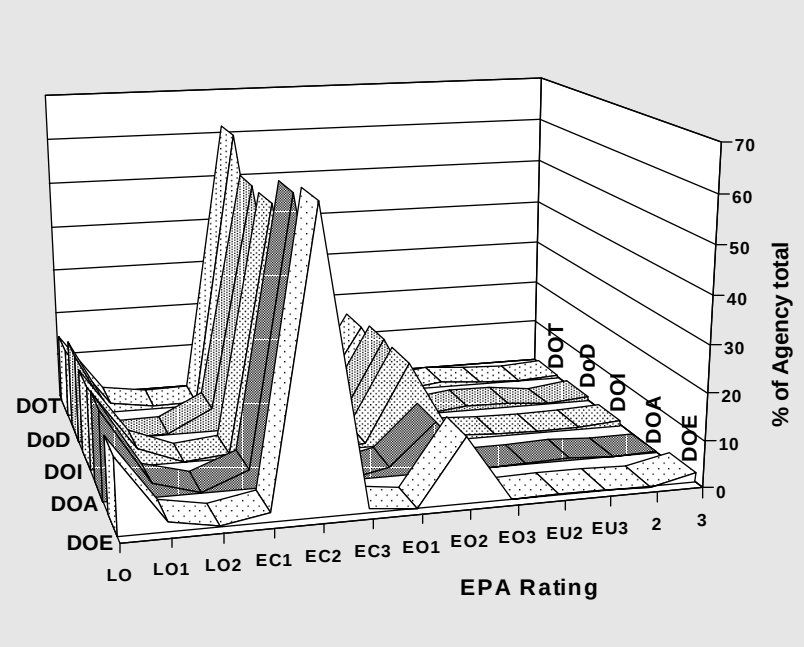
* From EPA Manual 1640: *Policy and Procedures for the Review of Federal Actions Impacting the Environment.*

EPA Rating System (continued)

Another potential source of inconsistency is related to how EPA rates EISs that do not identify a preferred alternative. Although EPA has not issued guidance for such EISs, EPA's Office of Federal Activities (OFA) advises that the reviewers should rate all of the alternatives (although this is not a requirement) and that the rating reported in the Federal Register should be an overall rating based on the "worst case" alternative. [An agency is required to identify a preferred alternative in a draft EIS if it has one at that point. An agency must identify a preferred alternative in a final EIS, however.]

Recent DOE draft EISs that did not identify a preferred alternative have received ratings in different ways. The EIS for the Hanford Remedial Action Program received one overall rating based on the environmentally worst alternative, whereas the Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS received a separate rating for each alternative, but not an overall rating. To avoid the potential for an EU rating, DOE programs may want to consider expressing a "non-preference" for a no action or reasonable alternative that is environmentally unsound and that DOE would not want to choose in any case.

EPA Ratings of Agency DEISs 1991-1996



In an effort to learn how DOE's EIS ratings compare to those of other Federal agencies and determine trends over time, the Office of NEPA Policy and Assistance examined the EPA's ratings for 1,325 EISs issued from 1991 to 1996. The majority of these (91 percent) were prepared by five agencies. They are, in descending order by number of EISs, the Department of Agriculture (DOA) [374 EISs], Department of Transportation (DOT)[274 EISs], Department of Defense (DoD)[251 EISs] Department of the Interior (DOA)[228 EISs], and the Department of Energy (DOE)[80 EISs].

The most common rating (about 60 percent) was EC-2. The next most frequent ratings were LO (18 percent) and EO (14 percent), with the remaining about evenly distributed among 10 other rating combinations. Notably, there are no significant differences among the major agencies (see figure). We also found no significant trends over time during the five-year period examined.

OFA staff note that the EPA Regional Offices have practical autonomy to conduct environmental reviews and rate documents for projects located in their territory. [OFA designates a lead office when two regions are involved. When an EIS covers several regions or is programmatic, OFA generally takes the lead.] OFA receives and reviews regionally-generated comment letters, but OFA does not study them for consistency. OFA pays greater attention to projects that have an EU or 3 rating because EPA's procedures require OFA's participation in an interagency process for resolving such comments. OFA believes that their participation ensures consistency for those relatively infrequent cases.

Thanks to Ken Mittelholtz and Jim Serfis of EPA's Office of Federal Activities, as well as Marie Jenet of EPA Region II, for their help in preparing this article.

Results of the EA Quality Review

As previously reported, the Office of NEPA Policy and Assistance has been engaged in an "EA Quality Review" of 20 recent DOE environmental assessments (EAs) approved by Heads of Program and Field Organizations. The study was intended to foster continuing improvement by providing feedback to the DOE NEPA community and a snapshot of Department-wide NEPA performance that may serve as a benchmark for future quality reviews.

Design of the Study

There is no established measure for the quality of a NEPA document. This study appraised quality in terms of whether the document meets the minimum regulatory requirements; is consistent with guidance provided by the Council on Environmental Quality and DOE; focuses on significant issues and avoids extraneous material; demonstrates a "hard look" at the environmental consequences of a proposed action; and is factual, without bias, correct, and precise.

In this light, the 20 most recently completed EAs as of August 1996 were reviewed. This sample, which includes EAs from 11 field offices and 6 program offices is not necessarily representative of DOE overall. To minimize subjectivity and promote consistency in the review, the DOE Environmental Assessment Checklist (August 1994) served as the primary evaluation tool, but the overall study results nevertheless required considerable interpretation and judgment. The Office of NEPA Policy and Assistance is responsible for the conclusions of the study, although the Office was assisted by a contractor. As appropriate, Office of NEPA Policy and Assistance staff will discuss the review of specific EAs with cognizant NEPA Compliance Officers.

Results in General

The EAs demonstrated a wide range in overall quality, from marginal to very good, as judged in terms of both technical content and overall readability. On balance, the EAs reviewed gave the potential environmental impacts of the proposed action the "hard look" required by NEPA. It was also evident that a multi-disciplinary team approach to document preparation consistently improved EA quality. A few EAs were judged to be of borderline quality because they did not contain all required elements (although none had a substantively essential omission), were inconsistent with guidance, or lacked rigor in the impact analyses. Many deficiencies could have been avoided by more consistently applying available guidance, such as the Green Book ("Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements") and the EA Checklist.

In some cases, including easy-to-obtain information would have considerably improved EA quality with minimal effort.

Important Fundamentals: Purpose and Need, Proposed Action, and Alternatives

The study strongly suggested that overall EA quality correlates positively with a precise statement of DOE's underlying purpose and need, a clear and complete description of the proposed action, and a convincing consideration of an adequate range of reasonable alternatives.

- While many of the EAs addressed the purpose and need appropriately, some were slanted toward a justification of the specific proposal. Nearly half of the EAs exhibited some bias in favor of the proposed action at one or more places in the document.

- For most of the EAs, the proposed action was described in sufficient detail so that potential impacts from all phases of the action could be identified; the other EAs needed better discussions of environmental issues associated with the proposed action. All EAs included the no action alternative, usually described in sufficient detail so that its potential impacts could be identified.

- Most of the EAs identified the reasonable alternatives, and many of these EAs analyzed such alternatives in addition to the proposed action and no action alternative. Several EAs were not clear regarding the possible existence of reasonable alternatives with lesser environmental impacts than those considered, and this was judged a deficiency.

- All EAs could have better highlighted the key differences among alternatives (environmental impacts, costs, mission needs, or other bases for selection).

Conclusions: Areas in need of continuing attention appear to include: describing the underlying purpose and need for action without bias, identifying the reasonable alternatives, properly dismissing any unreasonable alternatives, and effective ways to compare the impacts of analyzed alternatives.

continued next page

EA Quality Review (continued)

Impact Analyses

- For approximately half of the EAs, it was not clear whether preparers identified all potentially non-trivial impacts and analyzed these impacts in proportion to their potential significance. Several EAs notably affirmed that particular resources would not be affected by the proposed action and eliminated those resources from further discussion. Some stated why the resources would not be affected; two EAs included useful summary tables of potential issues and indicated which were addressed further in the EA.

- Some EAs appeared to inappropriately minimize potential environmental impacts. For example, when the analysis indicated a certain level of potential impact to an environmental resource, readers were promptly reassured, without further support, that there would be "no adverse effects," or (erroneously) that compliance with laws and procedures would "avoid" these impacts.

- Nine of the 14 EAs for proposed actions involving radioactive materials clearly addressed potential human health impacts adequately. Some EAs neglected to analyze potential radiological impacts on workers; others did not address all exposure pathways or the collective impact, maximum individual risk, or latent cancer fatalities, apparently relying on the reader deducing that such pathways and impacts were not important.

- Of 15 EAs for which the description of the proposed action suggested that the State Historic Preservation Officer should have been consulted, 9 documented that such consultation actually took place and the others were silent (consultation may or may not have occurred or been required).

- With respect to threatened and endangered species and wetlands, most of the EAs identified the presence or absence of these resources and described potential impacts accordingly. The other EAs were silent, apparently relying on the reader deducing whether or not sensitive resources were an important issue.

- Regarding environmental justice analyses, nearly half of the EAs briefly mentioned potential effects on minority or low-income populations within the potentially affected area. Some appropriately stated that such populations were not present. About half of the EAs were silent regarding the potential for environmental justice impacts.

Conclusions: Preparers often seem to rely on the readers to intuit that certain resources would not be affected by a particular proposed action. Summary tables that indicate potentially affected and clearly unaffected resources would effectively show that all resources were considered. Statements regarding compliance with requirements do not provide adequate impacts analysis nor evidence regarding the significance of impacts. More consistent and explicit discussion of environmental impacts is needed.

Readability and Reader-Friendliness

Many of the EAs were written precisely and concisely, and included helpful glossaries and explanations of technical concepts and scientific notation. However, some EAs require readers to be thoroughly familiar with site environmental resources, facilities, and mission, or used unnecessary jargon or undefined terms. Summary tables are helpful.

- One EA notably combined discussions of the affected environment and the potential consequences in a manner that reduced duplication and increased readability.

- A few EAs did not summarize important information from the referenced documents, making it difficult to assess or confirm the results presented in the EA. In a few cases, appendices contained important information that should have been summarized in the main text.

- Many EAs contained internal inconsistencies, or were inconsistent with EAs for other proposed actions at the same site.

- The quality and utility of maps and other graphic illustrations varied considerably among the EAs. Several included useful and easy-to-read graphics that enhanced the reader's understanding. In other cases, unclear or unreadable graphics detracted from the EA. A few EAs included graphics at the end of the document rather than in the text, making the document less reader-friendly.

- Two EAs inappropriately indicated they were prepared "for" not "by" DOE, and one EA inappropriately included signature spaces for contractor personnel on the front page. A list of preparers was unnecessarily included in one EA.

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EA Quality Review (continued)

Conclusions: Careful editing (e.g., elimination of jargon and internal inconsistencies) and using the EA Checklist (to avoid overlooking required or recommended items) would have solved many of the observed problems. Incorporating material by reference and using appendices may be effective ways to keep NEPA documents succinct, but document preparers must summarize such material appropriately.

A Record of Compliance and Commitment

An EA can serve to demonstrate DOE's commitment to reducing or avoiding environmental impacts associated with its activities.

- Half of the EAs reviewed included discussions of possible mitigation measures. Two particularly commendable practices were observed: incorporating mitigation measures (or "environmental control measures") as an essential component of the proposed action, and summarizing all mitigation measures in one section of the document to facilitate incorporating mitigation commitments in the finding of no significant impact.

- A few EAs contained promises to conduct future activities, such as special surveys of sensitive species or cultural resources, as a way to "avoid" impacts. These EAs should have been clear about whether such surveys were routine good management practices that were integral elements of the proposed action, or were mitigation commitments that were essential to render the impacts of the proposed action not significant. In the latter case, preparers would need to document essential mitigation commitments in the finding of no significant impact and in a publicly available Mitigation Action Plan (10 CFR §1021.322 and § 1021.331).

Follow-up

The Office of NEPA Policy and Assistance will inform cognizant NEPA Compliance Officers, as appropriate, of findings regarding specific EAs in this review. Several NEPA Compliance Officers at a meeting in October 1996 had suggested expanding the study to include consideration of the overall EA process, including public involvement, responses to comments on draft EAs, and findings of no significant impact. The Office of NEPA Policy and Assistance will consider these and any further suggestions for future studies. Please direct suggestions for further study or comments on this review to Joseph Gearo (e-mail address: joseph.gearo@eh.doe.gov), EH-42, at (202) 586-7683 or fax (202) 586-7031.

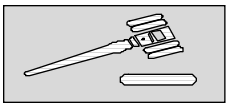
NEPA Web is a Powerful NEPA Research Tool

The Office of NEPA Policy and Assistance was able to respond quickly to two recent time-critical requests for information from the Office of Environmental Management by conducting an electronic search of NEPA documents loaded on the DOE NEPA Web (http://tis-nt.eh.doe.gov/nepa). Conducting these searches reinforced how important it is to maintain a centralized corporate NEPA data repository. We are again asking for help in maintaining this resource.

The information requests involved identifying NEPA documents associated with transporting waste from DOE sites to a treatment facility in the central U.S. and a commercial disposal facility in the western U.S. We were able to identify many of the relevant documents without a resource-consuming field office data call by searching all NEPA documents loaded on the NEPA Web. One caution, however, is that the loading of EAs and some EISs and Supplement Analyses onto the DOE NEPA Web is incomplete. Despite the large size of many DOE NEPA documents, the searches were fast and easy, requiring only entering a few well-chosen key words.

The Office of NEPA Policy and Assistance has made significant progress loading EAs and EISs, but still encounters the following barriers: 1) Documents often are submitted in incompatible electronic formats (electronic publishing standards and guidelines are available on the DOE NEPA tools module of the Web); and 2) some documents are not provided at all.

We urge NEPA Compliance Officers, with assistance from NEPA Document Managers, to help maintain this repository by submitting electronic copies of completed NEPA documents under their purview to the Office of NEPA Policy and Assistance, as required by DOE Order 451.1, section 5d(11). If you have any questions on the use of the Web or on formatting standards, please contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov or 202-586-7600.



Litigation Updates

Recent Rulings on DOE and U.S. Forest Service NEPA Documents

By: Stephen Simpson, Office of NEPA Policy and Assistance

The Department of Energy ended 1996 by winning one NEPA lawsuit and began 1997 by receiving a mixed decision on the NEPA issues in another lawsuit. Also, in December 1996, the Forest Service lost a challenge to the alternatives analysis in a Final EIS.

DOE EIS Upheld

On December 30, 1996, Judge Joseph F. Anderson, Jr., U.S. District Court for the District of South Carolina, ruled that the Department's February 1996 EIS on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel was adequate. The State of South Carolina had alleged that the EIS was deficient in that it "utterly fails to make candid disclosure of the known potential environmental and safety hazards" of spent fuel storage at the Savannah River Site.

Judge Anderson ruled that, although the EIS could have been clearer and more concise, it is not so unclear that the public did not have notice of the relevant facts (as evidenced in part by the volume and nature of public hearings and comments). He also held that the "bounding" analysis of safety vulnerabilities of the L-Reactor disassembly basin was adequate for NEPA review; the Department is not required to recognize each individual past study that pointed out various vulnerabilities. Finally, Judge Anderson dismissed the State's argument that the EIS was only written to justify a decision that had already been made, noting that the court's role in a NEPA case is only to review whether the procedural requirements of NEPA were followed.

DOE Did Not Adequately Apply Categorical Exclusion

The second recent NEPA decision involving the Department yielded a mixed result. On January 6, 1997, Judge Claudia Wilken of the U.S. District Court for the Northern District of California ruled on a lawsuit involving the Department's NEPA review of the Transuranic Management by Pyroprocessing-Separation (TRUMP-S) project. (The Department had prepared an EA for the first two stages of the TRUMP-S project and categorically excluded the third.) The plaintiffs, concerned about nonproliferation among other issues, alleged that a programmatic EIS should be prepared on all of the Department's research activities concerning actinide separation technologies (including TRUMP-S, the demonstration of electrometallurgical treatment technology on a limited amount of Experimental Breeder Reactor-II spent nuclear fuel, and other projects). Judge Wilken held that no programmatic NEPA review was merited because the majority of the impacts identified by the plaintiffs were site-specific, no cumulative or synergistic effect had been identified, and the TRUMP-S project has independent utility. (Judge Wilkin noted in passing that one of the plaintiffs' concerns, nuclear proliferation risks, is inappropriate for a NEPA review because such review would involve an analysis focusing more on political questions than environmental impacts.)

Judge Wilkin also ruled that the plaintiffs' alternative argument that the Department should have prepared an EIS for the first two stages of the TRUMP-S project is moot, because those stages are complete, but she ruled in the plaintiffs' favor concerning their opposition to the Department's application of a categorical exclusion to Stage III of the TRUMP-S project. The Department had determined that the proposed Stage III was a small scale research project within the meaning of the categorical exclusion in Appendix B3.10 to 10 CFR Part 1021, Subpart D. The Department's administrative record, however, did not show a determination per 10 CFR 1021.410(b) that there were no extraordinary circumstances and that Stage III is not connected to other actions with potentially significant impacts. Therefore, Judge Wilkin ruled that the Department's decision to proceed with Stage III was arbitrary and capricious.

[**Editor's Note:** The judge's decision in this case highlights the need to satisfy <u>all</u> of the regulatory requirements when determining that a proposed action may be categorically excluded. The Office of the General Counsel, in consultation with the Office of NEPA Policy and Assistance and in light of the court's opinion in this case, will consider what further guidance may be appropriate, especially regarding the issue of documentation, and will distribute such guidance as soon as possible. See related article, page 13.]

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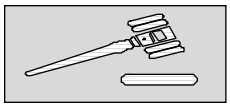


Litigation Updates (continued)

U.S. Forest Service Final EIS Ruled Inadequate

In addition to the cases involving the Department, a recent decision involving the U.S. Forest Service is instructive. In that case, the Forest Service prepared an EIS for expansion of a skiing facility in a National Forest. When the Forest Service issued the Final EIS, it analyzed an alternative (and chose it as the preferred alternative) that the plaintiffs claimed was not analyzed in the Draft EIS. The plaintiffs also claimed that the Forest Service rejected (without explanation) a new alternative proposed by several commenters to mitigate impacts on an important natural pond by using artificial ponds for snowmaking activities. The court ruled that the duty to discuss possible mitigation measures, coupled with comments alerting the Forest Service to adverse impacts and suggesting a solution, required that the Forest Service seriously consider the proffered alternative and explain its reasoning if it rejected the proposal. As a result of the Forest Service's failure to do so, the court held that the Final EIS was inadequate since it failed to analyze all reasonable alternatives. In addition, because the new alternative analyzed in the Final EIS was a new and different configuration of activities and not just a reduced version of a previously considered alternative, the Forest Service was required to prepare a Supplemental EIS to present to the public for review and comment. The Forest Service's failure to prepare a Supplemental Draft EIS, the court held, is arbitrary and capricious. Dubois v. United States Department of Agriculture, Nos. 96-1015, 96-1068 (1st Cir. Dec. 19, 1996).

Copies of the complete opinions are available from Stephen Simpson at 202-586-0125 (e-mail: stephen.simpson@eh.doe.gov). LL

DOE NEPA Process Data Misused

The May-June 1996 edition of *NEPA NEWS* contained an article highly critical of the NEPA process, written by Carl Bausch, a former assistant general counsel with the Council on Environmental Quality now working for the U.S. Department of Agriculture. *NEPA NEWS* is a newsletter published four times a year by NEPA Watch, located at the Center for Marine Conservation in Washington, D.C.

In his article, Mr. Bausch suggested that NEPA should be scrapped; he relied on DOE data to support his assertion that NEPA documents are not useful or cost effective. Mr. Bausch appeared to have used, out of context and without appropriate references, a portion of the data presented in DOE's first Lessons Learned Quarterly Report, issued December 1, 1994. Long-time readers of these Reports would know that much more recent DOE data were available for his article, and that the newer data would suggest conclusions opposite to those Mr. Bausch reached. Our most recent data reinforce that view.

Mr. Bausch's article provoked several readers to submit articles defending NEPA that were carried in the September-October 1996 edition of *NEPA NEWS*. An article setting the record straight regarding DOE data, by Eric Cohen of the Office of NEPA Policy and Assistance, was published in *NEPA NEWS* in February 1997. Readers interested in obtaining reprints of any of these articles or information on how to subscribe to *NEPA NEWS* should contact Eric Cohen at (202) 586-7684 (eric.cohen@eh.doe.gov) or *NEPA NEWS* editor Robert B. Smythe at (301) 654-5661. LL

New NEPA Rule Published

The Office of NEPA Policy and Assistance has prepared a booklet, Integrated DOE NEPA Implementing Procedures (10 CFR 1021, as amended) including Preambles, that conveniently consolidates the unchanged portions of the Department's 1992 NEPA Implementing Procedures and the amendments published in the Federal Register in July and October of 1996. The text of the integrated rule is the same as in the Federal Register publications except for minor editorial revisions to resolve format inconsistencies. This booklet is unofficial; however, the 1996 amendments will be officially incorporated into the Code of Federal Regulations in April or May 1997.

Please contact your NEPA Compliance Officer for a copy of the integrated rule, or EH-42 for multiple copies.

Office of General Counsel to Provide Administrative Record Guidance

By: Janine Sweeney, Office of General Counsel

Each year, DOE reviews many proposed actions under NEPA. In cases where an EA or EIS is prepared, DOE and its contractors prepare many different kinds of materials that take different forms, such as drafts, reports, computer analyses, or e-mail messages.

When the Department is sued on the basis of the adequacy of its environmental analysis under NEPA, the court may consider not only the NEPA document itself, but also what has become known as the "administrative record," to determine whether DOE has fully complied with NEPA's requirements. The administrative record generally consists of documents and other materials produced during the preparation of an EA or EIS, and should include all documents and materials the agency decision maker considered in reaching his or her decision.

Because thousands of documents may be produced during the NEPA process, choosing among them to compile the administrative record is often a difficult task requiring sound judgment. To assist the program and field offices in this task, the Office of General Counsel, in consultation with the Office of NEPA Policy and Assistance, is preparing guidance on what should be included in an administrative record. The guidance will include general guidelines to assist the preparer of the administrative record in deciding which documents to include in the record, as well as specific recommendations about documents that, almost without exception, should be included.

The Office of General Counsel intends to solicit comments on the draft guidance from the Justice Department and NEPA Compliance Officers. After considering the comments, the final guidance will be prepared and distributed. In the meantime, if questions arise concerning what documents or materials should be included in an administrative record, please contact field counsel or the cognizant attorneys in GC-51 (Environment), or Anita Capoferri, an attorney in GC-31 (Litigation) at Headquarters.

Questions and Answers

Q. Who approves supplement analyses and how are they numbered for publication and archival purposes?

A. DOE Order 451.1 (NEPA Compliance Program), section 5a(11), assigns supplement analysis responsibilities to Secretarial Officers and Heads of Field Offices. A supplement analysis is a NEPA determination document, similar to a determination to prepare an EA or an EIS. If EA and EIS determination authority has been further delegated to subsidiary field organization managers, they too would have the authority to approve supplement analyses and make corresponding determinations. As for numbering, supplement analyses are given the same number as the related EIS, with additional identifiers. For example, if the EIS in question was DOE/EIS-0001, the first supplement analysis would be numbered DOE/EIS-0001-SA1; the second, DOE/EIS-0001-SA2; and so forth. The program or field office that would prepare and approve the supplement analysis would have the appropriate number printed on the document. Program and field offices also should provide the Office of NEPA Policy and Assistance with five copies and an electronic disk of each supplement analysis, as for EAs and EISs.

Q. When are supplement analyses needed and can they be prepared before the Record of Decision?

A. DOE must supplement a draft or final EIS if there are substantial changes in the proposed action or significant new circumstances or information relevant to environmental concerns (see 10 CFR 1021.314 and 40 CFR 1502.9(c)). When it is not clear whether or not a supplemental EIS is required, DOE prepares a supplement analysis to inform three possible decisions: (1) prepare a supplemental EIS, (2) prepare a new EIS (or reissue a draft EIS) or (3) no further NEPA documentation is required. As for timing, a supplement analysis can be prepared at any time after issuance of a draft or final EIS, regardless of whether a Record of Decision has been issued. The need for a supplement analysis is triggered by subsequent changes in the basis upon which an EIS was prepared, and the need to evaluate whether or not the EIS is adequate in light of those changes. If the answer is obvious, a supplement analysis is not needed.

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 1996. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

SCOPING

- It was helpful to contact public officials and/or staff of the four affected local jurisdictions and the State early in project planning, before notifying the general public of the proposed action. Also, the environmental project lead and the project manager made a presentation on the proposal before a local planning commission.

DATA COLLECTION/ANALYSIS

- Because the PEIS covered eight different DOE sites, we coordinated each site's data through a single point-of-contact to prevent data conflicts and provide accountability.

- Interagency collaboration and assistance were provided for all aspects of data collection and impact analysis, saving both time and money. Ultimately, these savings will provide more funds for habitat improvements.

IMPACT ANALYSIS/METHODOLOGY

- At the start of the PEIS we developed a methodology report in coordination with EH and GC staff.

- Evaluating the environmental impacts on 13 resources of implementing five programs, under four alternatives, at seven sites, was so complex that we used a team of very senior-level personnel from four organizations to perform the analyses.

SCHEDULE

Timely Completion of Documents was Facilitated by:

- Litigation and threat of injunction against waste receipts that kept management's and counsel's attention on the EIS.

- A large-scale meeting at Headquarters to resolve comments and make revisions.

- Effective DOE planning and management, keeping the same Document Manager for the duration of the project, and abundant public participation.

Procedures for Keeping the Document on Schedule:

- Day-to-day coordination with EH and GC staffs; setting realistic but aggressive schedules for reviews and revisions; managing the contractor with detailed work-break-down schedules, labor plans, milestones, etc.

- (1) Have DOE staff prepare the EIS Summary, Chapter 1, and the Comment-Response volume, and have key DOE individuals work full time with the contractor at the contractor's offices. (2) Conduct sequestered reviews of the draft and final documents (gathering all reviewers in one room at an offsite location until the review is completed, comments provided, and potential fixes identified). (3) Provide a briefing on the Preferred Alternative to reviewers to obtain buy-in before delivering the document for review. (4) Negotiate with reviewers from GC and EH a detailed, step-by-step approval process with completion dates to ensure no unexpected delay.

continued next page

NEPA Process (continued)

Timely Completion of Documents was Inhibited by:

- Key decision makers delaying approval of the PEIS.
- Changes among Headquarters players for this multi-program EIS, resulting in a loss of corporate memory and difficulty in accommodating major changes in direction and policy for several programs.
- The need for new analysis because the Preferred Alternative (not identified in the draft EIS) involved a combination of alternatives that was not analyzed specifically-enough in the draft EIS.
- The time it took Headquarters to review and approve the document.

Factors that Facilitated or Inhibited DOE Teamwork:

- Many other related EISs/PEISs were being prepared in parallel, with tremendous potential for conflicting analysis; thus, much time was required for coordination with other documents.
- Planning for project close-out is difficult because the process does not end with the publication of the final EIS. In the early stages of project planning, project close-out is not well understood. Roles and responsibilities for developing the Record of Decision, Mitigation Action Plan, and Administrative Record should be well understood by the EIS Team and the organization being served.

PUBLIC PARTICIPATION SUCCESS

Successful Aspects of the Public Participation Process:

- If we didn't have answers, we took names and numbers and followed up with information by phone or mail.
- Interagency team meetings with congressional staff, and state and local elected officials were helpful in identifying and resolving sensitive property tax and land use issues before completion of the EA process. This public involvement effort helped to reduce adverse public comment and the potential for litigation.

Public Reactions to the NEPA Process:

- The public was overwhelmed by the plethora of NEPA documents being prepared.
- The public appeared to appreciate having a combined public hearing for the Stockpile Stewardship and Management PEIS, the Fissile Materials Storage and Disposition PEIS, and the Pantex Sitewide EIS.
- For the most part, members of the public who were participating in the process for the first time reacted very positively. They asked questions about the process and provided comments. Members of the public who have been involved in the NEPA process for years reacted in accordance with how the process was affecting their point of view on the proposed action. There was a lot of pressure from these individuals and organizations to make issues outside of the environmental review part of the NEPA process. Several groups wanted technical, cost (not just cost-benefit analyses), schedule and nonproliferation issues made a formal part of the PEIS.
- Public meetings contributed to building a better understanding of the NEPA process and outcomes.

FURTHER GUIDANCE NEEDS IDENTIFIED

- Green Book guidance is focused on project-specific actions. Programmatic documents have no real guidance and err toward over-inclusiveness. This is costly. Perhaps EH should consider guidance for PEISs.

USEFULNESS

Agency Planning and Decision Making:

- Although it was not clear how top-level agency officials used the NEPA process, we used it internally for our local siting decisions.
- The NEPA process facilitated informed and sound decision making by raising and responding to concerns about impacts on native fish populations.

continued next page

NEPA Process (continued)

Protection/Enhancement of the Environment:

- The EIS process served to protect the environment, but greater environmental benefits could have resulted if we had written a broader PEIS with less detail, and used the money saved for physical improvements at DOE sites.

What Worked and Didn't Work:

- All of the EIS contractor personnel were granted "Q" clearances. This placed an unnecessary burden on DOE resources; Q clearance should have been granted only to 2-4 personnel on the EIS contractor team. Almost nothing evaluated in the process of the EIS was classified or required clearance for review.

- If the Secretary is the decision maker, why is s(he) uninvolved until approval of the FEIS? Needless to say, issues raised at that point in the process may be costly and nearly impossible to address.

NEPA COST SAVINGS/BUDGET EXCEEDANCES

- Use a single contractor. We used 10 contractors, which was not efficient. Better yet, use Federal staff to perform most work and contractors only when necessary.

- We learned that well-written environmental documents elicit fewer comments than those of lesser quality. Fewer comments translates into cost savings. And by conducting all of the environmental analysis in-house (with the exception of cultural resources), we were able to complete the environmental work cost-effectively.

- The DOE project environmental lead should have been involved in the establishment of the initial document preparation budget.

EFFECTIVENESS OF THE NEPA PROCESS

Questionnaire respondents were asked to rate the effectiveness of the NEPA process in terms of its usefulness to decision makers. For the purposes of this report, "effective" means 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 "highly effective."

- For this quarter, 2 of the 3 respondents for EAs and 1 of the 4 respondents for EISs rated the NEPA process as "effective."

- One EA respondent stated that the NEPA process was instrumental in identifying mitigation measures to protect waterfowl species expected to be attracted to a new wildlife refuge within the immediate project area.

- Another EA respondent commented that the EA is an interagency plan that will be in effect over the next 10-12 years and will provide a method for continual site-specific planning, consultation, and environmental review. Additionally, the NEPA process was instrumental in informing interested individuals of the proposed action early in project planning.

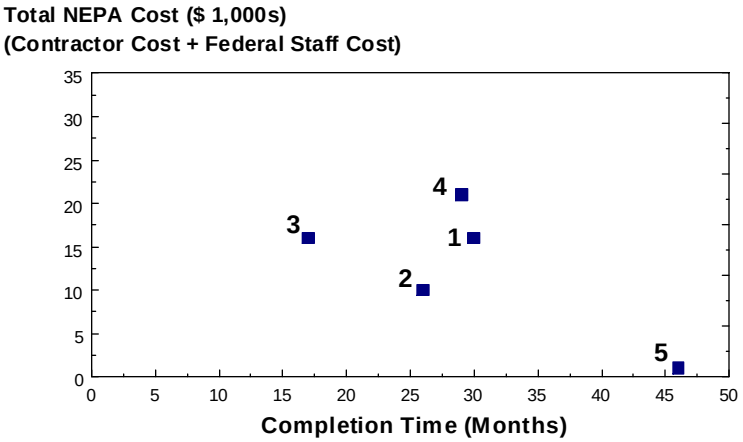
- Four respondents rated the effectiveness of the NEPA process as low because the NEPA process did not enhance the ultimate decision. LL

Reminder:

Lessons Learned Questionnaires for all NEPA documents completed during the second quarter of FY 1997 (January 1, 1997 to March 31, 1997) should be submitted as soon as possible after document completion, but no later than May 1, 1997. (Fax: 202-586-7031 or Internet: hitesh.nigam@eh.doe.gov). [**Editor's Note:** Please note that Hitesh Nigam (telephone 202-586-0750) is the new EH-42 staff contact for Lessons Learned Questionnaire issues. Yardena Mansoor is the new EH-42 staff contact for articles, guidance, and editorial matters (same fax; Internet: yardena.mansoor@eh.doe.gov; telephone 202-586-9326). Joanne Arenwald Geroe, the former contact, has transferred to another Federal agency. We wish her well.] The Lessons Learned Questionnaire is now available interactively on the DOE NEPA Web [http://tis-nt.eh.doe.gov/nepa] on the Internet. Look for it under NEPA Process Information.

EIS Cost and Completion Time Data

EIS Costs and Completion Time*



** EIS #6 was adopted from the Navy; therefore, cost and completion time are not reported.*

Cost Facts

- All 5 DOE EISs completed during the first quarter were either programmatic or sitewide EISs. Total NEPA process costs reported for these EISs were $1 million, $10.4 million, $16 million, $16.5 million, and $20.9 million. The corresponding contractor costs were $800,000, $9.6 million, $13 million, $14.4 million, and $19.7 million. NEPA process costs for three of these five EISs exceeded the original budget by 3%, 39%, and 6%; the other two were completed within budget.

- For EIS #3 and #5 the NEPA process costs represented 0.4% and 0.3%, respectively, of the total project costs. Total project costs were not reported for 3 EISs.

- Cumulatively, over the last year, the median cost for the preparation of 13 EISs for which cost data were reported was $7.5 million; the average cost was $9.9 million.

Completion Time Facts

- Five EISs were completed during the first quarter of FY 1997, in 17, 26, 29, 30, and 46 months.

- Cumulatively over the last year, the median completion time for 14 EISs was 26 months; the average completion time was 27 months.

*[**Editor's Note:** We will report on trends for EIS preparation costs and completion times in future quarterly reports when more data are received.]*

EISs

Defense Programs

1=Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components, DOE/EIS-0225
EPA Rating: EC-2*
(**Cost:** $1,300,000 Federal, $14,400,000 contractor;
Time: 30 months)

2=Nevada Test Site and Off-Site Locations in the State of Nevada Sitewide EIS, DOE/EIS- 0243
EPA Rating: EC-2*
(**Cost:** $800,000 Federal, $9,600,000 contractor;
Time: 26 months)

3=Stockpile Stewardship and Management Programmatic EIS, DOE/EIS-0236
EPA Rating: EC-2*
(**Cost:** $3,000,000 Federal, $13,000,000 contractor;
Time: 17 months)

Fissile Materials Disposition

4=Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS, DOE/EIS-0229
EPA Rating: EC-2*
(**Cost:** $ 1,200,000 Federal, $19,700,000 contractor;
Time: 29 months)

Albuquerque Operations Office/ Environmental Management

5=Uranium Mill Tailings Remedial Action Groundwater Project Programmatic EIS, Grand Junction Project Office, Colorado, DOE/EIS-0198
EPA Rating: EC-2*
(**Cost:** $260,000 Federal, $800,000 contractor;
Time: 46 months)

Idaho Operations Office/ Environmental Management

6=Department of the Navy EIS for a Container System for the Management of Spent Nuclear Fuel (formerly the Multi-Purpose Container System for the Management of Civilian and Naval SNF), DOE/EIS-0251
EPA Rating: LO*
(This EIS was adopted from the Navy)

* See page 6 for EPA Rating definitions.

EA Cost and Completion Time Data

Cost Facts

- Total NEPA process cost data were reported for 3 EAs ($18,000, $120,000, and $145,000).
- Cumulatively for the last year, the median cost for the preparation of 27 EAs was $52,000; the average cost was $94,000.

Completion Time Facts

- The median completion time for the 4 EAs completed during the first quarter of FY 1997 was 17 months (range: 5 to 41 months).
- All four of the EAs were completed on schedule and the NEPA process was initiated early enough to avoid being on a critical path.
- Cumulatively for the last year, the median completion time for 42 EAs was 9 months; the average completion time was 14 months.

*[**Editor's Note**: We will report on trends for EA preparation costs and completion times in future quarterly reports when more data are received.]*

EAs

Bonneville Power Administration (BPA)
1=Albeni Falls Wildlife Mitigation Project, Bonner and Kottenai Counties, Idaho, DOE/EA-1099 (**Cost:** Federal and contractor cost unreported; **Time:** 17 months)

2=BPA/PGE Transmission Support Project, DOE/EA-1179 (**Cost:** $130,000 Federal, $15,400 contractor; **Time:** 5 months)

Energy Efficiency and Renewable Energy
3=National Wind Technology Center Sitewide EA, DOE/EA-1127 (**Cost:** $3,000 Federal, $117,000 contractor; **Time:** 41 months)

Richland Operations Office/ Environmental Management
4=100-K Area Pond Fish Rearing, Hanford Site, Richland, Washington, DOE/EA-1111 (**Cost:** $3,000 Federal, $15,000 contractor; **Time**: 17 months)

EIS Distribution (continued from page 5)

required on letters transmitting EISs to key government officials (i.e., members of Congress, governors, heads of tribes and Indian tribal associations).

- Even when a press release has been approved as part of the communications plan, CP does not consider it a final document. The final press release needs to be reviewed for timeliness and context and approved by CP-2.1 and the Office of the Secretary.
- In the past, DOE has often distributed EISs on Fridays so that they could be filed the same day with the Environmental Protection Agency (EPA). EPA would then publish a notice of availability in the Federal Register the following Friday. A "Friday-driven" schedule is not effective for successful media and congressional outreach, however. Congress is not generally well-staffed on Fridays, making it difficult to ensure appropriate understanding and awareness of the NEPA documents and process. On the media side, many trade publications "close" on Friday, making it difficult for them to cover the news; in addition, the press perceives that releasing news on Friday means the organization is trying to bury news. For all these reasons, CP may want to conduct notifications and media outreach between Monday and Thursday before completing the distribution and filing with EPA.

For further information regarding CP's role in the NEPA process, please contact Steve Lerner, CP, at (202) 586-5470. A general discussion of EIS distribution procedures appeared on page 6 of the June 1995 edition of the Lessons Learned Quarterly Report. LL

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

June 2, 1997, Issue No. 11 For Second Quarter FY 1997

DOE-wide NEPA Contracts Will Be Ready to Use Soon!

Training Offered at June Workshop

By: Dawn Knepper, Contracting Officer, Albuquerque Operations Office

"My piles of paper now will save you time and paperwork later," says Dawn Knepper, Contracting Officer for DOE-wide NEPA Contracts.

Do you need an environmental assessment, environmental impact statement, environmental report or a portion of one? Would you like to begin work within a few weeks? Would you like to use the best, most experienced contractors at unbeatable prices? Do you want to fully control your NEPA contracting locally? We will soon have contracts that will let you do all this and more!

This may sound too good to be true, but the hard work of the DOE-wide NEPA Contract Source Evaluation Panel (and many others in the NEPA contract reform initiative) have made this dream a reality. The Panel, chaired by Roger Twitchell, NEPA Compliance Officer, Idaho Operations Office, has implemented ideas first discussed at the NEPA Contracting Reform Workshop in March 1996 and later by the follow-on Acquisition Planning Team. In addition to Roger and me, Panel members are Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office, and William (Skip) Harrell, Operations Program Manager, Albuquerque Operations Office.

Having these Department-wide multiple award contracts in place will allow you and your local Contracting Officer (called the Ordering Contracting Officer) to place a Task Order for your NEPA work. Together, you define the work, establish selection criteria, select the winning contractor, and fund and administer all the work locally. Because most of the contract requirements have been completed for you in advance, you can begin work very quickly: within two weeks for simple tasks, within four weeks for more complicated work.

These contracts will offer you maximum flexibility. Define the task to suit your program. Issue NEPA document preparation orders as one task or several. Prepare your own NEPA document, but use a Task Order for a specific analysis. Use different pricing arrangements for different parts of the document. You decide. The NEPA Document Manager can provide technical direction directly to the contractor by being designated as the Ordering Contracting Officer's Representative. Issuing a Task Order will be easy. You can compete your task among the contractors (in limited circumstances, you need not compete your task). Tasks can be firm-fixed price (Wow!), cost-plus-fixed-fee,

continued next page

For Inside *LESSONS LEARNED*
See Page 2

Albuquerque NEPA Meeting to Focus on Effectiveness, Efficiency

Mark your calendars! On June 24 and June 25, 1997, the Office of NEPA Policy and Assistance is sponsoring a meeting of the DOE NEPA Community at the Energy Training Complex in Albuquerque, New Mexico. A half-day contracting workshop follows on June 26, 1997. The Albuquerque Operations Office and Kirtland Area Office will co-host these important events, which are designed to promote continuous improvement in our community's performance of its NEPA responsibilities.

Featuring a varied and comprehensive agenda, the meeting will focus on the theme of "Effectiveness and Efficiency in the Department's NEPA Program." Scheduled presentations include: Council on Environmental Quality initiatives, DOE NEPA guidance developments, categorical exclusion determinations, legal issues and litigation, and managing contractor support of complex EISs.

Contracting Workshop

The follow-on contracting workshop will provide practical instruction in preparing and managing task orders under the new Department-wide multiple NEPA contracts due to be issued shortly by the Albuquerque Operations Office. This workshop is sure to be an invaluable hands-on learning experience, and NEPA Compliance Officers are strongly encouraged to participate. Interested NEPA Document Managers and NEPA Contacts also are invited to attend.

For information about the meeting and workshop, please contact Stephen Simpson at stephen.simpson@eh.doe.gov or (202) 586-0125; or Yardena Mansoor at yardena.mansoor@eh.doe.gov or (202) 586-9326. LL

Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report on Lessons Learned in the NEPA process. This report includes:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

DOE-wide NEPA Contracts

(continued from page 1)

cost-plus-incentive fee or any combination. You may want to set a fixed price for simple, well-defined tasks, such as certain environmental assessments or specific analyses. In this approach, you know exactly what you will pay and when you will receive your document. Pay the contractor when the acceptable document is delivered. For major jobs, we recommend issuing tasks on a cost-plus-incentive fee basis. This encourages contractors to give you their best price in order to win the task, but ensures that the price proposed is realistic and achievable because the incentive fee is based on cost and performance.

Detailed guidance on preparing and issuing a Task Order will be the subject of a workshop after the June 1997 NEPA meeting (see related article above). Bring your work, and go home with a Task Order ready for your Ordering Contracting Officer to issue.

You will get top quality contractors, at outstanding prices, starting work very quickly. You issue and administer your task locally, completely within your control and direction. Get the benefit of Department-wide contractors with the latest experience and best practices working on your task. Issuing a Task Order under these contracts does not require public notice in the Commerce Business Daily and is not subject to protest. Do you have to use these contracts? No. But why wouldn't you?

Better quality, faster, cheaper NEPA documents will soon be a reality in DOE! Awards are planned for June 1997. For more information, contact Dawn Knepper at dknepper@doeal.gov, phone (505) 845-6215, or fax (505) 845-5181. LL

CEQ Initiative: Reinventing NEPA Implementation

By: Ray Clark, Associate Director of NEPA Oversight, Council on Environmental Quality

Based on its January 1997 report, "The National Environmental Policy Act: A Study of its Effectiveness After Twenty-five Years," the Council on Environmental Quality (CEQ) is now engaged in a significant effort to reinvent the way Federal agencies implement NEPA. We have begun a multi-year effort to reinvent the NEPA process and focus agencies on the underlying goals of NEPA, cutting procedural delay, saving time and money, improving accountability to communities, and making NEPA count for more in agency decision making.

As the last issue of the LLQR (March 1997) presented the conclusions of the CEQ effectiveness study, I will not elaborate on the five elements that CEQ identified as critical to streamlining implementation of the NEPA process:

- **Strategic planning**, to integrate NEPA's goals into agency internal planning at an early stage;
- **Public information and input**, to take into account the views of the public during planning and decision making;
- **Interagency coordination**, to share information and integrate planning responsibilities and multiple statutory requirements;
- **Interdisciplinary "place-based" approach** to decision making, to focus the knowledge and values from a variety of sources on a specific place;
- **Science-based and flexible management approaches**, to deal with the uncertainties of environmental impact prediction.

Agencies should take a new approach to NEPA implementation: one that takes the standard NEPA paradigm of "predict, mitigate, implement" and incorporates monitoring and adaptation to make NEPA management more efficient and effective. This adaptive environmental management approach takes into account surprises of nature or human actions that could negate any environmental protections envisioned in the original analysis. An agency can analyze and approve a project with some uncertainty, monitor project implementation, and adapt the project or mitigation plan to ensure that significant environmental effects do not occur. In this way, agencies can use their NEPA analyses to move beyond mere documentation to using NEPA as a dynamic management tool.

With our objectives of improving the decision making process and making better decisions, we are approaching the NEPA Reinvention Project in phases. Phase I, now underway, is focusing on three sectors that are critically affected by agency implementation of NEPA: timber, grazing, and oil and gas. Teams representing all Federal agencies that have a role in planning and permit approvals in those sectors are assessing agency programs and identifying opportunities to cut bureaucracy, improve customer service, and improve decision making.

Agencies should take a new approach – one that takes the standard NEPA paradigm of "predict, mitigate, implement" and incorporates monitoring and adaptation to make NEPA management more efficient and effective.

In Phase II, our effort will be broadened to include all Federal agencies, and interagency teams will focus on resolving crosscutting issues identified in the effectiveness study.

Phase III will develop incentives for agencies to integrate environmental, social, and economic factors into agency decision making. Measuring the effectiveness of changes that are adopted under the reinvention initiative will require improving agency accounting of the time and costs of NEPA reviews and their usefulness to decision makers, stakeholders, and the interested public.

The Department of Energy has demonstrated leadership in its efforts to make NEPA work better. Your recent revision of the DOE NEPA implementing regulations has furthered your streamlining efforts. Adding new categorical exclusions serves to reduce paperwork and free resources to review actions with potential for environmentally significant effects—to focus on environmental issues that really count. Eliminating the requirement for a published implementation plan does not lessen the Department's responsibility to track and address public scoping comments but increases management flexibility in determining how best to do so. The Council on Environmental Quality is looking to the Department of Energy for continued leadership in the reinvention initiative.

The Council is seeking innovative approaches that agencies can take. The Council is interested in agencies identifying obstacles to innovation so that NEPA can serve as a real planning tool that is used by decision makers. CEQ will help overcome these obstacles. LL

DOE Comments Seek Clarification, Consistency Regarding CEQ's Environmental Justice Guidance

The Department of Energy has submitted comments on the Council on Environmental Quality's (CEQ's) "Draft Guidance for Considering Environmental Justice under the National Environmental Policy Act (March 1997)." DOE's comments (dated April 16, 1997) were directed at resolving inconsistencies between the draft Guidance, CEQ Regulations, and the Executive Order/Presidential Memorandum on environmental justice.

The Department asked CEQ to clarify and expand the portions of the Guidance on conducting environmental justice analysis. Specifically, DOE asked that factors to consider be based on the definitions of "disproportionately high and adverse human health effects" and "disproportionately high and adverse environmental effects," once those definitions are made consistent. In addition, DOE asked CEQ to clarify when socioeconomic and environmental justice analyses are needed in environmental assessments. DOE also asked for guidance on the extent to which minority or low-income populations should be considered in determining whether a proposed action may be categorically excluded from further NEPA review.

Contents of the Draft Guidance

After discussing the general tenets of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and its relationship to the NEPA process, the CEQ Guidance presents general principles for considering environmental justice under NEPA:

- The Executive Order does not change existing NEPA thresholds for significance, but specific consideration of impacts on low-income or minority populations may identify significant impacts that would otherwise be overlooked.
- Identifying a disproportionately high and adverse effect on a low-income or minority population does not preclude an agency from taking a proposed action, nor does it compel a conclusion that the action is environmentally unsatisfactory.
- Analysis of environmental justice concerns should be integrated with the rest of the NEPA review.

CEQ then presents guidance on considering environmental justice in specific phases of the NEPA process:

- Agencies should determine the presence or absence of low-income or minority populations before the scoping process, and use enhanced communication strategies to reach and inform such populations.
- Agencies may need to employ adaptive or innovative logistical approaches to overcome cultural or other barriers to participation of low-income or minority populations in the NEPA process.
- In determining the affected environment, low-income or minority populations should be identified using various tools.
- Potentially affected low-income or minority communities should be consulted concerning reasonable alternatives and possible mitigation measures.
- The NEPA document should state whether there would be a disproportionately high and adverse impact on low-income or minority populations, supported by a concise analysis that is easily understandable to the public.

Status of the Guidance

CEQ hopes to issue its Guidance in June. The Office of NEPA Policy and Assistance will then review its own draft environmental justice guidance (October 1996 draft, as revised after NEPA Compliance Officer comments) to determine whether changes are needed.

NEPA Order DOE 451.1 to Be Reissued with Conforming Changes

The Office of NEPA Policy and Assistance has prepared a modification to the NEPA Order, DOE O 451.1, to make changes that conform to the July 1996 amendments to the DOE NEPA Regulations (10 CFR Part 1021).

Because the amended regulations make an environmental impact statement implementation plan optional, the Order will no longer assign responsibilities associated with implementation plans. Subparagraphs that mentioned implementation plans will be deleted, but their designations will be reserved to avoid renumbering subsequent subparagraphs.

The Office of Human Resources and Administration will issue the Order in the near future as DOE O 451.1A.

DOE Sued on Stockpile Stewardship and Waste Management PEISs

By: Stephen Simpson, Office of NEPA Policy and Assistance

On May 2, 1997, the Natural Resources Defense Council (NRDC) and 38 other organizations (including several members of the Military Production Network) filed a complaint in the U.S. District Court for the District of Columbia challenging the adequacy of the recent programmatic environmental impact statement (PEIS) for Stockpile Stewardship and Management (SSM) and the Department's lack of a PEIS for Environmental Restoration and Waste Management. This lawsuit could have far-reaching implications for the Department and bears close monitoring.

Plaintiffs Want New PEISs

The organizations allege that the SSM PEIS is inadequate because it fails to include DOE's entire proposed SSM Program Plan and all reasonable alternatives, or to adequately analyze the Plan's environmental impacts. According to the complaint, the SSM PEIS defines the scope of the Department's proposal too narrowly (by not considering all proposed facilities from the SSM Program Plan) and the No Action Alternative too broadly (by including major new and upgraded facilities, including some not yet under construction).

Furthermore, in the plaintiffs' view, the Department did not consider the full range of reasonable alternatives (by analyzing only one alternative in addition to No Action) and took action prejudicing the selection of alternatives before the Record of Decision (by submitting a budget request for construction, transferring property and responsibility, and funding detailed design). The complaint also alleges that the SSM PEIS fails to adequately analyze the environmental impacts of the management of wastes from the SSM program.

The organizations seek to enforce the Stipulation and Order of Dismissal in Natural Resources Defense Council v. Watkins, No. 89-1835 SS (D.D.C. Oct. 22, 1990). The plaintiffs allege that the Department has violated the Stipulation by failing to issue a PEIS on Environmental Restoration and Waste Management,[1] and that such a PEIS is required before implementation of Environmental Management's Ten-Year Plan (now known as Accelerating Cleanup: Focus on 2006).

The organizations request that the court (1) declare that the SSM PEIS does not comply with NEPA and that the Department has violated the Stipulation; (2) require that the Department prepare a new adequate SSM PEIS and a PEIS on Environmental Restoration and Waste Management; and (3) prohibit the Department from implementing the SSM Program Plan and the Ten-Year Plan unless and until the above PEISs are complete.

Preliminary Injunction Requested

The plaintiffs have filed a motion for a preliminary injunction, pending trial on the merits, prohibiting DOE from expending any funds and taking any action in furtherance of the design and/or construction of new projects or major upgrades in mission capability for certain SSM facilities and programs, including the National Ignition Facility (NIF) and Contained Firing Facility at Lawrence Livermore National Laboratory; the Atlas Facility and upgrades to the Chemical and Metallurgy Research Building, Nuclear Materials Storage Facility, and Los Alamos Neutron Science Center at Los Alamos National Laboratory; the X-1 Advanced Radiation Source and Process and Environmental Technology Laboratory at Sandia National Laboratory; and the High Explosives Pulsed Power and Low-Yield Nuclear Explosives Facilities at the Nevada Test Site. Oral argument on the organizations' motion is scheduled for mid-June.

[1] The Stipulation included a clause stating that the Department "will, in a timely fashion, prepare, circulate for comment, make available to the public, and consider in its decision-making process," PEISs for Reconfiguration of the Nuclear Weapons Complex and Environmental Restoration and Waste Management. The Department published a Notice of Intent for an Environmental Restoration and Waste Management PEIS on October 22, 1990 (55 FR 42633). After public notice and opportunity to comment (60 FR 4608, Jan. 24, 1995), the Department narrowed the scope and subsequently issued the Draft Waste Management PEIS in August 1995. (NRDC was the only commentor on the public notice of the change in scope, and opposed the change in scope for both legal and policy reasons.)

Update: At a status conference with Judge Stanley Sporkin on May 9, the court established the schedule for briefing and hearing the motion for preliminary injunction. DOE filed the Administrative Record on May 19, and the court modified the briefing schedule at a hearing on May 27. As requested by Judge Sporkin, DOE filed the Final Waste Management PEIS with the Environmental Protection Agency on May 30. DOE's Opposition to the Preliminary Injunction is now due June 9, and oral argument is scheduled for June 17. DOE has agreed to delay excavation activities for NIF and "subcritical tests" at the Nevada Test Site until June 27. Judge Sporkin has asked DOE to explain why it has not yet published an EIS with respect to environmental restoration.

Effective NEPA Hearings: Learning from WIPP Experience

By: Harold Johnson, DOE Carlsbad Area Office
Mike Antiporda, CTAC-Jacobs Engineering

Public hearings can be extremely challenging when a project has stakeholders nationwide. The U.S. Department of Energy's Carlsbad Area Office met this challenge in conducting public hearings on the *Waste Isolation Pilot Plant* (WIPP) *Disposal Phase Draft Supplemental Environmental Impact Statement* (SEIS-II). Our experience with eight hearings held in cities across the country may provide some useful lessons learned.

Plan for a Hearing

- Provide a draft public involvement plan for stakeholder input. We announced the availability of a draft plan in our stakeholder newsletter and made appropriate changes based on comments from stakeholders.
- Determine locations for public hearings based on familiarity and accessibility to the public.
- Identify opportunities for public comment, to the extent possible, in the draft NEPA document.
- Brief the communications media in advance so that they can provide clear and consistent information to the public.
- Provide comment procedures in advance and make them available in writing at the meeting.
- Print informational materials "just in time." Circumstances can change right before the final deadline. Ensure that technical staff review for accuracy to prevent costly reprinting. Allow the printer enough time to print everything on schedule and error-free.

Design a User-Friendly Approach

- Provide furnishings that organizations or individuals with alternative points of view may use to display and make their informational materials available to the public.
- Route visitors through the display area on their way to the hearing room. People will likely pick up information, read it, and engage staff under these circumstances. Our informational materials addressed specific aspects of the SEIS-II, but also offered information about the WIPP project and the National Environmental Policy Act.

Provide a Positive Environment

- Hold hearings in-the-round. The hearing officer, technical support staff, commentors, and court reporter should all be seated at a table located in the center of the room. Arrange attendee seats on all sides of the center table and use a public address system to enable everyone to hear.
- Hold an on-the-record question-and-answer session 30 minutes before each comment session to generally assess stakeholder concerns and clarification needed in the NEPA document.
- Use flexible procedures to avoid unnecessary debate about rules and fairness.
- Announce the names of the upcoming commentors frequently, so that people can anticipate their opportunity to speak and remain to listen to other commentors.
- Open the floor to those who want to comment, if no one is signed up to follow a speaker.
- Schedule breaks for the court reporter, especially if the number of commentors is high. Discomfort can reduce the reporter's concentration; comfort can improve overall quality of his/her work.

Maintain Team Communication

- Hold an end-of-the-day debriefing for DOE and contractor staff as a useful coordination tool when conducting multiple hearings or single hearings that last multiple days. Close communication among hearing staff can promote successful practices and can prevent mistakes from being repeated.

Copies of the *Waste Isolation Pilot Plant* (WIPP) *Disposal Phase Draft Supplemental Environmental Impact Statement* (SEIS-II) can be obtained directly through the Internet (www.wipp.carlsbad.nm.us). If you have any questions or need further information, please contact Harold Johnson, Carlsbad Area Office, at (505) 234-7349 or Dennis Hurtt, Carlsbad Area Office, at (505) 234-7327. LL

NEPA's Bob Strickler and Linda Thurston Retire

At a March 18th retirement party in their honor, Bob Strickler and Linda Thurston, members of the Office of NEPA Policy and Assistance, each ceremoniously ended more than 20 years of Federal service. The party allowed friends, family, and co-workers to pay tribute to two dedicated and respected individuals. Each was presented a retirement plaque and a gift from their co-workers. Bob and Linda wish to extend a special thanks to all who contributed.

Bob was the Director of the Project Activities Division in DOE's Office of NEPA Policy and Assistance. He served his entire civilian government career as an environmental protection specialist with the Department of Energy, after four years in the U.S. Air Force. In heartfelt tribute, many colleagues acknowledged Bob's contributions. In a letter read at the luncheon, Dr. Victor Reis, Assistant Secretary for Defense Programs, praised Bob's "leadership overseeing NEPA [which] has been the key to our achieving goals…." Bob's friendly and expert assistance will be missed throughout the Department.

Linda served in the NEPA Office for seven years. Her Federal career also included service with the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Land Management, Minerals Management Service, and Fish and Wildlife Service. Linda worked with the Offices of Fossil Energy and Efficiency and Renewable Energy and as the NEPA training coordinator. After a vacation in Europe, she will retire in Alaska close to her two sons and their families.

We wish both Bob and Linda health and happiness as they enjoy retirement.

At the March 18 luncheon, Carol Borgstrom, Director, Office of NEPA Policy and Assistance, congratulates Bob Strickler, Director, Project Activities Division, on his retirement as Jim Daniel, Unit Leader, looks on.

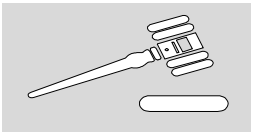
WE'VE MOVED!

The Office of NEPA Policy and Assistance has recently been consolidated into a single location in Room 3E-094 in the Forrestal Building. The fax number for the entire office is 202-586-7031. Individual phone numbers remain unchanged.

Reminder: Let People Know What DOE is Doing

Some stakeholders have expressed concern that they have found out about notices and assessments of DOE floodplain and wetlands actions too late to comment, especially when notices were published only in the *Federal Register*. DOE personnel responsible for notifying the public of its opportunity to comment on DOE actions should ensure that, in addition to the required publication in the *Federal Register*, notice is sent to persons and organizations that are likely to be interested and also is published in communications media the public is likely to use. This effort is especially important for actions with short public comment periods.

The latest edition (currently January 1997) of the *Directory of Potential Stakeholders for Department of Energy Actions Under the National Environmental Policy Act* (the "yellow book") may be helpful in identifying interested organizations. The list of media in the CEQ Regulations, 40 CFR 1506(b)(3), and DOE's *Effective Public Participation Under the National Environmental Policy Act* (the "gold book") may assist in defining suitable opportunities for notification in addition to the *Federal Register*.



Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

DOE Sued on Application of Categorical Exclusions, Settles Nevada Suit; Other Cases of Interest

Two new NEPA lawsuits have been filed recently against the Department concerning application of categorical exclusions and a proposed mining operation at Rocky Flats Environmental Technology Site. The Department did, however, settle one NEPA case (although the NEPA issues have been moot for a while).

Challenge to NEPA Regulations and Application of Categorical Exclusions

On February 21, 1997, the Department was sued in the U.S. District Court for the District of Kentucky by Mr. Mark Donham (a resident downwind of Paducah and the co-chair of the Paducah Site-Specific Advisory Board) concerning the NEPA reviews for the Department's NEPA regulations and the proposed Vortec Corporation Vitrification Demonstration at the Paducah Gaseous Diffusion Plant. Mr. Donham alleges that the Department's establishment of the categorical exclusions in the 1992 DOE NEPA regulations and 1996 amendments should have been the subject of an environmental assessment or an environmental impact statement. He further alleges that the Vortec project should not have been categorically excluded as a pilot-scale waste treatment facility under Appendix B6.2 to 10 CFR Part 1021, Subpart D, in that the proposed action does not comply with the procedures for application of a categorical exclusion in 10 CFR 1021.410 and 10 CFR 1021.211. The Court has directed the parties to attempt mediation, which will begin this month.

Challenge to Lack of NEPA Review for Rocky Flats Site Mining

The Sierra Club has sued the Department concerning NEPA review for a mining operation in the Buffer Zone at the Rocky Flats Environmental Technology Site. The Club alleges in the lawsuit, filed March 17, 1997, in the U.S. District Court for the District of Colorado, that the Department's "decision to relinquish its rights as a surface owner" of the mining claim is a major Federal action that requires preparation of an environmental impact statement. The Club alleges as evidence of this "decision" that the Department (1) actively negotiated with the mining company and the county concerning the rezoning and the conditional permit for extension of the strip mining site; (2) granted an easement for an access road to the proposed mining site; and (3) issued a license to allow the mining company to install air quality monitoring stations on the proposed mining site. As of this writing, the Department's answer to the complaint has not yet been filed.

Settlement in Nevada

The Department and the State of Nevada filed a Joint Stipulation for Dismissal of State of Nevada v. Peña (the lawsuit concerning disposal of off-site waste at the Nevada Test Site and the need for a site-wide EIS for the Test Site) on April 15, 1997, in the U.S. District Court for the District of Nevada. The Joint Stipulation is based on a Settlement Agreement that commits the Department to certain actions involving the performance assessment for Area 3 of the Test Site, the existing land withdrawal orders for the Test Site, and the Federal Facility Agreement and Consent Order for the Test Site. The issuance of the Final Site-wide EIS for the Test Site and the associated ROD rendered the remaining NEPA counts in the lawsuit moot, so those counts are not addressed in the Settlement Agreement.

Other NEPA Cases of Interest

Recent decisions involving the Coast Guard and the Federal Highway Administration are instructive. In the first case, the Coast Guard's issuance of an environmental assessment and finding of no significant impact for the proposed closure of its Support Center on Governors Island in New York Harbor was found not arbitrary and capricious. While closure of the Support Center would be a condition precedent to any disposal of Governors Island, the court found that the proposed closure would have sufficient independent utility to be considered separately because the proposed closure would meet the Coast Guard's purpose and need by itself, the proposed closure would not commit the Coast Guard to dispose of the Island, and further NEPA review would be prepared for any disposal. Furthermore, the court held that plaintiffs had failed to prove that the Coast Guard had not considered certain feasible alternatives within the

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New Executive Order Addresses Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 of April 21, 1997, Protection of Children from Environmental Health Risks and Safety Risks, instructs Federal agencies to place high priority on identifying and assessing environmental health risks and safety risks that may disproportionately affect children. Agencies are further directed to ensure that their policies, programs, activities, and standards address such risks. The Offices of NEPA Policy and Assistance and General Counsel are considering what implications, if any, this Order may present for the NEPA process.

The Executive Order recognizes that children may suffer disproportionately from "environmental health risks and safety risks," which are defined as risks to health or to safety that are attributable to products or substances that a child is likely to come in contact with or ingest (such as air, food, water, soil, and manufactured or processed products). These risks arise because, among other reasons, children's bodily systems are still developing, and they eat, drink, and breathe more in proportion to their body weight than adults.

Among other provisions, the Executive Order also establishes a Task Force on environmental health and safety risks to children that will biennially issue protection strategies. The Secretary of Energy is a member of the Task Force.

Executive Order 13045 was published in the *Federal Register* on April 23, 1997 (62 FR 19085-8). LL

Annual NEPA Planning Summaries

The great majority of the Department's NEPA documents actually prepared had been forecast in the Annual NEPA Planning Summaries, according to a review of the 1995 and 1996 Planning Summaries conducted by the Office of NEPA Policy and Assistance. The review found overall that approximately 75 percent of the environmental impact statements (EISs) and 85 percent of the environmental assessments (EAs) that were ultimately prepared had been predicted DOE-wide.

NEPA Planning Summaries are prepared annually by each DOE Program Office and Field Office. The summaries, which are required by DOE Order 451.1 (NEPA Compliance Program), describe ongoing and predicted NEPA documents for each organization over the subsequent 12-month (EA) or 24-month (EIS) period. The summaries also include information on planned cost and schedule for each of the NEPA documents. The Annual NEPA Planning Summary is intended to help the Offices allocate required resources to meet upcoming NEPA requirements and assist the public in planning for its participation in the NEPA process.

The preparation of Annual NEPA Planning Summaries has been underway for just three years, but during that period, consistent trends are evident, as follows:

- The 1995 and 1996 combined Summaries predicted approximately 85 percent of the Department's EAs and 75 percent of the EISs. This is an important result, because it shows that Offices are indeed planning for the NEPA documents they need to prepare.
- Fewer than one-third of the predicted NEPA documents are not prepared. This figure suggests that Offices are not planning a great many more NEPA documents than they actually will need. [The estimate is uncertain because planned NEPA documents sometimes are combined or deferred, so it is not always clear that a forecast document has not been undertaken.]

Overall, the study's results indicate that NEPA Planning Summaries have been sufficiently accurate to serve their NEPA resource allocation and public information purposes. For answers to questions or more information on the study, please contact Jim Daniel at jim.daniel@eh.doe.gov or (202) 586-9760. LL

What's New with Electronic NEPA

NEPA Web Resources Demonstrated at IAIA Annual Meeting

Representing the Office of NEPA Policy and Assistance, Lee Jessee demonstrated the Council on Environmental Quality (CEQ) NEPAnet and DOE NEPA Web to the International Association for Impact Assessment (IAIA) meeting in New Orleans, Louisiana, on May 28, 1997. IAIA is a professional society dedicated to developing approaches for comprehensive impact assessment, promoting training and public understanding, and sharing information networks.

CEQ has linked national and international NEPA resources into a single Web site to serve as a broad-based repository of environmental information. NEPAnet helps reduce costs by avoiding duplication of resources and efficiently delivering relevant data to Federal environmental analysts and decision makers, Congress, and others worldwide. NEPAnet enables searching CEQ guidance, studies, and annual reports; bibliographic, training, and professional association information; international environmental datasets and analyses; resources on pollution prevention, threatened and endangered species, and wetlands; and state and regional geophysical, meteorologic, and hydrologic data. CEQ intends to expand this NEPA dataset to better support analysis of environmental impacts and issues.

Recent enhancements to the DOE NEPA Web also have expanded access to environmental information. In the last six months, the DOE NEPA Web has added records of decisions and mitigation action plans, as well as more DOE environmental assessments and impact statements, to its collection of full text searchable NEPA documents. Recent guidance, Annual NEPA Planning Summaries, and fact sheets on DOE weapons complex NEPA reviews also have been added to the DOE NEPA Web.

Lessons Learned in Web Publication of DOE NEPA Documents

Some DOE offices are interested in publishing draft NEPA documents electronically as a means of making the documents available to the public for review and comment. To assist in preparing documents for efficient Web publication, the Environment, Safety and Health Office of Information Management prepared Electronic Publishing Standards and Guidelines (Working Document, Version 2, January 1997). These guidelines provide document creators with cost and time saving tools and instructions. While avoiding undue constraints on document production, the guidelines encourage that documents be prepared in a Web-compatible format. In addition, staff of the NEPA Office and the Office of Information Management now provide technical outreach, contacting NEPA Document Managers to offer assistance in preparing Web-publishable NEPA documents.

NEPA Document Managers and NEPA Compliance Officers wishing to provide a draft NEPA document electronically are encouraged to discuss with the Office of NEPA Policy and Assistance whether to publish it on the DOE NEPA Web and provide a link to it from their Program or Operations Office Web site. This approach promotes economy by loading each document once and provides access to all DOE NEPA documents at a single location.

The Office of NEPA Policy and Assistance recognizes that electronic publishing of draft NEPA documents is an evolving technique that needs to be considered more fully, including such perspectives as document preparation, contracting, information management, public participation, and legal counsel. The Office intends to further examine these issues with the assistance of the DOE NEPA Community.

The Uniform Resource Locator (URL) address for the DOE NEPA Web Site is http://tis-nt.eh.doe.gov/nepa/, and includes the DOE Office of Environment, Safety and Health Electronic Publishing Standards and Guidelines (see http://tis-nt.eh.doe.gov/nepa/tools/tools.htm). The URL for NEPAnet is http://ceq.eh.doe.gov/nepa/nepanet.htm. For more information on the International Association of Impact Assessment, access its Web site via NEPAnet.

If you have any questions on the DOE NEPA Web or electronic publication standards, or wish to link a Program or Operations Office Web site to the DOE NEPA Web site, please contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov or (202) 586-7600.

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 1997. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

- We teamed with the laboratory and the county to scope the EA and this approach worked well. It was the first time we'd invited an "outside" party to participate and we were pleased with the results.
- Contractor attendance and participation at the scoping meeting would have enhanced the NEPA process.
- DOE determined that an EA was the appropriate level of documentation, and considered the proposed upgrades to be primarily for ES&H purposes, but stakeholders viewed the upgrades as a change/increase in mission that required an EIS.
- Line management was unable to define the purpose and need for agency action, resulting in weak project definition and frequent changes in scope that contributed to delays in completing the EA.
- An internal scoping meeting that involved all document preparation team members ensured that scoping was effectively used to identify all reasonable alternatives and issues to be addressed. Public input added another dimension to defining the range of reasonable alternatives.

Data Collection/Analysis

- Open communication among all involved parties at the beginning of the NEPA process reduced time needed for data collection.
- Constant scope changes were a problem for data collection.

Schedule

Factors that Facilitated Timely Completion of Documents:

- The EA was completed on schedule because it tiered from the Programmatic EIS.
- Effective application of a management and review team, a hands-on NCO, and a NEPA Document Manager who was proactive and easy to work with helped to keep the EA on schedule.
- The Site-wide EIS Advisory Council considered the proposal to ensure that it was appropriate to complete an EA while the Site-wide EIS was being prepared. Also, good coordination between the Field and Program Offices was critical.

Factors that Inhibited Timely Completion of Documents:

- Changing the contract and contractor made timely completion of the EA difficult.
- The applicant changed the preferred action twice after the process began, causing delays.
- We had to extend the pre-approval review process because the EA did not reach the appropriate personnel within the Bureau of Reclamation. Confirmation of receipt should be required for all pre-approval review parties.
- The schedule was delayed by six weeks due to a last minute change in the preferred alternative. (The new alternative saved $2 million and will have fewer environmental impacts.)

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NEPA Process *(continued)*

Factors that Facilitated Effective Teamwork:

- The recent implementation of a performance-based task order contract promoted effective teaming.
- The DOE NEPA specialist attended project status meetings and provided input to the discussions regarding project concept.
- DOE guidance facilitated the project. However, an initial lack of NEPA understanding impeded progress and direction. We corrected this by providing NEPA training to the project team.

Factors that Inhibited Effective Teamwork:

- The project manager did not inform the NEPA specialist many times when the design of the proposed facility was changed or when the entire concept was changed.
- The contractor NEPA specialist participated in project status meetings but was "out of the loop" regarding changes in the project, which inhibited effective teamwork in preparing the EA.

Public Participation Process

Successful Aspects of the Public Participation Process:

- The EA process was improved by working with the Tribe that proposed the project. The Tribe wanted to see the NEPA process successfully concluded and was cooperative in providing information.
- Providing broad public outreach early in the process enhanced our ability to identify interested parties and obtain early input into scope and analysis. Having a public participation plan provided a clear "roadmap" that the whole team could follow.

Unsuccessful Aspects of the Public Participation Process:

- There was an inability to separate NEPA issues from other issues involved with the proposed land transfer. Further, stakeholders used NEPA as their forum for expressing views not related to human health or environment.

Public Reactions to the NEPA Process:

- Stakeholders seem to view the NEPA process as a way to learn what the laboratory is doing.
- Stakeholders appeared to appreciate the detailed and well-planned public participation process.

Further Guidance Needs Identified

- I was able to get help from the NEPA Compliance Officers who had written or drafted EAs for similar projects. It would be a big help if updated NEPA documents for the DOE complex were all on the World Wide Web. ***[Editor's Note:*** *The Office of NEPA Policy and Assistance has made significant progress in placing NEPA documents on the DOE NEPA Web. See related article on page 10.]*
- Additional guidance on accident analysis is needed, as well as further guidance on when and how many public meetings to hold. ***[Editor's Note:*** *See Effective Public Participation Under the National Environmental Policy Act, available from NEPA Compliance Officers or the Office of NEPA Policy and Assistance.]*
- Further guidance is needed for determining whether an EA or an EIS is an appropriate level of NEPA documentation.

Usefulness

Agency Planning and Decision Making:

- The NEPA process supported planning and decision making by ensuring that the appropriate people were involved up front, and that all reasonable scenarios were considered.
- The EA was helpful in determining what deed restrictions should be placed on ownership transfer documents.
- The NEPA process helped to clarify a project that was initially ill-defined.
- The NEPA process was not used well at all. The project was driven by political pressure on DOE.
- The proposed action was limited to a decision of either approval or disapproval, with mitigation required if approved. The NEPA process provided a sound basis for decisions both by DOE and BLM.

continued next page

NEPA Process *(continued)*

- The NEPA process was not used as a planning tool. The specific project was identified and then the NEPA documentation developed to address what was proposed.

Enhancement/Protection of the Environment:

- The NEPA process facilitated informed and sound decision making by allowing DOE, at the last minute, to select a new preferred alternative that changed the proposed water pipeline route to partially overlap an already disturbed area. This saved over $2 million and will have less impact on the environment.
- The environment was protected by the NEPA process and an action plan will ensure that the land transfer documents contain needed deed restrictions.
- The NEPA process protected the environment. About two acres of priority "old growth" shrub steppe habitat was saved from destruction by choosing a new alternative.
- The NEPA process protected the environment. This project will provide an additional fishery in the Duck Valley Reservation to mitigate for the loss of anadromous fish. While disturbing some common vegetation and habitat types, it will increase the diversity of habitat in this arid area.

What Worked and Didn't Work:

- Initial strong involvement by a NEPA person at the area office would have prevented a lot of the problems. This has since been rectified by delegation of EA approval authority and hiring of FTEs at the area office.

NEPA Cost Savings/Budget Exceedances

- Having Federal staff more involved in the process can help save money.
- Lack of draft review by all panel members resulted in last minute modifications that substantially increased EA preparation costs.

Effectiveness of the NEPA Process

[*Note: Questionnaire respondents were asked to rate the effectiveness of the NEPA process in terms of its usefulness to decision makers. For the purposes of this report, "effective" means 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 "highly effective."]*

- For this quarter, 13 of 24 respondents for EAs rated the NEPA process as "effective." The two EIS respondents rated the NEPA process as "effective."
- Eleven respondents rated the effectiveness of the NEPA process as low because the NEPA process did not enhance the ultimate decision.
- One respondent noted that the decision to accept a late developing alternative as the "preferred alternative" led to cost savings and benefits to the environment. Another respondent stated that "NEPA was a critical process for making the decision."

Reminder:

Lessons Learned Questionnaires for all NEPA documents completed during the third quarter of FY 1997 (April 1, 1997 to June 30, 1997) should be submitted as soon as possible after document completion, but no later than July 1, 1997 (fax: 202-586-7031 or Internet: hitesh.nigam@eh.doe.gov).

Please contact Hitesh Nigam, EH-42 staff (telephone 202-586-0750) for Lessons Learned Questionnaire issues or Yardena Mansoor, EH-42 staff contact for articles, guidance, and editorial matters (same fax; Internet: yardena.mansoor@eh.doe.gov; telephone 202-586-9326).

The Lessons Learned Questionnaire is now available interactively on the DOE NEPA Web [http://tis-nt.eh.doe.gov/nepa] on the Internet. Look for it under NEPA Process Information.

EIS Cost and Completion Time Data

Cost Facts

- The total NEPA process cost for EIS #1 represented 2.1% of the total project cost; for EIS #2, "total project cost" does not apply.
- Cumulatively, for the 12 months ended March 31, 1997, the median cost for the preparation of 12 EISs for which cost data were reported was $6.2 million; the average cost was $8.3 million.
- Seven of these 12 EISs were programmatic or site-wide, with median and average costs of $14.6 million and $12.3 million, respectively. The 5 project-specific EISs with cost data had median and average costs of $3.0 million and $2.6 million, respectively.

Completion Time Facts

- Cumulatively, for the 12 months ended March 31, 1997, the median completion time for 13 EISs was 26 months; the average completion time was 25 months.
- The 7 of these 13 EISs that are programmatic or site-wide have median and average completion times of 29 months. The 6 project-specific EISs have median and average completion times of 17 and 21 months, respectively.

EISs

Environmental Management/Office of Naval Reactors
1=Disposal of the S1C Prototype Reactor Plant EIS, Hanford Site, Richland, Washington
DOE/EIS-0275
EPA Rating: EC-2
Cost: $1.1M Federal, no contractor used
Time: 13 months

Western Area Power Administration
2=2004 Power Marketing Program EIS (Sierra Nevada Region)
DOE/EIS-0232
EPA Rating: EC-2
Cost: $1.3M Federal, $3.6 contractor
Time: 43 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

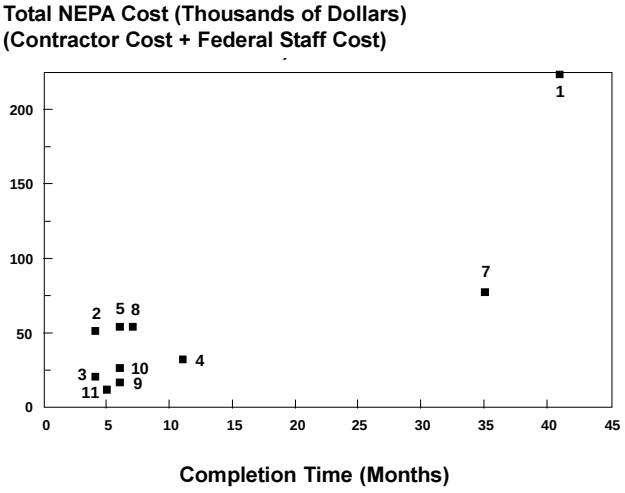
Other EIS-Related Documents Completed Between January 1 and March 31, 1997

Records of Decision	DOE/EIS- #	Date
Disposal of the S1C Prototype Reactor Plant, Hanford Site, Richland, Washington	0275	1/6/97 (62 FR 741)
Storage and Disposition of Weapons-Usable Fissile Materials-PEIS	0229	1/21/97 (62 FR 3014)
Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapons Components, Amarillo, Texas	0225	1/27/97 (62 FR 3880)
Tank Waste Remediation System at the Hanford Site, Richland, Washington	0189	2/26/97 (62 FR 8693)
Supplement Analysis		
Plutonium Finishing Plant Stabilization at the Hanford Site, Richland, Washington	0244	Approved 3/28/97 (no SEIS required)

NOTE: No Draft EISs were issued during this period.

EA Cost and Completion Time Data

Figure 1. EA Costs and Completion Times



Cost Facts

- Total NEPA process cost data were reported for 9 of the 11 EAs completed during the second quarter of FY 1997. (DOE did not prepare two of the EAs.) The median cost was $33,000; the average cost was $58,000.
- Cumulatively, for the 12 months ended March 31, 1997, the median cost for the preparation of 32 EAs was $51,000; the average cost was $88,000.

Completion Time Facts

- The median completion time for the 11 EAs completed during the second quarter of FY 1997 was 6 months (range: 4 to 41 months); the average time was 13 months.
- Only 3 EAs were completed on schedule during the second quarter of FY 1997.
- Cumulatively, for the 12 months ended March 31, 1997, the median completion time for 45 EAs was 7 months; the average completion time was 13 months.

EAs

Albuquerque Operations Office/ Defense Programs
1=Proposed Chemistry and Metallurgy Research (CMR) Building Upgrades at LANL,
Los Alamos, New Mexico
DOE/EA-1101
Cost: $59,800 Federal, $164,300 contractor;
Time: 41 months

2=Transfer of the DP Road Tract to the County of Los Alamos,
Los Alamos, New Mexico
DOE/EA-1184
Cost: $14,000 Federal, $37,300 contractor;
Time: 4 months

Albuquerque Operations Office/ Environmental Management
3=Groundwater Compliance Activities at the Uranium Mills Site,
Spook, Wyoming
DOE/EA-1155
Cost: $800 Federal, $20,000 contractor;
Time: 4 months

Bonneville Power Administration
4=Billy Shaw Dam and Reservoir
DOE/EA-1167
Cost: $32,500 Federal, no contractor used;
Time: 11 months

Fossil Energy
5=Presidential Permit to Construct and Operate the Wild Horse 69 kV Transmission Line, Montana
DOE/EA-1192
Time: 5 months
*[**Editor's note:** The costs of this EA were paid for by the applicant; therefore, cost information does not apply to DOE.]*

Naval Petroleum Reserves in California/Fossil Energy
6=Mid-Valley 3-D Seismic Survey on NPR-2,
Buena Vista, California
DOE/EA-1188
*[**Editor's note:** DOE was a cooperating agency to BLM; therefore, cost and time information do not apply to DOE.]*

Nevada Operations Office/ Environmental Management
7=Liquid Waste Treatment, Area 6, Nevada Test Site,
Nye County, Nevada
DOE/EA-1115
Cost: $19,000 Federal, $59,000 contractor;
Time: 35 months

Richland Operations Office/ Environmental Management
8=300 Area Steam Replacement, Hanford Site, Richland, Washington,
DOE/EA-1178
Cost: $5,000 Federal, $49,200 contractor;
Time: 7 months

Richland Operations Office Environmental Management
9=200 Area Emergency Facilities Campus, Richland, Washington
DOE/EA-1182
Cost: $3,000 Federal, $13,500 contractor;
Time: 6 months

Richland Operations Office/ Environmental Management
10=Storage of Non-Defense Spent Nuclear Fuel, Hanford Site,
Richland, Washington
DOE/EA-1185
Cost: $6,500 Federal, $19,800 contractor;
Time: 6 months

Savannah River Site/ Environmental Management
11=Central Shop Borrow Pit Project, Savannah River Site,
Aiken, South Carolina
DOE/EA-1194
Cost: $3,000 Federal, $8,700 contractor;
Time: 5 months

EIS and EA Trend Analysis

As a follow-up to the trends analysis reported in the June 3, 1996, Lessons Learned Quarterly Report, the Office of NEPA Policy and Assistance further examined the trends in NEPA document costs and completion times to take account of the most recent data and to study the effects of the Secretary's NEPA Policy Statement issued in June 1994. Costs and completion times were examined for three groups of EISs and EAs: (1) those completed before July 1, 1994; (2) those started before July 1, 1994, and completed after that date; and (3) those started and completed after July 1, 1994 (Tables 1, 2 and 3).

EIS Trend Analysis

EIS Completion Times:
As discussed below, the Department appears to be making progress in meeting the 15-month median completion time goal of the Secretary's NEPA Policy. In view of the wide variation in EIS completion times (note, for example, the ranges in Table 1), however, too few data are available to support definitive conclusions regarding trends, and no clear trend is apparent in Figure 2.

Table 1. EIS Completion Times

Time Period	No. of EISs	Completion Times (Months)		
		Median	Average	Range
Completed Before 7/1/94*	15	33	41	6 to 85
Started Before and Completed After 7/1/94	32	30	34	7 to 77
Started and Completed After 7/1/94	9	13**	14**	9 to 26**

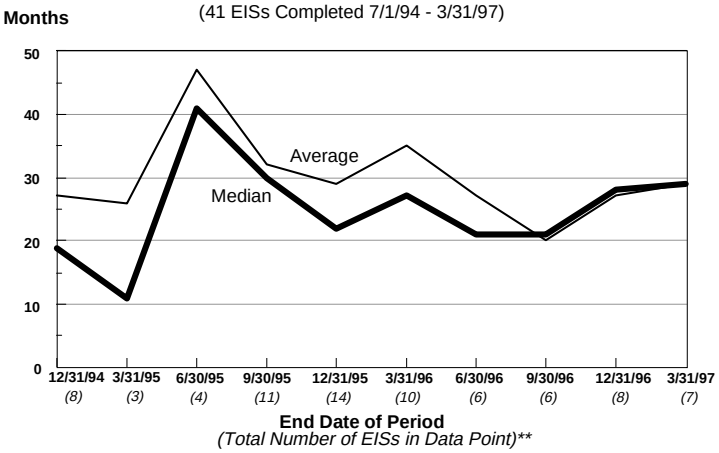
** Based on DOE Office of NEPA Policy and Assistance data on EISs completed within the period 1989 to 1993*

*** These data may underestimate completion times for the 24 EISs started after 7/1/94 because they reflect only the 9 that have been completed through 3/31/97 (see discussion below).*

Figure 2. EIS Completion Times

6 month moving trendline, revised quarterly*

(41 EISs Completed 7/1/94 - 3/31/97)



** For Figure 2, each data point represents the EISs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.*

*** EISs are counted in two data points, except perhaps the first and last.*

Data in Table 1 indicate that the median completion time for EISs completed before July 1, 1994, was 33 months, and the median completion time for EISs started before and completed after July 1, 1994, was 30 months.

Examining EISs started after July 1, 1994, gives more information about the Department's progress in meeting the goals of the NEPA Policy. As of March 31, 1997, DOE had started 24 and completed 9 such EISs; the median time to complete the 9 EISs was 13 months. This figure, reported in Table 1, should be interpreted cautiously, however, because these 9 completed EISs may not represent the completion times for the remaining 15 EISs that were started after July 1, 1994, and are still in process.

continued on page 17

EIS Trend Analysis (continued)

These ongoing EISs have process times-to-date (i.e., time from Notice of Intent to March 31, 1997) ranging from 3 to 23 months. Based on Program and Field Office estimates of the time to complete these ongoing EISs, the overall median completion time for the 24 EISs started after July 1, 1994, would be about 15 months. This suggests that the Department is on target to meet the NEPA Policy goal.

EIS Preparation Costs: The data for total EIS costs contains two clearly different subsets–programmatic/site-wide EISs and project-specific EISs. Of the 35 EISs completed between July 1, 1994, and March 31, 1997, for which cost data are available, 11 were programmatic or site-wide EISs and 24 were project-specific. The median and average costs to prepare the programmatic documents were $14.6 million and $14.4 million, respectively. This is significantly greater than the median and average costs for project-specific documents; i.e., $1.0 million and $1.6 million, respectively.

No clear EIS cost trend over time is apparent for either programmatic or project-specific EISs. We expect that future DOE EIS preparation costs will decrease as a result of DOE having completed several major programmatic/ site-wide EISs.

Litigation Updates

(continued from page 8)

reasonable range of alternatives because it considered and rejected alternatives similar to those suggested by plaintiffs. Finally, the court ruled that, because the Coast Guard's environmental assessment did not find a significant impact on the natural environment, the court could not consider a challenge to its analysis of socioeconomic impacts. Knowles v. U.S. Coast Guard, 96 Civ. 1018 (JFK) (S.D.N.Y. March 31, 1997).

The Federal Highway Administration's (FHWA's) EIS for a proposed tollroad in northeastern Illinois was found inadequate. FHWA failed to justify the future or current need for the proposed tollroad, and, as a result, the EIS did not provide enough information to make a reasoned decision as to possible alternatives. The analysis of future transportation needs in all the alternatives (including No Action) was based on a socioeconomic forecast that assumed the construction of a highway similar to the proposed tollroad; therefore, only the tollroad could adequately satisfy the forecasted needs. FHWA argued that a study that did not assume the existence of the highway similar to the proposed tollroad was impossible. The court noted, however, that the EIS did not state that essential information (the "impossible" study) was missing or that obtaining the information was infeasible or exorbitantly expensive (citing 40 CFR 1502.22). FHWA also argued that the range of alternatives was also based on current needs that did not depend on the challenged socioeconomic forecast. The court found, however, that FHWA did not have any support for the current needs either. The court directed FHWA to conduct additional studies or explain why the studies were not possible. Sierra Club v. U.S. Department of Transportation, No. 96 C 4768 (N.D. Ill. Jan. 27, 1997).

EA Trend Analysis

EA Completion Times: EA completion times have decreased steadily during the last two years (see Table 2 and Figure 3).

Table 2. EA Completion Times

Time Period	No. of EAs	Completion Times (Months)		
		Median	Average	Range
Completed Before 7/1/94*	52	14	16	2 to 56
Started Before and Completed After 7/1/94	98	23	24	3 to 88
Started and Completed After 7/1/94	74	6**	7**	2 to 20**

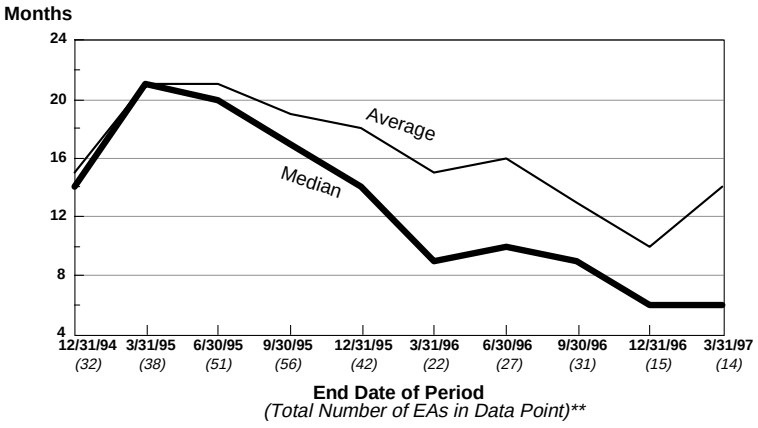
** Based on DOE Office of NEPA Policy and Assistance data on EAs completed within the period 1/93 to 6/94.*

*** The EAs started after 7/1/94 and not yet completed pose only a small potential to increase the times shown.*

Figure 3. EA Completion Times

6 month moving trendline, revised quarterly*

(177 EAs Completed 7/1/94-3/31/97)



** Each data point represents EAs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.*

*** EAs are counted in two data points, except perhaps the first and last.*

The median completion time for 52 EAs completed within the 18 months before the NEPA Policy Statement (January 1, 1993 to June 30, 1994) was 14 months, compared with 6 months for 74 EAs started and completed afterwards. The 98 EAs started before but completed after the Policy Statement had a median completion time of 23 months, which is significantly higher than the median completion time for either of the other time periods. Potential reasons for this difference were discussed in the June 1996 Lessons Learned Quarterly Report. Figure 3 shows that EA preparation times have declined recently to a median of 6 months.

EA Trend Analysis *(continued)*

EA Costs: Table 3 and Figure 4 show that EA costs also have declined steadily during the last two years.

Table 3. EA Costs

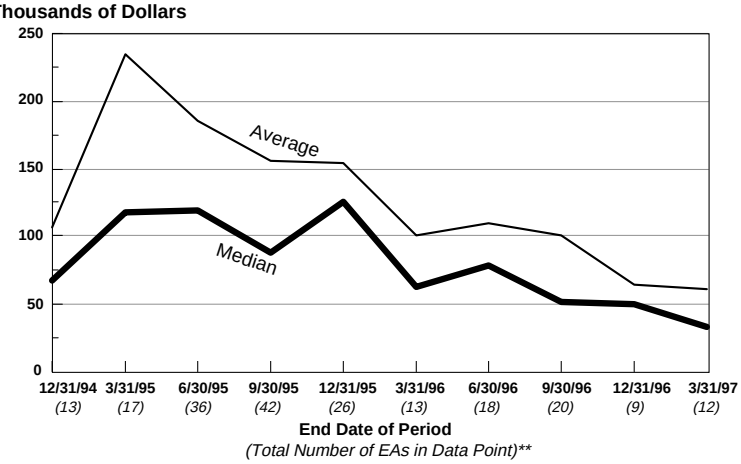
Time Period	No. of EAs	Costs (Thousands of Dollars)		
		Median	Average	Range
Completed Before 7/1/94	*	*	*	*
Started Before and Completed After 7/1/94	56	73	149	8 to 893
Started and Completed After 7/1/94	51	54	120	5 to 908

** Insufficient data*

Figure 4. Total EA Costs

6 month moving trendline, revised quarterly*

(177 EAs Completed 7/1/94 - 3/31/97 - Data shown are for 111 EAs with total cost reported)



** Each data point represents EAs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.*

*** EAs are counted in two data points, except perhaps the first and the last.*

EA costs have decreased from a median of $73,000 for 56 EAs started before but completed after July 1, 1994, to $54,000 for 51 EAs both started and completed after July 1, 1994. Consistent with observations in previous Lessons Learned Quarterly Reports (e.g., June, September, and December 1996), EA cost and completion times seem uncorrelated overall.

N E P A

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

September 2, 1997, Issue No. 12 For Third Quarter FY 1997

NEPA Aids Cultural Resources Protection

Native American Remains Receive Final Resting Place at Fernald

By: Edward P. Skintik, NEPA Document Manager, DOE-Fernald Environmental Management Project

One thousand years ago, the broad floodplain of the Great Miami River in what is now southwestern Ohio was home for indigenous people belonging to the Fort Ancient (or Upper Mississippian) Groups. In 1994, the discovery of Fort Ancient human remains along a proposed water supply line alignment marked the beginning of what turned out to be an extensive, three-year consultation and compliance process for DOE staff and contractors at the Fernald Environmental Management Project (FEMP). NEPA was an important part of the process: DOE-FEMPÕs preparation of an Environmental Assessment for the Disposition of the Prehistoric Remains proved to be an effective means to provide information to stakeholders, develop a consensus among involved parties regarding culturally sensitive materials, and further the goals of cultural resources protection.

Joseph Schomaker, Cultural Resource Coordinator at Fernald (right), with Diane Seltz, subcontractor at Fernald, at the excavation of prehistoric Fort Ancient Site (1000 AD to 1400 AD).

The new public water supply was needed to serve residents near FEMP, where groundwater supplies had become contaminated. Although the construction area was within an existing easement on private land, the project was ÒfederalizedÓ due to partial funding by DOE, and, in 1992, it was reviewed under NEPA. At that time, DOE determined that the proposed action was similar in scope to removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act, and therefore, under DOE NEPA regulations, eligible for categorical exclusion.

A pre-construction archaeological survey in 1994 identified prehistoric bone fragments and associated funerary objects at three sites along the proposed water line. All three sites were recommended as eligible for the National Register of Historic Places, and DOE-FEMP entered into a Memorandum of Agreement with the Ohio Historic Preservation Office and the Advisory Council on Historic Preservation. Under this agreement,

continued on page 4

FOR INSIDE LESSONS LEARNED
See Page 2

Sandia National Laboratories/New Mexico Site-wide Environmental Impact Statement

Trying Some New Approaches—and They Are Working

By: Donna A. Bergman, Director of EIS Projects Office, Albuquerque Operations Office

DOE Albuquerque Operations Office (DOE/AL) is in the early stages of preparing the Sandia National Laboratories/ New Mexico Site-wide Environmental Impact Statement (SNL/NM SWEIS). Because several SWEISs have been completed recently, we have the opportunity to benefit from many lessons learned. This will be the first major NEPA document prepared using one of the new DOE-wide NEPA task order contracts *(see page 10)*. In this article, we share some of the approaches we are using for the early phases of the SWEIS processÑand so far , so good!

Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report on lessons learned in the NEPA process. This issue features ÒNEPA success storiesÓ from field organizations: how the NEPA process helped resolve cultural resource protection issues at Fernald, and how innovative approaches are aiding preparation of a Site-wide EIS for Sandia, New Mexico.

Other articles in this report include:

A special *thank you* goes to our guest contributors for this issue: Donna Bergman, Gary Palmer, Ed Skintik, and Ellen Smith.

Remember: you, too, are welcome to submit articles for consideration in Lessons Learned.

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

Scoping

The Environmental Impact Statement Projects Office at the Albuquerque Operations Office conducted public scoping meetings in Albuquerque on June 23, 1997. Based on interviews with members of the public, we used an ÒOpen HouseÓ format to ensure an effective meeting. The following elements were included:

¥ DOE representatives were either DOE/AL or Sandia employees (no other contractors).

¥ In lieu of formal presentations, an introductory video was shown that outlined the public scoping process, including how to make comments during the meeting and throughout the scoping period. Other videos provided an overview and a historical background of Sandia operations.

¥ Displays of Sandia operations were staffed by Sandia technical experts who discussed their operations and answered the public's questions.

¥ DOE facilitators greeted the public, explained the meeting format and comment process, and answered questions. These facilitators were prepared to oversee Òround tableÓ discussions, as needed. Most discussions with the public were one-on-one, but several small discussions did take place with a facilitator.

¥ Several systems were in place to accept and record public comments: a lap-top computer and printer, a court reporter, and access to a facilitator to help with written comments. In addition, a toll-free telephone number has been established for members of the public to use throughout the SWEIS preparation.

Participants were asked to fill out a questionnaire as they left the meeting. Of the approximately 80 people who attended, the overwhelming majority appreciated the Open House format. They felt free to ask questions, give their opinions, and come and go at their leisure. They also appreciated the undivided attention they got from DOE and Sandia employees and liked the fact that no other contractors were involved.

continued on page 5

Preliminary Injunction Denied in Stockpile Stewardship and Management Lawsuit

By: Stephen Simpson, Office of NEPA Policy and Assistance

On August 8, 1997, Judge Stanley Sporkin of the U.S. District Court for the District of Columbia denied the motion for preliminary injunction filed by the Natural Resources Defense Council, Inc., et al. The plaintiffs sought to enjoin DOE from expending funds and proceeding with facility construction or major upgrades on thirteen DOE projects related to the Stockpile Stewardship and Management (SSM) Program. The plaintiffs alleged that DOE failed to perform an adequate environmental review of the program as required by NEPA, and argued that the Department's SSM Programmatic Environmental Impact Statement (PEIS) was arbitrary and capricious. *(See related article in the Lessons Learned Quarterly Report, June 2, 1997, page 5.)*

During the court hearings, the plaintiffs limited their motion to apply only to the National Ignition Facility at Lawrence Livermore National Laboratory and the Chemistry and Metallurgy Research Building and the Nuclear Materials Storage Facility at Los Alamos National Laboratory.

Plaintiffs Unlikely to Prevail

The court found that none of the plaintiffs' arguments was sufficiently compelling to grant the injunction and that they were unlikely to prevail on the merits of their case. The plaintiffs had argued that the entire SSM Program Plan must be considered in the SSM PEIS. Specifically, they claimed that the Programmatic No Action Alternative prevents useful comparison of other alternatives because it includes proposed SSM Program actions (which generally were the subject of separate NEPA review, but had not yet begun operations), rather than only current activities.

The plaintiffs also argued that the Preferred Programmatic Alternative should include future activities and facilities related to the development of new technologies (rather than leaving them subject to further NEPA review). The court noted that the SSM Program does not represent a new proposal and is not a static program. The court ruled that it could not reasonably construe NEPA or the Council on Environmental Quality Regulations to require the Department to prepare a single, comprehensive PEIS on the SSM Program.

The plaintiffs also claimed that the SSM PEIS was inadequate because the Department did not rigorously and objectively evaluate reasonable alternatives to the SSM Program Plan. The plaintiffs' argument was largely focused on the Consolidation Option and the Remanufacturing Option, both of which DOE had eliminated from detailed analysis in the PEIS. (The Consolidation Option concerned consolidation of plutonium and uranium handling activities both within the management and stockpile stewardship programs and within and between sites. The Remanufacturing Option concerned the remanufacture of weapons components to the original design specifications without using simulation facilities to ensure their safety and effectiveness.) The court ruled that the Department is "entitled to some deference" with respect to the reasonableness of particular alternatives, especially in light of Presidential and Congressional mandates, and deferred to the Department's choice of alternatives.

National Security Interests Important

In deciding whether to grant a motion for a preliminary injunction, a judge must balance harm to the plaintiff's interests with harm to the defendant's interest. In this case, the court noted that "the national security interests associated with implementing the SSM Program likely outweigh plaintiffs' immediate environmental concerns." However, the court ordered DOE to "perform a fuller disclosure" of the environmental, health, and safety risks associated with the plutonium pit fabrication program at Los Alamos National Laboratory and the National Ignition Facility within "a reasonable period of time." During the hearing on the case, DOE had offered to provide additional information of this nature. The court further directed that the disclosure should be responsive to the plaintiffs' concerns, although this disclosure need not delay the implementation of the program.

The court also noted that it expects DOE will produce annual site environmental monitoring reports for each facility involved in the SSM Program and will re-evaluate its program every five years. The court expects that DOE will make the nonclassified portions of the annual reports available to the plaintiffs "to allow them to monitor the government's actions" and will address "the plaintifs' reasonable and specific questions" regarding the Consolidation and Remanufacturing Options within 60 days of receipt of the plaintiffs' written questions.

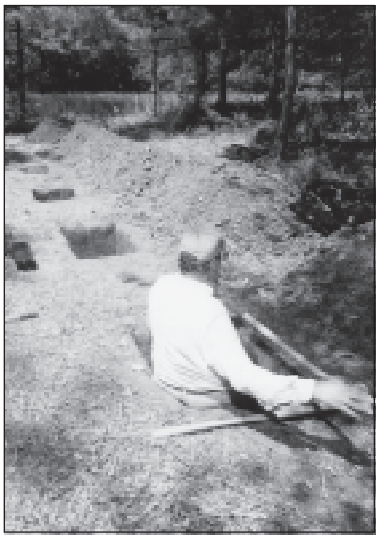
Fernald *(continued from cover)*

DOE was to implement a data recovery plan and determine the final disposition for the prehistoric remains and artifacts.

Cultural resources are protected under various Federal statutes, such as the National Historic Preservation Act, Native American Graves Protection and Repatriation Act (NAGPRA), and the American Indian Religious Freedom Act, and under Executive Order 13007, Protection of Sacred Sites. As in the NEPA process, consultation and public participation are important components of these Acts. Following the requirements of NAGPRA, DOE and its contractor, Fluor Daniel Fernald, initiated contacts with many Native American Tribes and organizations. In response, four Federally recognized Tribes, the Miami Tribe and the three Tribes comprising the Joint Shawnee Council, requested that DOE keep them informed and involved in the decision making. The Native American Alliance of Ohio also was kept involved as a consulting party under the National Historic Preservation Act.

In consultation with the National Park Service, the State Office of Historic Preservation, and interested Native Americans, data recovery was undertaken from late 1994 to early 1995; as requested by the landowner, DOE took official possession of the remains by way of a deed. The remains consisted of five prehistoric burials (complete skeletons), 15 to 20 partial burials (incomplete skeletons), one dog skeleton, and associated funerary objects. (A sixth burial encountered during installation of the pipeline was left in place.) With the consent of Native American Tribes and Groups, nondestructive anthropological research was conducted at a local college. The complete skeletal remains were determined to be those of four females of various ages between 2 and 30, and one male, age 16. Through radiocarbon dating of the burial pits, the remains were determined to be approximately 970 years old.

Duane and Kevin Everhart of the Native American Alliance of Ohio.



Tom Fugate (subcontractor for FernaldÕs Cultural Resource Management) prepares chambers for curation underground of Native American remains at Fernald.

In compliance with cultural resource protection laws, and out of respect for Native American culture and traditions, DOE-FEMP and Fluor Daniel Fernald continued to maintain dialogues with the Native Americans in the effort to determine a final resting place for the remains.
In late 1995, DOE determined that preparing an environmental assessment under NEPA could serve as an effective medium for full public participationÑmaking the document available to all interested parties, including the Native American Tribes and Groups, government agencies, and other stakeholders. In addition to burial at FEMP, alternatives addressed in the EA were: reburial along the water line easement where the remains were found, reburial on County park grounds, reburial at a local cemetery, transfer to a Native American Tribe, and curation or storage.

Initially, all Native American Tribes and Groups indicated a desire to have the remains interred at FEMP. Soon after the EA was issued, however, the Miami Tribe of Oklahoma filed a claim under Section 3(a)(2)(B) of NAGPRA for possession of the remains, based on their assertion as the aboriginal occupants of southwestern Ohio. DOE maintained, based on data recovery results, that the remains were Òculturally unaffiliatedÓ and, therefore, did not belong to any one Tribe. In January 1997, all involved Native American Tribes and Groups agreed that the remains should be interred within a protected, two-acre site on the FEMP property, selected with active participation by Native American spiritual leaders.

In March 1997, DOE-FEMP closed out the NAGPRA consultation process by taking the matter to the NAGPRA Review Committee, a seven-member advisory board that makes recommendations to the Secretary of the Interior. The Committee concurred with DOEÕs position that the remains were culturally unidentifiable and should be Ò curated undergroundÓ on DOE property DOE issued the EA and a Finding of No Significant Impact in May 1997, completing the NEPA review.

continued on page 5

Fernald *(continued from page 4)*

Putting the prehistoric remains to rest on DOE-controlled property was possible only through a cooperative effort among the Federal government, the Native American Tribes and Groups, and other stakeholders. Through the NAGPRA consultation process, which included face-to-face meetings with the Native American Tribes, DOE and Fluor Daniel Fernald worked to resolve the Miami TribeÕs claim, while also honoring the wishes of other involved Tribes and Groups. The informative EA, explaining various provisions of NAGPRA and the alternatives available to DOE, kept all parties (literally) reading from the same page.

Curation underground, probably the first such effort of its kind in Ohio, took place at the Fernald facility on May 25, 1997. During a private ceremony conducted by the spiritual leaders and members of the Miami Tribe of Oklahoma and the Native American Alliance of Ohio, the skeletal remains were carefully reinterred in the same orientation and position as they were found (the dog rests again with its master). With the graves protected on Federal property and access to the sacred site restricted to the Native American Tribes and Groups, all parties were satisfied with the outcome.

For more information regarding this project, contact Edward Skintik, DOE-FEMP, at Ed_Skintik@fernald.gov or (513) 648-3151; or Joe Schomaker, Fluor Daniel Fernald, at (513) 648-3277. For general information on NAGPRA and other cultural resource management issues, contact Lois Thompson, DOE Federal Preservation Officer, Office of Environmental Policy and Assistance, at (202) 586-9581.

Sandia SWEIS *(cont'd. from page 2)*

Using NEPA Task Order Contracts

DOE issued a Request for Task Order Proposal to the three DOE-wide NEPA task order contractor teams on July 15, 1997, for preparation of the SNL/NM SWEIS *(see page 10)*. DOE said it would evaluate cost and technical criteria, giving higher weight to the technical criteria. The teams were asked to submit the qualifications of the proposed project manager and key technical staff, and proposed Project Management, Public Participation, and Quality Assurance Plans.

SWEIS preparation was defined as three distinct phases or subtasks, to help us to control costs. The pricing approach varied according to what we considered to be most compatible with the scope of work for each subtask: draft SWEIS Ð cost plus incentive fee; public participation Ð cost plus fixed fee; and final SWEIS Ð firm-fixed price.

Because only one contractor was to be selected, the three contractors were asked to bid on the proposal on an all-or-none basis. The task was awarded to Halliburton NUS Corporation on August 15, 1997, and the contract began on August 18, 1997.

Preparation of the SWEIS

Under our team approach to the SNL/NM SWEIS, all three partiesÑDOE, Sandia, and Halliburton NUS CorporationÑhave responsibilities for the preparation of a quality document. To expedite the EIS, Sandia has been preparing information documents since the beginning of the year on environment and safety data and Sandia programs and facilities. For each information document, Sandia developed a task plan and budget (with direction from the DOE/AL EIS Projects Office). DOE formed key parameter teams for each resource area covered in the information documents to ensure that needed data are collected efficiently and effectively. The DOE key parameter teams also will review and comment on each draft of the Sandia information documents. We believe that having preliminary data right from the start will shorten Halliburton NUSÕ learning curve and will expedite preparation of the SWEIS.

A birdÕs-eye view of Sandia National Laboratories.

For more information, contact Donna Bergman at dbergman@doeal.gov or (505) 845-5185; or Julianne Levings at jlevings@doeal.gov or (505) 845-6201.

The Albuquerque NEPA Community Meeting in Retrospect: Reinvention Through Continuous Improvement

Continuous improvements in efficiency and effectiveness are central to DOE's NEPA compliance program. This was the focus of the DOE NEPA Community Meeting held June 24 and 25 in Albuquerque, New Mexico. In her opening remarks to the 115 participants, Carol Borgstrom (Director, Office of NEPA Policy and Assistance) said that while efficiencyÑmaking the process both cheaper and fasterÑhelps to convince decision makers of the benefits of NEPA, effectiveness is ultimately the higher goal.

Ò When all is said and done at the end of the day does NEPA make a difference at DOE?Ó Often, said Ms. Borgstrom, the answer is yesÑbut it depends on the issue and the decision maker. She encouraged meeting participants to reflect upon why they chose careers as environmental professionalsÑthat is, not just to place some good documents on the shelf, but rather to achieve a better environment by informing decisions with high quality environmental analysis, and to see government making a difference.

The meeting, held at the Energy Training Complex on Kirtland Air Force Base, featured presentations by staff from the DOE Office of NEPA Policy and Assistance and the Office of General Counsel, DOE Field Offices, and other Federal agenciesÑsome 25 speakers in all.

Robert Cunningham (Associate Director, Council on Environmental Quality) discussed CEQ's NEPA Reinvention Initiative, an ongoing effort to foster improved NEPA implementation by all Federal agencies *(see page 8)*. Mark Southerland (Versar, Inc.) and Ken Mittelholtz (Environmental Protection Agency) discussed CEQ's recent handbook on considering cumulative effects *(see Lessons Learned Quarterly Report, March 3, 1997, page 3)*. Mr. Mittelholtz also reviewed EPA's role in the NEPA process. Matt Urie (Office of General Counsel) provided an update on current legal issues and explained the value of preparing a good administrative record for DOE NEPA documents *(see page 7)*. Dawn Knepper (Contracting Officer, Albuquerque) discussed the DOE-wide Task Order NEPA Contracts and introduced the Program Managers for the three contractor teams *(see pages 10-11)*. Ellen Smith (Oak Ridge National Laboratory) reported on the annual meeting of the International Association for Impact Assessment *(see page 11)*; and Lee Jessee (Office of NEPA Policy and Assistance) provided a hands-on demonstration of the DOE NEPA Web.

From the Office of NEPA Policy and Assistance, various presentations reflected current NEPA guidance topics in various stages of development *(see page 9)*. Among these is a Ònew lookÓ at categorical exclusion procedures, being prepared in conjunction with the Office of General Counsel. The presentation stressed the importance of the NEPA Compliance Officer preparing a simple but adequate record of categorical exclusion determinations *(see page 9)*.

Other guidance topics included the DOE regulatory process (specified at 10 CFR 1021.216) that provides an environmental review process for privatization actions *(see page 8)*. In addition, plans for guidance on accident analysis were described, focusing on the NEPA context, rather than technical detail, and providing illustrations rather than prescriptions *(see page 9)*. A presentation on better graphics in NEPA documents provided thought-provoking examples of common problems and solutions.

NEPA guidance also is being developed by the Office of Defense Programs and the Office of Environmental Management. Gary Palmer (DP-45) discussed his office's NEPA guidance documents, and Steven Frank (EM-75) announced EM's draft *NEPA Guidance Handbook*, currently out for review.

All of these topics provide ample evidence of how DOE is reinventing its implementation of NEPA, in keeping with the CEQ initiative. In closing the meeting, Ms. Borgstrom referred appreciatively to Mr. Cunningham's presentation on NEPA Reinvention and, as he also had done, urged participants to read once again their Nation's pre-eminent environmental policy, the National Environmental Policy Act. LL

Color Printing Must Contribute Value

During the Albuquerque meeting presentation on Effective Graphics in NEPA Documents, a participant asked whether there are official restrictions on color printing. The Government Printing and Binding Regulations, revised and published in February 1990 (S. Pub. 101-9) by the U.S. CongressÕJoint Committee on Printing, recognize that while color printing increases costs, it may add demonstrable value. The Regulations (paragraphs 18-1 through 18-3) state that color printing must serve the end purpose of the printed item. ÒMaps and technical diagrams where additional color is necessary for clarityÓ is the first example listed of appropriate multicolor printing. Cited examples of multicolor printing that do not contribute demonstrable value include using more colors than necessary and using color for decorative effect or in lieu of effective design. The Regulations apply to all U.S. Government entities, except the U.S. Supreme Court. Copies are available from Yardena Mansoor at (202) 586-9326. LL

Keeping an Administrative Record

At this summerÕs DOE NEPA Community Meeting, Matt Urie (Office of General Counsel) described the importance of preparing a good administrative record. Here are a few key points from his presentation.

For every DOE NEPA document, there should be an administrative record. In general, the administrative record should consist of all documents (hard copies, electronic files, overhead slides, pictures, or other documents or records) relied upon in preparing the NEPA document and those that were considered by the decision maker in arriving at any decisions. The administrative record documents DOEÕs consideration of all relevant and reasonable factors and should include evidence of diverging opinions and criticisms of the proposed action or its reasonable alternatives. Overall, it should demonstrate and document that DOE took the Òhard lookÓ at the proposed action and its reasonable alternatives that is required by law.

Documentation of the NEPA/decision making process is governed by the Administrative Procedure Act. Among other things, the Act imposes the standards of judicial review against which an agencyÕs actions, including decisions following the preparation and completion of a NEPA document, are judged. In general, the Act allows a court to set aside agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The Administrative Procedure Act complements NEPAÕs procedural requirements for involving the public in an agencyÕs decision making process. A good administrative record helps the public understand the rationale behind an agencyÕs decision.

An administrative record for an environmental impact statement typically should include all public notices, references, and technical studies relied upon in preparing the statement and its appendices; concurrences; public comments and responses to those comments; internal memoranda; and in some cases document drafts (e.g., those that document exchanges of opinions or discussions of substantively important and material issues). While copies of generally available reference books or publications relied upon in preparing the impact statement need not be included in the administrative record, photocopies or other references to particular pages or excerpts used in the impact statement may be included. NEPA Document Managers with questions regarding the inclusion of particular documents or classes of documents in an administrative record should contact their legal counsel for additional guidance. The Office of General Counsel is drafting guidance for the preparation of administrative records.

Matt Urie offers some pointers on keeping an administrative record.

An Administrative Record

¥ should be compiled for every NEPA document in consultation with legal counsel;

¥ should demonstrate that DOE took the requisite Òhard lookÓ at the proposed action and its reasonable alternatives;

¥ should be kept in one central and secure location apart and distinct from other project files;

¥ should be overseen by a Department employee, such as the NEPA Document Manager;

¥ may include classified or privileged documents (these documents should be handled according to proper procedures);

¥ should be compiled contemporaneously with the preparation of the NEPA document; and

¥ should be user-friendly and organized in a manner that facilitates easy retrieval of the documents.

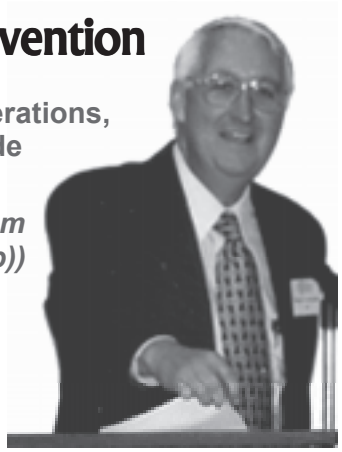
Accident Analysis Guidance—Some "Nagging" Topics

In a NEPA Community Meeting presentation on accident analysis guidance that he is co-preparing, Eric Cohen, Office of NEPA Policy and Assistance, suggested that the guidance should address the ÒnaggingÓ topics of: application of the *Sliding Scale;* determining which accident scenarios to analyze; assessing impacts to involved workers; providing a contextual framework for natural and human-caused beyond-design-basis accidents; indirect impacts; relationship to Safety Analysis Reports; consistency among EISs; justifying assumptions; ÒsignificanceÓ versus risk. A meeting participant suggested an additional topic, non-radiological impacts. Your comments are welcome on whether these are the highest priority topics for guidance *(see ÒNEPA Guidance UpdateÓ box, item 7, page 9).*

Council on Environmental Quality's NEPA Reinvention

ÒWe seek NEPAÕs clear vision to: conserve resources for future generations, promote widespread beneficial uses of the environment, and provide equity and preservation of history, culture, and nature.Ó

—Robert Cunningham
(paraphrase of NEPA, Section 101(b))



At this summerÕs DOE NEPA Community Meeting, Robert Cunningham (Associate Director, Council on Environmental Quality) discussed CEQÕs NEPA Reinvention Initiative and urged participants to take a fresh look at the original goals of NEPA.

Initiative

In its program to Òrediscover and implement our nationÕs environmental policy,Ó CEQ has stated its objective, defined five broad goals, and developed five program areas that form the framework for its ÒNEPA Reinvention Initiative.Ó (This Initiative stems from CEQÕs study of NEPAÕs effectiveness; see *Lessons Learned Quarterly Report,* March 3, 1997, page 1.)

Objective

By integrating the concepts of NEPA into agency missions, plans, and programs, each Federal decision maker will rediscover and implement our NationÕs environmental policy by the end of this century.

Goals

- **Implement** NEPA as a comprehensive vision of government decision making, not as a mere procedure;
- **Evolve** from authoritative to facilitative government/ public relations;
- **Increase** public accessibility to the Federal decision making process;
- **Enhance** the flexibility of NEPA procedures to achieve its original environmental, social, and economic aspirations; and
- **Eliminate** redundant administrative procedures, increase collaborative relationships, and implement continuous, adaptive management actions.

Program Areas

- Interagency coordination and integration;
- Interagency training;
- Pilot projects and examples of NEPA implementation in each of five areas identified in the NEPA Effectiveness Study: strategic planning, public information and input, interagency coordination, interdisciplinary and Òplace-basedÓ approach to decision making, and monitoring and flexible environmental management;
- Performance reporting; and
- External communication.

CEQ welcomes comments on NEPA Reinvention, including ideas on making NEPA compliance easier and on overcoming barriers to effective implementation. For more information, contact Robert Cunningham at cunningham_r@a1.eop.gov, (202) 395-5750, or fax (202) 456-6546. LL

NEPA Review of Privatization Initiatives

As discussed at the Albuquerque NEPA Community Meeting, DOE increasingly is exploring contracting arrangements that shift greater performance and financial risk to the private sector. In such Òprivatization,Ó private market mechanisms are substituted for traditional Government roles, products, and services; the Federal acquisition system is used to achieve privatization objectives. Privatization does not diminish DOEÕs responsibility under NEPA. However, it poses challenges to full and timely NEPA compliance, because it involves proprietary information, reliance on alternatives proposed by the private sector, and marketplace timing drivers.

The DOE NEPA Regulations at 10 CFR 1021.216 establish an environmental review process as part of procurement proposal evaluation. Section 216 sets out a procedure by which DOE can meet significant acquisition objectives while a NEPA review is under way. It also describes how relevant environmental considerations can be factored into the acquisition evaluation process and be made publicly available.

DOE NEPA practitioners are encouraged to become familiar with the provisions of Section 216 as they may apply to privatization actions within their purview. The Office of NEPA Policy and Assistance distributed draft guidance on this subject in June 1997 and currently is revising the guidance to address comments. Questions may be directed to Stan Lichtman at stanley.lichtman@eh.doe.gov or (202) 586-4610. LL

Categorical Exclusion Procedures: A New Look

As discussed at the Albuquerque NEPA Community Meeting, two recent lawsuits involving DOEÕs use of its categorical exclusions have prompted the Offices of NEPA Policy and Assistance and General Counsel to take a Ònew lookÓ at DOEÕs categorical exclusion procedures, including documentation for categorical exclusions.

The thrust of the proposed guidance is that for all but the most routine actions, DOE should prepare a simple yet adequate record signed by the NEPA Compliance Officer. This record would provide evidence (e.g., to a reviewing court) that DOE considered all the necessary factors under its NEPA regulations at 10 CFR 1021.410:

- The proposal fits within a category of actions listed in Appendix A or B to subpart D;
- There are no extraordinary circumstances related to the proposal that may affect the significance of its environmental effects;
- The proposal is not ÒconnectedÓ (40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts, is not related to other proposed actions with cumulatively significant impact (40 CFR 1508.25(a)(1)), and is not precluded by 40 CFR 1506 or 10 CFR 1021.211.

The record would also indicate for categorical exclusions in Appendix B that the proposed action included conditions listed in the regulations as integral elements (e.g., would not adversely affect environmentally sensitive resources).

A NEPA Compliance Officer may not delegate the responsibility for making categorical exclusion determinations. Generally, if consideration of a categorical exclusion leads to lengthy debate or if application of a categorical exclusion involves extensive documentation, then this may be a warning sign that an environmental assessment is appropriate.

The Office of NEPA Policy and Assistance distributed draft guidance on this subject in June 1997 and currently is revising the guidance to address comments. For more information, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov, (202) 586-4596, or fax (202) 586-7031.

NEPA Guidance Update from the Office of NEPA Policy and Assistance

Guidance on several topics is under preparation by the Office of NEPA Policy and Assistance. Four draft guidance documents *(1 through 4 below)* were distributed to the NEPA community for review and comment in June 1997, and the Office is now reviewing comments for possible incorporation into the guidance. (Item 3 also was distributed to the procurement community.) Several other guidance documents *(5 through 7 below)* are in earlier stages of development. For more information, please consult the following points-of-contact. The fax number in all cases is (202) 586-7031.

1. RCRA/NEPA Integration
Carolyn Osborne
(202) 586-4596
carolyn.osborne@eh.doe.gov

2. DOE EIS Checklist
Jim Daniel
(202) 586-9760
james.daniel@eh.doe.gov

3. NEPA and Privatization
Stan Lichtman
(202) 586-4610
stanley.lichtman@eh.doe.gov

4. Categorical Exclusion Procedures
Carolyn Osborne
(202) 586-4596
carolyn.osborne@eh.doe.gov

5. Better Graphics in NEPA Documents
Yardena Mansoor
(202) 586-9326
yardena.mansoor@eh.doe.gov

6. Update of the Compliance Guide (Vol. II, Reference Book)
Barbara Grimm-Crawford
(202) 586-3964
barbara.grimm-crawford@eh.doe.gov

7. Accident Analysis
Ted Hinds
(202) 586-7855
warren.hinds@eh.doe.gov

Eric Cohen
(202) 586-7684
eric.cohen@eh.doe.gov

Environmental Impact Statement Begun

On July 25, 1997, DOE published a Notice of Intent (62 FR 40062) to prepare an environmental impact statement for the National Spallation Neutron Source, a proposed accelerator-based neutron source and neutron science research facility. The proposed site is Oak Ridge National Laboratory (Oak Ridge, Tennessee). The alternative sites are Argonne National LaboratoryÐEast, LosAlamos National Laboratory, and Brookhaven National Laboratory. Technology alternatives include reactor-based neutron sources and variations in the accelerator-based system.

DOE-wide NEPA Document Preparation Contracts Awarded

On behalf of the Department of Energy, the Albuquerque Operations Office awarded three contracts on June 18, 1997, for NEPA document preparation services Department-wide (including the Federal Energy Regulatory Commission) to Halliburton NUS Corporation, Science Applications International Corporation, and Tetra Tech, Inc. *(see below).* The contracts enable individual Program or Field Offices to quickly issue task orders for preparation of an environmental impact statement, environmental assessment, environmental report, or sections of these documents.

At a workshop on June 26, 1997, in Albuquerque, New Mexico (following the NEPA Community Meeting held there June 24 and 25), many NEPA Compliance Officers and others in the DOE NEPA Community learned how easily local Contracting Officers may issue task orders under these contracts and the great flexibility the contracts provide to NEPA Document Managers in getting the work done. As Dawn Knepper (Contracting Officer for these contracts at the Albuquerque Operations Office) explained at the workshop, the NEPA Document Manager, in conjunction with a local Contracting Officer, defines the work, establishes selection criteria, selects the contractor, funds and administers the work, and evaluates contractor performance.

Work under these NEPA contracts may be started in as little as two to four weeks, depending on the complexity of the work. Offices may issue a task order on a cost-plus-fixed-fee, firm-fixed price, or cost-plus-incentive-fee basis, according to how specifically the scope of work may be defined. These options can be used to create incentives for contractors to work efficiently. Task awards may be based entirely or in part on contractor performance on previous tasks.

Tasks already have been assigned under these contracts. For the Los Alamos National Laboratory Site-wide EIS, a task was awarded for preparation of a public comment database. Also, following a request for task proposals in July, a task was awarded August 15 to Halliburton NUS Corporation to support the preparation of the Sandia National Laboratories New Mexico Site-wide EIS. According to Sandia SWEIS NEPA Document Manager Julianne Levings (Albuquerque Operations Office), ÒThese DOE-wide contracts are much more streamlined than traditional contracting approaches.Ó*(See related article on the Sandia SWEIS, page 2.)*

As a key part of Strategic Alignment Initiative 29, whose goal is to achieve $26 million in NEPA cost savings over five years, these contracts provide substantial opportunities for making the DepartmentÕs NEPA program work better and cost less. Based on the Albuquerque workshop, the Office of Environment and the Office of Procurement and Assistance Management, with assistance from Albuquerque Operations Office, have jointly prepared a brief guide on issuing task orders under these contracts that will be distributed shortly. NEPA Contracting Reform Guidance previously issued by the Assistant Secretary for Environment, Safety and Health in December 1996 provides detailed advice on management techniques, contractor performance evaluation, and NEPA process cost measurement to help achieve the full potential benefits of the new contracts.

Credit for issuing these contracts is due in part to the NEPA, procurement, and legal staffs who participated in

continued on page 11

The Three NEPA Contractors

¥ *Halliburton NUS Corporation, prime contractor*

Program Manager: Robert Shoup
rshoup@b-r.com
(505) 247-4933, fax (505) 247-8151

¥ *Science Applications International Corporation (SAIC), prime contractor*

Program Manager: Glen T. Hanson
glen.t.hanson@cpmx.saic.com
(505) 842-7858, fax (505) 842-7798

¥ *Tetra Tech, Incorporated, prime contractor*

Program Manager: Thomas Magette
magette@ttalex.com
(703) 931-9301, fax (703) 931-9222

L-R: Thomas Magette, Glen Hanson, and Robert Shoup.

Contracts *(continued from page 10)*

the March 1996 NEPA Contracting Reform Workshop (organized by the Office of NEPA Policy and Assistance) and in the follow-up Acquisition Planning Team meetings during summer 1996. Their discussions established the utility, feasibility, and features of the shared DOE-wide task order contracts for NEPA support.

Thanks also to the dedicated and efficient work of the Contract Source Evaluation Panel consisting of Roger Twitchell (chair), NEPA Compliance Officer, Idaho Operations Office; Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office; and William (Skip) Harrell, Operations Program Manager and Dawn Knepper, Contracting Officer, both from Albuquerque Operations Office. The panel was assisted by Headquarters advisors Carolyn Osborne of the Office of NEPA Policy and Assistance and Tom Brown of the Office of Procurement and Assistance Management.

For information on the DOE-wide NEPA contracts, please contact your NEPA Compliance Officer; Dawn Knepper at dknepper@doeal.gov, (505) 845-6215, or fax (505) 845-5181; or Carolyn Osborne at carolyn.osborne@eh.doe.gov, (202) 586-4596, or fax (202) 586-7031.

Note: *Dawn Knepper is available via teleconference or in person (if your organization is able to cover the costs) to conduct local workshops (in conjunction with your NEPA Compliance Officer) to get you jump-started on the use of these new contracts for NEPA document support.*

International Impact Assessment Organization Provides Forum

By: Ellen Smith, Research Staff Member, Oak Ridge National Laboratory

NEPA practitioners wishing to explore impact assessment practices from a global perspective may want to join the International Association for Impact Assessment (IAIA), an international professional organization dedicated to advancing the worldÕs capacity to anticipate, plan, and manage environmental, social, and technological impacts.

The only organization of its kind, IAIA was organized in 1980 to bring together researchers, practitioners, and users of impact assessment from all parts of the world. The current 2,500 members represent more than 95 countries. Regional chapters are active in various locations, including Canada, Europe, Brazil, Korea, South Africa, and the United States. International conferences, held annually at locations worldwide, typically draw 500 to 600 participants; these conferences often are associated with related training programs.

At the 17th annual IAIA conference, held in New Orleans in May 1997, the Department of Energy was one of several sponsors, including two other U.S. Federal agencies (Environmental Protection Agency and Bureau of Reclamation), government agencies from other countries, organizations, and businesses. Participants came from every continent except Antarctica. (A conference summary is available from the Office of NEPA Policy and Assistance at (202) 586-4600.)

The next annual conference is scheduled for April 1998 in Christchurch, New Zealand, and the announced theme is ÒSustainability and the Role of ImpactAssessment in the Global Economy.Ó

As a forum for information exchange and networking, IAIA facilitates the transfer of environmental impact assessment (EIA) knowledge from nations that have pioneered EIA development (e.g., the U.S., Canada, the Netherlands, and Australia) to other nations (such as developing nations and emerging democracies) that are trying to use EIA as a tool to improve decision making, to help protect environmental quality, or to conform with requirements of international organizations. Yet even for countries that primarily ÒexportÓ EIA procedures and methodologies, there are lessons to be learned from new EIA experiments conducted elsewhere throughout the world.

IAIAÕs quarterly journal, *Impact Assessment,* contains peer-reviewed articles, professional practice ideas, and book reviews. The IAIA newsletter, published four times a year, provides members with information on association activities and events. IAIA also hosts e-mail list servers on topics of current interest, including social impact assessment, urban environmental issues, ecological impacts assessment, assessment methodologies, and ÒstrategicÓ (e.g., programmatic) environmental assessment.

For more information on IAIA or to inquire about membership, contact the Executive Director, Rita Hamm, North Dakota State University, at rhamm@ndsuext.nodak.edu or (701) 231-1006; access the IAIA Web site at http://IAIA.ext.NoDak.edu/IAIA. The e-mail list servers are administered by Dr. Frank Vanclay in New South Wales, Australia; his e-mail address is fvanclay@csu.edu.au.

Training Spotlight

Forest Service Seminar Focuses on Responses to Public Comments

By: Gary Palmer, Deputy NEPA Compliance Officer, DOE Office of Defense Programs

A two-day seminar by the U.S. Department of AgricultureÕs Forest Service highlighted lessons learned in the NEPA comment and response process. The seminar followed the NEPA Community Meeting in Albuquerque, New Mexico, and was arranged primarily for Albuquerque Operations Office personnel by its NEPA Compliance Officer, Jeff Robbins.

The presenters were Rhey Solomon, Forest Service NEPA Coordinator, and Jody Sutton, a Content Analysis Specialist with the Forest Service Content Analysis Enterprise Team. Their presentation, ÒPublic Perception Analysis, Risk Assessment and Response Training,Ó included useful exercises and was capped by a summary and recommendations. Members of DOEÕs Albuquerque EIS Project Office, team members for the Los Alamos and Sandia Site-wide EISs, and others from the NEPA community attended.

Mr. Solomon and Ms. Sutton led the attendees step-by-step through the process of planning and carrying out responses to public comments, providing examples and practical instruction throughout.

The Planning Phase

In discussions of the planning phase, the instructors addressed applicable requirements and effective ways to encourage meaningful commentsÑmany of which DOE had used earlier in the Sandia Site-wide EIS public scoping meetings *(see page 2)*.

The instructors outlined methods for creating a database to maintain records of comments and then moved to the critical area of content analysisÑa key factor af fecting accurate presentation of public comments. They presented a comprehensive table of considerations designed to help NEPA Document Managers to select among alternative approaches: Òdo-it-yourself,Ó using a NEPA contractor, or using a subcontractor for specialized assistance with content analysis. The Forest Service group is available to provide assistance in this area; Mr. Solomon and Ms. Sutton stressed the importance of analysis of the comments by a disinterested party to assure objectivity.

Response Preparation

For response preparationÑthe next step in the processÑ the instructors presented a framework (with examples) for determining a format for presenting comments and responses, based on the number of comments received and their complexity. The value of this framework is that it enables the NEPA Document Manager to plan for and complete the comment responses in a logical, organized way.

In closing, Mr. Solomon and Ms. Sutton noted the importance of explaining the process in the introductory narrative in the EIS. Finally, they discussed current issues, including Forest Service experiences with Freedom of Information Act/Privacy Act requests.

The Forest Service presentation should interest anyone embarking on an EIS, particularly before the public scoping meetings and the public hearings on the draft EIS are held. NEPA Document Managers should arrange such training for the entire EIS team at about the time the Notice of Intent for an EIS is published.

For more information on the availability of presentations or comment response assistance by the Forest Service Content Analysis Enterprise Team, contact Jody Sutton at (406) 758-5243. Course materials are available for review at DOE Headquarters (DP-45, Forrestal 4B-087); for more information, contact Gary Palmer at gary.palmer@dp.doe.gov or (202) 586-1785. LL

*[**Editor's Note:** Based on the instruction, the Office of Defense Programs is revising the draft document entitled ÒComment Response in DOEÕs NEPA ProcessÓ distributed at the June 1997 NEPA Community Meeting. Mr. Palmer welcomes comments on that draft for use in preparing the next version, to be distributed at the next NEPA Community Meeting.]*

Be a Part of LLQR

We are already planning for the next edition of *Lessons Learned Quarterly Report,* and we want your contributions. If you would like to submit an article for the fourth quarter 1997 edition of LLQR (#13), please contact Yardena Mansoor to discuss your suggestion by the end of September. Yardena may be reached at yardena.mansoor@eh.doe.gov or (202) 586-9326. Submissions will be due by October 17, 1997. LL

Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

Department Settles Paducah Lawsuit; Agrees to Prepare Environmental Assessment

On July 10, 1997, the Department and Mr. Mark Donham filed a Joint Stipulation of Dismissal in *Donham v. United States Department of Energy* in the United States District Court for the Western District of Kentucky. The lawsuit concerned the categorical exclusion listings in the Department's 1992 NEPA regulations (as amended in 1996) and the application of two of those exclusions to the proposed Vortec Corporation Vitrification Demonstration project at the Paducah Gaseous Diffusion Plant.

The Joint Stipulation is based on a Settlement Agreement that commits the Department to withdraw the remaining categorical exclusion determination (DOE withdrew one categorical exclusion determination before the Settlement Agreement) for the proposed Vortec project and to prepare an environmental assessment analyzing the potential environmental impacts associated with the proposed test of the Vortec process and the proposed two- to three-year operation of the Vortec facility. (After the proposed test of the process, the Department will examine the results to determine if the process conforms to the Department's expectations and whether modification of the environmental assessment is necessary.) According to the Settlement Agreement, the Department can take delivery of the equipment for the Vortec process, but cannot assemble the equipment or consider procurement of the equipment in its decision whether to proceed with the project. The plaintiff committed to fully participate in all public processes associated with the preparation of the environmental assessment.

Pursuant to the Agreement, the court has dismissed the plaintiff's claim against the Department's 1992 and 1996 NEPA regulations. The plaintiff is allowed under the Agreement to file another lawsuit challenging the 1992 and 1996 regulations, but cannot do so in conjunction with the Vortec project.

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Coming Training Events

Advanced Topics in Environmental Impact Assessment

Larry Canter, University of Oklahoma

Samuel Atkinson, University of North Texas

November 5Ð7, 1997: Dallas/FortWorth Airport Holiday Inn

Fee: $595

For information, call Environmental Impact Training at (405) 321-2730

This course emphasizes emerging topics, tools, methods, and issues. Customized classes are available. Two- and three-day courses also are offered in environmental monitoring, risk assessment, and cultural resources.

Presenting Data and Information

Edward Tufte, Yale University

Fee: $300 (includes three books by Professor Tufte); discount for multiple registrations

One-day training; dates and locations to be determined

For information, call (800) 822-2454 between 9 AM and 5 PM Eastern Standard Time

The course centers on effective presentations in person, on paper, and in other media. Topics include strategies for information design; color; statistical data; scientific presentations; complexity and clarity; use of video, overheads, computers, and handouts; information displays in public spaces; animation and scientific visualizations. DOE Environment, Safety and Health staff have taken this class and found it highly relevant and insightful.

Improving EIS Readability

Do environmental impact statements (EISs) convey information effectively to the general publicÑthe tar get audience of these documents? Even if the answer is Òyes,Ó how could we improve them? These questions are the topics of two recently published articles in *Environmental Impact Assessment Review*. Three researchers from the University of Illinois conducted tests on high-school students in Joliet, Illinois, to quantify their ability to understand and recall project descriptions and environmental consequences of a local flood control plan EIS.

In the first study,[1] students read portions of the EIS and then answered questions about the project and its environmental effects. The studyÕs findings were clear: the participantsÕunderstanding of the EIS material was Òatrocious,Ó even among the best readers. Overall, the studentsÕperformance was far below 70 percentÑthe measure the authors considered to be adequate regarding comprehension, the equivalent of an academic ÒC.Ó According to Dr. William Sullivan, a professor of natural resources and environmental sciences at the University of Illinois and principal author of the study, ÒAn agency that fails to produce an EIS that citizens understand opens itself to lawsuits.ÓWhen citizens cannot understand the material presented in an EIS, they cannot participate in the process. Furthermore, those who cannot comprehend the facts presented in an EIS often will try to obtain clarification from other sourcesÑthe local media, for exampleÑ which often describe projects inaccurately.

The Illinois groupÕs second study[2] offers several suggestions that are cost-effective and easy to implement. The first of these, Òphotosimulation,Ó involves a series of ÒbeforeÓ and ÒafterÓ pictures of a project area, the latter of which are created with photograph manipulation software, such as Adobe Photoshop, to show possible changes in the landscape. In the example provided by the Illinois group, pictures of a local creek were used, showing what the creek would look like if flood control measures were installed *(see photos)*. When the researchers tested high-school studentsÕcomprehension of the same EISÑbut with the addition of photosimulationÑthe groups scored higher on comprehension tests. Specifically, two of the three measures, *understanding the gist of the project* and *understanding environmental effects,* improved to a level significantly greater than 70 percent. The third measure, *project recall*, did not increase significantly. Project recall contained the most technical information; therefore, photosimulation may not have contributed to increased readability in this area.

The researchersÕsecond suggestion for improving comprehension of EISs, surprisingly, is simple editing. EIS authors can Òhelp the

continued on page 17

Figure 1

Figure 2

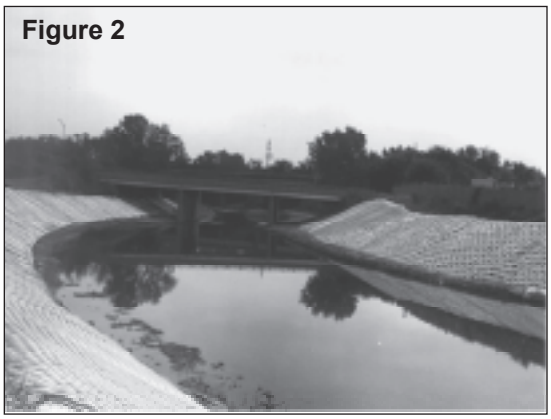


Figure 3

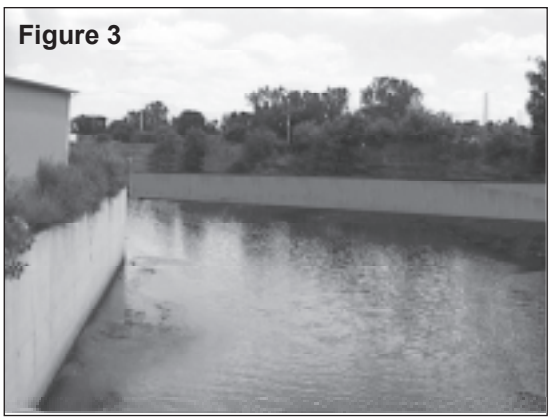
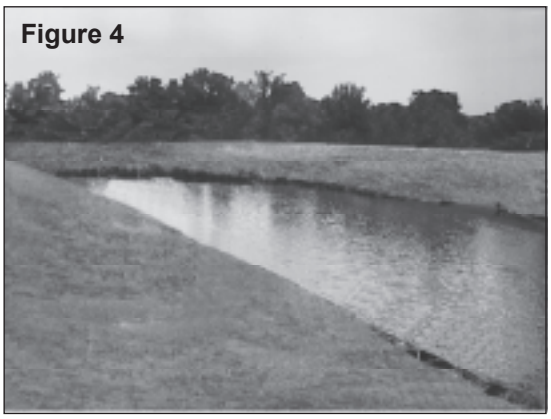


Figure 4



The flood control features suggested for the Hickory Creek included three different treatments of the creek banks. The banks were to be changed from their existing condition (Figure 1) to either a fabric formed concrete embankment (Figure 2), a vertical concrete wall (Figure 3), or an earthen embankment (Figure 4). [Photos reprinted with permission from Environmental Impact Assessment Review, Vol. 17(4), Sullivan, W.C., F.E. Kuo and M. Prabhu, ÒCommunicating with Citizens: The Power of Photosimulations and Simple Editing.Ó pp.295-310, July 1997. Elsevier Science Inc.]

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 1997. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

- Though a lot of attention was paid to internal scoping, some issues were missed that had to be addressed further into the process. It took extra time, but it improved the final product.
- After working out the basic structure of the alternatives in internal scoping meetings, the team could focus on the actual EIS analyses.
- A major scope change (cutting out environmental restoration waste and activities) caused delays. A lot of time and money was spent on defining reasonable alternatives for environmental restoration and then explaining removal of environmental restoration from the scope of the EIS.

Data Collection/Analysis

- Some early Document Managers did not stress preparation of a quality PEIS.
- The choice of an inexperienced contractor for a major EIS led to inefficiencies in analysis and the need to restructure the contract mid-stream.
- Information gathered from the sites and waste management program databases proved unreliable, resulting in information gaps and stakeholder concern about the accuracy of the analysis.

Schedule

Factors that Facilitated Timely Completion of Documents

- The brevity of the EIS and familiarity of team members with its content.
- The scope of the EA was well-defined.
- A strong Document Manager with experience in completing high-profile PEISs in a cost-effective and timely manner.
- Contractor specialists focused on improving the readability of the PEIS and on the technical aspects of production and distribution.

Factors that Inhibited Timely Completion of Documents

- The need for the proposed project diminished and was replaced by other priorities.
- Toward the end of the EA preparation process (after a draft EA was prepared), the Project Manager wanted to change the proposed action. This resulted in a delay, confusion, and some additional analysis and revisions to the text.
- The DOE Project Manager did not keep himself informed about NEPA activities, and the contractor Project Manager did not review the EA in a timely manner.

Factors that Facilitated Effective Teamwork

- Weekly meetings helped to track action items and data requests. Issues identified during the process were immediately addressed.
- Familiarity, respect, and trust among team members provided good attitudes and clear, collaborative communications.
- Frequent communication between the program office and EH/GC, including inviting EH and GC to internal meetings with contractors.
- The contractor preparing the EA had excellent writing skills and was willing to share early drafts with team members, whose comments provided useful feedback early in the writing process.

continued on next page

NEPA Process *(continued)*

Factors that Inhibited Effective Teamwork

- Cooperating Federal agencies did not participate and/or withdrew from cooperating status.
- Document Managers and their staff changed at least five times, and some early Document Managers did not exercise adequate control over preparation of the PEIS.

Public Participation Process

Successful Aspects of the Public Participation Process

- Interested stakeholders were kept informed of actions as we progressed through the NEPA process.
- Videoconference format for hearings on the draft PEIS worked well and allowed DOE HQ people to ÒattendÓ hearings in the field.

Unsuccessful Aspects of the Public Participation Process

- Tribes did not acknowledge written notification that DOE had provided them and may have been under the impression that no attempt had been made to involve them. More person-to-person involvement with Tribes is needed in the future.

Public Reactions to the NEPA Process

- Pay attention, early and often, to any individual or group that may be an adversary or that may misunderstand what you are trying to do.
- We received positive reactions to the way the public has been involved in the process, but the overall reaction to the PEIS has been negative due to the long time it took to prepare the document and its high cost.

Further Guidance Needs Identified

- Information on the appropriate level of analysis in programmatic EISs would be useful.

Usefulness

Agency Planning and Decision Making

- NEPA review was initiated early in the project, and the alternatives presented made the options clear to decision makers.
- Much of the decision making ended up being through other processes, or resulted in decisions to stay largely with the status quo (which is a valid outcome of the NEPA process, but calls its usefulness into question).

Enhancement/Protection of the Environment

- The NEPA process ruled out use of some intrusive remediation methods and also resulted in commitment to restore the remediated site with suitable native plant communities.
- The EA is also a plan for resource management and commits to mitigation as a condition of the project, reducing environmental impacts of mining.
- The NEPA process highlighted alternatives to minimize impacts.
- Though the environment may not have been protected, the understanding of the magnitude of impacts was improved.

continued on next page

Reminder:

Lessons Learned Questionnaires for all NEPA documents completed during the fourth quarter of fiscal year 1997 (July 1, 1997 to September 30, 1997) should be submitted as soon as possible after document completion, but no later than October 31, 1997.

For Lessons Learned Questionnaire issues, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov, (202) 586-0750, or fax (202) 586-7031. For articles, guidance, and editorial matters, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, (202) 586-9326, or fax (202) 586-7031.

The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web [http://tis.eh.doe.gov/nepa/] on the Internet. Look for it under NEPA Process Information.

NEPA Process *(continued)*

Effectiveness of the NEPA Process

The charts below illustrate how respondents rated the effectiveness of the NEPA process. For the purposes of this section, ÒeffectiveÓ means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning Ònot effective at allÓ and 5 Òhighly effective.Ó

For this quarter, all five respondents for EAs and five of the nine respondents for EISs rated the NEPA process as Òeffective.Ó

Several respondents stated that because the NEPA process was begun early, the project was positively influenced in many ways, including protection of the environment and savings in time and costs.

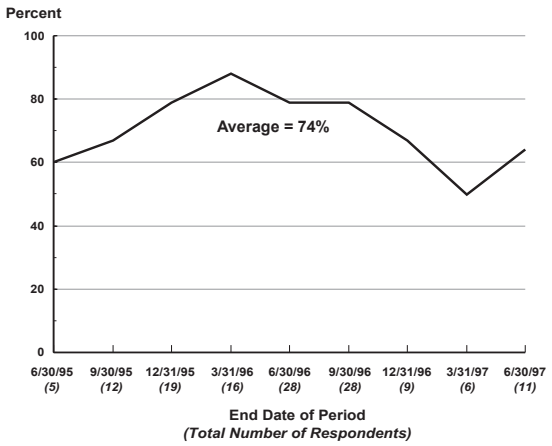
One EA respondent noted that information gathered during the NEPA process identified CERCLA issues associated with some of the alternatives. Even though actions may await resolution of these issues, the respondent stated that a ÒCERCLAmessÓwas certainly avoided in this instance.

One EIS respondent rating the process as Òineffective Ó stated that much of the decision making was made through processes other than NEPA.

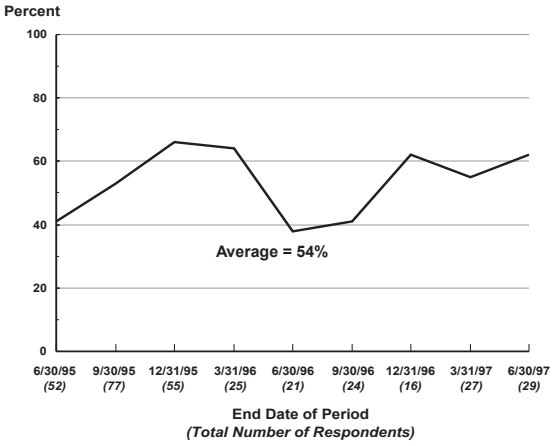
Percent of NEPA Respondents Rating the NEPA Process as Effective

6-month moving trendline, revised quarterly*

EISs



EAs



** Each data point represents questionnaire responses for the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.*

Improving EIS Readability

(continued from page 14)

reader see the forest before the treesÓ by following seven simple rules: provide an overview, provide headings, state headings as questions, make headings distinct, use locally recognizable landmarks to identify locations of project work, explain technical terms as they come up (rather than in a glossary), and use text bullets. When these techniques were employed in addition to photosimulation, comprehension increased dramatically, to more than 80 percent for each of the three measures.

Why doesnÕt every agency use these techniques? Unfortunately, each method has limitations. Photosimulations are only effective for those projects that involve a visible, physical change, and therefore do not apply to projects such as the transportation of nuclear waste. Simple editing offers great potential for improving EIS readability; however, one needs to be careful not to lose important detail when incorporating editing suggestions.

Even with limitations, these techniques can vastly improve the readability of EISs. DOE NEPA Document Managers should consider these approaches to writing NEPA documents. After all: improved, reader-friendly EISs promote greater public understanding and cooperation.

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[1] Sullivan, W.C., F.E. Kuo and M. Prabhu. May 1996. ÒAssessing the Impact of Environmental Impact Statements on Citizens,Ó *Environmental Impact Assessment Review,* 16(3):171-182.

[2] Sullivan, W.C., F.E. Kuo and M. Prabhu. July 1997. ÒCommunicating with Citizens: The Power of Photosimulations and Simple Editing.Ó *Environmental Impact Assessment Review,* 17(4):295-310.

EIS Cost and Completion Time Data

EISs

Bonneville Power Administration

Wildlife Mitigation Program
DOE/EIS-0246
EPA Rating: EC-2
Cost: $167,000 ($95,000 Federal, $72,000 contractor)
Time: 20 months

Environmental Management

Waste Management Programmatic EIS
DOE/EIS-0200
EPA Rating: EC-2
Cost: $35.4 million ($3.3 million Federal, $32.1 million contractor)
Time: 79 months

*[**Editor's note:** The Office of Environmental Management estimates that an additional $30.6 million was expended for Environmental Management Program start-up and ancillary efforts that support other DOE activities in addition to the Waste Management PEIS.]*

Savannah River/Environmental Management

River Water System
DOE/EIS-0268
EPA Rating: EC-2
Cost: $2.3 million ($130,000 Federal, $2,140,000 contractor)
Time: 11 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action	Adequacy of the EIS
LO Ð Lack of Objections	Category 1 Ð Adequate
EC Ð Environmental Concerns	Category 2 Ð Insufficient Information
EO Ð Environmental Objections	
EU Ð Environmentally Unsatisfactory	Category 3 Ð Inadequate

(See March 1997 Lessons Learned Quarterly Report for a full explanation of these definitions.)

***Editor's Note**: See the June 1997 Lessons Learned Quarterly Report for the most recent analysis of EIS and EA cost and time trends.*

Cost Data

- For this quarter, the median cost of three EISs was $2.3 million; the average cost was $12.6 million.
- Cumulatively, for the 12 months ended June 30, 1997, the median cost for the preparation of 12 EISs for which cost was reported was $7.6 million; the average cost was $10.2 million.
- Seven of these 12 EISs were programmatic or site-wide, with median and average costs of $15.7 million and $16.3 million, respectively. The five project-specific EISs with cost data had median and average costs of $1.1 million and $1.7 million, respectively.

Completion Time Data

- For this quarter, the median completion time of three EISs was 20 months; the average completion time was 37 months.
- Cumulatively, for the 12 months ended June 30, 1997, the median completion time for the preparation of 13 EISs was 26 months; the average completion time was 30 months.
- Seven of these 13 EISs were programmatic or site-wide, with median and average completion times of 30 months and 37 months, respectively. The six project-specific EISs had median and average completion times of 18 and 21 months, respectively.

Other EIS-Related Documents Issued Between April 1 and June 30, 1997

Notices of Intent	DOE/EIS-#	Date
Surplus Plutonium Disposition PEIS	0283	5/22/97 (62 FR 28009)
Sandia National Laboratory SWEIS	0281	5/30/97 (62 FR 29332)
Transmission System Vegetation Management Program EIS	0285	6/16/97 (62 FR 32591)
Records of Decision		
Interim Management of Nuclear Materials at the Savannah River Site	0220	4/11/97 (62 FR 17790; 3rd Supplemental ROD)
Uranium Mill Tailings Remedial Action Groundwater Project	0198	4/28/97 (62 FR 22913)
Sacramento 2004 Power Marketing Program (Central Valley Project)	0232	4/28/97 (62 FR 22934)
Dry Storage Container Systems for the Management of Naval Spent Nuclear Fuel (Navy Ð Lead Agency)	0251	5/1/97 (62 FR 23770; 2nd ROD)
Waste Management at the Savannah River Site	0217	5/19/97 (62 FR 27241; Supplemental ROD)
Wildlife Mitigation Program, Idaho, Montana, Nevada, Washington, Oregon	0246	6/23/97 (62 FR 32849)
Draft EIS		
Bonneville Power Administration/Lower Valley Power and Light Transmission System Reinforcement Project, Wyoming	0267	5/29/97

EA Cost and Completion Time Data

Cost Data

- Total NEPA process cost data were reported for seven of the eight EAs completed during the third quarter of FY 1997. The median cost was $74,000; the average cost was $117,000.
- Cumulatively, for the 12 months ended June 30, 1997, the median cost for the preparation of 25 EAs for which cost was reported was $51,000; the average cost was $73,000.

Completion Time Data

- For this quarter, the median completion time of eight EAs was nine months; the average completion time was 16 months.
- Cumulatively, for the 12 months ended June 30, 1997, the median completion time for the preparation of 33 EAs for which completion time was reported was six months; the average completion time was 12 months.

EAs

Albuquerque Operations Office/ Environmental Management

No Remedial Action at the Inactive Uraniferous Lignite Ashing Sites, Belfield and Bowman, North Dakota
DOE/EA-1206
Cost: $314,000
Time: 4 months

Chicago Operations Office/ Environmental Management

Environmental Remediation at Argonne National Laboratory-East, Chicago, Illinois
DOE/EA-1165
Cost: $74,000
Time: 10 months

Federal Energy Technology Center/ Fossil Energy

Coal-Fueled Diesel Project, Fairbanks, Alaska
DOE/EA-1183
Cost: $50,000
Time: 8 months

Idaho Operations Office/ Environmental Management

New Borrow Source Site, Idaho National Engineering and Environmental Laboratory, Idaho Falls, Idaho
DOE/EA-1083
Cost: $76,000
Time: 25 months

Kirtland Area Office/Defense Program

Design, Evaluation, and Test Technologies Center at TA III, Sandia National Laboratory, Albuquerque, New Mexico
DOE/EA-1195
Cost: $199,000
Time: 54 months

Ohio Field Office/Environmental Management

Disposition of Prehistoric Human Remains,
Fernald, Ohio
DOE/EA-1134
Cost: $38,000
Time: 19 months

Richland Operations Office/ Environmental Management

Relocation and Storage of Sealed Isotopic Heat Sources, Hanford Site, Richland, Washington
DOE/EA-1211
Cost: $68,000
Time: 4 months

Western Area Power Administration

IXC Fiber Optics Line, McCullough Substation (Nevada) to Liberty Substation (Arizona)
DOE/EA-1202
Time: 5 months

*[**Editor's note:** The costs of this EA were paid for by the applicant; therefore, cost information does not apply to DOE.]*

Litigation Updates *(continued from page 13)*

Constricted Purpose and Need Loses Case for Army Corps of Engineers

On July 14, 1997, based on an overly-constricted definition of purpose and need in the accompanying EIS, the U.S. Court of Appeals for the Seventh Circuit vacated an Army Corps of Engineers permit to construct a dam and reservoir for the City of Marion, Illinois, and a six-county water district. In planning this project, the City envisioned that one reservoir would supply both the City and the water district. In its EIS, the Corps confined the environmental analysis to Òsingle-sourceÓ alternatives Ñ i.e., both entities obtaining water from a reservoir The plaintiffs argued that the actual purpose and need for agency action was broader than the CorpsÕ definition and that there were reasonable alternatives beyond the single reservoir. The court agreed and ruled that the Corps had a Òduty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project.ÓThe court further held that the CorpsÕ constricted definition of purpose and need led to its rejection of otherwise reasonable alternatives, noting that Òalternatives might fail abjectly on economic grounds. But the Corps and, more important, the public cannot know what the facts are until the Corps has tested its presumption.Ó(The court further speculated that the CorpsÕ definition of purpose and need might be based on a contract between the City and the water district, but noted that Òthe public interest in the environment cannot be limited by private agreements.Ó)*Simmons v. U.S. Army Corps of Engineers*, 1997 WL 392717 (7th Cir. 1997).

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

December 1, 1997, Issue No. 13 For Fourth Quarter FY 1997

NEPA Review Adds Value to Proposed Sale of Naval Petroleum Reserve

DOE recently completed a Supplemental EIS/Program Environmental Impact Report (SEIS/PEIR) on the sale of Naval Petroleum Reserve (NPR) No. 1 (Elk Hills), a Federally owned oil field near Bakersfield, California *(map, next page)*. Closing the sale, scheduled for February 2, 1998, is conditioned on completing several statutory requirements, including the NEPA process, antitrust review, and a 31-day Congressional review.

The NEPA review was an important step leading to the prospective agreement to sell NPR-1 to Occidental Petroleum Corporation for $3.65 billionÑthe largest Federal divestiture in U.S. history. Based on the Supplemental EIS, the Office of Fossil Energy will be able to incorporate protection for biological and cultural resources into its decision making.

After the October 6, 1997, announcement of DOEÕs agreement to sell NPR-1 to Occidental, DOE Assistant Secretary for Fossil Energy Patricia Fry Godley observed: ÒTheNEPA process significantly contributed to the success of the NPR sale process. The prospective new owner will implement mitigation measures, in particular those concerning biological and cultural resources, similar to DOEÕs past practices. In addition, we involved Federal, State and local government entities as well as the public and private sector efficiently and meaningfully.Ó

Tony Como, the NEPA Document Manager, noted that Òthehighly interactive EIS team met the challenge of producing a high quality document under a very ambitious schedule.Ó

The endangered San Joaquin Kit Fox would continue to be protected after sale of NPR-1. (Photo courtesy of California Department of Fish and Game.)

Combined Federal and State Environmental Review

DOE and the Kern County Department of Planning jointly prepared the SEIS/PEIR to meet both NEPA and California Environmental Quality Act (CEQA) requirements. The two agencies held joint public hearings on the Draft SEIS/PEIR. The combined process provided an effective framework for close and timely coordination among DOE and State and local agencies.

Potential Effects Warranted Mitigation

NPR-1 serves as important habitat for a variety of threatened and endangered species, including the endangered San Joaquin Kit Fox. The NEPA/CEQA process alerted Federal, State, and county agencies and the public to how increased commercial development of the

continued on page 2

NPR-1 *(continued)*

oil and gas field could have significant impacts on threatened and endangered species and other biological resources. In addition, the optional provisions of the sales contract sensitized the oil and gas companies to the need for mitigation of significant environmental impacts to biological resources by providing for the transfer of an existing permit issued under Section 7 of the Endangered Species Act (ESA). Section 7 provisions ordinarily do not apply to nongovernmental entities, but the transfer was specifically allowed by the Act that authorized the sale. The advantage of a permit transfer is that a successful bidder would have a defined set of agreed-upon mitigation measures for immediate compliance with ESA, with time after the sale to obtain a commercial permit under ESA Section 10. Under the proposed sale agreement,

Naval Petroleum Reserve Fields in California. NPR-1 is located 35 miles southwest of Bakersfield.

Occidental Petroleum will assume DOE's existing Section 7 permit and agree to the same mitigation measures that DOE has been required to implement at the site.

The SEIS/PEIR also focused public attention on potential impacts to cultural resources—specifically two historic oil wells and several prehistoric sites of particular concern to Native Americans. DOE and Kern County are completing consultations and preparing a programmatic agreement with the California State Historic Preservation Officer and the Advisory Council on Historic Preservation concerning possible mitigation activities. Other issues addressed in the SEIS/PEIR include the potential impacts of increased oil and gas operations upon air and water quality.

Congressional Mandate Presents NEPA Challenges

The NPR-1 proposed sale demonstrates that Congressionally mandated divestiture does not diminish DOE's responsibility under NEPA. The schedule for the proposed sale, however, posed challenges to DOE to ensure a full and timely NEPA review while managing the sales process to maximize the financial return to the government. DOE needed to be responsive to a schedule affected by market timing considerations, while striving to meet the Congressional deadline to sell NPR-1 by February 10, 1998. The NEPA review process proved to be a partner in a successful sale process.

For more information, contact Tony Como, Office of Fossil Energy, at anthony.como@hq.doe.gov, phone (202) 586-5935, or fax (202) 287-5736.

Inside *LESSONS LEARNED*

Welcome to the fourth quarter FY 1997 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

INEEL High-Level Waste EIS: New Approaches to Public Scoping

By: Roger Twitchell, NEPA Compliance Officer, and
Bradley Bugger, Media Relations Specialist, Idaho Operations Office

When the Idaho Operations Office began planning for an EIS on options for treating high-level waste at the Idaho National Engineering and Environmental Laboratory (INEEL), we knew we were not going to approach scoping in the traditional manner.

In the past, we typically spent substantial sums on formal hearings, and yet our EIS managers told us that the results did not justify the expense. The old format, in which members of the public were given several minutes to stand and read a statement while DOE politely listened, was a polarizing situation with little or no interaction. We wanted to lay a foundation before the scoping workshops so that an informed public could interact meaningfully with DOE to identify issues and alternatives.

The INEEL High-Level Waste and Facilities Disposition EIS (Notice of Intent, 62 FR 49209, September 19, 1997) will analyze potential solutions to extremely complex problems, all of which involve technical, legal, regulatory, and budgetary concerns. DOE-Idaho intended to use the scoping process to actively engage the public in discussions of these complex issues.

As part of the scoping process, DOE-Idaho personnel and contractors staffed mall exhibits to disseminate information and answer questions. Pictured here, shoppers examine a model of a calciner, which solidifies liquid high-level waste.

Building Understanding

The EIS staff, comprised of DOE-Idaho and contractor personnel, set out to build the publicÕs understanding of EIS-related issues in several ways. First, the EIS staff held a public open house in Idaho Falls in April 1997. They then set up and staffed informational displays in shopping malls throughout southern Idaho. EIS staff also gave presentations to more than 200 INEEL employees involved in the high-level waste program at the Idaho Chemical Processing PlantÑi.e., workers whose jobs may be affected by decisions made as a result of the EIS.

Finally, EIS staff developed a questionnaire for conducting personal interviews with key stakeholdersÑ State and Tribal officials, Congressional staff, environmental and activist groups, regulators, union officialsÑand any other individuals or groups who wanted to be heard. The questionnaire also was included in the ÒDearCitizenÓmailouts that announced the scoping process.

The scoping process included two scoping workshops in Boise and Idaho Falls, in which the public and DOE would work together to identify new alternatives and issues. DOE told stakeholders and the media beforehand that oral comments and recorded transcripts *would not* be taken at the workshops, but participants were encouraged to submit written comments afterward.

Small Working Groups

EIS staff began each workshop with a presentation on DOEÕs problems in managing INEEL high-level waste, the preliminary alternatives DOE is considering, and the need for an environmental analysis. A question and answer session followed, and then the participants broke into small working groups. Each participant was given a worksheet that described the preliminary alternatives, scoping issues DOE had already identified, and new issues that the public had previously identified for DOE during the mall displays, open house, interviews, and questionnaire submittals.

continued on page 5

Diverse Strategies for EIS Savings

In recent months, several DOE EIS Document Managers have reported achieving savings in the environmental review process. Their approaches are diverse, as discussed in the articles on pages 4, 5, and 6. Bonneville Power Administration uses a model for concise yet comprehensive programmatic reviews; a Savannah River EIS used a data management program that also can support possible future Comprehensive Environmental Response, Compensation, and Liability Act reviews; and preparation of the Waste Isolation Pilot Plant Supplemental EIS used data from the Waste Management Programmatic EIS.

The "Pragmatic" EIS

A Model for Efficient Programmatic Environmental Review

By: Thomas McKinney, NEPA Compliance Officer, Bonneville Power Administration

prag·mat·ic, adj. *Dealing with facts or actual occurrences; practical*

Bonneville Power Administration (BPA) has developed an EIS model for its programs that deal with similar, repetitive implementation techniques and issues, such as wildlife management and watershed management programs. The approach improves efficiency by addressing common issues and generic environmental impacts. Through adopting a broad set of environmental standards and guidelines based on a programmatic EIS, subsequent site-specific project NEPA reviews can be more focused and less expensive.

Key principles of the programmatic approach include establishing a full range of alternatives and identifying program-wide issues and possible resolutions.

Accidental Name Proves Accurate

BPA's environmental staff implemented the model in its Wildlife Mitigation Program EIS (DOE/EIS-246) and Watershed Management Program EIS (DOE/EIS-265), and proposed a similarly structured EIS for BPA's transmission system vegetation management program.

The model was coined "pragmatic" when an automatic spell check computer function converted "programmatic" to "pragmatic" in a briefing paper on one of the model EISs. When the error was detected, the program staff happily embraced the rewording as accurate: the approach was, in fact, "pragmatic."

Approach Reduces Cost

Total cost of the "Pragmatic" EIS strategy includes costs of scoping and preparing the overall program EIS and then of conducting reviews of site-specific projects. The Wildlife Mitigation Program EIS cost $72,000 in contractor expenses (impact analysis and writing/editing), and about $95,000 for Federal staff. The Watershed Management Program EIS cost $52,000 in contractor expenses (the same contractors used similar approaches to the impact analyses and the same format as in the Wildlife Mitigation Program EIS) and about $95,000 for Federal staff. The brevity of both documents (the main part of the Wildlife EIS was 119 pages and the Watershed EIS was 126 pages) helped to contain preparation costs.

BPA expects site-specific project reviews (i.e., supplement analyses) to demonstrate that the programmatic EIS is adequate for the projects/sites. Costs of these reviews have yet to be determined, but are likely to range from about $2,500 to $8,000. This compares favorably with five to ten site-specific project EAs per year (which would have been necessary), varying from $15,000 to $75,000 each. With cost savings likely realized in the first year, applying the "Pragmatic" EIS strategy to the Wildlife Mitigation and Watershed Management programs will undoubtedly prove to be a good value.

For more information, including further description of the "Pragmatic" EIS model, please contact Thomas McKinney at tcmckinney@bpa.gov, phone (503) 230-4749, or fax (503) 230-5699.

Status of CEQ Environmental Justice Guidance

The Council on Environmental Quality (CEQ) expects to issue its "Guidance for Considering Environmental Justice Under the National Environmental Policy Act" before the end of the year. Except for editorial and clarifying changes, a pre-publication version is similar to CEQ's March 1997 draft guidance. The Office of NEPA Policy and Assistance will distribute DOE NEPA guidance on environmental justice (October 1996 draft, as revised after NEPA Compliance Officer comments) after making any necessary changes to reflect the CEQ Guidance.

River Water System Shutdown: Not as Simple as Turning Off the Pumps

By: Richard H. Rustad, NEPA Analyst, Savannah River Operations Office

The 1996 Savannah River Site Strategic Plan included a commitment to identify and dispose of excess infrastructure. The Savannah River Operations Office identified the River Water System, consisting of three pumphouses and approximately 50 miles of underground concrete piping, as surplus (since the cessation of reactor operations) and costly to operate and maintain. The Office projected significant cost savings by not operating any River Water System pumps. However, shutting down all River Water System flow is not as simple as turning off the pumps. As the proposed project developed, the preferred strategy for environmental reviewÑwhether to prepare a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) review and incorporate NEPA values; integrate the NEPA and CERCLA processes; or prepare stand-alone NEPA and CERCLA reviewsÑchanged as well.

Shutting off the River Water System would result in the eventual disappearance of L Lake, which DOE created in 1984 to dissipate thermal effluent from L Reactor. L Lake inundated a three-mile section of a creek contaminated with low levels of radionuclides from past operations. Shutting down the River Water System would uncover the contamination, and possibly trigger a response action under CERCLA. Based on historical information, DOE believed exposing the L Lake bed, creek, and floodplain would not pose a significant risk to the public.

The Savannah River Operations Office NEPA Group and Environmental Restoration Division together developed a strategy for environmental review: to perform a Remedial Investigation/Feasibility Study (RI/FS) and incorporate NEPA values into the resulting report, and then prepare a CERCLA interim record of decision to manage the risks from exposed L Lake sediments. After meeting with regulators, however, Savannah River Operations Office decided to prepare a CERCLA Site Evaluation instead. Because a Site Evaluation lacks essential NEPA features such as scoping, alternatives, public participation, and a record of decision, the NEPA Group concluded that a Site Evaluation would not be adequate for incorporating NEPA values. Savannah River Office then prepared a separate EIS for the River Water System (DOE/EIS-0268).

The NEPA Group decided to use a CERCLA sampling protocol for data collection, however, which would support possible future CERCLA remedial decisions. While this may initially have raised the costs of data collection for the NEPA review, it is expected to result in lower costs overall for the anticipated further environmental reviews.

For more information, contact Richard Rustad at richard.rustad@srs.gov, phone (803) 725-1572, or fax (803) 725-7688.

INEEL EIS Scoping *(continued from page 3)*

Each working group selected a spokesperson (a member of the publicÑ *not* a DOE, INEEL, or contractor employee), and then began brainstorming to identify alternatives and issues not previously identified. The spokesperson for each group then shared the groupÕs findings with the entire audience. New issues and concerns were added to a board at the front of the room, which also listed previously identified concerns. At the close of the meeting, participants were asked to place sticker dots on the board for their two highest priority concerns.

The meetings produced a comprehensive list of alternatives and issues, and the participantsÕsense of which issues were of highest priority. We found that the process was really a win-win situation: DOE received high-quality, well thought-out comments, and the public received answers to their questions, a better understanding of the issues, and an opportunity to influence DOEÕs deliberations. Feedback provided on comment cards revealed that most participants felt that the workshop format met or exceeded their expectations for participation in the NEPA process.

For more information, contact Brad Bugger at buggerbp@inel.gov, phone (208) 526-0833, or fax (208) 526-8789.

More Lessons from WIPP

By: Harold Johnson, NEPA Compliance Officer and Document Manager, Carlsbad Area Office
Stephen Simpson, Office of NEPA Policy and Assistance

The Supplemental Environmental Impact Statement for the Waste Isolation Pilot Plant (WIPP) Disposal Phase (SEIS-II) (DOE/EIS-0026-S2) is intended to inform a decision on whether to dispose of transuranic (TRU) waste at WIPP. If yes, then DOE also needs to decide the types and amounts of TRU waste to be disposed of, the minimum waste treatment requirements, and the mode of transporting waste to WIPP. Now that the document has been completed, the SEIS-II provides lessons on saving time and money that can be applied to other NEPA reviews. *(See ÒEffective NEPA Hearings: Learning from the WIPP Experience,ÓLessons Learned Quarterly Report, June 2, 1997, page 6.)*

Lesson 1—Build on data and analysis from other NEPA documents.

The SEIS-II waste treatment impacts analysis was based on the analysis of the impacts of TRU waste treatment in the Waste Management Programmatic Environmental Impact Statement (WM PEIS), adjusted to account for a later waste inventory and different analytical time frames. Using the information from the WM PEIS saved an estimated $4 million and promoted Department-wide consistency in NEPA reviews.

Lesson 2—Resolve analytical issues with the document management team early.

About the time the Draft SEIS-II was issued, Carlsbad Area Office issued new TRU waste volume projections in the National Transuranic Waste Management Plan. The new projections showed changes in TRU waste volumes relative to the Baseline Inventory Report figures used in the Draft SEIS-II.

The SEIS-II team decided to retain the analysis of the older waste volumes but to acknowledge the newer volume projections in an appendix and qualitatively discuss how impacts would have changed if the newer volume estimates had been used for analysis. Making this decision rather than analyzing the new volume projections saved considerable time and money, while maintaining adequate document quality.

Truck carrying demonstration TRUPACT waste containers, with the WIPP site in the background.

Lesson 3—Try innovative document review practices.

In the Headquarters SEIS-II review, the document management team experimented with ÒrealtimeÓ text changes. The text of the SEIS-II was projected on a screen for all reviewers to read and changes were typed in while the reviewers were present. Although reaching consensus on wording took time, discussing changes as they were proposed speeded the subsequent review of the revised document. The production team stayed at the contractorÕs office in Albuquerque and received revised files for reformatting and production by electronic mail. This technique for revising EIS text during a review is worth exploring further, especially when reviewers recommend specific language for the revisions.

For more information, contact Harold Johnson at johnsoh@wipp.carlsbad.nm.us, phone (505) 234-7349, or fax (505) 887-6970.

ISO 14000 and NEPA

In September 1996, the International Organization for Standardization (known as ISO) published the first in a series of voluntary international standards dealing with environmental management. The standards are referred to by individual numbers in the series designated ISO 14000. Included in this series are standards for a variety of environmental management concerns, such as environmental management systems (EMSs) (ISO 14001), environmental labeling (ISO 14020), and product life cycle assessment (ISO 14040). One reason for developing the ISO 14000 standards was to establish a level playing field for international trade among the nearly 100 nations that participate in the Organization. In the past, the Organization has established standards for everything from the speed of camera film (ISO 100, 400, etc.) to the size of credit cards, ensuring that your local credit card works in a Tokyo automated teller machine.

The NEPA Connection

Many Federal agencies, including the Department of Energy, and their site management contractors have decided that there are important benefits from implementing ISO 14000-style EMSs at their facilities, ranging from increased efficiency for environmental monitoring to improved stakeholder relations. The ISO 14001 EMS standard shares an important characteristic with the requirements for the NEPA review process. EMSs and NEPA reviews both require the analysis of actions affecting the environment to determine the ÒsignificanceÓ of potential impacts that may result.

Under the EMS standard, the environmental impact analysis facilitates establishing goals and targets for continually improving environmental performance. Significant impacts related to an organizationÕs environmental ÒaspectsÓ (actions and processes affecting the environment) become the primary focus of efforts to demonstrate continual improvement. Being able to demonstrateÑi.e., to a third-party auditor during periodic auditsÑcontinual improvement in meeting environmental goals identified in an EMS is part of how organizations become certified as compliant with ISO 14001.

Similarly, the identification of significant impacts in the NEPA review guides decision makers to needed mitigation of adverse effects. In the NEPA context, however, the term ÒsignificantÓ has important implications in terms of level of review and public involvement that are not present in ISO 14001.

Avoiding Confusion: How NEPA Differs from ISO 14001

Significance in the NEPA sense is related to the context and intensity or magnitude of the environmental effects. Under ISO 14001, significance can be based on an entirely different set of metrics. For example, an organization may develop an EMS for production processes or services that have no adverse environmental effects because of substantial customer or stakeholder concerns about the involved environmental resources. Consequently, it is possible for the NEPA and EMS review processes to arrive at differing conclusions of ÒsignificanceÓ for the same activity.

Common Goals

Differences between ISO and NEPA contexts for significance, if not explained and accounted for, could lead to challenges to the conclusions of a NEPA review. Therefore, NEPA practitioners need to understand the ISO 14001 process, share information resources for analytical and procedural elements that are common to EMS and NEPA document development, and participate in EMS development to help avoid misunderstandings. NEPA and ISO 14000 have a common goal of enhancing environmental quality. By understanding and participating in both processes, the NEPA practitioner can help ensure that this goal is achieved.

For more information, contact Ted Hinds, Office of NEPA Policy and Assistance, at warren.hinds@eh.doe.gov, phone (202) 586-7855, or fax (202) 586-7031. LL

Be a Part of Lessons Learned

We are already planning for the next edition of *Lessons Learned Quarterly Report,* and we want your contributions. If you would like to submit an article for the first quarter FY 1998 edition of LLQR (#14), please contact Yardena Mansoor to discuss your suggestion. Yardena may be reached at yardena.mansoor@eh.doe.gov or (202) 586-9326. Submissions will be due by January 30, 1998. LL

National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP), founded in 1975, is a multidisciplinary association dedicated to the advancement of the environmental professions in the United States and abroad. NAEP provides a network of professional contacts and a forum for the exchange of information on environmental planning, research, and management among colleagues in industry, government, academia, and the private sector. Currently, NAEP has 2,000 members in 18 state and regional chapters, 24 active student chapters, and numerous committees and working groups that focus on specific association programs and functions. Among these is the NEPA Working Group, whose mission is Òto improve environmental assessment as performed under NEPA.ÓGeneral membership in NAEP requires an undergraduate degree and at least three years experience, or a graduate degree, in an environmental field.

Certification for Environmental Professionals

Certified Environmental Professional (CEP) status is available through NAEPÕs Academy of Board Certified Environmental Professionals. To be eligible for CEP status, one must have an undergraduate degree and at least nine years of applicable environmental experience, including five years in a position of responsibility. Certification is awarded for expertise in environmental research and education, environmental operations, environmental assessment, environmental documentation, or environmental planning. For more information on NAEP membership and the CEP program, contact Donna Carter at naep@ilnk.com, phone (888) 251-9902, or fax (904) 251-9901.

Annual Conference in June

NAEP will hold its 23rd Annual Conference on June 20-26, 1998, in San Diego, California. The meeting will focus on six subject areas: ISO 14000 and Environmental Management; International Environmental Issues; General Environmental Issues; NEPA and the California Environmental Quality Act; the Academic Center for Environmental Excellence; and Public and Stakeholder Participation.

Although abstracts for paper presentations were due October 31, late submissions will be considered. For more information on submitting abstracts or on the conference in general, visit NAEPÕs Web Site at www.naep.org; or contact Kathy Giles at whn@quick.net, or phone (619) 597-4710.

NAEP Award for Excellence

This year, NAEP will present a NAEP Presidential Award for Excellence in NEPA Practice. A nominated NEPA project, agreement, or achievement will be evaluated against one or more of the following criteria:

- ¥ Represents a major negotiating achievement with stakeholders;
- ¥ Provides a major contribution to environmental protection with stakeholder recognition;
- ¥ Achieves innovation in NEPA methodology or achieves integration of decision making with the NEPA process.

Nominations for the award are due by March 15, 1998, and must include a nomination form and supporting documentation. Forms are available at NAEPÕs Web site at www.naep.org.

Recent EIS Milestones

Notices of Intent

Hanford Solid (Radioactive and Hazardous) Waste Program EIS (DOE/EIS-0286) (62 FR 55615, October 27, 1997).

Jacksonville Electric Authority Circulating Fluidized Bed Combustor Project EIS, Jacksonville, Florida (DOE/EIS-0289) (62 FR 60889, November 13, 1997).

Advanced Mixed Waste Treatment Project EIS, Idaho National Engineering and Environmental Laboratory (DOE/EIS-0290) (62 FR 62025, November 20, 1997).

High Flux Beam Reactor Transition Project EIS, Brookhaven National Laboratory (DOE/EIS-0291) (62 FR 62572, November 24, 1997).

Draft EISs

Draft Programmatic EIS for Long-term Management and Use of Depleted Uranium Hexafluoride Resources at Several Geographic Locations (DOE/EIS-0269) (approved November 5, 1997Ñin printing).

Draft EIS for Accelerator Production of Tritium at the Savannah River Site (DOE/EIS-0270) (approved November 24, 1997Ñin printing).

Draft EIS on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (DOE/EIS-0277) (62 FR 62761, November 25, 1997).

Records of Decision

Nez-Perce Tribal Hatchery Project (DOE/EIS-0213) (62 FR 54617, October 21, 1997).

Interim Management of Nuclear Materials at the Savannah River Site, *Fourth Supplemental ROD* (DOE/EIS-0220) (62 FR 61099, November 14, 1997).

NAEP Task Force Makes NEPA Recommendations

By: Dr. James Roberts, President, National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) has formulated recommendations on NEPA reinvention *(related article in the Lessons Learned Quarterly Report, September 2, 1997, page 8)* at the request of the Council on Environmental Quality (CEQ). The NAEP recommendations fall within five broad issues relating to planning, the role of NEPA in environmental protection, analytical focus, public scoping, and consistent application of NEPA within and across agencies. These issues and selected examples of the associated NAEP recommendations are provided below.

Federal agencies do not value or understand quality planning, and Federal managers (and their contractors) lack knowledge and experience in applying planning principles effectively. NEPA is usually detached from internal planning processes.

- Train managers and practitioners in effective planning and NEPA implementation.
- ISO 14000 parallels the NEPA planning and implementation process. Integration of ISO 14000 principles into NEPA would validate NEPA with accepted standards and increase consistency of application. *(See related article on ISO 14000, page 7.)*
- Commitments to mitigation with associated accountability could be documented in the decision.

The role of NEPA in environmental protection and policy development is not clear.

- CEQ should publish guidance on the role of the six goals of NEPA (Section 101(b)) in Federal decision making.
- Records of decision should disclose rationale for not selecting the environmentally preferred alternative.
- Evaluation of the six goals of NEPA also can help an agency evaluate its effectiveness under the Government Performance and Results Act.

Planning efforts are too long and too costly, and lack of analytic focus results in documents that are too lengthy.

- Reviewing agencies should be involved during NEPA document scoping so their concerns can be incorporated into the analysis early.
- CEQ should publish a compendium of good NEPA document sections with annotated rationale.
- Time and page limits should not be used as Òone-size-fits-allÓ quality indicators.

Public scoping must be improved to open up Federal government planning and decision making and make it more effective.

- Public scoping should be conducted for EAs, as well as for EISs.
- Training for Federal employees, reviewing agencies, and the public should simulate public scoping processes and emphasize problem solving.
- Informational meetings may be an effective supplement to comment-driven public meetings.
- Use innovative technologies for public scoping, such as on-line commenting.

Consistency is lacking in both applying NEPA across and within agencies and determining quality. Guidance for consistently implementing NEPA within an agency and across agency lines is lacking. Agencies use different processes, some more restrictive than the CEQ regulations, and no standardized and generally acceptable methods exist for evaluating quality.

- Federal decision makers must read the NEPA document before making the decision.

The full set of recommendations are available, for a nominal cost of reproduction and mailing, from NAEPÕs executive offices, 6524 Ramoth Drive, Jacksonville, FL 32226-3202 or e-mail: naep@ilnk.com.

For more information, contact Dr. James Roberts at gems@ns.net or phone (916) 483-1564.

The author wishes to thank the NEPA Working Group of NAEP chaired by John Wik, with participation by Judith Lee, Chuck Eccleston, James McElfish, Frederic March, Sharon Saari, and George Wood.

National Environmental Training Office Established at Savannah River Site

By: David Hoel, Savannah River Operations Office

DOE's National Environmental Training Office (NETO) was recently established at the Savannah River Site to provide centralized management of Department-wide environmental training programs. NETO's mission is to strengthen and maintain the environmental management skills of DOE Federal and contractor employees through a national, integrated program. Through resource pooling, the NETO program will provide uniform, high-quality technical training to other Federal and state agencies, as well.

The Office will coordinate training for the environmental compliance, restoration, and waste management Technical Qualification Program; identify and provide training to support process improvement initiatives; and assist DOE Field Training Offices with oversight of contractor environmental management training.

NETO Responds to Identified Need

Defense Nuclear Facilities Safety Board Recommendations 93-3 and 92-7 criticized the technical capabilities of DOE employees and DOE's oversight of contractor training. A Congressional Conference Committee report on the FY 1997 budget expressed concern about DOE's training costs and the absence of central oversight of training requirements and a system to prevent training abuses.

As a result, the Department issued Implementation Plan SAI-44, ÒCorporateApproach to Training,Ó to eliminate duplication of effort and improve cost-effectiveness. SAI-44 set milestones for consolidating training management, centralizing the development of Federal and contractor training programs, and establishing training Centers of Excellence. NETO serves as the environmental training Center of Excellence.

NEPA Training

NETO is working with the Office of NEPA Policy and Assistance, the Defense Programs NEPA Compliance Officer, and others to determine the training needs of the DOE NEPA community, including drafting a questionnaire to help identify NEPA training needs and priorities.

For more information, visit NETO's Web site at www.orau.gov/doe-sr/neto/neto.html; or contact David Hoel at david.hoel@srs.gov, phone (803) 725-0818, or fax (803) 725-0815.

Coming Training Events

Environmental Justice

Phillip Thompson, Esquire, Private Consultant
January 21ÐMarch 26, 1998, Wednesdays 6-9PM
USDA Graduate SchoolÑW ashington, D.C.
Fee: $199
For information, call (202) 720-5885

Making the NEPA Process More Efficient: Scoping and Public Participation

Dr. Larry Canter, University of Oklahoma;
Debra L. Richards, Arthur D. Little, Inc.
February 18-20, 1998
Duke UniversityÑDurham, North Carolina
Fee: $595
For information, call (919) 613-8082
or on the Web at www.env.duke.edu

Advanced Methods and Techniques in Environmental Impact Assessment

Dr. Larry Canter, University of Oklahoma;
Dr. Samuel Atkinson, University of North Texas
March 9-13, 1998
Environmental Impact TrainingÑDallas, Texas
Fee: $595
For information, call (405) 321-2730

Current and Emerging Issues in Managing the NEPA Process

A collaborative effort with several Federal agencies, Tribes, and non-governmental organizations.
April 1998 *(Dates TBA)*
Duke UniversityÑDurham, North Carolina
Fee: $595
For information, call (919) 613-8082
or on the Web at www.env.duke.edu

Beneficial Landscaping Practices

Federal projects often involve landscape changes that require consideration in the planning process. Accordingly, a Presidential Memorandum issued April 26, 1994, directs Federal agencies to implement environmentally and economically beneficial practices on Federal landscaped grounds and to reflect these practices in appropriate NEPA documents. An interagency workgroup subsequently recommended techniques for meeting the requirements of the Memorandum (60 FR 40837, August 10, 1995).

The guidance states Ò[W]hereFederal projects or federally funded activities or projects considered in the NEPA process include landscape considerations, É NEPA documentation É shall reflect the recommendations established in this guidance.Ó DOE, therefore, needs to incorporate these beneficial landscaping practices into NEPA documents, and also into activities and projects that normally are categorically excluded (such as routine maintenance).

General Principles

Landscaping includes not only options for plant selection, water use, and fertilizer and pesticide application, but also pollution prevention, habitat conservation and restoration, energy efficiency, and overall cost-effectiveness. The guidance recommends that NEPA documents reflect the following beneficial landscaping practices:

- Use regionally native plants for landscaping;
- Design, use or promote construction practices that minimize adverse effects on the natural habitat;
- Seek to prevent pollution;
- Implement water and energy efficient practices; and
- Create outdoor demonstration projects.

Integrated pest management can be used to control pests, both plant and animal, resulting in lower pesticide levels in the watershed and overall cost savings. One innovative technique creates ÒxeriscapesÓ by grouping plants with similar water needs, using drought-tolerant plants, correctly positioning plants so that the most drought-tolerant are on the side of prevailing winds, and widely using mulch. Such beneficial landscaping techniques are examples of what could be considered in NEPA documents.

DOE's Progress

A DOE Progress Report of July 1996 notes a wide variety of actions under the Memorandum and guidance. A DOE site uses solar power for some of its irrigation systems, for example. Many sites compost and re-use organic wastes, and they landscape with native, drought- and pest-tolerant plant species.

In Washington, D.C., adjacent to DOE's Forrestal Building, DOE created Earth Day Park to demonstrate photovoltaic lighting and to showcase landscaping that does not need fertilizers, pesticides, or mowing. All of these practices serve to reduce cost and effort and minimize adverse environmental impacts.

Achievement Awards

The Memorandum established awards for outstanding achievements in landscaping practices. DOE's Federal Energy Management Program (FEMP) administers the annual awards to individuals and organizations who use beneficial landscaping practices, show cost-effectiveness, and develop landscaping projects of broad applicability.

Recipients of the most recent awards, announced in October 1997, included:

- Luke Air Force Base in Arizona for a pest management treatment that reduces chemical use by 70 percent;
- The U.S. Postal Service in both Arizona and California for incorporation of xeriscape principles, the use of reclaimed water, and development of a demonstration garden; and
- A partnership of Federal, State, and County agencies in New Mexico for the Zuni Canyon Meadow Restoration Project.

Nominations for next year's awards are due in May 1998. For a nomination form or more information about the awards, contact FEMP at (202) 586-5772 or on the Web at www.eren.doe.gov/femp.

For more information about the guidance, contact Barbara Grimm-Crawford, Office of NEPA Policy and Assistance, at barbara.grimm-crawford@eh.doe.gov, phone (202) 586-3964, or fax (202) 586-7031.

Feedback on LLQR

Please submit feedback on the Lessons Learned Quarterly Report to:
Hitesh Nigam, hitesh.nigam@eh.doe.gov,
(202) 586-0750, fax (202) 586-7031

Or mail your suggestions to:
Office of NEPA Policy and Assistance, EH-42,
Attn: Hitesh Nigam, U.S. Department of Energy,
1000 Independence Avenue, SW, Washington, DC
20585-0119

Global Climate Change in NEPA Documents:
DOE Comments on CEQ's Draft Guidance

After an expedited review by the Office of NEPA Policy and Assistance, cognizant program contacts, and NEPA Compliance Officers, the Department provided comments to the Council on Environmental Quality (CEQ) on its ÒDraftGuidance Regarding Consideration of Global Climatic Change in Environmental Documents Prepared Pursuant to the National Environmental Policy ActÓ (October 1997).

In a letter dated October 31, 1997, DOE cited its leadership and commitment in addressing the challenges of global climate change, and specifically agreed with CEQÕs main proposition that global climate change is a Òreasonablyforeseeable Óimpact of greenhouse gas emissions, in the context of NEPA. DOE also agreed that the NEPA process should explore options to reduce net greenhouse emissions through analyses of alternatives and mitigation measures, and our comments offered many suggestions for making CEQÕs guidance more focused and productive.

DOE Suggests Focus on Future Activities

While CEQÕs draft guidance proposes an immediate review of *continuing* activities, DOE commented that the most productive consideration of global climate change issues under NEPA is through reviews of proposed *future* activities. CEQÕs draft guidance specifically directs Federal agencies to immediately review whether and to what extent continuing and proposed activities contribute directly or indirectly to greenhouse gases and climate change. DOE commented, however, that an immediate review of continuing operations in most cases is unwarranted because it is unlikely that agencies would be able to materially change the course of most ongoing actions (e.g., redesign or shut down operating facilities) even if the greenhouse emissions data and analytical models needed to justify the effort were available.

Two Aspects Apply to NEPA Reviews

In the draft guidance, CEQ discusses the scientific basis for concern about global climate change and presents the major conclusions of the Intergovernmental Panel on Climate Change (IPCC). The guidance discusses the role of the NEPA process and concludes that because global climate change is a reasonably foreseeable impact of greenhouse gas emissions, agencies must consider global climate change in NEPA documents.

CEQÕs draft guidance directs Federal agencies to consider the following two aspects of global climate change in their NEPA documents: (1) the potential for Federal actions to influence global climatic change (e.g., increased emissions or sinks of greenhouse gases); and (2) the potential for global climatic changes to affect Federal actions (e.g., feasibility of coastal projects in light of projected sea level rise). DOE commented that the guidance should note further that, in principle, the environmental impacts of a proposed actionÑi.e., other than the impacts on climateÑmay differ under different climate conditions; e.g., long-term health effects of waste disposal sites may be sensitive to assumed precipitation rates. DOE also stated, however, that there is no generally accepted method for evaluating such effects.

The draft guidance concludes that analysis of global climate change effects at the project level would not provide meaningful information in most instances, and indicates that agencies should assess such impacts in programmatic NEPA reviews. DOE agreed that such analyses are most useful at the programmatic level, but suggested that project-level NEPA reviews may be appropriate.

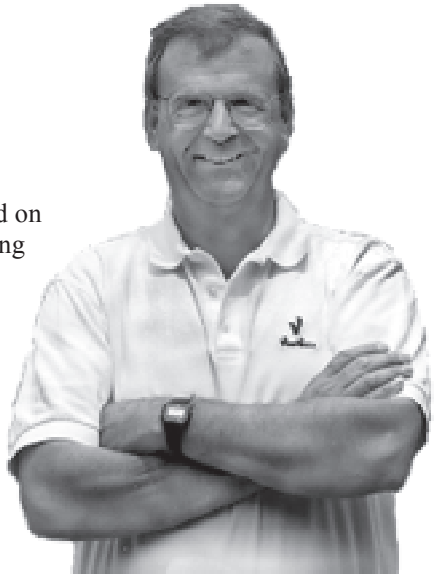
Guidance Could Be Addressed in Reinvention

DOE requested that CEQ not establish specific or new requirements for NEPA reviews and that the guidance should contain a preface stating that the guidance is not intended to be legally binding (such as is found in other recent CEQ guidance). Other DOE comments were directed at improving the clarity of the guidance (e.g., use of technical terms), the accuracy of the technical representations, and providing more complete references to help NEPA practitioners. DOE also suggested that CEQ consider addressing global climate change in the context of any future work under its NEPA Reinvention initiative.

For more information, contact Denise Freeman, Office of NEPA Policy and Assistance, at denise.freeman@eh.doe.gov, phone (202) 586-7879, or fax (202) 586-7031.

TRANSITIONS...

Tony Adduci Retires



Tony Adduci, NEPA Compliance Officer for the Oakland Operations Office, retired on November 3, 1997, after 34 years of service with the Federal government. Reflecting upon his years as NCO and NEPA Document Manager, Tony said he experienced many positive values of NEPA. Tony's approach stressed NEPA as a planning tool, he said, and treating each proposed action at the proper level of NEPA review.

When asked what advice he might give to a new NCO, however, Tony (noted for his humor as well as his directness) recalled the lines of a popular song: "You gotta know when to hold 'em, know when to fold 'em." NEPA Compliance Officers must satisfy the letter of the law, but, he suggests, they should emphasize intent and principle in making judgments regarding NEPA practices. In 1995, Tony received the Oakland Operations Office Process Improvement Award, and in 1996 the Energy Research Process Improvement Award. He continues to reside in Walnut Creek, California. We wish Tony well in his second career in education and the private sector.

Jim Melton Moves to Private Sector

Jim Melton, who served in the DOE Western Area Power Administration's Sierra Nevada Regional Office as environmental manager and NEPA Compliance Officer for nearly six years, has taken early retirement from Federal service to join the private sector.

Jim's career has been distinguished by many contributions and commendations, most recently the DOE Distinguished Career Service Award for outstanding environmental work on NEPA projects and management initiatives. He received six Outstanding Achievement Awards from the Western Area Power Administration between 1992 and 1997 for toxic waste reduction, cost containment, and administrative leadership.

Jim continues to serve on the Board of Directors of the National Association of Environmental Professionals. He may be reached at jim_melton@cpqm.saic.com or phone (208) 528-2173.

DOE-wide NEPA Contracts Update

Since the Department awarded three DOE-wide NEPA contracts in June 1997, nine tasks totaling $9.7 million have been initiated. The contracts were awarded to three teams headed by Haliburton NUS Corporation, Science Applications International Corporation (SAIC), and Tetra Tech, Incorporated. The following table shows the tasks awarded under these contracts since July 1997.

Task Description	NEPA Document Manager	Award Date	Contractor Team
Los Alamos National Laboratory Site-wide EIS (document production and comment response)	Cory Cruz (AL) ccruz@doeal.gov; phone (505) 845-4282	7/3/97	Tetra Tech, Incorporated
Sandia National Laboratories Site-wide EIS (draft and final EIS and public relations)	Julianne Levings (AL) jlevings@doeal.gov; phone (505) 845-6201	8/15/97	Haliburton NUS Corporation
Commercial Light Water Reactor Tritium Extraction Facility EIS	John Knox (SR) john.knox@srs.gov; phone (803) 725-1128	9/16/97	Haliburton NUS Corporation
Los Alamos Nonproliferation and International Security Center EA	Dean Triebel (LAAO) d.triebel@doe.lanl.gov; phone (505) 665-6353	11/13/97	Tetra Tech, Incorporated
Advanced Mixed Waste Treatment Facility EIS (draft EIS and comment response)	John Medema (ID) medemaje@inel.gov; phone (208) 526-1407	11/14/97	Tetra Tech, Incorporated
Hanford Remedial Action Program EIS (completion of EIS in progress)	Tom Ferns (RL) thomas_w_ferns@rl.gov; phone (509) 372-0649	11/17/97	Haliburton NUS Corporation
High Level Waste and Facilities Disposition EIS	Roger Twitchell (ID) twitchrl@inel.gov; phone (208) 526-0776	11/24/97	Haliburton NUS Corporation

North American Agreement on Transboundary Environmental Impact Assessment

In conjunction with the North American Free Trade Agreement (NAFTA), the United States, Canada, and Mexico also entered into the North American Agreement on Environmental Cooperation (NAAEC). Article 10.7 of the NAAEC calls upon the Commission for Environmental Cooperation Council, which consists of cabinet-level environment officials of the three NAFTA parties, to develop recommendations on notification, consultation, assessment, and mitigation for certain proposed projects likely to cause significant adverse transboundary environmental impacts. Accordingly, in June 1997 the Council announced the partiesÕ decision to negotiate a legally binding agreement on transboundary environmental impact assessment (ÒAgreementÓ).

From a United States perspective, such an Agreement would provide for early notice of proposed physical projects in Canada and Mexico that are likely to have significant adverse impacts on the U.S. environment, and would provide for an opportunity to express U.S. concerns. The U.S. government and its citizens also could participate in Canadian and Mexican governmental decisions, thus ensuring that U.S. concerns are taken into account.

Notification

There likely will be two bases for notification under the Agreement: (1) proposed physical projects that the originating country, on a case-by-case basis, determines have the potential to cause significant adverse transboundary environmental impacts; and (2) designated categories of physical projects located within 100 km of the United States/Mexico and United States/Canada borders, without characterization of transboundary environmental impact. The U.S. has proposed that, for the United States, only major actions as defined under NEPA and subject to decisions by the U.S. Federal government would be included in the scope of the Agreement.

The first and second negotiating sessions took place this year on September 11Ð12and November 17Ð18in Montreal, Canada. Further sessions are to occur in the coming months. The target for completing an Agreement is April 1998.

For more information, contact Jim Daniel, Office of NEPA Policy and Assistance, at james.daniel@eh.doe.gov, phone (202) 586-9760, or fax (202) 586-7031.

Support the Preparation of Annual Planning Summaries

Members of the DOE NEPA Community are reminded to support the preparation of their organizationÕs Annual NEPA Planning Summary. DOE Order 451.1A requires each Secretarial Officer and Head of a Field Organization to submit an Annual NEPA Planning Summary to EH-1 by January 31 of each year. The Annual NEPA Planning Summary also must be made available to the public. The Summary is to include: (1) the status of ongoing NEPA compliance activities, (2) any environmental assessments expected to be prepared in the next 12 months, (3) any environmental impact statements expected to be prepared in the next 24 months, (4) the planned cost and schedule for completion of each NEPA document identified, and (5) an evaluation of whether a site-wide environmental impact statement would facilitate future NEPA compliance efforts *(required every three years, starting in 1995).* Annual planning for NEPA reviews promotes efficient resource management and scheduling. Questions may be addressed to Jim Daniel, Office of NEPA Policy and Assistance, at james.daniel@eh.doe.gov, phone (202) 586-9760, or fax (202) 586-7031.

Office of NEPA Policy and Assistance Issues Guidance

The NEPA Office recently issued guidance on several topics. For additional information or copies, please consult the following points of contact.

1. **A Brief Guide: Department of Energy-wide Contracts for NEPA Documentation** (September 30, 1997)
   Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596

2. **DOE EIS Checklist** (November 12, 1997)
   Jim Daniel at james.daniel@eh.doe.gov, phone (202) 586-9760

3. **DOE NEPA Implementing Procedures (10 CFR Part 1021) including Preambles to Final Rulemakings** (November 14, 1997Ñin printing)
   Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596

If You Don't Know Where You're Going... Any Road Will Take You There

This article is reprinted with permission from the September 1997 issue of ***OnTrack****Ñ Environmental News from Environmental Training & Consulting International, Inc.*

Failure to ask two fundamental questions lies at the root of many practitionersÕ problems with public involvement.

1. What do you want from the public involvement process?

2. How will you know you have achieved it?

Without a clear purpose for doing public involvement and a well-defined outcome and evidence procedure for each part of the overall program, you canÕt address other key questions effectively. For example, you wonÕt know which public involvement methods would work best in the given situation, how to attract new participants in the process, or what criteria need to be met to gain consensus or reach informed consent. As the saying goes, ÒIf you donÕt know where youÕre going, any road will take you there.Ó

Although these two fundamental questions are deceptively simple, challenge yourself to develop specific answers as you walk through each step of the following procedure.

1. What do you want from the public involvement process?

(a) State your objectives in positive, concrete terms. Focus on what you *do* want, rather than what you *donÕt* want. ÒI want 12 new faces at the meetingÓ is far more effective than ÒI donÕt want just the usual participants.Ó

(b) Make sure your goals are within your control. This is crucial. You donÕt control the responses of other peopleÑ particularly in public involvement processes. ÒI want them to get a better attitude,Ó is not within your control, although you can take many steps that may, over time, generate trust, respect and positiveness and thereby elicit different responses from the public. ÒI want my presentation to be accurate and well-organizedÓ is an outcome that you do control, one that may lead to an improved ÒattitudeÓ and increased responsiveness over time.

(c) Set objectives that are achievable within your time/budget constraints. A public involvement goal of gaining the complete trust of all U.S. citizens for the Department of Defense is probably a little aggressive. However, you could set an objective of demonstrating reliability (read trustworthiness) on project XYZ by ensuring that all environmental information communicated to the public is accurate and comes from qualified sources.

2. How will you know when you have succeeded in reaching your public involvement objectives?

The true test on whether your public involvement objectives are clear enough is whether you can easily answer this question.

(a) Make sure that the evidence really relates to the objective. If your objective is to ensure that seven involved parties participate in the public involvement process and your evidence of success is that youÕll feel good at the end of each public meeting, you need to develop some other evidence procedure. Feeling good at the end of public meetings is great but is not evidence that the objective was achieved.

(b) Be specific. State what will you see, hear or feel when you have succeeded, rather than vague statements like ÒweÕll make better decisions.Ó The more specific and measurable, the better. If your objective is ÒThe public will feel involved,Ó youÕll never know if youÕve succeeded. Also, ÒIÕll just knowÓ is a cop out. If youÕll know, then get clear about *how* you will know. If part of your objective is that 400 people will participate in the public involvement process by December 1997, youÕll know if youÕve gotten there.

Now evaluate the following public involvement outcomes based on these criteria:

Outcome: ÒI want to give a good presentation.Ó

This is probably not specific enough for an individual objective, and definitely not an outcome for a public involvement process. By going through the evidence procedure, you could develop a more useful outcome.

Outcome: ÒI want them to like us.Ó

Forget this. ItÕs not within your control and sometimes is less related to your actions than to strategy, long-standing resentments, etc. Evidence would be difficult to obtain.

Outcome: ÒI want them to like our project.Ó

This is both not specific and not within your control.

Outcome: ÒBy April 1998 when we complete our public involvement activities, we want to determine if the public has issues/concerns that we have not identified. We will involve at least 50 members of the public beyond the three interest groups that are usually involved.Ó

This is an achievable outcome.

Evidence: ÒEither we will have added to our list of issues, or we will have a written agreement from all participants that no further issues need to be analyzed at this time, and we will have added 50 names to our mailing list.Ó

Effective public involvement is challenging enough by its very nature. Give yourself a head-start by addressing these two fundamental questions at the outset and youÕll find that the process becomes easier.

Environmental Training & Consulting International, Inc. is located at 2325 Eudora Street, Denver, CO 80207, etcidenver@aol.com, phone (303) 321-3575, or fax (303) 321-4569.

Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

BPA Wins NEPA Lawsuit and DOE Gains Partial Settlement in Another, but Two New Suits Filed against DOE

Bonneville Power Administration (BPA) recently won a lawsuit concerning a major programmatic EIS. The Department of Energy has also agreed to a partial settlement of the litigation concerning the Stockpile Stewardship and Management Programmatic EIS (SSM PEIS). Two new NEPA lawsuits have been filed recently against the Department, however, concerning a proposed decontamination and decommissioning action at the K-25 Plant and selection of a western port for the receipt of foreign research reactor spent fuel.

Bonneville Business Plan EIS Upheld

The U.S. Court of Appeals for the Ninth Circuit recently upheld the adequacy of the Business Plan EIS (DOE/EIS-0183, June 1995) [and several Records of Decision (RODs) based on that EIS] prepared by BPA to analyze potential market responses and corresponding environmental impacts from BPAÕs business activities. The Business Plan EIS is the basis of a staged decision making process that tiers from the Business Plan ROD, which decided broad BPA business strategies for which only general marketing responses and environmental impacts can be projected. The Business Plan ROD is being followed by several additional RODs for agency actions that are consistent with the general marketing responses and environmental impacts projected in the Business Plan EIS. Site-specific NEPA reviews, however, will be prepared only for proposed projects for which actual physical effects could be identified and evaluated.

Several utility and environmental organizations sued BPA, alleging, among other things, that the Business Plan EIS and subsequent RODs did not comply with NEPA in several respects. The court disagreed with the plaintiffs:

¥ The plaintiffs argued that, rather than tiering subsequent RODs to the original Business Plan EIS ROD, BPA was required to prepare a separate EIS before each ROD. The court ruled that, as long as the NEPA review for the subsequent RODs is adequate, whether it is contained in a programmatic EIS or a separate EIS is immaterial. (The court noted in passing that Òinmany ways, a programmatic EIS is superior to a limited, [project]-specific EIS because it examines an entire policy initiative rather thanÉ a single agency action.Ó)The court could find no intervening changes that would cause the EIS to be outdated.

¥ The plaintiffs also argued that BPA had not analyzed the cumulative impacts of the contracts that were the subjects of the subsequent RODs. The court found that, in the analysis of the preferred programmatic alternative, BPA had adequately considered cumulative impacts of all of the contracts.

¥ The plaintiffs argued that the EIS did not consider alternatives to the current access to the transmission system, but the court found that Òafair reviewÓof the alternatives led to the opposite conclusion and that an agency is required to examine only those alternatives necessary to permit a reasoned choice.

¥ The plaintiffs argued that BPA should have considered a no action alternative under which BPA would not sign any agreements for power or transmission. The court held that BPAÕs no action alternative (the status quo, i.e., continuation of its present sales contracts) was allowed by the CEQ regulations. The court quoted the answer to Question 3 of *Forty Most Asked Questions Concerning CEQÕs National Environmental Policy Act Regulations* that Òthe Ônoaction Õalternative may be thought of in terms of continuing with the present course of action until that action is changed.Ó(46 FR 18026, March 23, 1981).

¥ The plaintiffs challenged BPAÕs analysis of several environmental consequences of the alternatives. The court found for BPA on all counts, noting that BPA was not required to use a particular methodology for impact analysis, or, as for social impact analysis, that NEPA did not require the requested analysis. The court paid special attention to BPAÕs analysis of long-term impacts (which focused on relationships between variables rather than quantitative projections), and ruled that BPAÕs method was adequate because BPA could not make statistically meaningful projections of future outcomes.

Association of Public Agency Customers v. Bonneville Power Administration, 1997 U.S. App. LEXIS (9th Cir. 1997).

continued on next page

DOE Suits *(cont'd. from page 16)*

Partial Settlement in Stockpile Litigation

On October 27, 1997, Judge Stanley Sporkin of the U.S. District Court for the District of Columbia approved a Joint Stipulation and Order negotiated by the parties that settles a portion of the Stockpile Stewardship and Management Programmatic EIS (SSM PEIS, DOE/EIS-0236, December 1996) litigation involving the construction of the National Ignition Facility (NIF). (On August 8, 1997, Judge Sporkin had denied the motion filed by the Natural Resources Defense Council, Inc., et al., to preliminarily enjoin DOE from proceeding with construction of NIF. *See related articles in the Lessons Learned Quarterly Report, June 2, 1997, page 5, and September 2, 1997, page 3.)*

Under the Order, DOE must fully evaluate any potential risks to the human environment from continuing to construct and operate NIF in an area possibly contaminated with buried hazardous material. (During construction, DOE excavated capacitors and soil containing polychlorinated biphenyls that were previously unknown and thus were not considered in the SSM PEIS.) DOE will examine available written materials, interview workers with relevant knowledge, conduct reasonably necessary physical tests (as specified in the Order), and provide periodic status reports to the plaintiffs and the court. DOE will then issue a supplement to the SSM PEIS that evaluates the reasonably foreseeable significant adverse environmental impacts of operating NIF in a possibly contaminated area.

Construction of NIF will continue while these activities are being completed, although DOE cannot take any action that may threaten the public health, safety, and/or the environment. The Order does not address the other issues in the lawsuit, including whether the SSM PEIS is adequate and whether DOE is required to prepare a PEIS on Environmental Restoration and Waste Management.

Department Sued to Prepare EIS for K-25 Decontamination and Decommissioning

On August 22, 1997, the Oil, Chemical and Atomic Workers International Union, AFL-CIO; the union local in Oak Ridge, Tennessee; and several union members in Oak Ridge, filed suit in the U.S. District Court for the District of Columbia concerning the Department's award of a contract to BNFL, Inc., for decontamination and decommissioning of three buildings at the K-25 Gaseous Diffusion Plant in Oak Ridge. (Defendants in the suit also include BNFL, Inc., and the Community Reuse Organization of East Tennessee, under an Amended Complaint filed August 28, 1997. On October 23, 1997, the Natural Resources Defense Council, the Oak Ridge Environmental Peace Alliance, and two other environmental groups moved to intervene as plaintiffs on the NEPA claim.)

In addition to counts concerning workforce restructuring and employment opportunities for displaced workers, the plaintiffs also seek to restrain the Department from taking any action under the BNFL, Inc., contract until the Department prepares an EIS for the proposed decontamination and decommissioning action (as allegedly required under Appendix D3 to 10 CFR Part 1021, Subpart D). According to the Amended Complaint, the requested EIS should include the impacts of the proposed commercial sale of radioactive scrap metals, including nickel, that would result from the proposed decontamination and decommissioning action. The Department filed a motion to dismiss the suit on October 21, 1997, based in part on the ban under the Comprehensive Environmental Response, Compensation, and Liability Act on judicial actions before completion of the remedial action.

Department Sued Again on Foreign Research Reactor Spent Fuel EIS

On October 20, 1997, the County of Contra Costa and the City of Concord, both in California, filed suit in the U.S. District Court for the Northern District of California opposing the Department's selection of Concord Naval Weapons Station as the western port of entry for the receipt of foreign research reactor spent nuclear fuel. The selection was based on the Department's February 1996 EIS on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS-0218). (The EIS also was the subject of an earlier lawsuit by the State of South Carolina, which the Department won in December 1996. *See Lessons Learned Quarterly Report, March 3, 1997, page 11.)*

In addition to counts concerning the Department's criteria for choice of the port, the plaintiffs allege that the Department should have analyzed the risks of terrorist activities; the security at military posts generally or the Concord Naval Weapons Station specifically; the risks of transportation through the San Francisco Bay Estuary (including potential impacts on endangered and threatened species); and the inadequacies and dangers of the proposed rail transport route from the Concord Naval Weapons Station to the Idaho National Engineering and Environmental Laboratory. They ask the court to enjoin the Department from scheduling or receiving any shipment of spent nuclear fuel to or through the Concord Naval Weapons Station, and for a judgment that the selection of the Concord Naval Weapons Station as the western port of entry was unlawful. LL

Other Cases of Interest

Alternatives Not Required for Forest Service Mitigation Measure

On July 1, 1997, the U.S. Court of Appeals for the Ninth Circuit ruled that the EIS prepared by the U.S. Forest Service (USFS) for the harvesting of timber and the construction and reconstruction of roads in the Smokey Corridor area of the Lewis and Clark National Forest complied with NEPA. The appellants argued that USFS failed to consider a reasonable range of alternatives for the road closure (or restriction) that was a proposed mitigation measure common to all six action alternatives. The court ruled that, because road closure or restriction was a proposed mitigation measure, USFS was not required to consider alternatives, such as different road closures in different areas.

The appellants also argued that USFS should have prepared a supplemental EIS for the Smokey B timber sale, because the actual acreage sold (based on a survey of the area) was greater than that analyzed in the EIS (based on information in USFSÕ Timber Stand Management Reporting System database). USFS argued that the difference of plus or minus 10% was typical of the types of minor adjustments that occur in applying the database, and that such a variation was not a substantial change in the proposed project. The court agreed. *Island Range Chapter of the Montana Wilderness Association v. U.S. Forest Service*, 1997 U.S. App. LEXIS 16332 (9th Cir. 1997).

Environmental Impacts Must Be Assessed for Land Exchange in Vermont

The USFS was sued in May 1997 to assess the environmental impacts of a proposed land exchange between USFS and Sugarbush Resort Holdings, Inc. Congressional legislation directed USFS to convey land to the resort management company for acceptable land or cash, under terms and conditions to be prescribed by USFS. Following the legislation (which did not expressly exempt the land exchange from NEPA review), the USFS developed and approved an exchange proposal, concluding that the proposed action was categorically excluded. Subsequently, the USFS determined that the exchange was a non-discretionary agency action and, as such, was exempt from NEPA.

The court found in favor of the plaintiff, stating that the proposed land exchange was not exempt from NEPA because USFS has discretion to impose terms or conditions on the land exchange and to approve or disapprove the transaction, its actions were not purely ministerial, and compliance with NEPA would not be Òan empty formality.ÓThe court further ruled that the land exchange could not be categorically excluded from NEPA review because, among other reasons, the proposed use (hotel and conference center) would not be Òessentially the sameÓas the current use (parking lot and tennis courts), as required under USFSÕ NEPA regulations, notwithstanding that the land would retain a high-density land management designation. *RESTORE: The North Woods v. the U.S. Department of Agriculture*, 1997 U.S. Dist. LEXIS 9340 (D. Vt. 1997).

HUD Prevails in Connected Actions Suit

Three not-for-profit community groups brought suit against the U.S. Department of Housing and Urban Development (HUD) alleging that HUDÕ designation of an area known as Lincoln West in the Riverside South area of Manhattan as eligible for Federal mortgage insurance required NEPA review. The plaintiffs also challenged HUDÕ decision to limit its environmental review to four apartment buildings within Lincoln West rather than the entire Riverside South area.

The court found in favor of HUD on all points. The court ruled that ÒNEPA does not require an EA and FONSI or an EIS at the preliminary stage of a development project,Ó such as the designation of the Lincoln West area as eligible for Federal mortgage insurance. The court also found HUDÕ decision to limit the environmental review to the four buildings to be reasonable.

The court concurred with HUDÕ determination that construction of the four buildings had Òindependent utilityÓfrom other proposed projects in that the developer requesting HUDÕ assistance would go ahead with the apartment buildings with or without the other Federal projects in the Riverside South area. The other Federal projects were not, therefore, connected actions under the Council on Environmental Quality NEPA regulations [40 CFR 1508.25(a)(1)]. *Coalition for a Liveable Westside v. U.S. Department of Housing and Urban Development*, 1997 U.S. Dist. LEXIS 8860 (S.D.N.Y. 1997).

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 1997. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping—What Worked

¥ Two no action alternatives. *Two variations of the no action alternative were analyzed based on public scoping comments*.

¥ Combining DOEÕs scoping process with another agencyÕs meetings. *Scoping meetings were held jointly with U.S. Fish and Wildlife Service (USFWS) public meetings on an interdependent project*.

¥ Early mailing to potential stakeholders. *A ÒScoping StatementÓwas mailed to potentially interested stakeholders at the onset of the EA process. This permitted the public and agencies to comment before the EA was prepared*.

Scoping—What's Needed

¥ More Program Office involvement. *This would have helped the Field Office to clarify the scope of the proposed activities and identify all interested stakeholders. The Field Office was unaware that certain stakeholders were in contact with the Program Office and wanted to review the EA that the Field Office was preparing.*

Data Collection/Analysis—What Worked

¥ Specifying details of the project to a resource agency. *Providing the location, nature of the project, and a list of species known to occur on the site elicited a succinct and informative reply from USFWS, allowing DOE to complete the Section 7 (threatened and endangered species) consultation quickly.*

¥ Use of Geographic Information Systems (GIS). *This permitted rapid and cost-effective analysis of complex data and Òwhat-ifÓscenarios in developing alternatives. While a somewhat expensive tool, GIS more than paid for itself in time and cost savings.*

Data Collection/Analysis—What Didn't Work

¥ Overly conservative analysis in order to protect classified information. *This raised concerns by the reviewers that the potential impacts were overstated.*

¥ Change in models. *Changing performance assessment models between the draft and final Supplemental EIS necessitated redoing the analysis.*

Schedule

Factors that Facilitated Timely Completion of Documents

¥ Early identification of issues and decisions to be made.

¥ Concurrent review. *This included input from Headquarters in the early stages, and real-time changes throughout the review process.*

¥ Establishment of a Headquarters/Field Office team relationship early in the process.

¥ Involving resource agency technical staff in the preparation of the EA. *Staffing the project with Tribal members, State managers, and USFWS personnel facilitated the review process, effectively getting the agencies to Òbuy-inÓto the analysis before the document was issued to the public.*

continued on next page

NEPA Process *(continued)*

Factors that Inhibited Timely Completion of Documents

¥ Limitations of the tiering document. *Because the document from which the EIS was tiered did not address a scenario similar enough to that needed for a subsequent EIS, additional analysis was required.*

¥ Lack of NEPA experience among cooperating agency staff. *Apparent confusion among the other agency staff regarding their own NEPA process caused communication problems*.

¥ Insufficiently trained document manager. *When the NEPA Document Manager is not properly trained in NEPA compliance, there may be a huge learning curve.*

¥ Unnecessarily limited scope of earlier document. *The project change that triggered the EA had actually been analyzed in Ð but deleted from Ð a previous EA*.

Factors that Facilitated Effective Teamwork

¥ Work sharing. *The delegation of tasks and responsibilities, combined with regular status and deadline meetings, evened out the workload among team members*.

¥ An Òactionteam.Ó*This team was formed (with representatives from contractors, counsel, stakeholders, and DOE) to establish and monitor the schedule and oversee activities.*

Reminder:

Lessons Learned Questionnaires for all NEPA documents completed during the first quarter of fiscal year 1998 (October 1, 1997 to December 31, 1997) should be submitted as soon as possible after document completion, but no later than January 30, 1998.

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

The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web [http://tis.eh.doe.gov/nepa/] on the Internet. Look for it under NEPA Process Information.

Factors that Inhibited Effective Teamwork

¥ Acrimony and complaints. *Acrimony generated by Field Office requests for EIS approval authority and complaints about failure to adhere to the original schedule adversely affected the NEPA process.*

Public Participation Process

Successful Aspects of the Public Participation Process

¥ Early, informal scoping meetings and public hearings. *The question and answer period at the beginning of each session helped the public feel more comfortable and welcome.*

¥ Announcement by postcard. *Using a computerized NEPA mailing list, postcards announcing the availability of the draft EA and meeting information were mailed to more than 600 people. This proved to be both effective and relatively inexpensive.*

¥ Involve stakeholders in developing a public involvement plan.

Unsuccessful Aspects of the Public Participation Process

¥ Serving a dispersed public. *The project area was rural and the population was widely dispersed. Despite notifications on radio, in the local press, at local meeting places, at meetings, and by direct mailings, many people complained that they received insufficient notice about the project.*

¥ Late comments. *Several comments submitted after the Finding of No Significant Impact was signed focused on the need for an EIS instead of an EA. Also, most organizations invited to comment on the draft EA did not comment.*

¥ Meetings remote from the project site. *Public meetings held at distant locations are generally not well-attended. Only highly controversial actions or actions affecting the entire nation or DOE as a whole require meetings in Washington, D.C. or in State capitals.*

continued on next page

NEPA Process *(continued)*

Public Reactions to the NEPA Process

¥ Timing of public involvement. *Members of the public complained because the comment period and hearings spanned the holidays through the first week of January.*

¥ EA can provide assurance. *Although this project would have qualified for categorical exclusion, DOE prepared an EA because of public concerns about allowing a private company to work on a DOE facility.*

Usefulness

Agency Planning and Decision Making

¥ NEPA was ÒtheÓ planning tool. *While some may initially have had the idea that NEPA was just another hoop to jump through, by the time we had finished the draft EIS, most interested parties had an enhanced understanding of the project.*

Enhancement/Protection of the Environment

¥ Applicability to future projects. *The EIS will be useful for future watershed management issues and projects, and consequently, will enhance watershed habitats for fish.*

¥ Environmental vigilance. *The EA process resulted in assurances that the for-profit entities would maintain environmental integrity over the life of the project.*

Effectiveness of the NEPA Process

For the purposes of this section, ÒeffectiveÓ means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning Ònot effective at allÓ and 5 meaning Òhighly effective.Ó

For this quarter, 9 out of 12 respondents for EAs and five out of six respondents for EISs rated the NEPA process as Òeffective.Ó

One EA respondent, rating the NEPA process as ineffective, stated that this rating is not fair to the NEPA process, because it was the second time a document had been completed for the same project as a result of the project taking a new direction.

The one EIS respondent who rated the NEPA process ineffective stated that although the outcome of the project was predetermined, the NEPA process did help to define the project and enable better decisions regarding specific actions.

EIS-related Documents Issued Between July 1 and Sept. 30, 1997

Notices of Intent	DOE/EIS-#	Date
Spallation Neutron Source, Oak Ridge Operations Office	0247	7/21/97 (62 FR 40062)
High-Level Waste and Facilities Disposition, Idaho Operations Office	0287	9/15/97 (62 FR 49209)
Draft EISs		
Supplemental EIS/Program Environmental Impact Report for Sale of the Naval Petroleum Reserve No. 1, Elk Hills, California	0158-S2	7/11/97 (62 FR 40074)
Disposal of S3G and D1G Prototype Reactor Plants, Richland, Washington *(Office of Naval Reactors)*	0274	7/16/97 (62 FR 39227)
Records of Decision		
Kenetech/Pacificorp Windpower Program, Bonneville Power Administration *(BLM Ð Lead Agency)*	0255	7/21/97 (62 FR 40809)
Watershed Management Program in Oregon, Idaho, Washington, and Montana, Bonneville Power Administration	0265	8/27/97 (62 FR 46954)
Supplement Analysis		
Supplement Analysis for Spent Fuel Transportation from High Flux Beam Reactor, Brookhaven National Laboratory to Savannah River Site *(No Supplemental EIS required)*	0203-SA1	Approved 7/2/97

EIS and EA Time and Cost Facts

EISs

Albuquerque Operations Office

Environmental Management
Waste Isolation Pilot Plant Disposal Phase Supplemental EIS
DOE/EIS-0026-S2
EPA Rating: LO
Cost: $8.2 million ($0.3 million Federal, $7.9 million contractor)
Time: 25 months

Bonneville Power Administration

Nez-Perce Tribal Hatchery Project
DOE/EIS-0213
EPA Rating: EC-2
Cost: $492,000 ($101,000 Federal, $391,000 contractor)
Time: 39 months

Western Area Power Administration

Navajo Transmission Project, Arizona, New Mexico, Nevada
DOE/EIS-0231
EPA Rating: EC-2
Time: 50 months

*[**Note:** The costs of this EIS were paid by the applicant; therefore, cost information does not apply to DOE.]*

One EIS Completed in Third Quarter, but Not Previously Reported in LLQR:

Bonneville Power Administration

Watershed Management Program in Oregon, Idaho, Washington, and Montana
DOE/EIS-0265
EPA Rating: LO
Cost: $147,000 ($95,000 Federal, $52,000 contractor)
Time: 15 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

(See March 1997 Lessons Learned Quarterly Report for a full explanation of these definitions.)

EAs

Chicago Operations Office

Nuclear Energy
Proposed Shutdown of the Experimental Breeder Reactor II Project at ANL-West, Idaho Falls, Idaho
DOE/EA-1199
Cost: $165,000
Time: 9 months

Golden Field Office

Energy Efficiency and Renewable Energy

Ponnequin Wind Energy Project, Weld County, Colorado
DOE/EA-1221
Cost: $44,900
Time: 5 months

Biorecycling Technologies, Inc., Noble Biogas & Fertilizer Plant, Fresno, California
DOE/EA-1223
Cost: $11,500
Time: 8 months

Idaho Operations Office

Environmental Management
Test Area North Pool StabilizationÑUpdate
DOE/EA-1217
Cost: $26,000
Time: 2 months

Richland Operations Office

Environmental Management
Trench 33 Widening in Low Level Waste Burial Ground 218-W-5, Hanford Site, Richland, Washington
DOE/EA-1203
Cost: $30,000
Time: 5 months

Defense Programs
Tritium Target/Lead Test Assembly, Richland, Washington
DOE/EA-1210
Cost: $75,000
Time: 6 months

Western Area Power Administration

Proposal to Amend Existing Operating Permit for the Ault-Craig 345-kV and Hayden-Archer 230-kV Transmission Line
DOE/EA-1187
Cost: $25,000
Time: 12 months

Three EAs Completed in Third Quarter, but Not Previously Reported in LLQR:

Bonneville Power Administration

Kootenai River White Sturgeon Conservation Aquaculture Project
DOE/EA-1169
Cost: $141,000
Time: 11 months

Naval Petroleum Reserve-California

Fossil Energy
Curly Top Virus Control Program for 1997-2001 for NPR-C, Elk Hills and Buena Vista, California
DOE/EA-1011

*[**Note:** DOE was a cooperating agency to BLM; therefore, cost and time information do not apply to DOE.]*

Rocky Flats Office

Environmental Management
National Conversion Pilot Project Stage III, Rocky Flats Environmental Technology Site, Golden, Colorado
DOE/EA-1200
Cost: $10,000
Time: 7 months

EIS Completion Time and Cost

The June 2, 1997 Lessons Learned Quarterly Report *noted that of the 24 EISs started after the Secretarial NEPA Policy Statement of June 1994, nine had been completed in a median time of 13 months. Since then, one of those EISs has been cancelled and four more EISs of the 24 have been completed. The median completion time of these 13 completed EISs is 15 months.*

For those same 13 EISs started and completed after June 1994, the median and average costs are $3.0 million and $5.4 million, respectively.

NEPA

National Environmental Policy Act

LESSONS LEARNED

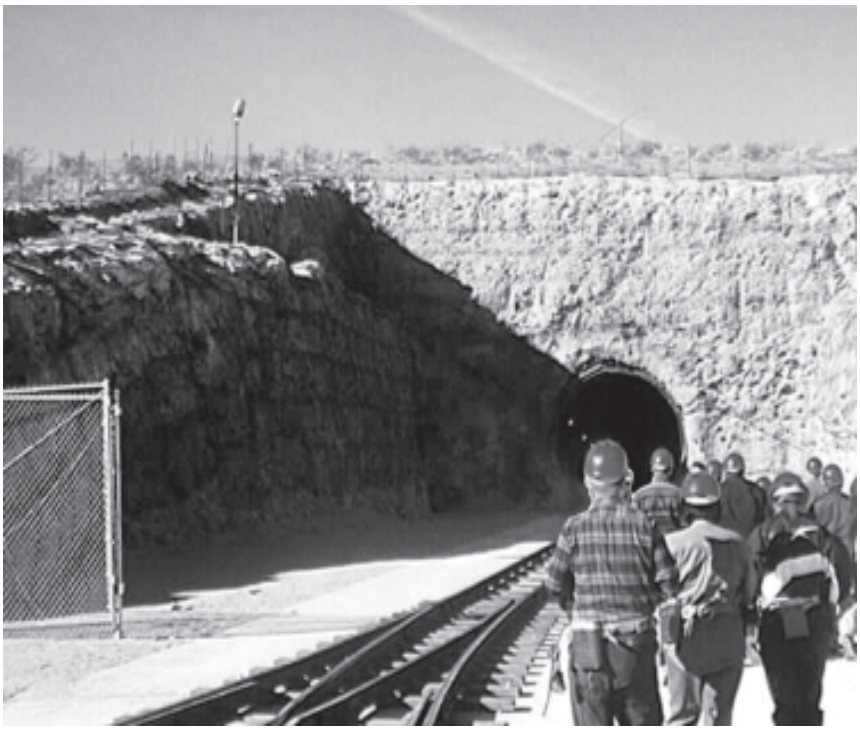
U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

March 2, 1998, Issue No. 14 For First Quarter FY 1998

Managing Progress on the Repository EIS

How to Move a Mountain

How do you manage preparation of a major EIS that is important to five Program Offices, four Field Offices, and other Federal agencies, not to mention a wide array of stakeholders? How do you address extremely complex and controversial issues for a high-profile, high-priority project without getting bogged down in details? How do you keep a large team focussed on an EIS that is five years in the making for a project that, if approved, would not begin receiving spent nuclear fuel and high-level waste before 2010? How do you get senior management attention when it is needed, to avoid proceeding in the wrong direction?



Tour members approach the entry to the Yucca Mountain Exploratory Studies Facility. The EIS Management Council, along with members and technical advisors of the EIS Preparation Team, visited the site in January while participating in briefings on technical, legal, and policy issues.

Multilevel Management

The Yucca Mountain Site Characterization Office, which faces all of these challenges in preparing the EIS for a geologic repository, is finding that a tiered management approach helps to keep the EIS on track. Three levels of EIS management have been established to obtain policy direction and bring pertinent issues to appropriate decision makers when needed:

- **An interdisciplinary EIS Preparation Team** manages day-to-day issues and consults as needed with a group of senior subject-matter experts within involved organizations.

- **A mid-level Management Council** consisting of representatives of DOE Headquarters Program Office and EH and GC representatives

continued on page 2

Yucca Mountain *(continued from page 1)*

meets regularly on technical and policy issues, and may consult with other agencies, such as the Department of Justice and the Council on Environmental Quality.

- **An Executive Committee**, the senior managers of the cognizant organizations, addresses the most important or sensitive issues, and assures that the EIS reflects highest-level Departmental priorities and policies.

Why Use This Approach?

The Department has applied a multilevel management approach effectively to several EISs that had certain characteristics in common: (1) a proposed project of great importance to the Department, (2) multi-office involvement, (3) timing as an important factor, (4) especially challenging technical and policy issues, and (5) heightened level of controversy.

The Yucca Mountain EIS has similar characteristics. The Yucca Mountain Project is key to determining the future of geologic disposal for the nation's commercial and DOE's spent nuclear fuel and high level wastes. Timely completion of the Yucca Mountain EIS is critical, and demands close coordination with affected Offices on the scope of the EIS. Challenging technical issues require early resolution and involve integrating many scientific and engineering disciplines. On the policy side, the Yucca Mountain Project is governed by the Nuclear Waste Policy Act, which provides direction on the scope of the EIS. In addition to high levels of technical controversy and public concern, the Yucca Mountain Project has also received attention from the international scientific community.

The multilevel approach seems to be working, according to Wendy Dixon, Yucca Mountain Site Characterization Office's Assistant Manager for Environment, Safety and Health and Chair of the Management Council for the EIS.

The Council Comes to the Mountain

In January 1998 the EIS Management Council held its regularly scheduled meeting at the Yucca Mountain Site Characterization Office in Las Vegas and invited DOE Headquarters and Field staff and contractors to an all-day guided tour of the site before the meeting. "The first-hand observations of the tunnel and ongoing experimental activities, and the opportunity to question the lead technical experts in the program, proved to be very valuable to all of us on the tour," said Carol Borgstrom, Director, Office of NEPA Policy and Assistance. "We now have a much better sense of the project and its potential impacts on the surrounding area. I would recommend similar tours for key participants in all major DOE EISs," she said.

After the tour the Council received briefings on the progress of ongoing site characterization and performance assessment activities and addressed current EIS preparation issues. Lake Barrett, Acting Director of the Office of Civilian Radioactive Waste Management, met with the Management Council to discuss the preparation of DOE's "Viability Assessment" and the EIS. Said Wendy Dixon, "We especially value the support we get for this big, difficult NEPA project from our colleagues on the EIS team and from senior management. Obtaining timely input when we need it makes us confident that we will produce a high-quality EIS on schedule."

continued on page 3

Inside *LESSONS LEARNED*

Welcome to the first quarter FY 1998 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Yucca Mountain

(continued from page 2)

Next Steps

The Nuclear Waste Policy Act directs the Secretary to determine whether to recommend to the President that the Yucca Mountain Site be developed as a geologic repository. Under the Act, an EIS must accompany such a recommendation. Work to complete the EIS is proceeding in earnest. The draft EIS is scheduled to be issued in July 1999, and the final EIS in August 2000. Concurrent with EIS preparation, the Yucca Mountain Site Characterization Office continues to make steady progress studying the site and in the fall of 1998 expects to issue a report assessing the viability of proceeding with studies and licensing of a repository at Yucca Mountain. Additional information is available at the Yucca Mountain Project Web site at http://www.ymp.gov/.

The EIS Management Council is briefed on regional geology and site topography as it tours the crest of Yucca Mountain.

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report.* Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone (202) 586-9326. Draft articles for the next issue are requested by April 30, 1998.

Second Quarter Questionnaires Due April 30

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 1998 (January 1, 1998 to March 31, 1998) should be submitted as soon as possible after document completion, but no later than April 30, 1998. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

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

LLQR Online

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

Richland EA Offers Lessons in Public Involvement and Working with Classified Information

By: Julie K. Turner, *NEPA Document Manager, Richland Operations Office*

In July 1997, the Richland Operations Office, in cooperation with the Tennessee Valley Authority, prepared an EA for Lead Test Assembly Irradiation and Analysis at Watts Bar Nuclear Plant, Tennessee, and Hanford Site, Richland, Washington (DOE/EA-1210). The EA assessed potential environmental impacts associated with proposed tests to confirm the viability of producing tritium in a commercial light water reactor. These tests would involve irradiation of tritium-producing burnable absorber rods at a commercial nuclear power facility and post-irradiation examination of the rods at one or more national laboratories. During preparation of the EA, the document preparation team learned important lessons about public involvement and working with classified information that can be applied to other DOE NEPA documents.

Communication and Public Involvement

The activities evaluated in the EA would be conducted by several organizations in various locations across the United States. Richland Operations Office staff used the *Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act* to identify organizations that might be interested in reviewing the EA, in addition to familiar Hanford stakeholders. Richland staff also asked the DOE Program Office (Defense Programs), Field Offices, and the cooperating agency to identify potentially interested parties. Stakeholders identified by this process were notified of DOE's intent to prepare the EA and invited to comment on the draft document.

Of the organizations invited to comment on the draft EA, most did not respond during the public comment period. After a Finding of No Significant Impact was signed, however, the Richland Operations Office received comments from some of these stakeholders and from others who had not previously been identified. The EA team was unaware that these latter stakeholders were interested in the EA, even though several of the stakeholders had been in contact with the Program Office or the cooperating agency.

Based on this experience, we think several approaches could help to identify interested stakeholders more completely:

- **Reorganize or cross-reference the DOE stakeholders directory.** Potential cross-references could include listing by field office, by geographic region, or by topics of concern, so that activities in a particular location could be better correlated with potentially interested stakeholders in that region. Currently, the directory lists stakeholders alphabetically, which does not support this type of correlation.

- **Identify points of contact who have primary responsibility for public involvement for other government agencies that may be affected by DOE activities.** The NEPA Stakeholders Directory identifies public affairs directors for DOE facilities, but not for other Federal agencies. Public affairs directors at other agencies could be asked to identify stakeholders for specific facilities and for information regarding local public concerns.

Protecting Classified Information

The impact analysis was based on unclassified information and deliberately used methods that provided a conservative assessment of the potential impacts from the proposed activities. This approach allowed Richland Operations to issue the EA without a classified appendix and to make the entire document available to the public. Several members of the internal review panel, however, expressed concerns that this approach to protecting classified information resulted in large overestimates of the impacts. An alternative approach would be needed when truly insignificant impacts could not be demonstrated using such a conservative analysis. Such approaches could include:

- using less conservative unclassified assumptions,
- including a classified appendix in the document, or
- preparing a classified EA.

For more information, contact Julie Turner at julie_k_turner@rl.gov, phone (509) 372-4015, or fax (509) 372-4549. LL

EDITOR'S NOTE: *The January 29, 1998, transmittal memorandum for the 9th edition of the* Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act *notes that the Office of NEPA Policy and Assistance is converting the Directory to a Microsoft Access database that, among other features, could produce customized reports on a regional basis. The Office will continue to publish the Directory semi-annually.*

DOE Charts Course for Managing TRU Waste

Records of Decision Issued for WIPP SEIS and Waste Management PEIS

The Department has issued two landmark Records of Decision (RODs) that set the course for treatment, storage, and disposal of transuranic (TRU) waste:

- The ROD for the Waste Isolation Pilot Plant (WIPP) Disposal Phase, based on the WIPP Disposal Phase Supplemental EIS (DOE/EIS-0026-FS2; September 1997) (SEIS-II); and
- The ROD for Treatment and Storage of Transuranic Waste, based on analyses in the Waste Management Programmatic EIS (DOE/EIS-0200; May 1997) (WM PEIS TRU).

TRU waste contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram of waste.

Together, these two RODs, which were both published in the *Federal Register* on January 23, 1998 (at 63 FR 3623 and 63 FR 3629), give notice of DOE's decisions regarding disposal of TRU waste at WIPP, the minimum requirements for treatment of TRU waste to meet WIPP acceptance criteria, and the locations for preparation and storage of TRU waste before disposal.

WIPP is a mined repository for radioactive waste, the first of its kind in the United States. It is located 2,100 feet below the surface in an ancient salt deposit near Carlsbad, New Mexico. Under the SEIS-II ROD, DOE will use WIPP for disposal of up to 175,600 cubic meters of TRU waste, after preparation to meet WIPP's waste acceptance criteria. Before the site can be opened for disposal, WIPP must still meet compliance requirements of the Environmental Protection Agency (and, for TRU mixed waste, the State of New Mexico).

The WM PEIS TRU ROD is the first ROD based on the WM PEIS, which supports integrated nationwide decision making for DOE's waste management program. The ROD will be followed in due course by RODs for low-level mixed waste, low-level waste, high-level waste, and hazardous waste. Under the WM PEIS TRU ROD, each DOE site that currently has or will generate TRU waste will prepare and store its TRU waste onsite until disposal, except that the Sandia National Laboratory in New Mexico will transfer its TRU waste to the Los Alamos National Laboratory in New Mexico.

For further information regarding the WIPP decision, contact Harold Johnson, NEPA Document Manager and Compliance Officer, Carlsbad Area Office, at johnsoh@wipp.carlsbad.nm.us, phone (505) 234-7349, or fax (505) 234-7061. For further information on the WM PEIS TRU decision, contact Patrice Bubar, Director, Office of Planning and Analysis (EM-35), Office of Environmental Management, at patrice.bubar@em.doe.gov, phone (301) 903-7204, or fax (301) 903-9770. LL

DOE-wide NEPA Contracts Update

In June 1997, the Department awarded three DOE-wide NEPA contracts to teams headed by Halliburton NUS Corporation, Science Applications International Corporation, and Tetra Tech, Incorporated, to support your NEPA documents quickly, effectively, and cost efficiently. Since then, Tetra Tech has acquired Halliburton NUS and now Tetra Tech will propose the combined resources of Tetra Tech, Inc. and Tetra Tech NUS (formerly Halliburton NUS) to support your NEPA documents. To foster competition, an additional award will be made soon. The new awardee will be announced before the meeting of NEPA Compliance Officers later this month. For more information on use of the DOE-wide NEPA contractors, contact Dawn Knepper at dknepper@doeal.gov or (505) 845-6215, forward questions to your NEPA Compliance Officers, or see the next issue of the *Lessons Learned Quarterly Report.*

Since December 1997, the following task has been awarded:

Task Description	NEPA Document Manager	Award Date	Contractor Team
Brookhaven High Flux Beam Reactor EIS	Nand Narain (BNL) narain@bnl.gov, phone (516) 344-5435	12/17/97	Tetra Tech, Inc.

For information on tasks awarded before December 1997, see the *Lessons Learned Quarterly Report*, December 1997, page 13. LL

Early NEPA Review Saves Resources for the Agricultural Research Service

By: John Crew, *Agricultural Research Service, U.S. Department of Agriculture*
Murray Wade, *Energy Division, Oak Ridge National Laboratory*

Incorporation of early environmental review in project planning, rapid assessment of key issues during scoping, and prompt reaction by the proposing agency—all basic tenets of effective NEPA practice—were recently demonstrated by the Agricultural Research Service (ARS) in preparing an EIS for an energy project in New York. The proposed project was to construct and operate up to 18 wind turbines to provide electrical power for an ARS animal disease research facility on Plum Island, located off the North Fork of Long Island. The purpose of the proposed action was to reduce dependency on mainland utilities and save more than $1 million per year in purchased electricity.

Initial studies focused on the feasibility of developing a wind energy system and the associated economics. Recognizing that there would be considerable public interest and concern because the wind turbines would be visible from adjacent Long Island and the neighboring Connecticut shoreline, ARS decided to prepare an EIS and requested assistance from the ORNL (Oak Ridge National Laboratory) NEPA Program in implementing the NEPA process and preparing the necessary documentation. A Notice of Intent to prepare the EIS was published on February 14, 1997 (62 FR 6940), and two scoping meetings were held during April.

The ARS and ORNL team identified and focused its efforts on two issues during the early scoping stages: potential impacts to sensitive ecological receptors and the economic viability of the wind turbine system. The team undertook reconnaissance-level field studies and prepared an early evaluation of potential impacts to resident and migratory birds, including threatened and endangered species. These studies indicated there would be a high probability of significant environmental impacts from birds colliding with the wind turbines. In addition, preliminary economic analyses revealed that substantial costs had not been considered and that alternatives involving combinations of diesel and wind generation appeared to be more economically attractive.

Given the potential for significant adverse environmental impacts and uncertainties about economic feasibility, ARS decided to cancel the project and the EIS in May 1997.

Because NEPA was initiated early, ARS was able to protect sensitive ecological resources, meet the electrical energy needs of a remote research facility, and save the costs of an EIS.

ARS further determined that other actions could be taken to achieve some, if not all, of their initial objectives without constructing new generating capacity. These actions included, for example, using existing emergency diesel-fired generators (or replacing these generators with more efficient units) for electric peak load shaving and continuing other energy conservation measures.

This case illustrates how early application of the NEPA process can help an agency to avoid potentially significant adverse impacts and identify cost-effective alternatives. Because the NEPA process was started early, ARS could protect sensitive ecological resources on Plum Island while meeting the electrical energy needs of a remote research facility. Project proponents avoided major design and construction costs and also saved about 75 percent of the funds earmarked for the EIS.

For more information, contact John Crew at jcrew@ars.usda.gov, phone (215) 233-6549, or fax (215) 233-6558.

Need Technical Assistance? Try the Core Technical Group

When you need supplemental expertise in a technical area, one option is the Core Technical Group (CTG), sponsored jointly by Defense Programs (DP) and Environmental Management (EM). CTG provides analytical support in more than 58 technical areas, from accelerators to waste management, including NEPA compliance. Since its inception in July 1996, the CTG has provided support for about 80 projects throughout DOE, on diverse topics such as nuclear criticality, fire protection, a safety analysis report, and systems engineering for a local area network upgrade.

The CTG is composed of about 450 DOE employees who participate with the approval of their supervisors. The Group includes members who have participated in a peer review of environmental impact assessment methodologies. For the Los Alamos National Laboratory Site-wide Environmental Impact Statement (SWEIS), CTG members helped to develop analysis methodologies for accidents, radiological impacts, seismology and geology, surface and ground water, environmental justice, and transportation impacts. CTG members similarly will review methodologies for the ongoing Sandia National Laboratory SWEIS.

The CTG is a resource for improving the quality of technical support while reducing the overall cost. Potential users should visit the CTG Web site at http://www3.dp.doe.gov/ctg/ctg.htm, which provides information about the group, a users guide, the "service request form," and a full list of subjects for which the CTG provides expertise.

The CTG Coordinator for DP is Xavier Ascanio, (301) 903-5697; and for EM, the CTG Coordinator is John Kaysak, (202) 586-0108.

For more information, contact the CTG Service Desk at ctg@dp.doe.gov, phone (888) 439-5883 or (301) 903-8525, or fax (301) 903-3414.

Office of NEPA Policy and Assistance Guidance

The NEPA Office recently issued guidance on several topics. For additional information, please consult the appropriate points of contact. Guidance marked with an asterisk (*) may be printed or downloaded from http://tis-nt.eh.doe.gov/nepa/ under DOE NEPA tools.

Department of the Interior Review Process for NEPA Reviews (December 8, 1997)
contact: Stephen Simpson at stephen.simpson@eh.doe.gov, phone (202) 586-0125

Guidance on National Environmental Policy Act Review for Corrective Actions under the Resource Conservation and Recovery Act (December 23, 1997)*
contact: Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596

Guidance on National Environmental Policy Act Categorical Exclusion Determinations (January 16, 1998)*
contact: Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596

Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act, 9th Edition (January 29, 1998)*
contact: Stephen Simpson at stephen.simpson@eh.doe.gov, phone (202) 586-0125

Guidance on Dates for NEPA Documents (February 23, 1998)*
contact: Joe Gearo at joseph.gearo@eh.doe.gov, phone (202) 586-7683

Environmental Protection Agency Proposes Changes to Voluntary EIS Policy

The Environmental Protection Agency (EPA) is proposing to change its 1974 Policy for Voluntary Environmental Impact Statements to a broader Voluntary NEPA Compliance Policy. The proposed policy changes (62 FR 63334, November 28, 1997) would reflect EPA's obligations under NEPA as defined by Congress and the courts and ensure that EPA's voluntary NEPA compliance practices are consistent with the Council on Environmental Quality's NEPA regulations.

Many EPA Actions are Exempt from NEPA Review

EPA is legally required to comply with the procedural requirements of NEPA for its research and development activities, facilities construction, wastewater treatment construction grants under the Clean Water Act, and EPA-issued National Pollutant Discharge Elimination System permits for new sources. EPA is exempted by statute for actions taken under the Clean Air Act and for most other Clean Water Act programs. EPA also is exempted from the procedural requirements of environmental laws, including NEPA, for Comprehensive Environmental Response, Compensation, and Liability Act response actions. For other programs, courts have consistently recognized that EPA procedures or environmental reviews under enabling legislation are functionally equivalent to the NEPA process and, thus, exempt from the procedural requirements under NEPA. Nevertheless, it has been long-standing EPA policy to prepare EISs voluntarily for some actions.

New Policy Would Broaden EPA's Voluntary NEPA Reviews

The existing policy specifies that a voluntary analysis be documented in an EIS and does not contemplate that an EA resulting in a FONSI might be appropriate for some actions. Under the new policy, EPA would prepare EAs and issue FONSIs when appropriate, thereby eliminating unnecessary analysis.

Also, under the new policy EPA would consider voluntary NEPA review for actions involving: cumulative cross-media or ecosystem impacts; environmental justice issues; issues that involve other Federal agencies that are addressing issues under the NEPA process; special resources such as endangered species or cultural resources; and public health risk.

For specific rulemaking actions, EPA would continue to meet the fundamental NEPA requirements through its Regulatory Development Process, which includes analysis and public participation elements that would make separate NEPA documentation redundant, unless EPA determines that NEPA documentation would be beneficial. LL

Anticipating the Discovery of Unknown Waste

Sample Language for Inclusion in NEPA Documents

For proposed actions that involve siting alternatives, it may be appropriate to include language in the NEPA document to address the possible presence of unknown wastes or other hazardous or radioactive material that may be encountered during project-related construction activities, such as excavation.

Language similar to the following paragraph, based on the draft EIS for the Accelerator for the Production of Tritium at Savannah River (DOE/EIS-0270), may be considered:

> *The preferred and the alternative sites for the proposed action are not known to contain any hazardous, toxic, and/or radioactive material. Nevertheless, the potential exists that construction-related activities such as excavation could result in the discovery of previously unknown hazardous, toxic, and/or radioactive material. If such material were discovered, DOE would remove and dispose of such material in accordance with all applicable laws and regulations.* [If applicable, the following sentence could be included: *The Mitigation Action Plan that will be prepared after the ROD for this document will provide more specific information on the process and procedures that would be followed.*] LL

DOE Planning Summaries Provide NEPA Forecasts

The Office of NEPA Policy and Assistance has begun its review of the 1998 Annual NEPA Planning Summaries. As required under DOE O 451.1A (NEPA Compliance Program), each DOE Program and Field Office prepares a summary each year that identifies EAs that the Office expects to prepare in the next 12 months and EISs in the next 24 months, and includes corresponding cost estimates and schedules. The Summary also describes the status of ongoing NEPA compliance activities.

In addition, every three years (starting with 1995), the Summary is to include an evaluation of whether a site-wide EIS would facilitate future NEPA compliance efforts. The Annual NEPA Planning Summary is intended to help DOE Program and Field Offices plan and allocate resources needed for NEPA reviews, and, by making the Summary publicly available, assist the public in planning for its participation in the DOE NEPA process.

DOE Offices have demonstrated continued improvement in anticipating NEPA reviews since preparation of Summaries began in 1995. Most of the Department's EISs and EAs prepared in 1997 had been forecast in the Annual Planning Summaries. This finding suggests that Field and Program Offices have the information needed to begin planning a NEPA review early, which often contributes to a successful NEPA process.

For more information on the Annual Planning Summaries, please contact Jim Sanderson at jim.sanderson@eh.doe.gov, phone (202) 586-1402, or fax (202) 586-7031.

Recent EIS Milestones

Notice of Intent

Production of Tritium in a Commercial Light Water Reactor (DOE/EIS-0288) (63 FR 3097, January 21, 1998).

Records of Decision

Waste Isolation Pilot Plant Disposal Phase (DOE/EIS-0026-S2) (63 FR 3623, January 23, 1998).

Waste Management Programmatic EIS, Treatment and Storage of Transuranic Waste (DOE/EIS-0200) (63 FR 3629, January 23, 1998).

Disposal of the Defueled S3G and D1G Prototype Reactor Plants, Office of Naval Reactors (DOE/EIS-0274) (63 FR 4235, January 28, 1998).

Supplement Analysis

Foreign Research Reactor Spent Nuclear Fuel Transportation along other than the Representative Route from Concord Naval Weapons Station to Idaho National Engineering and Environmental Laboratory (DOE/EIS-0218-SA1) (January 1998; no further NEPA review required).

NAEP Seeks to Identify Accepted Methods of NEPA Practice

The National Association of Environmental Professionals (NAEP) *(Lessons Learned Quarterly Report, December 2, 1997, page 8)* has formed a Tools and Techniques NEPA Practice Committee. Part of NAEP's NEPA Working Group, this new committee is chartered to identify and promote Accepted Methods of Professional Practice for implementing NEPA requirements. Emphasis is on tools and techniques to assist in decision making, streamline the NEPA compliance process, and promote effective and integrated environmental planning.

The NAEP is currently accepting proposals for candidate Accepted Methods of Professional Practice. Under the committee's adoption process, proposed methods will undergo a national peer review, a public comment period, and a formal endorsement process. Currently, candidates include methods for applying the purpose and need statement to the NEPA scoping process and for determining: when private actions are subject to NEPA, the appropriate scope of a programmatic EIS, and how wetland issues should be addressed in NEPA analyses.

The Tools and Techniques Committee seeks a diverse, interdisciplinary membership and welcomes new members. NEPA practitioners interested in joining the Committee are encouraged to contact Fred March (NEPA Working Group Chairman) at fmarch@sandia.gov, phone (505) 844-7424; or Chuck Eccleston (Tools and Techniques Committee Chairman) at charles_h_eccleston@rl.gov, phone (509) 376-9364.

Additional information is available at the Tools and Techniques Committee's Web site at http://www.naep.org/tnt/.

ER's NCO Describes His Role

By: Clarence Hickey, *NEPA Compliance Officer, Office of Energy Research*

Clarence Hickey, ER NCO

As the NEPA Compliance Officer (NCO) for the Office of Energy Research (ER), I have numerous responsibilities, including those listed in the DOE NEPA Order (DOE O 451.1A), my own performance standards, and those protean government functions called "other duties as assigned." But according to my colleagues and customers, my most important function is as a facilitator of NEPA communications throughout the ER complex.

The ER complex consists of ER Headquarters (HQ), four Operations Offices (CH, OAK, OR, RL), the Site/Area/Group Offices that administer ER-sponsored activities, and the National Laboratories that conduct scientific research on behalf of ER. I also serve as the ER complex NEPA liaison to the other Program Offices (such as EH and GC). Keeping abreast of ER NEPA activities across the complex (as well as other NEPA developments across DOE) is a time-consuming job—but well worth the effort. Good communication, I believe, is the key to success.

Before the 1994 delegation of EA approval authority to Field Offices, it was easier for me to stay abreast of ER NEPA documentation because most NEPA documents and related correspondence were routed through ER HQ. I continue to support delegation, but now I review fewer NEPA documents. Maintaining an operational awareness of NEPA implementation and the ability to assist the ER complex requires me to continuously communicate and coordinate with the Field Offices and laboratories.

Indeed, I serve as the ER NEPA communications facilitator, promoting communication via a variety of media and methods, from the old-fashioned, low-tech handwritten memo method to the World Wide Web and other sophisticated telecommunications. These are described in detail in the Annual NEPA Program Summary I prepare for ER, which can be found on the ER NEPA Compliance Web site (http://www.er.doe.gov/production/er-80/er-83/nepacomp.html). The main NEPA communications vehicles ER uses are summarized as follows.

Monthly NCO Conference Calls

In 1996, I began coordinating monthly NCO conference calls for all the Operations Office NCOs associated with ER activities. The calls help us to keep each other up to date on ER's NEPA activities and those throughout the DOE complex that affect ER. We have also used these calls to discuss regulatory changes and to promote consistent procedures throughout the ER community.

Semiannual NEPA Workshops

Approximately twice a year since 1991, ER HQ has sponsored Environment, Safety and Health (ES&H) Coordination Meetings attended by representatives from the entire ER complex and its support contractors. I have sponsored a series of ER NEPA Workshops at these meetings. The ES&H Coordination Meetings and the NEPA Workshops provide forums for exchanging information, discussing and resolving ER's NEPA issues, and continuously improving its NEPA products and services. A team approach to problem identification and resolution has resulted in many joint initiatives among ER organizations that have improved efficiency, saved money, and led to new approaches to implementing NEPA's procedural provisions. Summaries of each ES&H Coordination Meeting and NEPA Workshop are distributed to all participants.

ER NCO Communication Series

An ER NCO Communication Series was begun in 1992 to archive guidance, procedures, lessons-learned studies, and other NEPA-related documents of broad interest to ER and its field elements. Many of these products result from workgroups commissioned by the ER NEPA Workshops. Typically, two to five ER NCO Communications are issued each year. Topics have included categorical exclusions, an ER-developed environmental assessment training course, an EA training manual, and the ER NCO Quality Awards. NCO Communications are listed, and some contained, on the ER NEPA Web site.

ER NCO Quality Awards Program

In 1994, ER initiated a NEPA Quality Awards Program to recognize the achievements of the ER community in improving the NEPA process and in achieving the goals of the Act. The criteria for an award are in ER NCO Communication No. 96-01. In addition to recognizing achievement, the award program communicates what ER

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***Note:** The NEPA Compliance Officers will meet in Washington, D.C., in late March, to discuss their role.*

NEPA Process Game Enlivens Richland's Training

Participants in Richland Operations Office's training class enjoying the NEPA Process game.

At the Richland Operations Office, which oversees the Hanford Site, trainers use a fast-paced, competitive board game as part of their NEPA training program. Participants have reported that they enjoy the game at several levels: while learning about the DOE NEPA process, they also discover the value of cooperative problem-solving.

The game, inspired in part by the French card game *Mille Bourne,* is played by two teams of at least three players each. Players draw and discard "NEPA Milestone" cards with the objective of placing five cards in the correct sequence on the board (define the project and conduct scoping, identify the affected environment and impacts, perform analysis, complete internal review, and obtain DOE approvals). At various stages of the game, a team plays eight general and Hanford-specific *Environmental Issue* cards (e.g., air quality, cultural resources, threatened and endangered species, and the Hanford Reach Study Area) that the opposing team must "resolve" by playing the corresponding *Consultation* cards (e.g., EPA, State Department of Health, State Historic Preservation Officer, U.S. Fish and Wildlife Service, and National Park Service).

The game includes *Data Collection, Document Preparation,* and *Document Review* cards.

Team members can share information and strategize within their own team but not with members of the opposing team. The game's instruction sheet is designed so that players must seek "regulatory interpretation." The team that completes "the NEPA process" first—without omitting any step—wins the game.

Often, the quality of communication within the team makes the difference.

The game was originally developed in 1994 (as part of Richland Operations Office's 16-hour Hanford DOE NEPA Process Training Class) by Dr. Leslie Wildesen of Environmental Training and Consulting International, Inc. (ETCI), Tanya Sorenson (formerly of the Quality Training and Resource Center at Hanford), and Kim Welsch, Waste Management Hanford Company. According to the developers, the underlying objective of the game is to illustrate some of the group dynamics that pervade real-life NEPA projects, the interdependency that group actions have on completing the NEPA process, and the personal relations factors that can cause delays in project implementation. Often, it is the quality of communication within a team that makes the difference in how quickly the game is "won."

For more information, contact Dr. Leslie Wildesen at etcidenver@aol.com or (303) 321-3575 or Kim Welsch at kim_r_welsch@rl.gov or (509) 376-4373.

ER's NCO Role *(cont'd. from page 10)*

considers important concerning NEPA implementation and the uses of NEPA in support of ER programs. Dr. Martha Krebs, Director of ER, has presented the annual award at ES&H Coordination Meetings.

NEPA Program Summaries

Each year, I prepare an Annual Program Summary of ER's NEPA activities for distribution throughout ER and DOE. The Program Summary provides information, expresses concerns, identifies successes, and monitors outcomes of ER's NEPA program. It supports the ER Strategic Plan and encourages the environmental stewardship of the research, scientific community, facilities, and institutions sponsored by ER.

Visits to ER's Sites and Facilities

In order to gain familiarity with environmental conditions and issues and to meet and talk with my field colleagues, I use all legitimate opportunities to personally visit ER field sites. This helps to increase the effectiveness of the ER NEPA program, improves communications, and helps me to coordinate the development of guidance and training materials. During 1995 and 1996, for example, I visited eight sites, some in conjunction with a NEPA training course I offered to the Operations Offices, some in conjunction with EH's NEPA meetings, and others as a part of routine business. Regular, in-person meetings at field locations are essential to the smooth functioning of the ER NEPA program.

For more information, contact Clarence Hickey at clarence.hickey@oer.doe.gov or (301) 903-2314.

Transitions

Dave Dossett Retires

Dave Dossett retired this past December from the Southwestern Power Authority, where he served for two and one-half years as the NEPA Compliance Officer. In addition to working for DOE, Dave's 27 years of Federal service included positions with the Soil Conservation Service, Bureau of Land Management, Office of Surface Mining, and the U.S. Army as a civilian with responsibility for all Army environmental compliance in Alaska.

Ben Underwood Moves to Private Sector

Ben Underwood, who for six years served as lead NEPA attorney in the DOE Bonneville Power Administration's Office of General Counsel, has left Federal employment to specialize in NEPA consulting. Ben had earlier worked for four years at DOE Headquarters in the Office of General Counsel, litigating numerous environmental cases. Ben continues to work with BPA as a consultant. He may be reached at nepa@bellsouth.net or phone (803) 577-6100. LL

Needs Assessment for NEPA Training Underway

Working in partnership with the DOE National Environmental Training Office (NETO) ("National Environmental Training Office Established at Savannah River Site," *Lessons Learned Quarterly Report,* December 1997, page 10) and the Defense Programs NCO, the Office of NEPA Policy and Assistance has asked NCOs to help assess the need for any further DOE-specific NEPA training curricula for DOE-wide use. NCOs have been asked to evaluate responses to questionnaires from NEPA Document Managers and other NEPA contacts in their offices and to transmit responses and their evaluations to NETO by March 20, 1998. Results will be discussed at a meeting of NCOs at the end of the month. LL

Training Opportunities

Environmental Impact Statements: Fact or Fiction
March 24-25, 1998
Rutgers University—New Brunswick, New Jersey
Fee: before March 24—$365; after March 24—$399; multiple registrations—$350 each
For information, call (732) 932-9271; or e-mail ocpe@aesop.rutgers.edu

New Advances in Ecological Risk Assessment
March 30-April 2,1998
Richard Di Giulio, Duke University; Benjamin Parkhurst and William Warren-Hicks, Cadmus Group Inc.
Duke University—Durham, North Carolina
Fee: $850
For information, call (919) 613-8082; or on the Web, www.env.duke.edu

Making the NEPA Process More Efficient: Scoping and Public Participation
April15-17, 1998
Ray Clark, CEQ, facilitator
Duke University, Nicholas School of the Environment—Durham, North Carolina
Fee: $595
For information, call (919) 613-8082; or on the Web, www.env.duke.edu

Wetlands Laws and Regulations
April 16, 1998
Rutgers University—New Brunswick, New Jersey
Fee: before April 3—$195; after April 3—$225; multiple registrations—$175 each
For information, call (732) 932-9271; or e-mail ocpe@aesop.rutgers.edu

National Conference on Environmental Decision Making
May 3-6, 1998
University of Knoxville—Knoxville, Tennessee
Fee: before April 1—$250; after April 1—$300
For information, call (423) 974-0250; e-mail utconferences@gateway.ce.utk.edu; or on the Web, www.ncedr.org

Current and Emerging Issues in Managing the NEPA Process
May 6-8, 1998
Ray Clark and Dinah Bear, CEQ, and others
Duke University, Nicholas School of the Environment—Durham, North Carolina
Fee: $595
For information, call (919) 613-8082; or on the Web, www.env.duke.edu

The NEPA Toolbox©: Essentials for New Practitioners
May 11-12, 1998

Cumulative Impacts Analysis
May 13-14, 1998
Dr. Leslie E. Wildesen
Environmental Training & Consulting International Inc.—Denver, Colorado
Fee: before April 27—$695 each course or $1,095 for both; after April 27—$750 each or $1,195 for both
For information, call (301) 321-3575; or e-mail etcidenver@aol.com

Cumulative Effects Assessment in the NEPA Process
May 20-22, 1998
Dr. Larry Canter, University of Oklahoma, facilitator
Duke University, Nicholas School of the Environment—Durham, North Carolina
Fee: $595
For information, call (919) 613-8082; or on the Web, www.env.duke.edu

Litigation Updates

By: Stephen Simpson, *Office of NEPA Policy and Assistance*

DOE Wins Challenge to Sale of Naval Petroleum Reserve Number 1

DOE recently won a lawsuit concerning the sale of Naval Petroleum Reserve Number 1 (NPR-1) only a few days after the complaint was filed. *(See related article in the Lessons Learned Quarterly Report, December 1, 1997, page 1.)* On January 29, 1998, an Indian Tribe, a tribal member, the Sierra Club, and the Southwest Center for Biological Diversity sued DOE, alleging that the sale would violate NEPA, the Endangered Species Act, and several Federal historic preservation statutes, and requested that the closing of the sale of NPR-1 to Occidental of Elk Hills, Inc., scheduled for February 5, 1998, be enjoined.

According to the complaint, the Supplemental Environmental Impact Statement (SEIS) prepared for the sale: inadequately described the affected environment, especially prehistoric archaeological resources; inadequately discussed the environmental impacts of the alternatives, especially concerning cultural resources, threatened, endangered, and rare species, and cumulative impacts; did not analyze a reasonable range of alternatives and did not have a "proper" no-action alternative. Further, the complaint alleged that DOE failed to prepare a Supplement to the SEIS (or a Supplement Analysis) to analyze the potential increase in production as a result of the sale to Occidental Petroleum, and that the analysis of mitigation measures in the SEIS was based on a Programmatic Agreement and a Cultural Resources Management Plan that were not yet complete.

The judge dismissed the NEPA and historic preservation claims at oral argument and stated in a written opinion on February 3, 1998, that, through informal consultation with appropriate oversight agencies and protection of the environment by continuing application of relevant federal laws, DOE had complied with the law and the environment would continue to be protected after the sale. The U.S. Court of Appeals for the Ninth Circuit denied the plaintiffs' request for an emergency injunction on February 4, and the closing of the sale of NPR-1 was completed as scheduled on February 5. *Tinoqui-Chalola Council of Kitanemuk and Yowlumne Indians, Southwest Center for Biological Diversity, Sierra Club, and Delia Dominguez v. United States Department of Energy*, No. CV-F-98-5100 OWW DLB (D.E.D. Calif. Feb. 3, 1998).

NRDC Files Contempt Motion, Asks for Fines and Withdrawal of Recent RODs

In the continuing litigation over the Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS) and the need for an Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (ERWM PEIS), the Natural Resources Defense Council (NRDC), on behalf of itself and its 38 co-plaintiffs, filed a motion on January 23, 1998, raising the stakes for the Department. *(See related article in the Lessons Learned Quarterly Report, December 1, 1997, page 17.)* The motion asks the court to hold DOE in contempt for failing to issue an ERWM PEIS in alleged violation of the Stipulation and Order of Dismissal in *Natural Resources Defense Council v. Watkins,* No. 89-1835 SS (D.D.C. Oct. 22, 1990). The plaintiffs request that the court impose four penalties:

1. withdrawal of the recent Records of Decision for the treatment, storage, and disposal of transuranic waste (because DOE allegedly did not consider environmental restoration waste in reaching those decisions);
2. a fine of $5,475,000 to a fund for public monitoring of nuclear weapons facilities cleanup for DOE's failure to comply with the October 1990 Stipulation and Order;
3. a fine of $5,000 per day until DOE commits to a schedule for completing an ERWM PEIS, and, beginning a year after the court's decision on this request, an additional $5,000 per day until the PEIS is completed—with fines going to the public monitoring fund; and
4. payment of the plaintiffs' costs in monitoring and enforcing the Stipulation.

In requesting this relief, the plaintiffs dropped an earlier request that the Secretary and the Assistant Secretaries for Environment, Safety and Health and Environmental Management be imprisoned until DOE pays the fine and commits to a binding schedule for an ERWM PEIS. DOE submitted its reply to the motion on February 12, 1998. DOE also is preparing a reply to the plaintiffs' motion to amend their complaint by withdrawing the issues related to the adequacy of the SSM PEIS and substituting claims that DOE should prepare a supplemental SSM PEIS based on significant new information concerning (1) the environmental impacts of reasonably foreseeable

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DOE Cases *(continued)*

experiments at the National Ignition Facility that will use extremely toxic materials such as lithium hydroxide, plutonium-239, and uranium-232, and (2) DOE's plans to expand the plutonium pit production program at the Los Alamos National Laboratory to include a number of facilities that are deteriorating or otherwise suffering from serious safety and security deficiencies.

At a hearing on February 20, 1998, on the contempt charges, Judge Sporkin deferred a decision until either holding a trial (which he scheduled to start October 15, 1998) or receiving recommendations from a special master. The judge asked the parties to advise him of which process they prefer.

Shipment of Waste Generates Lawsuit Against DOE, Other Agencies

On February 2, 1998, fishermen from the west coast of Puerto Rico, several organizations of Puerto Rican fishermen, and other Puerto Rican public-interest organizations sued DOE in the United States District Court for the District of Puerto Rico challenging the shipment of high-level radioactive waste through the Mona Passage of Puerto Rico and the Panama Canal on its way from France to Japan. (In addition to DOE, co-defendants include the Department of State, the United States Coast Guard, and the companies involved in the treatment and transport of the waste.) The high-level waste results from companies in France reprocessing spent nuclear fuel from reactors in Japan. The resulting plutonium and uranium are then shipped back to Japan for use as fuel. The vitrified high-level waste is shipped to Japan for storage.

The plaintiffs allege, in addition to violations of the Atomic Energy Act and the Nuclear Non-Proliferation Act, that the decision of DOE and the State Department to permit the shipment of the waste is a major federal action under NEPA and that the shipment would have the potential for significant impacts on the quality of the human environment. They claim that DOE and the State Department have violated NEPA by allowing transportation of the nuclear waste material without preparing an EIS. The plaintiffs requested a temporary restraining order to halt the shipment pending a hearing on their request for a preliminary injunction to prevent the shipment from proceeding. The plaintiffs then withdrew their motion for a temporary restraining order and the court refused to issue a preliminary injunction to stop the ship because it had already left United States territorial waters.

Another Case of Interest

Scope of Alternatives Adequate for Brooklyn Courthouse EIS

The United States District Court for the Eastern District of New York recently refused to enjoin construction of a proposed new Federal courthouse in Brooklyn, ruling that the EIS prepared by the joint lead agencies (the General Services Administration and the U.S. Postal Service) was adequate. (Part of the new courthouse would be in the Historic Post Office in Brooklyn.) The plaintiffs alleged several inadequacies in the EIS, including the scope of reasonable alternatives and improper segmentation from another project involving the Central Islip courthouse.

The lead agencies limited their analysis of alternatives in the EIS to the preferred alternative, the no action alternative, and two design alternatives, after rejecting thirteen alternative sites as inadequate to meet their purpose and need. Upon challenge by the plaintiffs, the court ruled that a process of screening alternative sites to identify the ones to fully analyze is rational and sufficient to meet NEPA requirements. The court also rejected the plaintiffs' challenges based on segmentation, ruling that the Brooklyn courthouse was on a different timetable, responded to a separate need, and was fifty miles away from the Central Islip courthouse, such that "common geography" was not present. The two courthouses were independently justified and were not connected, cumulative, or similar actions requiring NEPA review in the same EIS (40 CFR 1508.25).

The court disagreed with the plaintiffs on two other major issues. Plaintiffs argued that it was improper for the EIS to rely on traffic mitigation measures within the sole jurisdiction of the New York City Department of Transportation. The court ruled that the lead agencies were permitted, under Supreme Court precedent, to prepare an EIS that discusses possible mitigation measures but leaves the detailed plans to a later stage, particularly where the adoption of those measures is within the control of the local government. Plaintiffs also contended that the solicitation of a demolition contractor before issuance of the Final EIS and preparation of conceptual design drawings before issuance of the Record of Decision were improper interim actions. The court found, however, that merely using conceptual designs or requesting potential contractors to identify themselves neither impacted the environment nor limited the lead agencies' choices, noting that the agencies could not have evaluated the environmental impacts of the proposed project without conceptual designs. *Concord Village Owners v. Barram*, 1997 U.S.Dist. LEXIS 10773 (E.D.N.Y. 1997).

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 1997. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping—What Worked

- Adaptive meeting formats. *We had a very large turnout at our open house meeting and several people expressed concern that they would not be able to make public statements. So we changed the format to a sit-down meeting with a few presentations and a long period of questions and comments from the audience.*

Data Collection/Analysis—What Worked

- Independent technical review. *To respond to challenges to our data, we hired an independent consultant to review the data for technical adequacy.*

Data Collection/Analysis—What Didn't Work

- Timing of detailed design. *We thought we had a Catch-22 in that the other involved agencies did not want to proceed with detailed design and siting analysis before the NEPA process was complete. However, upon closer examination, we agreed that this information was not needed to assess site-specific impacts.*

Factors that Facilitated Timely Completion of Documents

- Use of in-house forces. *We found that using our own laboratory resources to perform computer analyses and compile the document was more efficient than hiring a contractor.*
- On-site manager. *Having the NEPA Document Manager on site facilitated timely completion of the EA.*
- Planning ahead. *By beginning the NEPA process early, the proposed project start date was not impacted.*
- Electronic transfer of review documents.

Factors that Inhibited Timely Completion of Documents

- Changes in project design. *Numerous revisions and re-analysis of potential impacts were necessary throughout the NEPA process because of changes in the project design. Finally, it was decided to pursue a different proposed action, requiring another round of revisions and re-analysis.*
- Incorporating late comments. *We had many comments that continued after the "close" of the comment period. The special analysis required as a result pushed our completion date out several months.*
- Changing points-of-contact. *The consultant's point-of-contact changed three different times, and we had to bring each one up to speed.*
- Controversy. *Constant misinformation, misunderstandings, and lack of trust among members of the sponsoring agency and animosity between two participating Tribes necessitated much more in-depth public involvement than normal for an EA.*
- Last-minute review. *After a four-week review period, reviewers waited until the last minute to express questions and comments.*
- Incompatible software. *The support contractor did not use the specified word processing software, and delays occurred because the document had to be converted to the appropriate format.*

Factors that Facilitated Effective Teamwork

- An excellent writer/editor.
- Good communication.

Factors that Inhibited Effective Teamwork

- Untimely communication. *Changes were not always communicated to the NEPA team in a timely fashion.*
- Using inappropriate writing style. *The technical people from the consulting firm had a hard time writing the EA at the layman level that we wanted.*
- Non-cooperation. *Another Federal agency responsible for remedial work was not forthcoming with information to support the NEPA process.*

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NEPA Process *(continued)*

Public Reactions to the NEPA Process

- We received no comments from the surrounding community, and we believe it was primarily because of the effective public relations and community information effort that this facility has practiced for many years.
- The NEPA process helped participants get better information about the project and about their choices.
- Stakeholders that were contacted appreciated DOE's concern.

Agency Planning and Decision Making

- Basically, NEPA has not been part of project planning. The NEPA staff need to become involved in the project very early and stay involved.
- It took considerably more money to complete a good NEPA document than we originally thought. A lot of the cost involved re-educating the three different consultant points-of-contact.

Enhancement/Protection of the Environment

- The NEPA process minimized impacts to endangered species and floodplains/wetlands.
- A bald eagle nest was carefully monitored during the project implementation.

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."

Six of the twelve respondents found the NEPA process effective; of those six, four found the process highly effective, indicating that it brought out important issues and provided a means for reducing adverse environmental impacts. LL

EIS-related Documents Issued Between Oct.1 and Dec. 31, 1997

Notices of Intent	DOE/EIS#	Date
Hanford Solid (Radioactive and Hazardous) Waste Program	DOE/EIS-0286	10/27/97 (61 FR 55615)
Jacksonville Electric Authority Circulating Fluidized Bed Combustor Project, Jacksonville, FL	DOE/EIS-0289	11/13/97 (62 FR 60889)
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory	DOE/EIS-0290	11/20/97 (62 FR 62025)
High Flux Beam Reactor Transition Project at the Brookhaven National Laboratory, Upton, NY	DOE/EIS-0291	11/24/97 (62 FR 62572)
Draft EISs		
Programmatic EIS for the Long-term Management and Use of Depleted Uranium Hexaflouride Resources at Several Geographic Locations	DOE/EIS-0269	11/97
Accelerator Production of Tritium at the Savannah River Site	DOE/EIS-0270	11/97
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, CO	DOE/EIS-0277	11/97
Records of Decision		
Supplemental EIS/Program Environmental Interim Report for Sale of the Naval Petroleum Reserve No. 1 at Elk Hills, CA	DOE/EIS-0158-S2	12/19/97 (62 FR 66609)
Nez-Perce Tribal Hatchery Project	DOE/EIS-0213	10/21/97 (62 FR 54617)
Interim Management of Nuclear Materials at the Savannah River Site *(4th Supplemental ROD)*	DOE/EIS-0220	11/14/97 (62 FR 61099)
Navajo Transmission Project, Arizona, New Mexico, Nevada	DOE/EIS-0231	10/31/97 (62 FR 58966)
Shutdown of the River Water System at the Savannah River Site *(Record of Decision issued on 12/23/97)*	DOE/EIS-0268	1/28/98 (63 FR 4236)
Supplement Analyses		
Greenville Gate Access to Kirschbaum Field at Lawrence Livermore National Laboratory (*no further NEPA review required)*	DOE/EIS-0236-SA1	12/97
Paleontological Excavation at the National Ignition Facility at Lawrence Livermore National Laboratory (*no further NEPA review required)*	DOE/EIS-0236-SA2	12/97

Analysis: EIS Completion Times and Costs

EISs Completed During the First Quarter of FY98

Naval Petroleum Reserve-California
Fossil Energy
Supplemental EIS/Program Environmental Impact Report for Sale of the Naval Petroleum Reserve No. 1 at Elk Hills, California
DOE/EIS-0158-S2
EPA Rating: EC-2
Cost: $2.4 million ($0.1 million Federal, $2.3 million contractor)
Time: 19 months

Office of Naval Reactors
Nuclear Energy
Disposal of the Defueled S3G and D1G Prototype Reactor Plants
DOE/EIS-0274
EPA Rating: LO
Cost: $1.0 million, no contractor used
Time: 15 months
*[**NOTE:** NE-60 (Navy) documents are not used in cost and time analyses.]*

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

(See March 1997 Lessons Learned Quarterly Report for a full explanation of these definitions.)

By examining EISs started after July 1994, one can evaluate whether the Department is meeting the 15-month median completion time goal of the June 1994 Secretarial Policy Statement, and also establish a baseline for future studies of EIS time and cost performance. Briefly, the EIS completion time data to date show substantial progress, as explained below.

The June 2, 1997, *Lessons Learned Quarterly Report* provided a status report on a cohort of 24 EISs for which Notices of Intent had been issued between July 1, 1994, and March 31, 1997; the cohort consists of 10 programmatic or site-wide and 14 project-specific documents. Sufficient data are now available to justify another status report. Note, however, that the results may be biased until all EISs in the cohort are completed.

Since the June 1997 Report was issued, one EIS has been removed from the cohort because DOE was not the lead agency. Also, 14 of the 23 remaining EISs have now been completed. Time and cost measures for the completed EISs are presented in Table 1.

Table 1. EIS Cohort Status
23 EISs Started Between July 1, 1994 and March 31, 1997 (After the Secretary's NEPA Policy Statement)

EIS Type	Number Completed	Completion Times (months)			Costs ($M)		
		Median	Average	Range	Median	Average	Range
Total	14	14.5	16	9 to 26	3	5.7	0.02 to 20.9
Programmatic or Site-wide	7	17	18.5	12 to 26	8.2	9	0.1 to 20.9
Project Specific	7	11	13	9 to 19	2.4	2.3	0.02 to 4.2

**Results may be biased until cohort results are complete.*

Observations

Based on the wide range of completion times and costs, and the small size of the still incomplete sample, the data should be interpreted very cautiously.

Times: Although the available completion times sample may be biased low, more than half of the documents in the cohort are complete, and the raw data show that the full cohort median cannot exceed 20 months (no matter how long it takes to complete the remaining 9 EISs). Based on Program and Field Office estimates for these 9 remaining documents, the cohort median would be about 19 months.

Table 1 also shows the expected trend that project-specific EISs generally take less time to complete than the more complex programmatic and site-wide EISs.

Before July 1994, the median completion time was 33 months for a sample of 15 DOE EISs, nearly all of which were project-specific rather than programmatic or site-wide. Table 1 and schedule projections for the remainder of the cohort strongly suggest that the median completion time for project-specific EISs in the cohort could be close to 15 months. Overall, the cohort results show substantial improvement after July 1994.

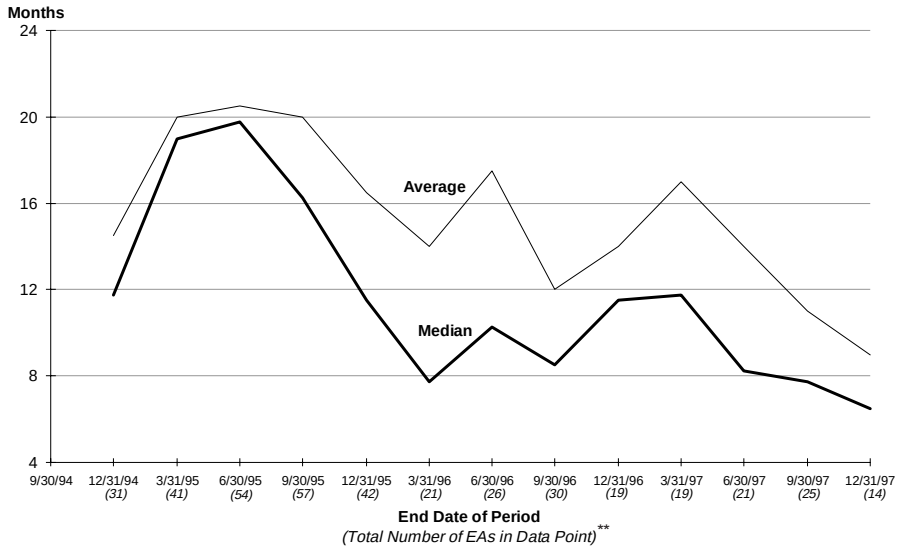
Costs: Table 1 shows a wide range of costs for preparing the 14 completed EISs, and, as expected, substantially lower costs on the whole for project-specific EISs relative to programmatic and site-wide EISs. There is no pre-July 1994 cost baseline to compare with, however. Indeed, results for this cohort will become a baseline against which the effects of more recent process improvements—such as the multiple DOE-wide NEPA contracts—can be measured.

Analysis: EA Completion Times and Costs

Figure 1. EA Completion Trendlines
6-Month Moving Trendlines, Revised Quarterly*

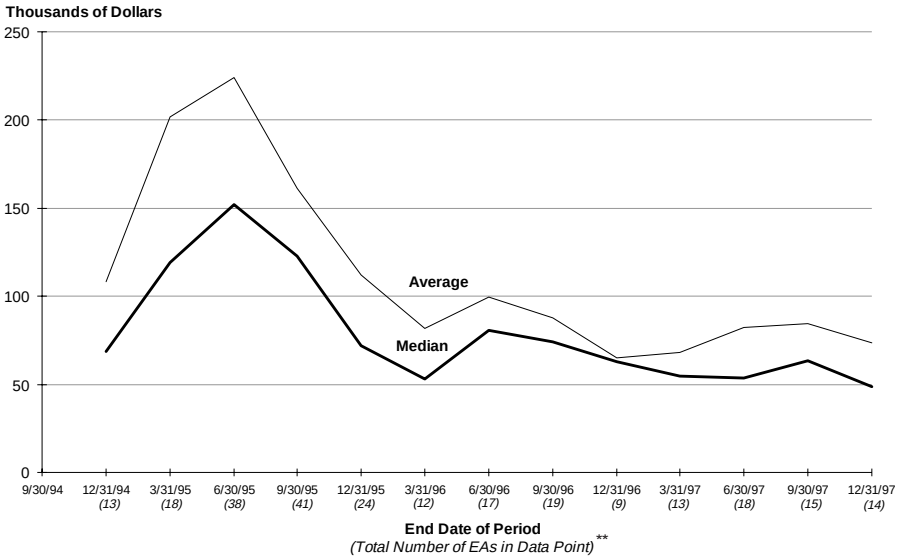
A. Completion Times

(219 EAs completed 7/1/94 through 12/31/97. Data shown are for 207 EAs with completion time reported)



B. Total Costs

(219 EAs completed 7/1/94 through 12/31/97. Data shown are for 133 EAs with total cost reported)



*Each data point represents EAs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.

**EAs are counted in two data points, except perhaps the first and last.

This page and the next present the results of ongoing compilation and analysis of EA completion times and cost data provided by NEPA Document Managers in Lessons Learned Questionnaires.

Figures 1(A) and 1(B) present trendlines for overall DOE EA completion times and costs, respectively. Figures 2(A) and 2(B) *(next page)* display, for each EA preparing office, the median time and cost for the subset of EAs that were both started and completed after the June 1994 Secretarial Policy Statement.

Observations

The trends shown in Figure 1 are consistent with the streamlining process that was carried out under the 1994 Policy Statement. Early results included EAs that were begun before June 1994 and completed before the streamlining was fully implemented, which took about six months. Since then, time and cost trends have been highly favorable.

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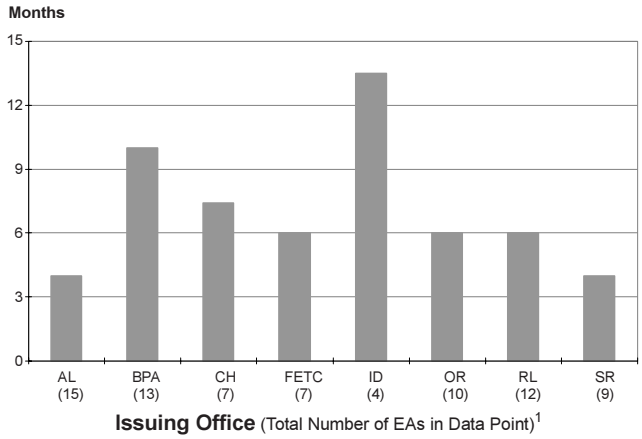
Observations *(continued)*

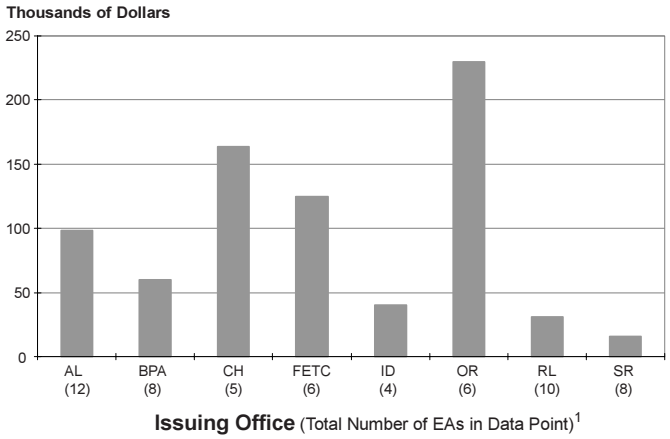
Figure 2 must be interpreted more cautiously, especially in light of statistical limitations, and should be most meaningful and useful to each office that prepares EAs. For many reasons, high time and cost are not necessarily inefficient. Appropriate time and cost vary with the complexity of proposed actions and alternatives, the environmental context, and local stakeholder involvement practices and requirements. Each Office is the best judge of its effectiveness and efficiency in preparing EAs. Figure 2 provides data whereby an Office may compare its results with those of other offices that may be similarly situated with respect to factors that determine EA times and costs. By engaging in "benchmarking," an Office could seek improvements that, in its own judgment, would bring its EA preparation process closer to optimum.

Figure 2. EAs Started and Completed after June 1994

A. Median Completion Times



B. Median Costs



[1]*Reported only for those Offices that have time and cost data for at least four EAs.*

EAs Completed During the First Quarter of FY98

Bonneville Power Administration

Methow Valley Irrigation District Project, Okanogan County, Washington
DOE/EA-1181
Cost: $244,000
Time: 16 months

Federal Energy Technology Center

Fossil Energy
Hoe Creek Underground Coal Gasification Test Site Remediation, Campbell County, Wyoming
DOE/EA-1219
Cost: $62,000
Time: 4 months

Idaho Operations Office

Energy Efficiency and Renewable Energy
City of Boise Geothermal Project, Phase III, Boise, Idaho
DOE/EA-1133
Cost: $10,000
Time: 21 months

Los Alamos Area Office

Defense Programs
Lease of Land for the Development of a Research Park at Los Alamos National Laboratory, New Mexico
DOE/EA-1212
Cost: $145,000
Time: 7 months

Nevada Operations Office

Environmental Management
Area 5 Radioactive Waste Management Site Access Improvement Project, Nevada Test Site, Nevada
DOE/EA-1170
Cost: $15,000
Time: 23 months

Oakland Operations Office

Environmental Management
Off-Site Transportation of Low-level Waste for Four California Sites
DOE/EA-1214
Cost: $25,000
Time: 7 months

Oak Ridge Operations Office

Environmental Management
Proposed Lease of Land and Facilities within the Oak Ridge K-25 Site, Oak Ridge, Tennessee
DOE/EA-1175
Cost: $345,000
Time: 19 months

Energy Research
Proposed Increase in Operating Parameters of the Continuous Electron Beam Accelerator Facility at the Thomas Jefferson National Accelerator Facility, Newport News, Virginia
DOE/EA-1204
Cost: $168,000
Time: 8 months

Savannah River Operations Office

Environmental Management
DOE Permission for Off-loading and Transportation of Commercial Low-level Radioactive Waste Across the Savannah River Site
DOE/EA-1218
Cost: $17,000
Time: 4 months

National Environmental Policy Act

NEPA

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

June 1, 1998, Issue No. 15 For Second Quarter FY 1998

NEPA Compliance Officers Meet in DC

How can NEPA Compliance Officers (NCOs) become more effective? What can the Offices of Environment, Safety and Health (EH) and General Counsel (GC) do to better support the NCOs? Field and Program NCOs and staff of the Offices of NEPA Policy and Assistance and the Assistant General Counsel for Environment met in Washington, DC, on March 26 and 27 to explore these questions.

Peter Brush, Acting Assistant Secretary for Environment, Safety and Health, saluted the NCOs as key participants in DOE's NEPA Program. "NEPA is no longer a military campaign to be imposed on the Department; it has become a way of life," he said. Referring primarily to the NCOs' role in recommending approval of environmental assessments (EAs) to Secretarial Officers and Heads of Field Organizations, he continued, "We rely on the NCOs to perform functions that we formerly carried out at higher levels of the Department. You have become a major force in streamlining our NEPA compliance."

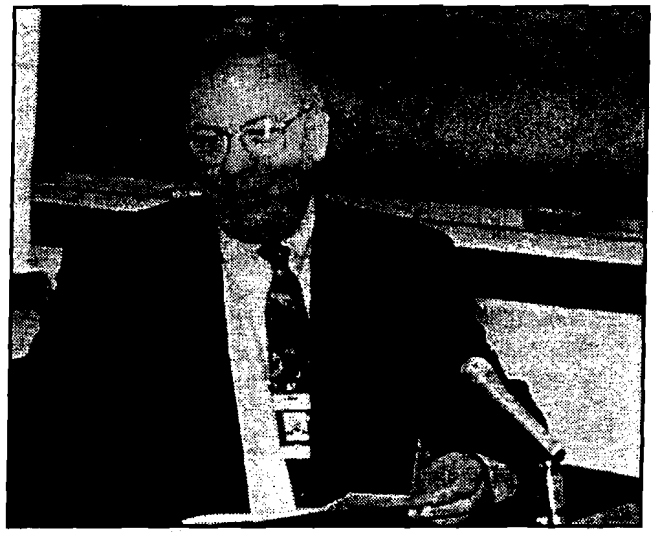
Mr. Brush emphasized that to be effective, NCOs must have authority and information. "Use it or lose it," he challenged them. In response to an NCO's question as to whether DOE top managers support NEPA, Mr. Brush responded that the Secretary is a "true believer" and that the Assistant Secretaries are deeply analytical decision makers who appreciate the value of systematic environmental review during the decision process.

"NEPA . . . has become a way of life."

The articles that follow highlight the major discussion topics at the NCO meeting. An NCO panel shared ways to provide NEPA advice to their managers, project officials, and NEPA document preparers. NCOs, EH, and GC discussed how to efficiently and effectively record categorical exclusions. NCOs identified NEPA training needs for their Offices and spoke of the value of the *Lessons Learned Quarterly Report* in Department-wide NEPA coordination. NCOs with tasks under the DOE-wide NEPA support contracts expressed satisfaction that the expected benefits (reduced time and cost) are materializing. A panel told of experiences integrating NEPA with other environmental reviews and consultations—under the Endangered Species Act, the National Historic Preservation Act, and state environmental policy acts, for example. GC emphasized the importance of preparing an adequate administrative record to document the NEPA process.

The NCOs and the Office of NEPA Policy and Assistance will continue to seek ways to improve the DOE NEPA Program. They are planning a wider DOE NEPA Community Meeting to be held at the Nevada Operations Office during the week of October 13, 1998.

Related articles begin on page 3



Peter Brush, Acting Assistant Secretary for Environment, Safety and Health, presents opening remarks at the March meeting of the DOE NEPA Compliance Officers

Inside *LESSONS LEARNED*

Welcome to the second quarter FY 1998 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

Correction

[redacted]

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report*. Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, phone (202) 586-9326, or fax (202) 586-7031. Draft articles for the next issue are requested by July 31, 1998.

Third Quarter Questionnaires Due July 31

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 1998 (April 1 through June 30) should be submitted as soon as possible after document completion, but no later than July 31, 1998. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

The Role of the NCO
It's a Tough Job, But . . .

Following Mr. Brush's comments challenging NCOs to use their authority to become more effective advocates for environment, safety, and health within their organizations, a diverse panel of six Headquarters and Field NCOs discussed potential barriers to needed improvements in NCO effectiveness. In introducing the panel, moderator Eric Cohen noted that the Office of NEPA Policy and Assistance has met with NCOs several times to explore ways to strengthen the role of the NCO, and he encouraged panel members to frankly discuss any empowerment issues that may limit their ability to do their jobs. Specifically, panel members were asked to explore their relationships with management and program officials, project managers, NEPA document managers, and legal counsel. Following are highlights of the discussion.

NCOs share perspectives on working effectively with managers, project personnel, legal staff, and NEPA Document Managers (left to right, facing forward: Clarence Hickey, Bill White, Elizabeth Withers, Debbie Turner, Steve Frank, and Lloyd Lorenzi)

Chicago: Bill White advised NCOs to work jointly with the Document Manager, Project Manager, legal staff, and public outreach staff early in the EA internal scoping process. The goal of such a group would be to cooperatively draft an EA outline, statement of purpose and need, proposed action and alternatives, and to identify potential environmental issues. This early effort helps EA preparation to proceed efficiently. The teamwork approach fosters partnership and lessens the likelihood of disagreements developing later in the EA process. Mr. White cautioned, however, that NCOs may find themselves in the middle of conflicts among the participants if open communications and a spirit of teamwork are not established early.

Energy Research: Clarence Hickey reported that communication and coordination are paramount. (See related article in *Lessons Learned Quarterly Report*, March 1998, page 10.) "Part of my job is to provide my best advice," he asserted, "and to be sure that my manager is informed, even when making a decision that differs from my recommendation." He believes that what helps the NCO to be effective is not just a hammer (the NCO authorities under the NEPA Order), but also influence based on trust. Mr. Hickey recommends that NCOs invest considerable effort in understanding the basic project technology of proposals undergoing NEPA review in order to advise management and project personnel on the potential environmental issues affecting their activities.

Environmental Management (EM): Steve Frank described the EM NEPA program's emphasis on supporting and coordinating with the Field through education, communication, and enabling. Because of the large number of NEPA reviews that involve EM, he must select reviews in which to participate. Mr. Frank encouraged Field NCOs to share site tracking reports for NEPA activities with EM and EH. He also offered the EM Monthly Envirowatch bulletin (http://www.em.doe.gov/em75/envwatch/) as a resource to the environment, safety, and health community.

Federal Energy Technology Center: Lloyd Lorenzi reported on incorporating a discussion of NEPA responsibilities into the Center's functions and responsibilities manual. By this means he hopes to ensure that NEPA responsibilities are brought to the attention of project staff. Mr. Lorenzi also strives to ensure that NEPA compliance is not overlooked in project planning by requiring the NCO to sign project initiation documents to signify that "NEPA is complete."

Golden Field Office: Debbie Turner described the NCO role in an Office that works primarily with non-Federal proponents and sites. Her approach is to remind non-Federal Project Managers that appropriate NEPA activities can help them, and that NEPA is the way DOE does business, not a separate activity. To build support for the NEPA program through an understanding of its benefits, Ms. Turner has shifted the focus of training sessions from *how* to *why* to undertake NEPA compliance activities.

continued on page 4

Special Considerations in Applying Categorical Exclusions

The process of applying categorical exclusions for some classes of actions—such as routine maintenance or indoor bench-scale research—is not straightforward. On this, everyone at the NCO meeting could agree. But a variety of viewpoints emerged regarding the best way to address proposed actions in such categories, which may not be well-defined until shortly before they are to begin, and may occur in large numbers per year.

Stan Lichtman, Office of NEPA Policy and Assistance, framed the discussion of categorical exclusions. Mr. Lichtman emphasized that NCOs need practical approaches for determining the level of NEPA review for these types of proposed actions. To do so, NCOs need to be able to identify the extraordinary circumstances that would make proposed actions ineligible for categorical exclusion. He stated that the discussion need not be concerned about proposed actions that vary trivially from actions previously determined to be categorically excluded or for which the specific details could not possibly affect the appropriate level of NEPA review.

A panel of NCOs—Paul Dunigan, Richland Operations Office; Drew Grainger, Savannah River Operations Office; Roger Twitchell, Idaho Operations Office; and Elizabeth Withers, Los Alamos Area Office—described approaches that they use to apply categorical exclusions in their Offices. The panel members acknowledged that no single method of applying categorical exclusions is best for all circumstances.

The Office of the Assistant General Counsel for Environment reminded NCOs that they must consider the specific facts of an actual proposed action when applying a categorical exclusion. When proposed actions are grouped for categorical exclusion application, the NCO should limit the duration and scope of the determination. Any categorical exclusion determination for an action that will continue into the future must be based on knowledge of the actual nature of the action.

The discussion was part of an ongoing focus on categorical exclusions that recently resulted in guidance on recordkeeping (Memorandum to Secretarial Officers and Heads of Field Organizations, signed by Peter Brush, January 16, 1998). (See related article in *Lessons Learned Quarterly Report*, September 1997, page 9.) At the end, it was clear that the "last word" on this subject had not yet been heard. Carol Borgstrom, Director of the Office of NEPA Policy and Assistance, promised to consult with other Federal agencies on their processes for categorical exclusion determinations. She advised that further guidance on categorical exclusion determinations will be completed in consultation with the NEPA Compliance Officers and the Office of General Counsel. LL

Mark Your Calendar!

Next DOE NEPA Community Meeting

Nevada Operations Office
North Las Vegas, Nevada

Week of October 13, 1998

Further information will be mailed shortly.

Role of the NCO *(continued from page 3)*

Los Alamos Area Office: Elizabeth Withers observed that litigation over the Dual Axis Radiographic Hydrodynamic Test Facility (related article in *Lessons Learned Quarterly Report*, December 1995, page 12) raised her Office's awareness of the need for careful NEPA review for proposals that change in the course of development. Litigation concentrates the mind, she reported, though the Office would not care to repeat the experience.

The NCO panel suggested ways that EH can help strengthen their NEPA programs:

- Inform Headquarters NCOs of, if not actually involve them in, interactions between EH and Field Offices regarding NEPA activities.
- Provide more training to NEPA Document Managers.
- Provide preparers with feedback on EA quality.
- Provide more opportunities to recognize NEPA Offices excellence.
- Continue to support the *Lessons Learned Quarterly Report* as a tool for continuous improvement, guidance, and metrics tracking. LL

NEPA Training Anticipated

Questionnaire Results Identify Needs

By: David Hoel
National Environmental Training Office
Savannah River Operations Office

Results continue to be evaluated in the training needs analysis conducted by the DOE National Environmental Training Office (NETO) in partnership with the Office of NEPA Policy and Assistance and the Office of Defense Programs. (See related article in *Lessons Learned Quarterly Report*, December 1997, page 10.) More than 60 percent of the 150 questionnaires sent to members of the DOE NEPA community were returned.

Preliminary analysis of questionnaire responses indicates that a substantial proportion of the NEPA community is in favor of DOE sponsoring Department-wide NEPA training for a wide range of NEPA topics. Topics of popular interest include: general overview of NEPA requirements, the DOE Order and Rule on NEPA, determining the appropriate level of NEPA review, and recent and emerging NEPA issues. Respondents also indicated an interest in training on NEPA litigation lessons learned, DOE Headquarters NEPA procedures, NEPA document project management, health effects analysis, endangered species impacts, environmental justice impacts, and preparing findings of no significant impact and records of decision.

Discussion of these results by NCOs supports a Department-wide need for NEPA training. NETO will complete a compilation of the survey results, produce a final report, and consult with the Office of NEPA Policy and Assistance to determine what Department-wide NEPA training to sponsor. For more information, see the NETO web page at http://www.em.doe.gov/neto/ or phone (803) 725-0814.

Is CD-ROM Technique in DOE's Future?

By: Gary Palmer
Deputy NEPA Compliance Officer
Defense Programs

The Defense Programs NCO Office is exploring the use of CD-ROM-based training for DOE and contractor staff involved in the NEPA process. To evaluate this educational technology for NEPA training, we have started a pilot program with the assistance of The Mangi Environmental Group. We have identified 31 modules that could make up a several-day, complete NEPA course and have chosen two to develop as pilot lessons. "DOE NEPA" will explain how the Department implements NEPA. "Getting Started on a NEPA Process" will present EIS, EA, and categorical exclusion requirements in a DOE context, setting the stage for further development of each level of NEPA review. We have reviewed outlines of one of these modules; completion of the text will allow computer technicians to produce the material to be placed on the CD-ROM. When these two modules are completed, they will be reviewed and tested for use by the target audience, NEPA Document Managers.

We discussed this developing training project at the recent March NCO Meeting. Several NCOs asked whether the technology could be extended to have the modules available on-line, through an Internet connection. It appears—at this point, anyway—that the technology would not support interactive training online.

We also distributed sample disks that demonstrate the technology to NCOs at the March meeting, and we intend to present the pilot modules at the next NEPA Community Meeting. We will continue to explore all aspects of this training capability and will report on the status in future issues of the *Lessons Learned Quarterly Report*. For additional information, contact Gary Palmer at gary.palmer@dp.doe.gov or (202) 586-1785.

DOE-wide NEPA Contracts Provide Quick Access, Lower Costs

New Contractor Added

The Contracting Officer for the DOE-wide NEPA support contracts, Dawn Knepper, Albuquerque Operations Office, enthusiastically promoted continued and increased use of the contracts at the NCO meeting. She also announced a new contract award to Battelle Memorial Institute, which will help foster competition and avoid potential conflicts of interest now that one of the original three contract holders has acquired another. (See related article in *Lessons Learned Quarterly Report*, September 1997, page 10.)

Ms. Knepper advised NCOs to use competition in awarding tasks and to be sure to complete contractor performance evaluations after a task is completed. The Program Manager for each contractor team also briefly addressed the NCOs, summarizing the NEPA support capabilities of their respective companies and subcontractors.

Two NCOs who served on the source evaluation panel, Drew Grainger, Savannah River Operations Office, and Roger Twitchell, Idaho Operations Office, described their experiences using the DOE-wide contracts. They confirmed that task orders can be issued easily within two weeks, compared to months or even years to award a new contract. They have had success using detailed Statements of Work, several of which were provided as examples. One NCO observed that costs for one contractor are 20 percent lower under the DOE-wide NEPA contract than under a separate contract with the site.

The tasks listed below have been awarded since June 1997. For more information on the use of the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov or (505) 845-6215. LL

The Three DOE-wide NEPA Contractor Teams: An Update

- **Battelle Memorial Institute**
  Program Manager: Lucinda Low Swartz
  swartzl@battelle.org
  phone (202) 646-7802, fax (202) 646-5233
- **Science Applications International Corporation (SAIC)**
  Program Manager: Glen T. Hanson
  glen.t.hanson@cpmx.saic.com
  phone (505) 842-7858, fax (505) 842-7798
- **Tetra Tech (formerly Tetra Tech Incorporated and Halliburton NUS Corporation)**
  Program Manager: Thomas Magette
  magette@ttalex.com
  phone (703) 931-9301, fax (703) 931-9222

Task Description	NEPA Document Manager	Award Date	Contractor Team
Los Alamos National Laboratory Site-wide EIS (document production and comment response)	Cory Cruz (AL) ccruz@doeal.gov; phone (505) 845-4282	7/3/97	Tetra Tech, Incorporated
[illegible]	[illegible] (AL) [illegible]	[illegible]	Halliburton NUS Corporation
Commercial Light Water Reactor Tritium Extraction Facility EIS	John Knox (SR) john.knox@srs.gov; phone (803) 725-5550	9/16/97	Halliburton NUS Corporation
[illegible]	[illegible] (LAAO) [illegible]	11/13/97	Tetra Tech, Incorporated
Advanced Mixed Waste Treatment Facility EIS (draft EIS and comment response)	John Medema (ID) medemaje@inel.gov; phone (208) 526-0535	11/14/97	Tetra Tech, Incorporated
Hanford Remedial Action Program EIS (completion of EIS in progress)	Tom Ferns (RL) thomas_w_ferns@rl.gov; phone (509) 372-0649	11/17/97	Halliburton NUS Corporation
High Level Waste and Facilities Disposition EIS	Tom Wichmann (ID) wichmatl@inel.gov; phone (208) 526-0535	11/24/97	Halliburton NUS Corporation
Brookhaven High Flux Beam Reactor EIS	Nand Narain (BHG) narain@bnl.gov; phone (516) 344-5435	12/17/97	Tetra Tech, Incorporated
Container System for the Naval Spent Nuclear Fuel Supplement Analysis	Ron Ramsey (ID) ramseyro@inel.gov; phone (202) 526-1545	3/11/98	SAIC
Los Alamos National Laboratory Land Transfer EIS	Elizabeth Withers (LAAO) [illegible]; phone (505) [illegible]	4/10/98	Tetra Tech

Integrating NEPA with Other Environmental Reviews

The Council on Environmental Quality (CEQ) NEPA regulations require that, to the fullest extent possible, agencies shall prepare an EIS concurrently with and integrated with environmental impact analyses and related surveys and studies required under other statutes (40 CFR 1502.25). Furthermore, agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication (40 CFR 1506.2).

The reviews and consultations to be integrated with NEPA review include those undertaken in accordance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, and state environmental policy acts. Typically, reviews under these statutes are needed to completely assess the impacts of a proposed action.

Often the reviews are based on the same information and may be performed at the same time as a NEPA review, thereby gaining efficiencies. Integrating these reviews, however, poses many challenges, as a panel of NCOs and NEPA Document Managers discussed.

Advice from GC

In discussing the status of ongoing litigation and lessons learned, Anita Capofari, Office of the Assistant General Counsel for Contractor Litigation, and Steve Ferguson and Janine Sweeney, Office of the Assistant General Counsel for Environment, urged NCOs to prepare administrative records that document opportunities for public participation and consideration of information adverse to the agency position. (See additional recommendations in the related article in *Lessons Learned Quarterly Report*, September 1997, page 7.) They also recommended using in EISs the model language on encountering unexpected materials during excavation (presented in the *Lessons Learned Quarterly Report*, March 1998, page 8).

Tony Como, Office of Fossil Energy, reported on the strategy of transferring a Section 7 Endangered Species Act permit, including mitigation requirements, to a private sector purchaser of the Naval Petroleum Reserve (related article in *Lessons Learned Quarterly Report*, December 1997, page 1). The NEPA review included alternatives that projected how the purchaser would likely develop and operate the property differently from development and operation under the constraints (including budgetary) of government activity.

Paul Dunigan, Richland Operations Office NCO, described DOE's experiences in preparing two major EISs jointly with the State of Washington to satisfy both NEPA and the state environmental policy act. Joint preparation with the State was highly efficient in satisfying all requirements.

Kathy Pierce, Document Manager for the Bonneville Power Administration, discussed the challenges of conducting public scoping for a proposed action involving multiple agencies with highly different scoping procedures. She described Bonneville's success in coordinating with the Fish and Wildlife Service and State Historic Preservation Office early enough to report on the consultation in the draft NEPA document.

Elizabeth Withers, Los Alamos Area Office NCO, discussed meeting regulatory requirements when most of a site is an environmentally sensitive resource because of the presence of endangered species or their critical habitat, archaeological sites, or other cultural resources. She reminded NCOs to be open to compromise in complicated environmental consultations with agencies whose perspectives and procedures differ from DOE's.

In group discussion, NCOs asked EH to provide more guidance on integrating NEPA and state environmental reviews.

NRC Adopts DOE NEPA Documents for Spent Fuel at INEEL

By: Eric Cohen, *Office of NEPA Policy and Assistance*

In March 1998, the Nuclear Regulatory Commission (NRC) issued a Final EIS to support its decision on DOE's application for a license to construct and operate a dry storage facility at the Idaho National Engineering and Environmental Laboratory (INEEL) for Three Mile Island Unit 2 spent nuclear fuel debris. DOE NEPA practitioners involved with projects, that eventually may be regulated by NRC, may be interested in how NRC applied its EIS procedures and relied on DOE NEPA documents in this case.

DOE's Proposal and NEPA Review

DOE has been managing Three Mile Island Unit 2 spent fuel debris at INEEL at the Test Area North wet storage pool. In response to environment, safety, and health vulnerabilities that DOE identified associated with the storage pool, DOE is proposing to construct and operate a new dry storage facility at the Idaho Nuclear Technology and Engineering Center (formerly the Idaho Chemical Processing Plant) to store the spent fuel debris until the department disposes of the fuel. Because NRC regulates spent nuclear fuel from commercial power reactors such as those at Three Mile Island, DOE applied for an NRC license for the proposed new facility.

As part of the "environmental report" required under NRC license application procedures (10 CFR Part 72), DOE provided NRC with the following DOE NEPA documents that addressed the proposal, but in which NRC did not participate as a cooperating agency:

- A programmatic EIS: DOE/EIS-0203-F, *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement*, April 1995.
- An EA tiered from the programmatic EIS: DOE/EA-1050, *Environmental Assessment: Test Area North Pool Stabilization Project*, May 1996.
- A second EA tiered from the programmatic EIS to address changes in scope: DOE/EA-1217, *Environmental Assessment: Test Area North Pool Stabilization Project* (Update to DOE/EA-1050), August 1997.

How NRC Applied NEPA and Prepared its FEIS

NRC elected to adopt the DOE NEPA documents as its Final EIS and chose not to recirculate the documents, except as a final statement. As NRC stated in the Final EIS and the Notice of Availability (51 FR 13077, March 17, 1998), this process was allowable under NRC NEPA procedures (10 CFR Part 51, Appendix A to Subpart A) and Council on Environmental Quality NEPA regulations (40 CFR 1506.3). In choosing this approach to its NEPA review, NRC conducted an independent staff review of the DOE documents and determined that:
(1) the NRC proposed action of issuing a license is substantially the same as the actions considered in DOE's NEPA documents; (2) the DOE NEPA documents are current; and (3) NRC NEPA procedures were satisfied.

NRC prepared its Final EIS by excerpting text, figures, and tables from DOE's NEPA documents. The excerpted material was modified as necessary to fit NRC's format for EISs and to place it within the context of NRC's proposed action. As a rough estimate, about 80 to 90 percent of NRC's Final EIS consisted of excerpted DOE material. The remaining narrative primarily introduced the DOE material and contained very little new analysis.

For readers interested in more information or a copy of NRC's Final EIS, the complete title is: Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation to Store the Three Mile Island Unit 2 Spent Fuel at the Idaho National Engineering and Environmental Laboratory, (NUREG-1626) (Docket No. 72-20). The NRC contact for the FEIS is Dr. Edward Y. Shum, U.S. Nuclear Regulatory Commission, Washington, DC 20555, phone (301)415-8545.

Alternative Dispute Resolution: Common Ground with NEPA

By: Phoebe Hamill, *Office of Fossil Energy*

Many organizations, both public and private, are increasingly coming to appreciate the value of alternative dispute resolution (ADR) in structured decision making. ADR can help Federal agencies by building consensus and by reducing the likelihood of NEPA-related litigation. (See related article in *Lessons Learned Quarterly Report,* June 1996, page 7.)

Last February, I attended an excellent session on ADR at the American Bar Association's class on environmental law issues. The two ADR panelists were Peter R. Steenland, Department of Justice counsel for dispute resolution, and Gail Bingham, President of RESOLVE, Inc., a not-for-profit center for environmental dispute resolution based in Washington, DC.

The panelists identified environmental and natural resources conflicts as particularly challenging to resolve. Multiple parties are affected, and issues are complicated by scientific uncertainty. Parties often have unequal resources that they can commit to the process, and negotiations must be accountable to a wide range of public policy and legal requirements, including open meeting laws.

ADR Process

An ADR process for an environmental dispute is often initiated voluntarily, but it may also be mandated by the courts. Mediation is the favored process by both the government and the courts. Mediators are neutral problem-solvers, disassociated from any past grievances among the parties, with no stake in the outcome; they can help parties overcome barriers and engage in successful dialogue. Participants usually engage both in direct dialogue in joint sessions as well as in confidential discussions with the mediator who may conduct "shuttle diplomacy." Sometimes, when mediators float potential offers, an idea may receive a fairer hearing because the parties do not know whether it came from the mediator or from the (distrusted) adversary.

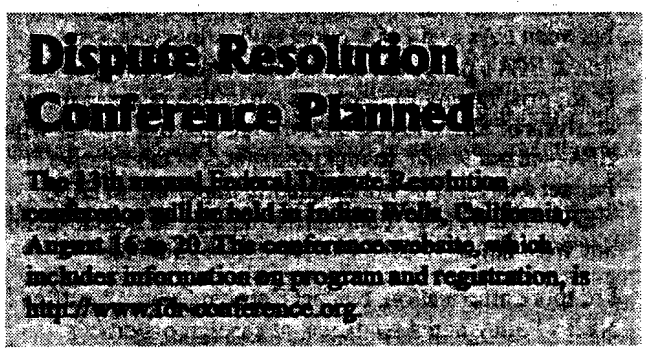
ADR experts point out that it is sometimes necessary to go beyond traditional public involvement procedures. An ADR process can supplement the NEPA process for information gathering, scoping, and the evaluation of alternatives. What ADR adds to NEPA public involvement is that parties collaborate—not just comment and respond. ADR will work only when there is some agreement on underlying need; it will not be successful where opponents are using NEPA to block a project altogether. If there is no potential for flexibility, ADR may become, as one panelist put it, "an expensive way to achieve the same impasse."

DOE Experience

DOE has employed ADR techniques on several occasions with some success. Mediation was used to settle one of the foreign spent fuel cases in South Carolina. At the Paducah Site last year, the court directed that the parties attempt mediation (*Lessons Learned Quarterly Report,* June 1997, page 8). Recently, a facilitator was appointed to assist the parties reach a settlement in the waste management portion of the Stockpile Stewardship case (see "Litigation Updates," page 13).

On May 1, 1998, the President issued a memorandum, "Designation of Interagency Committees to Facilitate and Encourage Federal Agency Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking." The memorandum encourages "consensual resolution of disputes and issues in controversy involving the United States, including the prevention and avoidance of disputes."

ADR, then, does share some common ground with NEPA. Mediators can help parties create processes that obtain useful information to complete—not compete with—the NEPA process. For further information on ADR at DOE, contact Phyllis Hanfling, Director, Office of Dispute Resolution, Office of General Counsel (GC-12), at (202) 586-6972.



Reminder: Clean Air Act Conformity Requirements to be Met Through NEPA

Shortly after the Environmental Protection Agency issued its final rule concerning Clean Air Act conformity (effective January 31, 1994), the Office of Environment, Safety and Health determined that the Department would implement these regulations through the NEPA process (memorandum "Information—Final Clean Air Act Rule Requiring that Federal Actions Conform to Applicable State Implementation Plans" from Raymond Pelletier, Director, Office of Environmental Guidance, now Environmental Policy and Assistance, dated January 27, 1994). The conformity regulations (40 CFR Part 93) were also discussed in detail at the February 1994 NEPA Compliance Officers meeting in Augusta, Georgia.

The regulations prevent Federal agencies from providing financial assistance, licensing, permitting, or approving any activity in a "nonattainment" or "maintenance" area that does not conform to the State implementation plan. For DOE sites or DOE programs that fund or approve activities in nonattainment or maintenance areas, NEPA documents must contain a conformity determination or explain why the regulations do not apply to the proposed action. Please let us know your experience and any lessons you have learned regarding implementation of the conformity regulations. Contact Mary Greene at mary.greene@eh.doe.gov, phone (202) 586-9924, or fax at (202) 586-7031.

Ecological Society of America Briefs Federal Agencies

The Ecological Society of America Headquarters Office, Washington, DC, held a briefing on its current activities for Federal agency representatives on May 13. Participants included staff from the Environmental Protection Agency and the Departments of Interior, Commerce, Agriculture, and Energy. This meeting was part of ongoing efforts by the Society to reach out to Federal agencies and improve the ways in which it provides ecological information to agency decision makers.

One accomplishment of the Society this year is expansion of its Internet services. The Society web site at http://esa.sdsc.edu provides access to, among other features, its outreach activities (newsletters, fact sheets, and issue papers, such as one on "Ecosystem Services: Benefits supplied to Human Societies by Natural Ecosystems"), electronic copies of its journal "Ecology," and links to many web sites of potential interest to environmental scientists.

The Society also continues a strong science program through its Sustainable Biosphere Initiative (SBI) Project Office, with the aim of assisting the scientific community in responding to Federal policy needs. Publications at the SBI location on the Society's web site include a 1996 "Conversation" on "NEPA and Ecosystem Management." SBI is currently involved in the preparation of a paper on managing land use that will be available in the Fall 1998, after peer review. SBI also is planning a workshop for Federal agencies on advances in understanding ecological responses to acid deposition since the 1990 National Acid Precipitation Assessment Program report was issued.

For further information contact Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596, or fax (202) 586-7031.

National Academy of Public Administration to Evaluate DOE NEPA Program

The Office of NEPA Policy and Assistance has asked the National Academy of Public Administration (NAPA) to evaluate the effects of DOE's NEPA reforms initiated in mid-1994, on the timeliness, cost, and effectiveness of DOE's NEPA reviews. NAPA will also evaluate the effects of DOE reforms on stakeholders' opportunities to participate effectively in DOE's decision-making process. NAPA's study will be completed this summer, after which the NEPA Office will make results available to the DOE NEPA community. Congress chartered NAPA to provide independent and expert advice on a broad range of policy and management issues to improve the quality of Federal operations.

Cumulative Effects Analysis Events

CEQ Planning Regional Workshops

The Council on Environmental Quality (CEQ) plans to conduct regional training workshops on cumulative effects analysis beginning in the Fall 1998. Workshops will be based on the CEQ Handbook, "Considering Cumulative Effects Under the National Environmental Policy Act," issued in January 1997.

CEQ recently solicited help with workshop content from Federal agency NEPA liaisons, and on May 18, staff from the Office of NEPA Policy and Assistance and the Office of General Counsel and four NEPA Compliance Officers (Defense Programs, Energy Research, Bonneville Power Administration, and Western Area Power Administration) participated in a pilot workshop with NEPA liaisons from other Federal agencies. Participants provided constructive critiques of draft presentation materials. Staff from the Office of NEPA Policy and Assistance will represent DOE in a smaller, multi-agency working group that will continue to advise CEQ regarding the workshops.

EPA Preparing Guidance for Its NEPA Reviewers

The Environmental Protection Agency's (EPA) Office of Federal Activities is preparing guidance on "Consideration of Cumulative Impacts in EPA Review of NEPA Documents," based on CEQ's Handbook. EPA intends that the guidance assist its NEPA reviewers in meeting EPA responsibilities under Section 309 of the Clean Air Act, to review and comment on EISs prepared by other Federal agencies.

In response to EPA's offer to other Federal agencies to comment on the draft guidance, the Office of NEPA Policy and Assistance coordinated a review of the draft guidance with NCOs and provided comments to EPA on May 14. DOE's comments asked that the guidance address differences in cumulative effects analysis between EAs and EISs, expressed strong concern about EPA's proposed use of a historical benchmark (e.g., pristine environment) as a baseline in comparative analysis of alternatives, and offered to work further with EPA—in particular, to include aspects of cumulative impact analysis that are frequently important in DOE NEPA reviews (e.g., cumulative impacts on human health) but were not addressed in EPA's draft guidance.

For more information, contact Carolyn Osborne, Office of NEPA Policy and Assistance, at carolyn.osborne@eh.doe.gov, phone (202) 586-4596,or fax (202) 586-7031.

Training Opportunities

Environmental Scoping and Decision Analysis: Applying Modern Planning and Analysis Tools
National Association of Environmental Professionals
June 20 and June 24, 1998
San Diego, California
Fee: $75
For information, see the "conference homepage" (http://www.wco.com/~aecos/NAEP/confer6.html) at NAEP's Internet site http://www.naep.org

An Environmental Professional's Introduction to the Voluntary Management Standards
National Association of Environmental Professionals
June 20, 1998
San Diego, California
Fee: $75
For information, see the "conference homepage" (http://www.wco.com/~aecos/NAEP/confer6.html) at NAEP's Internet site http://www.naep.org

Environmental Impact Assessment
Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Environmental Impact Training
July 29 to 31, 1998
Irving, Texas
Fee: $595
For information, call (405) 321-2730

Advanced Topics in Environmental Impact Assessment
Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Environmental Impact Training
August 3 to 5, 1998
Irving, Texas
Fee: $595
For information, call (405) 321-2730

Environmental Laws and Regulations
DOE National Environmental Training Office
August 11 to 13, 1998
Savannah River Site
Fee: Free to Federal employees; $220/day for contractors and others
For information, call (803) 725-0816, or see Internet site http://www.em.doe.gov/neto/courses/env256.html

DOE's NEPA Program Cited as Exemplary at Congressional Hearing

At a Congressional oversight hearing on problems and issues associated with NEPA, witnesses within and outside the Federal government referred to DOE's NEPA program as exemplary. The hearing was held March 18, 1998, by the House of Representatives' Committee on Resources, chaired by Congressman Don Young (Alaska).

The Council on Environmental Quality Chair, Kathleen McGinty, emphasized NEPA's importance in integrating economic, social, and environmental values. NEPA implementation has also helped agencies avoid mistakes, she said, recalling how former DOE Secretary James Watkins once remarked to Congress, "Thank God for NEPA." The NEPA process was key to his decision to defer selection of a costly tritium production technology.

Most of the witnesses from the public sector and from private interest groups testified that NEPA itself is not a problem—but NEPA implementation by certain agencies needs improvement. The Director of the Reason Public Policy Institute, Lynn Scarlett, however, singled out DOE as having successfully reinvented its NEPA compliance program, particularly in setting, tracking, and reporting cost and time goals for the NEPA process. She noted that, for DOE, the common wisdom is certainly true that "what gets measured gets done."

Witnesses suggested that Federal implementation of NEPA needed to enhance opportunities for involvement by state and local governments. In this regard, Senate Bill 1176, introduced in September 1997, would amend NEPA to require Federal agencies to identify states and counties with jurisdiction by law or special expertise as cooperating agencies in the preparation of NEPA documents. Witnesses also urged multiple Federal agencies that might be involved in a proposed action to coordinate better, particularly in identifying requirements for projects, eliminating duplication of environmental analyses, and consolidating approvals.

For further information on the hearing or DOE's NEPA process, contact Carolyn Osborne, Office of NEPA Policy and Assistance, at carolyn.osborne@eh.doe.gov, phone (202) 586-4596, or fax (202) 586-7031.

NEPA Guidance Updates

DOE NEPA Guidance

These guidance documents are under development. For information, please consult the following points of contact. For all, the fax number is (202) 586-7031.

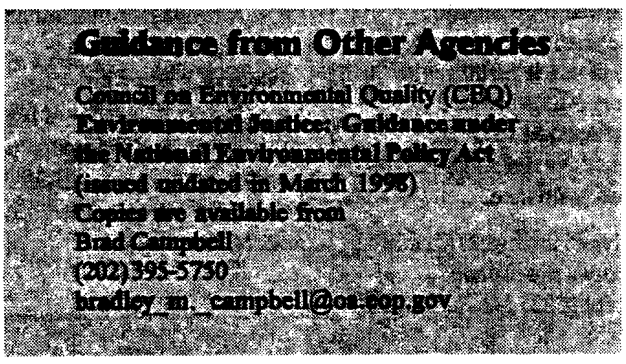
Categorical Exclusion Procedures
Carolyn Osborne
(202) 586-4596
carolyn.osborne@eh.doe.gov

Accident Analysis Guidance
Ted Hinds
(202) 586-7855
warren.hinds@eh.doe.gov

Eric Cohen
(202) 586-7684
eric.cohen@eh.doe.gov

Better Graphics in NEPA Documents
Yardena Mansoor
(202) 586-9326
yardena.mansoor@eh.doe.gov

Update of the NEPA Compliance Guide (Reference Book)
Barbara Grimm-Crawford
(202) 586-3964
barbara.grimm-crawford@eh.doe.gov



Litigation Updates

By: Stephen Simpson, *Office of NEPA Policy and Assistance*

DOE Wins Two Spent Nuclear Fuel Suits, Files Motion and Response in Stockpile Stewardship Litigation

DOE has won two NEPA lawsuits, one over selection of a western port for the receipt of foreign research reactor spent nuclear fuel, and the other over the management of spent nuclear fuel at the Idaho National Engineering and Environmental Laboratory. DOE has also recently filed its summary judgment motion and its response to the plaintiffs' summary judgment motion in the continuing litigation involving the Stockpile Stewardship and Management Programmatic EIS.

Choice of Port Upheld

On March 18, 1998, the U.S. District Court for the Northern District of California upheld the selection (in a May 1996 Record of Decision) of Concord Naval Weapons Station (NWS) as the western port of entry, based on the Department's February 1996 Final EIS on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS-0218). The County of Contra Costa and the City of Concord, both in California, had sued DOE in October 1997, alleging that the selection of Concord NWS violated several Federal laws, including NEPA. (See *Lessons Learned Quarterly Report*, December 2, 1997, page 17.)

The plaintiffs alleged that the port selection violated NEPA because (1) the EIS did not adequately address the risk of terrorism or sabotage at Concord NWS; (2) new facts discovered after completion of the EIS required a Supplemental EIS; (3) the Navy's Environmental Assessment (EA) (tiered from the DOE EIS) of the site-specific impacts of use of Concord NWS as a port of entry was inadequate (for the same reasons that the EIS was inadequate); and (4) DOE impermissibly segmented issues (by preparation of a DOE programmatic EIS, a DOE Supplement Analysis (SA) for a different transportation route, and a Navy site-specific EA).

The court ruled that DOE's decision not to quantify the probability that terrorism or sabotage would occur was reasonable given that the EIS discussed the security measures in place and described in detail the potential consequences of deliberate attack. The court also found that, because the plaintiffs had not identified significant impacts not already evaluated in the EIS and SA, neither the choice of Concord NWS nor the selection of a new route required preparation of a Supplemental EIS. The court found that any omission of terrorism or sabotage issues in the EA did not violate NEPA because DOE had adequately addressed the same issues in the EIS. Finally, the court held that the separately prepared assessments (programmatic EIS, SA, and EA) did not constitute improper segmentation of the NEPA review. *Contra Costa County v. Peña*, No. C97-3842 FMS (N.D. Calif. March 18, 1998).

DOE Wins Suit on Idaho Spent Fuel EIS

On March 31, 1998, Judge Edward J. Lodge of the U.S. District Court for the District of Idaho granted DOE's motion for summary judgment, effectively ending the suit filed in August 1995 by the Snake River Alliance Education Fund challenging the adequacy of DOE's Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS (DOE/EIS-0203). The plaintiff alleged among other things that the EIS was deficient because DOE: (1) did not adequately "establish the underlying purpose and need for the proposed actions" or "justify" its choice of preferred alternative; (2) improperly segmented its analysis; (3) did not consider a reasonable range of alternatives; and (4) did not adequately analyze "environmental, human, and other impacts."

In its motion, DOE argued that the EIS clearly identified the purpose and need for agency action (and noted that neither NEPA nor the Council on Environmental Quality (CEQ) Regulations implementing NEPA require that the agency "justify" the proposed action or an alternative in the EIS). DOE also argued that the analysis was not improperly segmented; rather, DOE analyzed the impacts of actions that were ripe for decision and is deferring analysis of further actions to tiered NEPA review. DOE asserted that the range of alternatives was reasonable. (The EIS clearly linked the programmatic and site-wide alternatives, the site-specific no action alternative was appropriate for analysis of a continuing operation, and the EIS evaluated the alternative requested by the plaintiff during the public comment period.) Finally, DOE contended that the analysis of radiological impacts was based on the best scientific knowledge available and its use of a conservative analysis of accident impacts was reasonable.

continued on page 14

DOE Cases *(continued from page 13)*

As of this writing, Judge Lodge has not yet issued an opinion giving his reasons for ruling in favor of DOE nor an order formally dismissing the case.

Motion for Summary Judgment Filed in Stockpile Stewardship Case

Matters are proceeding in the litigation brought by the Natural Resources Defense Council (NRDC) and 38 other nongovernmental organizations concerning a 1990 stipulation and order in which DOE indicated that it would initiate preparation of two programmatic EISs–one for the reconfiguration of the nuclear weapons complex and one for waste management and environmental restoration. (See related articles in *Lessons Learned Quarterly Report*, June 1997, page 5 and September 1997, page 3.)

In January 1998, the plaintiffs amended their complaint concerning the weapons complex, narrowing the outstanding issues to new information regarding the National Ignition Facility and to production of plutonium pits at the Los Alamos National Laboratory. This complaint now challenges the adequacy of DOE's Stockpile Stewardship and Management Programmatic EIS (SSM PEIS) and asks that the court require DOE to prepare a supplemental programmatic EIS. (See related article in *Lessons Learned Quarterly Report*, March 1998, page 13.) On April 6, the plaintiffs filed a motion for summary judgment on the issues raised by the amended complaint.

On May 18, the Department of Justice filed on DOE's behalf a motion for summary judgment. The brief supporting DOE's motion argues that DOE does not need to prepare a supplemental programmatic EIS because the information pointed to by the plaintiffs is not new and was adequately addressed in the SSM PEIS, does not significantly change the analysis and conclusions of the SSM PEIS, raises issues being addressed by tiered NEPA documents (in particular, the Los Alamos National Laboratory Site-wide EIS), or addresses possible actions for which DOE has not yet formulated a proposal. A hearing on the summary judgment motions is scheduled for June 22, 1998.

In the waste management portion of the case, both parties have agreed to the appointment by the court of a Special Master to assist the parties in reaching a settlement. In addition, the parties are proceeding with the discovery phase of the process preliminary to a trial on NRDC's request to hold DOE in contempt of the 1990 Stipulation and Order for failure to prepare a programmatic EIS that addresses environmental restoration. That trial is scheduled for October 15, 1998.

Other Cases of Interest

Forest Service Ordered to Prepare EIS for One Action, Support Mitigation Measure for Another

The U.S. District Court for the Western District of Pennsylvania recently ordered the Forest Service to prepare an EIS for a proposed timber sale, the "Mortality II Project," from the Allegheny National Forest. The Service had prepared an EA for the sale that examined only two alternatives, the proposed action (which involved an extensive use of "even-aged" management techniques, including clearcutting) and no action. The plaintiffs challenged the Service's Finding of No Significant Impact (FONSI), alleging that the use of even-aged management techniques on 4,775 acres (out of the 5,000 acres for sale) would have the potential for significant impacts, including impacts on wildlife and old-growth forests.

The court agreed with the plaintiffs that the magnitude of the proposed action and the selection of even-aged management as the predominant management technique undermined the FONSI. (The court also noted that the length of the 49-page EA, with 349 pages of appendices, tended to undermine the FONSI, citing the admonition of the Council on Environmental Quality (CEQ) in the answer to Question 36b of *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* that "in most cases, . . . a lengthy EA indicates that an EIS is needed." 46 Fed. Reg. 18026, 18037 (1981)) The court further held that several of the potential impacts of the proposed action corresponded to the "intensity" factors in the definition of "significantly" in the CEQ NEPA Regulations (40 CFR 1508.27). Specifically, the location of the proposed action contained exceptionally high quality streams and endangered species habitat; it was also adjacent to an old-growth forest.

Finally, the court agreed with the plaintiffs' challenge to the Service's range of alternatives. Although the Long-Range Management Plan for the Allegheny National Forest stated that even-aged management techniques would be the "featured" system for this area, the court held that the Service still had an obligation to consider a "broad range of reasonable alternatives," some of which would involve more extensive use of uneven-aged management techniques. *Curry v. U.S. Forest Service*, 1997 U.S. Dist. LEXIS 20134 (W.D. Pa. 1997).

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What Worked and Didn't Work in the NEPA Process

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

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

Scoping

What Worked

- A strategic determination. *A project team meeting proved effective in determining the level of NEPA review required for this project: an EA to supplement the EIS.*
- Internal scoping to share information. *An internal scoping meeting was used to get project people up to speed on issues and to point out another option in sizing the project.*
- Effective integration with the state process. *We used the state's EA-type process and EA worksheet to analyze potential environmental impacts of the state's portion of the project, incorporating the worksheet into the EA as an attachment. The state's formal process for public noticing, review, and comment was unique for this facility, but it worked well.*

Data Collection/Analysis

What Worked

- Resource specialists. *We used specialists from the cooperating agency to prepare resource reports.*
- Early identification of data needs. *A list of data needs was provided to the project people early.*
- Sensitivity analysis. *We used this to show that project impacts were far below the levels of concern.*

What Didn't Work

- Off-season field studies. *Better planning would have accomplished the necessary wetlands delineation during the growing season of 1996, instead of having to wait for the growing season of 1997.*

Schedule

Factors that Facilitated Timely Completion of Documents

- Frequent communication. *We maintained active cooperation between project sponsors and NEPA staff.*
- Electronic review. *We made "real time revisions" during the review process.*
- Timely review. *To expedite the process, reviewers commented on the first several chapters (1 through 4) before completion of the entire draft EA.*
- Effective management. *Managers maintained constant vigilance over the schedule and deliverables.*

Factors that Inhibited Timely Completion of Documents

- Uninformed Management. *The DOE Field Office Manager had not been made aware of the project, which delayed EA approval by two weeks.*
- Inadequate experience. *Project proponents may not have had sufficient knowledge of NEPA requirements.*
- Incomplete design information. *The delay in document completion was largely due to issues related to the project conceptual design and characterization of the proposed construction site (e.g., borehole data and the location of the proposed building footprint to identify potentially impacted wetland areas).*
- Mitigation design. *Developing mitigation measures for potential impacts (e.g., design of the shielding for the proposed experiment) took longer than initially anticipated.*
- Review schedules. *State reviews should not have been scheduled over the holidays.*

Factors that Facilitated Effective Teamwork

- Familiarity. *Good cooperation among team members, who had worked together previously.*
- Effective review. *DOE reviewed early draft portions of documents and offered helpful input. This process was aided by the use of e-mail and conference calls. The result was prompt resolution of key issues.*
- NCO and GC assistance. *Significant, thoughtful comments from the NEPA Compliance Officer and the legal staff on the draft EA helped to improve the document.*

Second Quarter FY 1998 Questionnaire Results

Process

Successful Aspects of the Public Participation Process

- Complete information. *Informing the public of all activities, including the EA process.*
- Early contacts. *Extensive mailings and personal contacts with stakeholders early in the process, including continual contact and information exchange with the involved Tribes.*
- Public information. *A public information meeting helped get the message out on the positive aspects of the project.*
- Proactive involvement of stakeholders. *We provided EAs for pre-approval review to three states and arranged visits with representatives of two state agencies, where we presented the EA and discussed the proposed project. Information about the proposed project was sent to local mayors, and we offered briefings to them as well (none were requested).*
- Full disclosure. *Open and honest meetings with local housing associations, mayors, and school groups.*

Unsuccessful Aspects of the Public Participation Process

- Overly broad publicity for EA-level issues. *The aggressive efforts to publicize the project, involve stakeholders, and notify news organizations as far away as Washington, DC, seemed excessive.*

Usefulness

Agency Planning and Decision Making—What Worked

- Project improvements. *Changes were made to improve the project design as a result of the NEPA process.*
- Siting. *The NEPA process helped DOE to identify the best location for conducting the research.*
- Process provided focus. *The process allowed DOE to focus clearly on the issues of potential concern. DOE and the community ensured that these issues could be effectively mitigated.*
- Facilitated good planning. *The process substantiated that good planning actually does result from the NEPA process.*
- Promoted informed decision making. *The need for the project was very clear to the biologists, but convincing decision-makers and stakeholders of the impacts from not acting soon was a challenge.*

Agency Planning and Decision Making—What Didn't Work

- Decision already made. *A management decision to implement this project had effectively already been made before the EA was completed.*

Enhancement/Protection of the Environment

- No adverse impact. *The NEPA process ensured that there would be no adverse impact to the environment.*
- Mitigation was identified to minimize impacts.
- Key issues addressed. *The EA facilitated the identification and mitigation of key environmental concerns, such as the potential for ground water activation.*

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 decision making.

- For this quarter, in which all documents were EAs, 6 of the 12 respondents rated the NEPA process as "effective."
- The two respondents rating the process as "highly effective" indicated that it provided valuable documentation and assisted in protecting the environment by analyzing potential impacts in advance of project implementation.
- One respondent (who rated the process as "4") stated that it allowed the site to focus on the key issues of concern.
- All three respondents who rated the process as "not effective at all" explained that the decision appeared to have been already made prior to the NEPA review.

Second Quarter FY 1998 Questionnaire Results

EIS-related Documents Issued Between Jan. 1 and Mar. 31, 1998

Notices of Intent	DOE/EIS#	Date
• Production of Tritium in a Commercial Light Water Reactor	DOE/EIS-0288	1/21/98 (63 FR 3097)
• Sutter Power Plant and Transmission Line Project, California	DOE/EIS-0294	2/13/98 (63 FR 7412)
• South Oregon Coast Reinforcement Project, Coos Bay/North Bend, Oregon	DOE/EIS-0296	3/31/98 (63 FR 15391)
Records of Decision		
• Waste Isolation Pilot Plant (WIPP) Disposal Phase Supplemental (SEIS II), Carlsbad, NM	DOE/EIS-0026-S2	1/23/98 (63 FR 3623)
• Treatment and Storage of Transuranic Waste (Waste Management Programmatic)	DOE/EIS-0200	1/23/98 (63 FR 3629)
• Disposal of the Defueled S3G and D1G Prototype Reactor Plants, Richland, WA (Navy document)	DOE/EIS-0274	1/28/98 (63 FR 4235)
• Shutdown of the River Water System at the Savannah River Site	DOE/EIS-0268	1/28/98 (63 FR 4236)
Supplement Analyses		
• Supplement Analysis for the Concord Naval Weapons Station as the West Coast Port of Entry for Shipments of Foreign Research Reactor Spent Nuclear Fuel from Asian and Pacific Rim Countries *(No further NEPA review required)*	DOE/EIS-0218-SA-01	1/98
• Supplement Analysis for Proposed Silos 1 and 2 Accelerated Waste Retrieval Project at Fernald *(No further NEPA review required)*	DOE/EIS-0195-SA-03	3/98
• Supplement Analysis for the Use of Hazardous Materials in National Ignition Facility Experiments at Lawrence Livermore National Laboratory *(No further NEPA review required)*	DOE/EIS-0236-SA-03	3/98
• Supplement Analysis for the Enhancement of Pit Manufacturing at Los Alamos National Laboratory *(No further NEPA review required)*	DOE/EIS-0236-SA-04	3/98

Recent EIS Milestones

Notices of Intent

Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM (DOE/EIS-0293) (63 FR 25022, May 6, 1998)

Griffith Power Plant and Transmission Line Project, Mohave County, AZ (DOE/EIS-0297) (63 FR 16496, May 3, 1998)

Draft EISs

Los Alamos National Laboratory, Los Alamos, NM Site-wide (DOE/EIS-0238) (April 1998)

Construction and Operation of a Tritium Extraction Facility at Savannah River Site (DOE/EIS-0271) (April 1998)

Supplement Analysis

Tank Waste Remediation System, Richland, WA, (DOE/EIS 0189-SA2) (May 1998) *(No further NEPA review required)*

EA Cost and Completion Time Data

(No EISs were completed in this quarter.)

Bonneville Power Administration

Upper Snake River Fish Culture Facility
DOE/EA-1213
Cost: $28,200
Time: 13 months

Grizzly Substation Fiber Optic Project at Crooked River National Grasslands, Jefferson County, OR
DOE/EA-1241
Cost: $10,100
Time: 4 months

Chicago Operations Office/Energy Research

Management of Whitetail Deer Causing Damage at Fermi National Accelerator Laboratory
DOE/EA-1228
Cost: $11,200
Time: 5 months

Proposed Neutrino Beams for the Main Injector at Fermi National Accelerator Laboratory
DOE/EA-1198
Cost: $128,500
Time: 18 months

Idaho Operations Office/Environmental Management

SIC Mining Plan of Operation
(DOE adopted Bureau of Land Management EA)
DOE/EA-1248
Cost: (Does not apply)
Time: (Does not apply)
(Missing from the last issue of *Lessons Learned*)

Naval Petroleum and Oil Shale Reserves in Colorado, Utah, Wyoming/Fossil Energy

Site-wide EA for Transfer of Ownership of Naval Petroleum Reserve No. 3, Colorado, Utah and Wyoming
DOE/EA-1236
Cost: $10,000
Time: 5 months

Savannah River Site/Environmental Management

Construction, Operation, and Decontamination and Decommissioning of the Waste Segregation Facility at SRS
DOE/EA-1229
Cost: $18,500
Time: 1 month

Tritium Facility Modernization and Consolidation Project at SRS
DOE/EA-1222
Cost: $27,600
Time: 27 months

Other Cases of Interest

(continued from page 14)

In another action, the U.S. Court of Appeals for the Second Circuit recently struck down a Forest Service FONSI that depended on a mitigation measure unsupported by either substantial evidence of its effectiveness or a sufficient monitoring plan. As part of a proposed logging project in Vermont, the Service proposed to extend a logging road into critical habitat for the black bear. The Service conceded in the EA that the unauthorized use of the road by all-terrain vehicles would be a problem and that the amount of such use was unknown, but would be likely to increase as a result of the proposed action. In addition to temporal restrictions on the construction and use of the extension, the Service proposed to mitigate for adverse impacts to the bears by constructing a berm at the current end of the road to give drivers of all-terrain vehicles the impression that the road had not been extended.

The court ruled that, in issuing a FONSI based in part on the proposed berm, the Service had not taken a "hard look" at the impacts of the proposed road. The court noted that mitigation measures have been found to be sufficiently supported (so that the agency can rely on them to issue a FONSI) when they were based on studies conducted by the agency or when the agency had an adequate monitoring mechanism in place. The Service did not, however, conduct a study of the effects of the proposed mitigation measure, propose any monitoring of the berm's efficacy, or consider any alternatives in case the berm failed. In the absence of substantial evidence to support the efficacy of the mitigation measure, the court found that the Service did not adequately consider the significance of the impact of the proposed action on the environment and ordered the Service to reexamine the propriety of issuing a FONSI. *National Audubon Society v. Hoffman*, 1997 U.S. App. LEXIS 36184 (2d Cir. 1997). LL

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

September 1, 1998, Issue No. 16 For Third Quarter FY 1998

DOE NEPA Community to Meet in October

On October 14 and 15, 1998, the DOE NEPA Community will meet in North Las Vegas, hosted by the Nevada Operations Office at its new Support Facility. The Office of NEPA Policy and Assistance is sponsoring this meeting to improve DOE NEPA performance through sharing of lessons learned and discussion of current issues.

Managing the NEPA Process

The meeting will focus on issues that NEPA Document Managers face daily: What tools and techniques can help manage a NEPA review process? How can NEPA Compliance Officers, project managers, contracting officers, and others be engaged to maximize success of a NEPA review?

Meeting participants, all of whom play key roles in the DOE NEPA process, will be encouraged to recount successful experiences and give advice on these matters. Several guidance documents being developed will be spotlighted in a plenary session and then discussed in breakout sessions. (See related article on page 3.)

Improving Performance and Getting Results

Richard A. Minard, Jr., Associate Director of the Center for the Economy and the Environment, National Academy of Public Administration, will highlight the Academy's recent review of the DOE NEPA Compliance Program (related article, page 4) and challenge the DOE NEPA Community to further successes under the Government Performance and Results Act of 1993. Follow-on speakers will help meeting participants explore performance-based NEPA contracting, NEPA litigation lessons learned, and the role of NEPA in planning land use and divestiture.

Site Tours Offered

The Nevada Operations Office is offering optional site tours before and after the meeting. The tour of the Yucca Mountain facility (related article in *Lessons Learned Quarterly Report,* March 1998, page 1) will include a visit to the exploratory study facility (tunnel) at the north portal, the south tunnel boring machine, other study facilities at the base of the mountain, and a trip to the mountain crest. The tour of the Nevada Test Site will include former nuclear weapons testing facilities and sites.

Thanks to Mike Skougard, NEPA Compliance Officer for the Nevada Operations Office, for volunteering to host the meeting and assisting in meeting planning. For more information concerning the DOE NEPA Community Meeting, including tour registration, contact Jim Sanderson at jim.sanderson@eh.doe.gov, phone (202) 586-1402, or fax (202) 586-7013. LL

(Photograph shows the mountains above Mercury Base Camp, Nevada Test Site.)

Inside *LESSONS LEARNED*

Welcome to the third quarter FY 1998 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

NEPA Stakeholders Directory Issued

The Office of NEPA Policy and Assistance issued the 10th edition of the DOE NEPA Stakeholders Directory on July 31, 1998. The directory provides contact information on potential stakeholders for the Department's actions under NEPA. This edition replaces the 9th edition, which should be recycled.

For further information, contact Stephen Simpson, Office of NEPA Policy and Assistance, at stephen.simpson@eh.doe.gov or phone (202) 586-0125.

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report.* Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone (202) 586-9326. Draft articles for the next issue are requested by October 30, 1998.

Fourth Quarter Questionnaires Due October 30

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter fiscal year 1998 (July 1 to September 30) should be submitted as soon as possible after document completion, but no later than October 30, 1998. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

Guidance Underway to Assist in DOE's NEPA Process and Document Preparation

A major focus of the October DOE NEPA Community Meeting will be guidance now in preparation by the Office of NEPA Policy and Assistance to promote efficient and effective NEPA document preparation:

NEPA Document Manager. The NEPA Document Manager guidance will spotlight the importance of the NEPA Document Manager in the Department's NEPA process. The guidance will provide information on what has worked in the past and suggest ways to avoid mistakes.

NEPA Glossary. The NEPA Glossary will define terms that are frequently used in DOE NEPA documents. This resource should reduce the need to research or reinvent definitions and improve efficiency and consistency among the Department's NEPA documents.

EIS Summary. This guidance will help EIS preparers write an adequate and accurate summary that sharply defines the environmental consequences of choosing among alternatives. For many readers, the summary forms their first and lasting impression of the EIS. This guidance will review regulatory requirements, provide recommendations on good writing, and discuss how to use the summary to increase efficiency.

Environmental Justice. This guidance will assist in incorporating environmental justice considerations into DOE's NEPA process, by describing techniques for enhancing public participation and approaches for environmental justice analysis at every level of NEPA review. The DOE guidance will be consistent with DOE's Environmental Justice Strategy and will build on the Council on Environmental Quality's (CEQ's) December 1997 general environmental justice NEPA guidance. DOE's guidance will also be consistent, to the extent applicable, with the April 1998 guidance on environmental justice issued by the Environmental Protection Agency's Office of Federal Activities.

Accident Analysis. Although the CEQ regulations do not use the term "accident," analyses of potential accidents are an important part of many DOE NEPA documents. Proposed actions involving potentially dangerous processes merit close attention to "off-normal" operations, whether due to natural phenomena or human error. This guidance is the starting point for additional guidance dealing with issues and concerns about accident analyses.

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NEPA Compliance Guide Issued

The updated NEPA Compliance Guide, prepared by the Office of NEPA Policy and Assistance, has been completed and will be distributed to the DOE NEPA community in October. Volume I of the Guide, *General NEPA References*, includes the NEPA statute and related regulations and guidance from the Council on Environmental Quality, Department of State, and the Environmental Protection Agency.

Volume II of the Guide *(Department of Energy Regulations and Guidance)* provides the DOE NEPA regulations and related guidance. All documents included in the Guide also will be available on the DOE NEPA Web (http://tis.eh.doe.gov/nepa/). For further information, contact Barbara Grimm-Crawford at barbara.grimm-crawford@eh.doe.gov or phone (202) 586-3964.

EH-42 Guidance Contacts

For more information regarding the guidance topics mentioned in this article, consult the following points-of-contact at the Office of NEPA Policy and Assistance (EH-42). Internet addresses for all are firstname.lastname@eh.doe.gov. The fax number in all cases is (202) 586-7031.

NEPA Document Manager
Shane Collins (202) 586-1979

NEPA Glossary
Denise Freeman (202) 586-7879

EIS Summary
Yardena Mansoor (202) 586-9326

Environmental Justice
Stephen Simpson (202) 586-0125

Accident Analysis
Warren (Ted) Hinds (202) 586-7855
Eric Cohen (202) 586-7684

NEPA Process in the Privatization Context
Stan Lichtman (202) 586-4610

Clean Air Act Conformity
Mary Greene (202) 586-9924

NEPA Web Updates
Lee Jessee (202) 586-7600

The National Academy of Public Administration Examines DOE's Management of the NEPA Process

DOE has made "substantial progress" over the past ten years in making its implementation of NEPA more efficient, according to a report, "Managing NEPA at the Department of Energy," published by the National Academy of Public Administration in July 1998. The report concludes that the Department is also preparing its NEPA documents in "substantially less time than it used to," and NEPA process costs appear to be decreasing, at least for EAs.

Perspective

The Academy's study was commissioned by the DOE Office of NEPA Policy and Assistance and conducted by the Academy's Center for the Economy and the Environment. The report tells the history of DOE's progressive adoption of administrative reforms in the Department's NEPA compliance program, particularly the changes carried out in the 1990s during the tenures of Admiral James Watkins and Hazel O'Leary as Secretaries of Energy.

Under the leadership of Academy Fellow and distinguished NEPA expert Lynton Caldwell, the study team reviewed data and documents at DOE Headquarters, conducted interviews of persons within and outside the DOE NEPA community, and convened a roundtable discussion on a draft of the report.

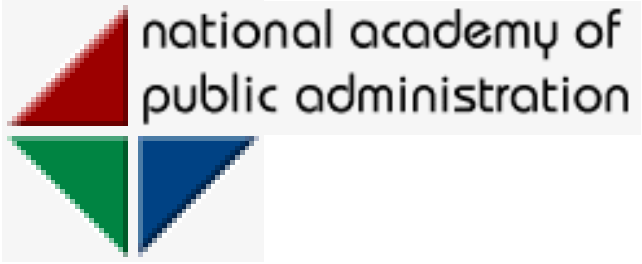
Effectiveness of the Secretarial NEPA Policy Statement

The Academy mainly studied whether the reforms of the Secretarial NEPA Policy Statement have made DOE's NEPA process more efficient. The report concludes that the Department is making "steady and incremental improvements in its management of the NEPA process." It notes that the 1994 Secretarial Policy Statement helped set goals for performance and initiate procedural changes that have streamlined the NEPA process, without reducing opportunities for public involvement. It also credits DOE for developing performance measures to track progress toward NEPA reform goals.

These procedural changes "have likely resulted in some cost savings," according to the report; however, these savings "cannot be readily quantified." The report states that: "From the current data on actual NEPA process costs, it appears that EA costs have decreased in the last few years, but it is not possible to draw any firm conclusions regarding the costs of EISs as a whole." The report also notes that the Department's "historic under-investment in effective environmental management, planning, and record-keeping has forced the Department to gather basic site information as part of NEPA analyses, thus raising the apparent cost of the analysis."

The report suggests that the Department needs to improve its NEPA support contracting, specifically in the areas of contract incentives and contractor evaluations. "It is not clear that Department managers have implemented effective ways to evaluate and improve contractor performance." According to the report, the DOE-wide NEPA contracts are "very promising but still unproved" (related article, page 8).

The report also suggests that the Department "needs to do more to make its NEPA reviews its 'own.'" The Department could save more money and do an even better job if DOE employees — rather than contractors — played a greater role in preparing NEPA documents. Specifically, the report suggests that DOE staff take direct charge of scoping each analysis, preparing the statement of purpose and need, and defining the proposed action and alternatives.



As the report acknowledges, the study did not address whether there has been any improvement in the quality of the Department's NEPA documents or whether the NEPA process effectively informed DOE decision making. The report urged the Department to develop performance measures that would enable the Department to track progress on these critical issues.

The National Academy of Public Administration is an independent, nonpartisan organization founded in 1967 and chartered by Congress to provide assistance to Federal, state, and local governments in improving their effectiveness, efficiency, and accountability. The Center for the Economy and the Environment is one of the Academy's eight focus areas. The report is available on the DOE NEPA Web (http://tis.eh.doe.gov/nepa/) under DOE NEPA Process Information and on the Academy's web site (http://www.napawash.org/).

NEPA Practitioner's Bookshelf

Of likely interest to readers of *Lessons Learned* are three recently published NEPA-related books, described briefly below. The Office of NEPA Policy and Assistance from time to time makes this type of information available to DOE NEPA practitioners, including the "Suggestions for the NEPA Practitioner's Bookshelf" (August 1996), available in the DOE NEPA Compliance Guide and upon request from the Office of NEPA Policy and Assistance.

Environmental Policy and NEPA: Past, Present, and Future

Ray Clark and Larry Canter, editors; June 1997
CRC Press LLC/St. Lucie Press
2000 Corporate Blvd., NW
Boca Raton, Florida 33431

Phone (800) 374-3401
Internet http://www.crcpress.com

CRC Press publication number SL0721
360 pages, $65.00

Environmental Policy and NEPA: Past, Present, and Future presents the work of 28 contributing authors who address the historical background of NEPA, current trends and issues associated with the environmental impact assessment process, and future opportunities for increasing the effectiveness of NEPA.

Edited by Council on Environmental Quality (CEQ) Associate Director Ray Clark and University of Oklahoma Professor Larry W. Canter, the book reflects and expands upon the background and ideology of the 1997 CEQ effectiveness study (*Lessons Learned Quarterly Report*, March 1997, page 1). It also includes a chapter by one of NEPA's "founding fathers," Lynton Caldwell, on "Implementing NEPA — A Non-Technical Political Task."

Among the wide-ranging topics in this book are: NEPA as the rational approach to change, the basic purposes and policies of NEPA regulations, the effect of NEPA abroad, the concept of continuous monitoring and adaptive management, highlights of NEPA in the courts, public involvement under NEPA, alternative dispute resolution, and sustainable development.

NEPA Effectiveness – Managing the Process

Frederic March; June 1998
Government Institutes, Inc.
4 Research Place, Suite 200
Rockville, Maryland 20850

Phone (301) 921-2300; fax (301) 921-0264

Government Institutes product code 608
200 pages, $79.00

This book grew out of Mr. March's participation, as a member of the National Association of Environmental Professionals, in CEQ workshops on its effectiveness study. *NEPA Effectiveness — Managing the Process* is organized around ten themes of NEPA practice. For each theme, Mr. March provides related insights, guidance, and tools.

In this book, Mr. March, a senior environmental scientist at Sandia National Laboratory and one of the authors of *NEPA Compliance Manual* (Government Institutes, 1994), shows how the keys to NEPA effectiveness are within the regulations but often are not recognized. He also discusses CEQ's NEPA reinvention initiative (*Lessons Learned Quarterly Reports*, June 1997, page 3; September 1997, page 8; and December 1997, page 9), addresses CEQ's recent guidance on cumulative impacts (see *Lessons Learned Quarterly Report*, March 1997, page 3), and provides a step-by-step approach to determining significance in the NEPA context. The book cites DOE's use of categorical exclusions as an outstanding example of good NEPA practice. An index of NEPA-related topics and lists of NEPA-related references and web sites are also provided.

"NEPA Bookshelf" continues on page 8

Publishing a Draft EIS on the DOE NEPA Web

By: Lee Jessee, *Office of NEPA Policy and Assistance*

Three draft EISs were recently published on the DOE NEPA Web to coincide with the beginning of their public comment periods:

- Continued Operation of Los Alamos National Laboratory (DOE/EIS-0238),
- Tritium Extraction Facility at the Savannah River Site (DOE/EIS-0271), and
- Idaho National Engineering and Environmental Laboratory Advanced Mixed Waste Treatment Project (DOE/EIS-0290).

Plan for Timely Publication of Draft

Each of the three draft EISs was created with electronic publishing in mind. They were prepared using software that automatically converts the electronic file to Web publishing format — either hypertext markup language (html) or portable document format (pdf). Each was ready to be accessible on the DOE NEPA Web within three working days of receipt by the Office of NEPA Policy and Assistance (EH-42) because the files were complete and Web publishable. For user convenience, the DOE NEPA Web availability announcement for each draft EIS was hyperlinked to both the full-text draft EIS and to the full-text notice of availability.

Benefits of Web Publication

Web publication increases the range of public involvement opportunities at low cost. Publishing on the Web makes a draft EIS immediately accessible to individuals, who may browse through the document and transfer or print portions of interest. Efficiency is enhanced to the extent that public access through the Web replaces requests for the entire document, reducing distribution costs.

Web Services Available from EH

Staff from two DOE Environment, Safety and Health offices, EH-42 and Information Management (EH-72), collaborate to support Web publication of NEPA documents. Technical assistance is available to help in planning, using Web-compatible software, and scheduling electronic publication.

The NEPA Compliance Officer or Document Manager may request a summary report of electronic access to the draft EIS. The summary report can profile users by country, region, city, state, province, and most active organizations.

The table below shows, for the three draft EISs cited above, how long the document had been available on the Web when the data were generated, the number of visits or "hits" to the document, the number of users of each document, and how many kilobytes (a measure of electronic information) the users transferred (downloaded).

Keys to Success

- **Web Standards:** To allow preparation of the draft EIS for Web publication during the brief period between EIS approval and publication of the notice of availability, the electronic version should be submitted

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Data on Web Users Examination of 3 DOE Draft EISs

EIS Number	Days on Web When Data Generated	"Hits"	Number of Users	Kilobytes of Information Transferred
DOE/EIS-0238	92	2775	438	327,371
DOE/EIS-0271	64	2105	316	27,404
DOE/EIS-0290	13	57	21	3520

DOE-wide NEPA Contracts Showing Benefits

In the first year, use of the multiple DOE-wide NEPA support contracts has changed pricing mechanisms for NEPA documents and substantially reduced procurement lead times, according to the Albuquerque Operations Office's Contracts and Procurement Division (June 18, 1998, status memorandum to Richard H. Hopf, Deputy Assistant Secretary for Procurement and Assistance Management). The Albuquerque Operations Office issued the contracts in June 1997 and is responsible for overall contract administration on behalf of the Department.

Of the tasks issued at the time of the status report, only half were awarded on a cost plus fixed fee basis. As noted in the memorandum, the decreased use of this pricing mechanism "represents a significant departure from historical practice and demonstrates progress toward the achievement of NEPA contract reform." The outcome of issuing half of the tasks (both by number and dollar value) on either a firm-fixed price or cost plus incentive fee pricing arrangement (rather than cost plus fixed fee) will be assessed when the tasks and performance evaluations are complete.

The memorandum also reported that tasks orders were issued within 10 to 31 days from the time that task proposals were requested, depending on the complexity of the work. Such a reduction in procurement lead times (from about a year under conventional practice) was achieved, as noted in the memorandum, "by all the ordering offices, indicating a truly streamlined process." LL

New Task Orders

The tasks below have been issued since May 1998. (See related article and table of previous tasks in *Lessons Learned Quarterly Report*, June 1998, page 6). For more information on the use of the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov or (505) 845-6215.

Task Description	NEPA Document Manager/ Technical Point of Contact	Award Date	Contractor Team
Analyses to Support the INEEL High-Level Waste and Facilities Disposition EIS	Tom Wichmann NEPA Document Manager wichmatl@inel.gov (208) 526-0535	5/8/98	Halliburton NUS
Nuclear Materials Integration Project, NEPA Compliance Assessment[1]	Gary Roberson Technical Point of Contact groberson@doeal.gov (505) 845-5805	6/1/98	Tetra Tech, Inc.
Habitat Management Plan Overview Document[1,2]	Teralene Foxx Technical Point of Contact foxxt@lanl.gov (505) 667-3024	6/12/98	SAIC
Rapid Reactivation Project at Sandia National Laboratory EA	Tom Goss NEPA Document Manager tgoss@doeal.gov (505) 845-5510	8/18/98	Battelle Memorial Institute

1 These are technical documents related to DOE's NEPA Compliance Program.
2 This was the first task to be issued by a management and operating contractor.

NEPA Bookshelf *(continued from page 5)*

Communicating Risk in a Changing World

Timothy L. Tinker, Maria T. Pavlova,
Audrey R. Gotsch, and Elaine Bratic Arkin, editors;
May 1998
Ramazzini Institute/OEM Press
OEM Health Information, Inc.
8 West Street
Beverly Farms, Massachusetts 01915

Phone (800) 533-8046
Internet http//www.oempress.com

OEM Press publication number 23046
198 pages, $42.50

This book reports the discussions and conclusions of a 1996 symposium sponsored by the U.S. Department of Health and Human Services Environmental Health Policy Committee's Subcommittee on Risk Communication and Education, DOE, and the Consortium for Risk Evaluation with Stakeholder Participation. Participants included more than 25 researchers and practitioners from government, academia, and industry who are active in science-based public communications. Topics addressed include: environmental justice, comparative risk assessment, broadening stakeholder involvement, the role of the media, educational strategies, and community and worker right-to-know issues. One of the editors, Dr. Maria Pavlova, is a Medical Officer in DOE's Office of Occupational Medicine and Medical Surveillance (EH-61).

For more information on this book and the results of the symposium (including a DOE project on "Communicating Health Risk: Working Safely with Beryllium"), contact Dr. Maria Pavlova at maria.pavlova@eh.doe.gov or phone (301) 903-3658.

Guidance Underway

(continued from page 3)

NEPA Process in the Privatization Context. This guidance will address Section 216 of the DOE NEPA regulations (10 CFR Part 1021), which applies to consideration of environmental information in the procurement process. DOE increasingly applies Section 216 as it turns to the competitive marketplace (rather than management and operating contractors) to carry out projects.

Clean Air Act Conformity. This guidance will discuss the Clean Air Act requirements found at 40 CFR Part 93 for determining conformity of Federal actions to State Implementation Plans, and how these requirements are addressed in the NEPA process. The guidance will help NEPA document preparers obtain information regarding air quality designations, determine the applicability of Clean Air Act conformity regulations to proposed actions, judge whether a conformity determination is needed, and address conformity in NEPA documents.

NEPA Web Updates. The DOE NEPA Web has been upgraded with a new search engine. The guidance will provide an overview of new features and the latest instructions on electronic publishing of DOE NEPA documents.

NEPA Web

(continued from page 6)

in Web-ready format, preferably html. (Microsoft Word 6.0 or newer and WordPerfect 6.0 or newer enable direct conversion of files to html.) Using software that does not conform to this standard requires time-consuming conversion of the electronic file and may preclude Web publication by the desired date. Information on Web publishing standards is provided in the EH Electronic Publishing Standards and Guidelines (currently under revision) located in the Tools module of the DOE NEPA Web (http://tis.eh.doe.gov/nepa/).

- **Early Coordination:** The NEPA Document Manager should coordinate early with the DOE NEPA Webmaster to identify technical and timing requirements.

To coordinate on Web publication of a draft EIS, or for further information on the DOE NEPA Web resources or Web publishing standards, contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov or (202) 586-7600.

NAEP Conference Held in San Diego

By: Yardena Mansoor, *Office of NEPA Policy and Assistance*

NEPA practitioners wishing to participate in a broader environmental community may consider the opportunities provided by the National Association of Environmental Professionals (NAEP). (See related article in *Lessons Learned Quarterly Report,* March 1998, page 9).

Conference Theme Links NEPA to Environmental Management

Over 200 people, many of them members or friends of the DOE NEPA community, attended NAEP's annual conference held June 21 to 24, 1998, in San Diego, California. The intertwined theme of the conference was "Environmental Management: Linking NEPA, ISO 14000, and Sustainable Development." Conference sessions also addressed public participation and university level environmental education.

CEQ Counsel is Keynote Speaker

Dinah Bear, General Counsel of the Council on Environmental Quality (CEQ), delivered a keynote speech that tied together the three conference sub-themes of NEPA, ISO 14000, and sustainable development. She observed that these ideas are linked as embodiments of the NEPA's Section 101 statement of national environmental policy:

> [I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Ms. Bear remarked that NEPA emphasizes the role of planning in achieving these goals; ISO 14000 addresses approaches to environmental management after the planning stage; and sustainable development recognizes the balancing between current and future resource use that is central to both NEPA and ISO 14000. She also praised NAEP — in particular, for its Code of Professional Ethics and Standards of Practice — and urged its members to strive for credible and effective communication of scientific information.

The second keynote speaker was John Dunlop, Chairman of the California Air Resources Board since 1995. He described the evolution of regulatory paradigms by which California air quality has dramatically improved while the state's population and vehicle-miles driven have multiplied. The early approach to improving environmental quality was based on command and control regulations based on the first feasible technologies identified, primarily for motor vehicles. As industry gained experience with implementation of these technologies, both scientific knowledge and attitude evolved, permitting the emergence of a vast environmental technology industry that offered a broad range of choices for addressing many types of emissions. The maturing of the industry has permitted a new market-driven paradigm: state regulatory bodies work with industry to set reasonable goals — now for 48 categories of consumer products — and industrial entities meet their goals by choosing individually preferable approaches. This system is more accommodating, more collaborative, and less adversarial than command and control regulation, and is more economically efficient as well.

NAEP Activities

NAEP publishes a bimonthly magazine, "NAEP News," and administers an environmental professional certification program as a tool for career development. The organization has 19 affiliated state and regional chapters throughout the country and 25 university chapters.

Planning is underway for the 1999 NAEP Conference to be held in early June in Kansas City, Missouri. Abstracts will be due in October 1998. For more information on NAEP, to obtain a copy of Conference proceedings, or to inquire about membership, contact the organization's offices at (888) 251-9902, fax (904) 251-9901, or view *http://www.naep.org* on the Web.

Savannah River Guidance Wins NAEP Environmental Quality Award

NAEP recently awarded the Savannah River Site its NEPA Presidential Excellence Award for integrating the NEPA compliance and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) processes at the site. The team, which included Bart Marcy and John Sessions (Westinghouse Savannah River Company) and Richard Rustad and Brian Hennessey (DOE, Savannah River Operations Office), was acknowledged for developing a NEPA/CERCLA Integration Guidance document that complies with both NEPA and CERCLA requirements.

Litigation Updates

By: Stephen Simpson, *Office of NEPA Policy and Assistance*

Court Dismisses Stockpile Stewardship and Management Portion of Ongoing Lawsuit

Interim Decision in K-25 Lawsuit; WIPP and EBR-II Challenged

In the ongoing litigation concerning DOE's NEPA review for the Stockpile Stewardship and Management Program, the court has dismissed the plaintiffs' amended complaint that DOE should prepare a supplemental EIS, while ordering the Department to fulfill its commitments to complete certain technical studies and supplement analyses; the Waste Management Programmatic EIS portion of this litigation continues. Concerning the NEPA review for decontamination and decommissioning of three buildings at the former K-25 Plant in Oak Ridge, DOE has received a partial victory based, in part, on the court's interpretation of CERCLA requirements. In the existing lawsuit concerning the Waste Isolation Pilot Plant (WIPP) Disposal Phase Final Supplemental EIS, a new party has moved to intervene. Also, another organization has sued DOE concerning the NEPA review for the Experimental Breeder Reactor-II (EBR-II) at Argonne National Laboratory-West.

Stockpile Stewardship Portion of *NRDC v. Peña* Case Dismissed

On August 18, 1998, Judge Stanley Sporkin of the U.S. District Court for the District of Columbia granted DOE's Motion for Partial Summary Judgment and dismissed the case filed by the Natural Resources Defense Council et al. regarding NEPA compliance for the Stockpile Stewardship and Management (SSM) Program. In its original complaint filed in May 1997, the plaintiffs had alleged that DOE failed to perform an adequate environmental review of the program as required by NEPA. (See related articles in the *Lessons Learned Quarterly Reports,* June 1997, page 5; September 1997, page 3; and December 1997, page 17.) The plaintiffs amended their complaint in January 1998 to withdraw 11 of their 13 claims concerning the SSM Program and substituting claims that DOE should prepare a supplemental SSM Programmatic Environmental Impact Statement (PEIS) based on alleged new information. The new information cited by the plaintiffs involved: (1) seismic and safety risks affecting pit production facilities at Los Alamos National Laboratory; (2) the potential for plutonium fires at the Los Alamos facility where the agency uses both weapons grade plutonium-239 and plutonium-238; (3) a new congressionally mandated plan requiring the agency to design, construct, and partially operate a larger scale pit production facility at multiple sites; and (4) new proposals to conduct a range of experiments using hazardous and radioactive materials at the National Ignition Facility at the Lawrence Livermore National Laboratory. (See related article in the *Lessons Learned Quarterly Report,* March 1998, page 13.)

Issues Not Ripe for Review

In this recent decision, Judge Sporkin ruled that, based on oral and written representations made by DOE, "none of the issues raised by Plaintiffs is now ripe for review." However, the judge stated that the plaintiffs had the right to return to the court for appropriate action if DOE were to fail to follow through with its promises or if it were found that the Department misrepresented its position to the court. In dismissing the plaintiffs' SSM Program causes of action, the court also entered an order embodying DOE's representations. These representations include DOE's commitment to:

- complete and publish several Los Alamos seismic studies by December 31, 1998;
- issue a supplement analysis to the SSM PEIS containing a technical analysis of whether the information in the seismic studies is significant;
- include in the supplement analysis a technical analysis setting forth the extent to which a building-wide fire at Technical Area-55 at Los Alamos would result in the release of plutonium;
- based on the supplement analysis and after a 30-day public comment period, make a determination on the need to prepare a supplemental SSM PEIS;

"Litigation Updates" continues on page11

Litigation Updates *(continued from page 10)*

- prepare and circulate a supplemental SSM PEIS prior to taking any action that would commit DOE resources for pit production capability at Los Alamos for a capacity in excess of the level analyzed in the SSM PEIS; and
- determine, by January 1, 2004, whether certain experiments involving hazardous and radioactive materials would be conducted at the National Ignition Facility or to prepare a supplemental SSM PEIS analyzing the reasonably foreseeable environmental impacts of such experiments.

Waste Management PEIS Litigation Continues

This decision, however, does not end this litigation. In their original complaint, plaintiffs also claimed that DOE is required to prepare an Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (ERWM PEIS). (See related article in the *Lessons Learned Quarterly Report,* June 1997, page 5.) The plaintiffs requested that the court hold DOE in contempt for failing to issue an ERWM PEIS in alleged violation of the Stipulation and Order of Dismissal in *Natural Resources Defense Council v. Watkins*, No. 89-1835 (D.D.C. Oct. 22, 1990). A trial on the contempt motion is scheduled to start October 15, 1998. (See related article in the *Lessons Learned Quarterly Report*, March 1998, page 13.)

K-25 NEPA Challenge Partially Barred by CERCLA

The Department has received a partial victory concerning the NEPA review for the decontamination and decommissioning of three buildings at the East Tennessee Technology Park (ETTP) (formerly the K-25 Gaseous Diffusion Plant) in Oak Ridge and possible recycling of the resulting contaminated metal.

On June 3, 1998, Judge Gladys Kessler of the U.S. District Court for the District of Columbia issued a Memorandum Opinion in the lawsuit concerning the Department's award of a contract to BNFL, Inc. for decontamination and decommissioning of three buildings at the ETTP and possible recycling of the resulting contaminated metal. The suit was filed by the Oil, Chemical and Atomic Workers International Union, AFL-CIO; the union local in Oak Ridge, Tennessee; several union members in Oak Ridge; and the Natural Resources Defense Council, the Oak Ridge Environmental Peace Alliance, and two other environmental groups. (See related article in the *Lessons Learned Quarterly Report*, December 1997, page 16.)

Judge Kessler dismissed that portion of the suit that sought an EIS for the decontamination and decommissioning action, finding that it was a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) removal action and, therefore, could not be challenged before its implementation was completed.

Judge Kessler found, however, that although both the CERCLA Engineering Evaluation/Cost Analysis and the BNFL contract encourage recycling of the recovered metals, they do not require BNFL to do so. She ruled that an optional action is not an "organic element" of the remedial plan and that the same CERCLA bar would not, therefore, protect the recycling action from challenge. The judge is allowing the portions of the suit concerning the recycling action to proceed to discovery and trial to determine whether an EIS should be prepared.

WIPP SEIS-II Inadequate, Citizens Group Alleges

Citizens for Alternatives to Radioactive Dumping (CARD), a New Mexico organization, has moved to intervene in an existing lawsuit concerning the Waste Isolation Pilot Plant (WIPP).[1] CARD's motion and proposed complaint, filed June 9, 1998, alleges that the WIPP Disposal Phase Final Supplemental EIS (SEIS-II) is inadequate because it fails to:

- consider the feasibility of alternative disposal sites (e.g., long-term monitored retrievable storage facilities at transuranic waste generating sites);
- adequately consider that minority and low-income populations would bear a disproportionate share of

"Litigation Updates" continues on page 12

1 The original lawsuit, filed in 1991 by the States of New Mexico and Texas, three Members of Congress, and four environmental groups, challenged the DOE decision to begin a test program at WIPP. The original plaintiffs alleged violations of the Federal Land Policy and Management Act, NEPA (with respect to the first WIPP Supplemental EIS), and the Resource Conservation and Recovery Act. The court enjoined DOE from proceeding with WIPP until the land was properly withdrawn. Subsequently, Congress passed the WIPP Land Withdrawal Act, withdrawing the WIPP site from public lands for testing and disposal of defense transuranic waste. The lawsuit lay dormant until May 1998, when DOE filed a Motion for Expedited Status Conference. Further proceedings, including CARD's motion, followed.

Litigation Updates *(continued from page 11)*

high and adverse environmental impacts from activities at WIPP and from transportation activities;

- adequately address the impacts of waste transportation, especially the consequences of intentional interference with waste shipments; and
- adequately consider the effect of the hydrology and geology of the WIPP site (especially the existence of karst formations) on the long-term performance of WIPP.

The Department's response to CARD's motion asks that the court not allow CARD to intervene, stating that CARD's intervention would bring completely new issues to the lawsuit, the motion is not timely, CARD's interests are adequately represented by existing parties in the lawsuit, and the resolution of the ongoing lawsuit would not impair CARD's legal right to challenge the adequacy of SEIS-II. The court has yet to rule on CARD's motion.

Group Alleges that Shutdown of EBR-II Requires EIS

On July 2, 1998, Coalition 21, an Idaho not-for-profit group, sued the Department, alleging that the proposed removal of the sodium from the primary cooling system of the Experimental Breeder Reactor-II (EBR-II) at Argonne National Laboratory-West requires DOE to prepare an EIS which would include an analysis of the complete decontamination and decommissioning of the reactor. (Coalition 21 is a group that, according to the complaint, "supports nuclear technologies and technological solutions to the problems facing Idaho, the nation, and the world.") DOE issued an EA and finding of no significant impact for the proposed shutdown of EBR-II in September 1997 (DOE/EA-1199).

Coalition 21 alleges that NEPA, the Council on Environmental Quality regulations implementing NEPA, and the DOE NEPA regulations require that DOE prepare an EIS for the decommissioning of a nuclear fuel reprocessing facility. Coalition 21 also alleges that DOE did not take a hard look at the environmental consequences of shutdown and decommissioning in the EA, including that the EA failed to:

- define the final state of EBR-II and fully discuss the impacts of final decommissioning;
- analyze the impact of "the elimination of a unique billion-dollar research facility and the loss of the 19.5 megawatt electrical power generated for" the Idaho National Engineering and Environmental Laboratory;
- analyze the full range of reasonable alternatives;
- assess "the environmental, social, and economic issues and the long-term losses involved in the decision to decommission the only facility in the United States that has the capability to recycle spent nuclear fuel, plutonium, and uranium;" and
- consider "the worldwide and long-range character of environmental problems that would result from depriving countries such as Japan, France, and Russia the research generated from EBR-II concerning the long-term use of nuclear energy."

Furthermore, Coalition 21 alleges that DOE has illegally segmented the decision making for the proposed action and prepared the EA only after having begun the process of decommissioning the EBR-II facility. As of this writing, DOE has not filed its answer to Coalition 21's complaint. LL

Presidential Memorandum on Plain Language

President Clinton has directed heads of executive departments and agencies to use plain language in Federal government writing in an effort to make the government more responsive, accessible, and understandable to the public (63 FR 31883, June 10, 1998). By October 1, 1998, agencies are directed to use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement. By January 1, 1999, agencies must use plain language in all proposed and final rulemaking published in the *Federal Register*. The Presidential Memorandum also urges agencies to rewrite existing regulations in plain language. To help departments and agencies comply with these directives, the National Partnership for Reinventing Government has issued guidance entitled *Practical Guidance on Clarity of the Written Word.*

Plain language documents are described as having logical organization and easy-to-read design features. Except for necessary technical terms, plain language writing uses common, everyday words; it also uses "you" and other pronouns and short sentences in the active voice. The Presidential Memorandum and the related guidance are accessible via the NEPA Tools module of the DOE NEPA Web (http://tis.eh.doe.gov/nepa/) or from the Plain Language Action Network web site (http://208.204.35.97/). LL

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 1998. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- Tiering. *The EA tiered off the programmatic EIS, which provided the framework for the analysis strategy.*

What Didn't Work

- Miscommunication with the public. *The public misunderstood the intent of the scoping process and did not provide adequate input*.

Data Collection/Analysis

What Didn't Work

- Relying on another agency for data. *We relied on the other agency and their consultants for data that was not supplied to us in a timely manner.*

Schedule

Factors that Facilitated Timely Completion of Documents

- Dedicated staff. *I was able to focus nearly all of my time on this project*.
- Effective teamwork. *Concurrent reviews, teleconferences, e-mailing draft documents and comments, and good communication among team members facilitated timely completion of the EA*.
- Incorporation by reference. *The EA was kept to a minimum of pages by incorporating information by reference from other documents*.

Factors that Inhibited Timely Completion of Documents

- Extended public review. *Stakeholders requested an extension of the public review*.
- Disagreement on the determination. *Although the NEPA Compliance Officer (NCO) had determined with Field Counsel support that an EA was appropriate, the project manager, project proponents, and the contractor argued for about three months that the action could be categorically excluded.*
- Late determination. *The project manager did not advise the NCO of the project when it was first identified because the manager thought a NEPA review was not necessary*.
- Headquarters input. *A more timely response from Headquarters regarding our request for assistance would have helped us deal more efficiently with a situation that was new to our office.*

Factors that Facilitated Effective Teamwork

- Trust, commitment to quality, cost consciousness, and good communication.

Process

Successful Aspects of the Public Participation Process

- Clear and open communication. *Our success with the public was based on open lines of communication and a clear understanding of project and agency needs*.
- Project updates. *The state, stakeholders, and the public were routinely advised via letters of progress on the EA*.

Unsuccessful Aspects of the Public Participation Process

- Mixed messages. *It was difficult to get an honest reading from the public on the process because some participants thought we did a good job communicating and responding, while others, who may not have liked the project, probably did not like or trust our process.*
- Misunderstandings by other agencies. *The amount of public participation sought, consistent with the DOE regulations and guidance, misled some of the commenting agencies to think that the proposed action was larger and more complex than it actually was.*

Usefulness

Agency Planning and Decision Making — What Worked

- Alternatives were improved. *The process allowed us to work closely with the cooperating agency and the public to develop alternatives that changed throughout the process and responded more to the needs of all parties involved while still meeting the purpose and need for the project. I continue to be sold on the value of the NEPA process!*
- Technical issues were addressed. *The NEPA process facilitated decision making by answering technical issues in a format that the public could understand.*

Agency Planning and Decision Making — What Didn't Work

- Treating NEPA as just mere paperwork. *A decision was made based on technical merits, and environmental aspects were not directly considered in the decision. Once the project was selected, the necessary "NEPA paperwork" was completed by the project manager.*

Cost

Factors that Facilitated Cost Savings — What Worked

- Dedicated staff. *Being able to focus nearly all of my time on this project turned out to be cost-effective in the long run.*

What Didn't Work

- Budgeting costs associated with other agencies. *Because I didn't have much experience with the cooperating agency, some cost items arose that I had not budgeted for.*

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 decision making.

- For this quarter, in which there were four EAs and one EIS, four of the six respondents (two people responded on one EA) rated the NEPA process as "effective."
- The respondents rating the process as "effective" stated that the process facilitated effective interaction with the cooperating agency and the public, that alternatives were improved, and that scoping helped community involvement, which made the decisions more meaningful.
- The two respondents who rated the process as "not effective at all" indicated that it was only a paperwork exercise for a decision already made.

NEPA Document Cost and Completion Time Facts

Cost Data

EISs

- For this quarter, one EIS was completed at a cost of $578,000.
- Cumulatively, for the 12 months that ended June 30, 1998, the median cost for the preparation of four EISs was $1,479,000; the average cost was $2,903,000.

EAs

- For this quarter, the median cost for the four completed EAs was $29,500 (the range was $25,500 to $102,000); the average cost was $46,625.
- Cumulatively, for the 12 months that ended June 30, 1998, the median cost for the preparation of 27 EAs was $28,000; the average cost was $77,000.

Completion Time Data

EISs

- For this quarter, the completion time for the one EIS was 24 months.
- Cumulatively, for the 12 months that ended June 30, 1998, the median completion time for the preparation of five EISs was 25 months; the average completion time was 31 months.
- EIS Cohort Status: The March 2, 1998 *Lessons Learned Quarterly Report* (page 17) described a cohort of 23 EISs for which Notices of Intent were issued between July 1, 1994 and March 31, 1997. Fifteen of the cohort EISs have been completed through June 30, 1998, with a median completion time of 15 months, and an average of 16 months. See the March 1998 article for more details.

EAs

- For this quarter, the median completion time for four EAs was 5 months (the range was 2 months to 21 months); the average completion time was 8 months.
- Cumulatively, for the 12 months that ended June 30, 1998, the median completion time for 27 EAs was 7 months; the average completion time was 10 months.

NEPA Documents Completed Between April 1 and June 30, 1998

EISs

Bonneville Power Administration
Lower Valley Transmission Systems Reinforcement Project, Wyoming
DOE/EIS-0267
Cost: $578,000
Time: 24 months

EAs

Bonneville Power Administration
Grande Ronde Basin Endemic Spring Chinook Salmon Supplementation Program
DOE/EA-1173
Cost: $102,000
Time: 21 months

Golden Field Office/EE
Kotzebue Wind Installation Project
Kotzebue, Alaska
DOE/EA-1245
Cost: $31,000
Time: 7 months

Right-of-Way Easement for Public Service Company of Colorado at the South Table Mountain Site, Golden, Colorado
DOE/EA-1254
Cost: $25,500
Time: 2 months

Grand Junction Project Office/EM
Ground Water Compliance at the Falls City, Texas, Uranium Mill Tailings Remediation Action (UMTRA) Project Site
DOE/EA-1227
Cost: $28,000
Time: 3 months

EIS-Related Documents Issued Between April 1 and June 30, 1998

Notices of Intent	DOE/EIS#	Date
Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico	DOE/EIS-0293	4/30/98 (63 FR 25022)
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona	DOE/EIS-0297	4/3/98 (63 FR 16496)
Draft EISs		
Construction and Operation of a Tritium Extraction Facility at Savannah River Site	DOE/EIS-0271	April 1998
Site-wide EIS for Continued Operation of the Los Alamos National Laboratory, Los Alamos, New Mexico	DOE/EIS-0238	April 1998
Telephone Flat Geothermal Development Project, Siskiyou and Modoc Counties, California (BPA is a cooperating agency)	DOE/EIS-0298	May 1998
Surplus Plutonium Disposition	DOE/EIS-0283	June 1998
Supplement Analysis		
Tank Waste Remediation System, Richland, Washington *(No further NEPA review required)*	DOE/EIS 0189-SA2	May 1998

Recent EIS Milestones

Draft EISs
Production of Tritium in a Commercial Light Water Reactor (DOE/EIS-0288)
(August 20, 1998)

Advanced Mixed Waste Treatment Project, INEEL (DOE/EIS-0290) (July 9, 1998)

Final EIS
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site
(DOE/EIS-0277) (August 6, 1998)

Records of Decision
Waste Management Programmatic EIS, Hazardous Wastes (DOE/EIS-0200)
August 5, 1998 (63 FR 41810)

Storage and Disposition of Weapons Usable Fissile Materials Programmatic EIS, amended (DOE/EIS-0229), August 13, 1998
(63 FR 43386)

BPA/Lower Valley Transmission System Reinforcement Project, Wyoming
(DOE/EIS-0267), August 21, 1998
(63 FR 44853)

Supplement Analyses
"Acceptance of Foreign Research Reactor Spent Nuclear Fuel Under Scenarios Not Specifically Mentioned in the EIS."
Foreign Research Reactor Spent Nuclear Fuel Programmatic EIS
(DOE/EIS-0218-SA 2) (August 19, 1998)
(No further NEPA review required)

"AL-R8 Sealed Insert Container for the Pit Repackaging Program."
EIS for the Continued Operation of the Pantex Plant
(DOE/EIS-0225-SA1), August 5, 1998
(No further NEPA review required)

"Storing Plutonium in the Actinide Packaging and Storage Facility and Building 105-K at the Savannah River Site."
Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS
(DOE/EIS 0229-SA1), August 6, 1998
(Amended DOE/EIS-0229 Record of Decision; *no further NEPA review required*)

National Environmental Policy Act

NEPA

LESSONS LEARNED

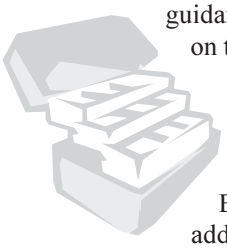
U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

December 1, 1998, Issue No. 17 For Fourth Quarter FY 1998

New and Improved NEPA Compliance Guide Issued in 2 Volumes

A new and improved DOE NEPA Compliance Guide, issued by the Office of Environment, Safety and Health, has been distributed to about 750 members of the DOE NEPA Community. Intended to foster sound and efficient NEPA compliance, the Compliance Guide is a collection of resources and references to aid in NEPA document preparation and other aspects of the NEPA process.

Volume I, *General NEPA References*, contains the statute, and regulations and guidance from the Council on Environmental Quality, the Department of State, and the Environmental Protection Agency. Volume II, *Department of Energy NEPA Regulations and Guidance*, contains DOE references related to compliance with NEPA. The format is easy to use and will accommodate future guidance supplements. The contents of the Compliance Guide were complete as of August 1998. Supplementary updates, including any new DOE regulations and guidance (see below), will be mailed to people on the distribution list.



More Recently Issued Tools

After the Compliance Guide was prepared for publication, the Office of Environment, Safety and Health issued additional NEPA guidance documents.

✓ **Environmental Impact Statement Summary (September 1998):** Helps in the preparation of an informative, concise, and readable summary. For many readers, the summary forms the first and lasting impression of the EIS and bears a greater than normal obligation to communicate clearly.

✓ **Glossary of Terms Used in DOE NEPA Documents (September 1998):** Provides authoritative definitions to foster efficiency and consistency in the preparation of NEPA documents.

✓ **NEPA Document Electronic Publishing Standards (October 1998):** Describes requirements, standards, and guidelines for Web publication of DOE NEPA documents to provide comprehensive NEPA information promptly and cost-effectively.

✓ **Designating and Supporting NEPA Document Managers (November 1998):** Emphasizes the importance of the NEPA Document Managers to the success of DOE's NEPA program, the knowledge and skills required, and resources available.

Additional Guidance Tools in Preparation

The Office of NEPA Policy and Assistance is developing additional tools for the NEPA process. Guidance scheduled for the near future will address:

✓ NEPA in the Context of Privatization,

✓ Accident Analysis,

✓ Clean Air Act Conformity and NEPA, and

✓ Environmental Justice Considerations in the NEPA Process.

Additional guidance topics under development include supplement analyses and transboundary impact analysis.

continued on page 2

Inside *LESSONS LEARNED*

Welcome to the fourth quarter FY 1998 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

New Compliance Guide
(continued from page 1)

The DOE NEPA Compliance Guide and other guidance documents are available on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under NEPA Tools.

Acknowledgment

The Office of NEPA Policy and Assistance wishes to acknowledge the dedication and creativity of Barbara Grimm-Crawford, Special Assistant to the Deputy Assistant Secretary for the Environment, in overcoming many content and production challenges for the new Compliance Guide. Without her, the new Guide would still be "in process." LL

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report.* Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone 202-586-9326. Draft articles for the next issue are requested by January 29, 1999.

First Quarter Questionnaires Due January 29

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 1999 (October 1 to December 31, 1998) should be submitted as soon as possible after document completion, but no later than January 29, 1999. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

Looking Forward from Nevada

DOE NEPA Community Meets on Theme of "Improving Performance/Getting Results"

By: Yardena Mansoor, *Office of NEPA Policy and Assistance*

About 150 members of the DOE NEPA Community — NEPA Compliance Officers and Document Managers, Counsel, the Office of NEPA Policy and Assistance, and NEPA support contractors — met at the Nevada Operations Office's new facilities in North Las Vegas on October 14 and 15, 1998.

Gerry Johnson, Manager, Nevada Operations Office, welcomes participants to the DOE NEPA Community Meeting.

In his welcome, Gerry Johnson, Nevada Operations Office Manager, praised the site-wide environmental impact statement for the Nevada Test Site (completed in 1996) as a high quality document that meets NEPA compliance requirements and promotes efficiency and flexibility in undertaking new site missions. His remarks presaged the meeting's theme of "Improving Performance/Getting Results," introduced by Carol Borgstrom, Director, Office of NEPA Policy and Assistance. She emphasized that now that DOE has made progress in reducing the time and cost of preparing environmental assessments and environmental impact statements, the NEPA community needs to pursue further improvements to make NEPA documents more useful to decision makers and the public.

The NEPA Document Manager: How to Be a Winner

The NEPA Document Manager — a key player in improving the performance of the DOE NEPA process — was a major topic of discussion. Stan Lichtman, Division Director, Office of NEPA Policy and Assistance, led a discussion on how to be a successful NEPA Document Manager, assisted by panelists Jay Rose of Defense Programs, Julianne Levings of the Albuquerque Operations Office, and Mike Skougard of the Nevada Operations Office. A function established by the Secretary of Energy in 1994 as part of a continuing series of reforms, the NEPA Document Manager is accountable for planning and executing the NEPA process for a proposed action. The NEPA Document Manager function requires knowledge of NEPA requirements, adequate authority, and management skills that include effective communication. One of the panel's key recommendations is that NEPA Document Managers should engage the decision maker, not just take direction and report environmental results.

Many Resources Available to Assist DOE NEPA Document Managers

Draft guidance on the role of the NEPA Document Manager was circulated for comment before the Nevada meeting. The guidance, issued in final form on November 24, 1998, identifies resources available to suport NEPA Document Managers:

People: Experienced NEPA Document Managers, NEPA Compliance Officers in every Program and Field Office, the Office of NEPA Policy and Assistance, and DOE's environmental attorneys in Headquarters and the Field.

Training: Offered by NEPA Compliance Officers, the Office of NEPA Policy and Assistance, DOE's National Environmental Training Office (www.em.doe.gov/neto/), and commercial sources.

continued on page 4

Panel members Jay Rose, Julianne Levings, and Mike Skougard discuss how to be a successful NEPA Document Manager.

(continued from page 3)

Guidance: Office of NEPA Policy and Assistance guidance documents available in its NEPA Compliance Guide, the DOE NEPA Web (http://tis.eh.doe.gov/nepa/), and the NEPA *Lessons Learned Quarterly Reports*.

NEPA Tools

Discussion of new NEPA guidance, intended as tools to assist the NEPA Document Manager, highlighted the meeting. Carolyn Osborne, assisted by Eric Cohen and Yardena Mansoor of the NEPA Office, provided detailed information on the range of DOE NEPA guidance tools now available or in preparation. Four new guidance documents have recently been completed, and guidance on additional topics is under development. (See related article on page 1.)

Coordinating Environmental Review with Procurement

DOE increasingly is exploring contracting arrangements that shift greater performance and financial risk to the private sector. Stan Lichtman discussed provisions of DOE's NEPA regulations (10 CFR 1021.216) concerning environmental review for such "privatization" procurements. Apparently unique to DOE, these requirements are intended to make NEPA and the procurement process work smoothly together when DOE will make a source selection related to implementing a proposed action before completing a required EA or EIS.

NAPA Evaluation of DOE NEPA Reforms

A special guest speaker, Richard Minard, Associate Director of the National Academy of Public Administration's (NAPA) Center for the Economy and the Environment, reported on the Academy's July 1998 study of the DOE NEPA program. (See *Lessons Learned Quarterly Report,* September 1998, page 3. The NAPA report is available at http://www.napawash.org.)
Mr. Minard summarized the findings of the NAPA report, including that "DOE has made substantial progress in improving the management of its responsibilities under NEPA." Further, "DOE's efforts to manage the NEPA process as efficiently as possible should help make it more credible, stable, and useful," he said. Mr. Minard enthusiastically endorsed DOE's use of NEPA Document Managers, noting the active and critical role they play in designing and directing the environmental review process and the excellent management training the role provides. He also said that "establishing effective working relationships among the headquarters and field components involved in the NEPA process is an important challenge" for the NEPA Document Manager. Mr. Minard observed that "staff commitment to openness, quality and honesty will gradually erode" any remaining cynicism regarding NEPA at DOE.

DOE-wide Contracts, Performance-based Contracting Emphasized

The DOE-wide NEPA support contracts issued in June 1997 are time-efficient and have provided cost savings, reported Dawn Knepper, Albuquerque Operations' Contracting Officer. (See *Lessons Learned Quarterly Report,* September 1998, page 7.) Over a period of 15 months, 12 different offices have issued 27 tasks for a total of about $18 million. Of this total, almost $15 million was awarded on a competitive basis.
Ms. Knepper urged the DOE NEPA community to issue tasks on a performance basis — that is, to structure all aspects of an acquisition around the purpose of the work to be performed. "Ask for what you want: define the results, not the process," she said.

Legal Lessons

Ben Underwood, formerly of DOE and now an attorney in private practice, spoke on the strategic importance of the administrative record in preventing or prevailing in NEPA litigation. The administrative record consists of all materials that DOE considered in making its decision under NEPA (including information with which DOE disagrees and the reasons for disagreeing). In NEPA litigation, the court normally reviews only the administrative record. (See, for example, the first case in "Other Cases of Interest," page 13.) If the court finds that the record does not demonstrate a reasoned basis for DOE's decision, the court can delay the proposed action until DOE completes an adequate NEPA review.
Steve Ferguson, Office of General Counsel, reviewed the status of DOE NEPA litigation and invited the DOE NEPA Community to review General Counsel's draft guidance on the administrative record for the NEPA process. (Comments were due November 13.)

Yucca Mountain Repository EIS Cross-cutting Issues

Before the meeting opened, many attendees took the optional tour of Yucca Mountain, currently under study as a potential disposal site for spent nuclear fuel and high-level radioactive waste. Wendy Dixon, Repository Environmental Impact Statement Project Manager, discussed the potential connections to other DOE environmental review issues, including wastes at various DOE sites and accident analysis.

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Highlights from the Breakout Sessions

Clean Air Act (CAA) Conformity

The CAA Amendments of 1990 require Federal actions to conform to state implementation plans for achieving and maintaining ambient air quality standards. EPA issued implementing regulations in 1993, and compliance is normally achieved via the NEPA process. DOE has had little experience with this rule, largely because few proposed actions are subject to the full conformity requirements. Planned DOE NEPA guidance will describe when the CAA conformity requirements apply, how general conformity should be addressed within NEPA documents, and how to coordinate the conformity process with the NEPA process.

Environmental Justice

This session explored approaches to identifying minority and economically disadvantaged populations, applying a sliding scale approach so that issues with higher expected intensity of impacts and public interest receive more detailed analysis. The session also covered tailoring public participation opportunities to environmental justice issues and technical approaches for environmental justice impact analysis.

Accident Analysis

The NEPA Office is working on guidance on accident analysis in DOE NEPA documents to improve consistency among NEPA reviews and achieve efficiency. The challenge is to be conservative (so that risks are not minimized through optimistic assumptions about uncertainties) while being realistic (so that dramatic risks with very low probabilities do not unduly influence the choice among alternatives). The breakout participants agreed that considering a range of potential accidents is part of evaluating the overall impacts of a proposal.

Transboundary Impacts

This breakout session discussed recent CEQ guidance on NEPA analyses for transboundary impacts — that is, the impacts of U.S. actions on the Canadian and Mexican environments. Challenges in incorporating transboundary analysis into NEPA reviews include: data availability, timeliness, completing environmental review before making a decision, and differences in the stringency of the various nations' environmental regulations.

EIS Summary

Breakout session participants examined impact comparison tables from various EIS summaries to identify strengths and weaknesses in the approaches used. All of the tables examined contained some inappropriate or insufficient statements, such as "the impacts would increase" or "the emissions would meet regulatory standards." (See the related article on page 9 of this issue.)

Supplement Analysis

This session addressed procedural questions: Who approves a supplement analysis? What documentation is appropriate for a determination that a new or supplemental EIS is not needed? Should a supplement analysis just be made available to the public (as specified in the DOE NEPA regulations) or issued for public review and comment? What factors should be considered in a supplement analysis for a site-wide EIS? (See the related article on page 10 of this issue.)

Clear and Concise Writing

Participants noted the tradeoff between "clear and concise" writing and "complete" analysis. It is necessary to incorporate both values, with "clear and concise" writing emphasized in the EIS and its summary, and "completeness" in the supporting material and appendices.

Integrated Safety Management and NEPA

This session explored the connections, conceptual similarities, and complementary aspects of NEPA, Integrated Safety Management Systems, and Environmental Management Systems. Participants recommended integrating a site's good existing safety and environmental review processes into the new systems.

(continued from page 4)

Land Divestitures and Future Land Use

Andrew Duran, Office of Field Management, discussed DOE's program for evaluating land needs and planning for future land use. DOE now owns or manages about 100 sites, many of which are currently classified as excess and may be sold or divested under the Federal Real Property Management Regulations. DOE will undertake appropriate NEPA reviews for these actions.
A panel consisting of Paul Dunigan, NEPA Compliance Officer, Richland Operations Office; Beth Osheim, Chief Counsel, Ohio Field Office; and Elizabeth Withers, NEPA Document Manager, Los Alamos Area Office, discussed approaches being used in NEPA reviews for divestiture and future land use decisions at their sites.

Clear and Concise Writing

Clear and concise writing —an essential quality for NEPA documents — was the subject of an entertaining lunchtime presentation by Stan Stenersen, a professional writing instructor. He used brief courtroom scenes from two popular comedy films, "What's Up, Doc?" and "My Cousin Vinny," to illustrate bad and good techniques for narrating a complicated story. The more effective approach uses a "top-down" logical structure, in which the main point is presented first and supporting details follow. In contrast, presenting details before the conclusion fails because there is no context for understanding the significance of the details.

Breakout Sessions and Demonstrations

In addition to speakers and panels, meeting attendees chose from among eight breakout topics for informal group discussions. Topics included: Integrated Safety Management and NEPA, transboundary environmental impacts, environmental justice, supplement analyses, accident analyses, Clean Air Act conformity, the environmental impact statement summary, and clear and concise writing. (See highlights on page 5.)
Additional demonstrations and displays addressed the DOE NEPA Web (http://tis.eh.doe.gov/nepa/) and NEPA training opportunities.

Follow-up Activities

Carol Borgstrom asked attendees to follow up on the meeting by providing feedback on the draft guidance documents as well as their needs for support and assistance, disseminating the NEPA document preparation and other information in the meeting notebooks, and engaging decision makers throughout the NEPA process.

Participants assembled in the Nevada Operations Office's new facilities in North Las Vegas for the October NEPA Community Meeting.

Managing Baseline Environmental Information for the Sandia Site-wide EIS

By: Frederic March, *Sandia National Laboratories–New Mexico, and*
Julianne Levings, *NEPA Document Manager, Albuquerque Operations Office*

"So far, so good" may be the best way to characterize early progress on the site-wide EIS for Sandia National Laboratories–New Mexico. After a preliminary draft in September and a concurrence review draft in November, we expect to be able to meet our commitment to issue the draft EIS by January 31, 1999. In this article, we share some lessons learned regarding our approach to the effective collection and management of environmental information as a means to help achieve the Department's goal of a better, faster, and cheaper NEPA process.

Sandia initiated work on the environmental baseline information before the EIS notice of intent was issued. This early start on data collection and analysis meant that, in the request for EIS preparation contractor proposals, DOE could advertise the availability of draft information documents — an approach which, we believe, resulted in lower bids for the site-wide EIS. The early start also meant that the draft information documents were completed only six weeks after EIS contractor selection.

Information Documents Support EIS Preparation

Working within DOE's project management framework, and after developing detailed scopes, milestones, and budgets, Sandia produced the following information documents:

Facility and Safety Information Document —

a comprehensive technical compendium of the work of the Laboratory, including its environment, safety and health (ES&H) activities. The final version of this document will also include in-depth information on 10 selected facilities and facility groupings whose operations are analyzed in detail in the site-wide EIS.

Environmental Information Document —

a comprehensive technical compendium of the results of ongoing Sandia ES&H programs involving regulatory compliance, monitoring, and record keeping.

Geographic Atlas —

a large-format, bound collection of maps showing all relevant facilities, infrastructure, and environmental features at and near Sandia, including those on non-DOE federal properties. The EIS contractor used data from the Geographic Information System that produced these maps to generate maps for the site-wide EIS.

Internal Web Tool Used to Collect Data

To coordinate additional data needs, Sandia National Laboratories designed an innovative, internal web tool to gather detailed operational data from a large number of persons spread across the Laboratory. Personal meetings were held with all persons providing data to overcome ambiguities in instructions and to motivate careful responses. The web tool, called the "Facility Information Manager," was composed of:

- A database covering 34 lab facilities considered essential to NEPA analysis. For current baseline and five future scenarios of operations, data included hazard descriptions; levels of emissions; inventories of radioactive and hazardous chemicals; radioactive, mixed, and hazardous wastes generated; major resource consumption; and many other variables.
- A user-friendly questionnaire requesting data in all of the above areas, with user help screens to explain exactly what was required and why.

For information about the Sandia National Laboratories–New Mexico Site-wide EIS, contact Julianne Levings, NEPA Document Manager, at jlevings@doeal.gov, phone 505-845-6201, or fax 505-845-6392; for information about the Sandia's Facility Information Manager, contact Richard Schetnan at 505-844-0954.

Data Analysis Forum Planned for January

The DOE Office of Operating Experience Analysis and Feedback (EH-33) will sponsor a three-day Data Analysis Forum on January 26 to 28, 1999, in Las Vegas, Nevada. The purpose of the forum is to share innovative techniques for: collecting meaningful data, analyzing data to reveal useful insights, and presenting clear, concise results so that decision makers can act and the public can be informed. The forum will consist of presentations, panel discussions, and displays. For a full description of the forum, including a list of topics of interest, see the sponsoring office's Web Site at http://tis.eh.doe.gov/web/oeaf/. For more information, contact Richard Day at richard.day@eh.doe.gov, or phone 301-903-8371.

Tiered NEPA Strategy for UMTRA Ground Water Project is Paying Off

By: Donald Metzler, *DOE Grand Junction Project Office*

The Uranium Mill Tailings Remedial Action (UMTRA) Ground Water Project is finding that a tiered NEPA documentation strategy is paying off in terms of reduced time and cost for site-specific NEPA reviews.

The UMTRA Ground Water Project, which started in 1991, is the second phase of the DOE Title I UMTRA program. The purpose of the project is to eliminate, reduce, or otherwise address to acceptable levels the potential health and environmental consequences of uranium milling activities by meeting the Environmental Protection Agency ground water cleanup standards. The UMTRA Ground Water Project is selecting one of three compliance strategies — No Further Remediation, Natural Flushing with Monitoring, and Active Remediation — at 22 former uranium processing sites.

PEIS Provides Overall Framework

One of the first steps in the UMTRA Ground Water Project was to prepare a programmatic EIS [1] — a different approach from how NEPA was applied to the earlier UMTRA Surface Project. In the earlier project, DOE met its NEPA compliance requirements on a site-by-site basis by preparing EAs or EISs, the latter typically consisting of hundreds of pages in multiple volumes. Even though the PEIS took almost six years from genesis to completion, it now serves as the overall planning document, providing an objective and consistent framework for determining site-specific ground water compliance strategies.

That six-year process — which involved scoping meetings, public hearings across the country, and a Record of Decision — is now paying valuable dividends to the affected communities, regulatory representatives, and DOE. Data and analyses from the PEIS are used to prepare site-specific environmental impact analysis more efficiently. The UMTRA Ground Water Project is developing tiered NEPA documents that are concise, focused, and cost-effective. An EA is about 25 pages long, generally costs less than $30,000 from start to finish, and can be completed within six to nine months, including public scoping meetings and stakeholder reviews.

The PEIS put the UMTRA Ground Water Project's "right foot forward" from the very start. The planning accomplished during the development of the PEIS forced DOE to think out the entire project in detail — before making decisions. Further, letting the affected public, interested parties, and regulatory representatives take some early ownership of the decision making process helps ensure that important project aspects that could have negative outcomes to the environment or affected public are not overlooked.

Giving Stakeholders What They Want

Because the PEIS settled the programmatic issues early, the tiered EAs can focus on the site-specific issues that are often so important to the affected communities. Through community meetings, UMTRA Ground Water Project's stakeholders know they can obtain technical documents and data packages such as Baseline Risk Assessments and monitoring data at their local libraries or by calling a DOE toll-free number. This generally obviates including all the technical information in the tiered EA, resulting in a concise, comprehensible document. A user-friendly EA is what the stakeholders tell us they want.

For further information, contact Don Metzler at dmetzler@doegjpo.com, phone 970-248-7612, or fax 970-248-6023.

[1] Uranium Mill Tailings Remedial Action Ground Water Project Programmatic EIS, DOE/EIS-0198, approved October 1996, $1.0 M (EIS preparation cost).

Regulatory Compliance ≠ No Environmental Impacts ≠ Insignificant Impacts

It's an issue that comes up frequently in NEPA reviews: "The Alpha Project will comply with the x, y, z standards. Therefore, no significant impacts are anticipated." As the song goes, "it ain't necessarily so." And such an approach does not necessarily comply with NEPA. Every DOE project is required to comply with all applicable environment, safety, and health standards and regulatory requirements. Nevertheless, we still do NEPA reviews. Why is that?

Even Compliant Projects Have Impacts

Stating in a NEPA document that a proposed action "would be carried out in compliance with applicable regulatory requirements" does not mean that there would be *no* environmental impacts or that the impacts would be *insignificant*. There would be impacts from taking action, and even fully compliant actions may have significant environmental impacts. These points are discussed in "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements" (also known as the Green Book, DOE/EH, May 1993, pages 29 to 30).

That regulatory compliance demonstrates neither absence nor insignificance of environmental impacts is clearly illustrated by considering a major project — such as a dam, highway, or airport — that is *intended* to significantly change the human environment. Such projects must satisfy many types of environmental regulatory requirements, yet they impose large, significant, and permanent environmental impacts.

Early Court Case on NEPA and Regulatory Standards

One of the first cases to interpret NEPA, *Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission*,[1] considered whether regulatory compliance relieves an agency of any NEPA obligations. In this case, the Atomic Energy Commission, in considering a license application for a nuclear power plant, indicated that, with regard to water quality impacts of the plant, it would defer to water quality standards established and administered by state agencies and approved by the Federal government under the Federal Water Pollution Control Act. The most the Commission indicated it would do was to include a condition in all construction permits and operating licenses that would require compliance with the water quality and other standards set by the agencies.

In rejecting the Commission's view of the connection between regulatory requirements and NEPA compliance, the court noted that NEPA requires a Federal agency proposing an action to undertake a "case-by-case balancing judgment" of the particular economic and technical benefits weighed against the environmental costs. The water quality standards in effect established a minimum condition for the granting of a license, but the Commission was not precluded from demanding more strict water pollution controls than those demanded by the applicable water quality standards. The court recognized that in some circumstances there may be significant environmental damage, although not quite enough to violate applicable standards.

Relation to "Significance"

The *significance* of impacts of a proposal that complies with regulatory requirements depends on context and intensity (40 CFR 1508.27). For example:

- A proposal to construct and operate an industrial facility in an already disturbed area may conform to all applicable regulations, but could result in cumulatively significant environmental impacts.
- A facility constructed in a pristine area may be able to obtain all necessary permits, but could impose burdens on natural resources that did not previously exist.
- A small facility and a very large one of the same type (for example, coal-fired power plants) must each meet all applicable environmental requirements (perhaps the same requirements), but may have impacts that differ greatly in significance.

Further, the CEQ regulations direct that a proposal's *threatened* violation of Federal, state, or local environmental laws or requirements is one of ten factors to consider in determining whether the impacts of the proposal are significant. (See 40 CFR 1508.27(b)(10) and 10 CFR Part 1021, Appendix B to Subpart D, Conditions that are integral elements of the classes of action in Appendix B, subsection (1)). In this light, using up the remaining allowable increment under air emissions standards would be compliant, but the proposal nevertheless may have significant impacts.

Recommendations

✓ Do not use compliance with regulatory standards or permits as justification for not analyzing the impacts or as evidence that a proposed action or alternative lacks potential for significant environmental impacts.

✓ Address potential or threatened violation of laws, regulations, and standards in evaluating significance of impacts. LL

[1] 449 F.2d 1109 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 942 (1972).

Procedures for an Environmental Critique and Synopsis, and a Supplement Analysis

Environmental Critique

When DOE will not complete a required EA or EIS for a proposed action before making a source selection related to implementing the action, the DOE NEPA Regulations (10 CFR 1021.216) provide an environmental review process synchronized with the DOE procurement process. DOE specifies in its solicitation documents that offerors shall submit reasonably available environmental data and assessments, and the part evaluation of those materials would play in the source selection. For offers in the competitive range, DOE prepares and considers a confidential "environmental critique" before making a selection in the procurement. The critique discusses the salient characteristics of each offer and how the offers differ in their potential environmental impacts.

Q: ***Who prepares, and who approves, an environmental critique?***

A: The environmental critique supplements the procurement process. The procurement team may include staff with the qualifications to assess the environmental information (including independently evaluating and verifying the offerors' submittals) and prepare the critique.

Environmental Synopsis

In the interest of public disclosure, DOE will prepare an "environmental synopsis" based on the environmental critique (10 CFR 1021.216(h)). The synopsis documents DOE's consideration of environmental factors in the selection process, yet excludes from disclosure and protects information regarding the offers that DOE is not authorized to disclose. After making a selection in the procurement, DOE (with the assistance of the Office of NEPA Policy and Assistance) files the synopsis with the Environmental Protection Agency and makes it publicly available. The synopsis is incorporated into any NEPA review that may be prepared for the action.

Q: ***Who prepares the environmental synopsis? Who approves it?***

A: The environmental synopsis must be prepared by people who are privy to the (confidential) environmental critique. The synopsis should be acceptable to the NEPA document preparation team, including counsel and (for an EIS) the Office of NEPA Policy and Assistance. The approval authority, however, rests with the appropriate supervising manager in the organization that is primarily responsible for preparing the EIS or EA.

For further discussion of environmental critiques and synopses, refer to the (currently draft) Guidance on the NEPA Process in the Privatization Context. Questions may be addressed to Stan Lichtman, at stanley.lichtman@eh.doe.gov, phone 202-586-4610, or fax 202-586-7031.

Supplement Analysis

Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1502.9(c)) specify that an agency shall prepare a supplemental (draft or final) EIS if there are substantial changes to a proposal or significant new circumstances or information relevant to environmental concerns. *When it is unclear whether an EIS supplement is required*, DOE NEPA regulations require preparation of a supplement analysis that discusses the pertinent circumstances (10 CFR 1021.314(c)). The supplement analysis serves as the basis of a DOE determination that an existing EIS should be supplemented, a new EIS should be prepared, or that no further NEPA documentation is required.

Q: ***Which DOE official has authority to approve a supplement analysis and make the associated determination?***

A: Under the DOE NEPA Order (DOE O 451.1A, paragraph 5a(11)), a Secretarial Officer or Head of a Field Organization, for matters under the office's purview and when required by the DOE NEPA regulations,

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Mini-guidance

(continued from page 10)

prepares a supplement analysis and, with the concurrence of DOE counsel, makes a determination based on the analysis. The responsibility for preparing a supplement analysis includes the obligation to assure its accuracy and adequacy. Preparing a supplement analysis and using it to determine the need for further NEPA review (that is, are the changes "substantial," are the new circumstances or information "significant"?) is parallel to the authorities in paragraph 5a(9) to issue an EA and determine that impacts of a proposed action are significant and an EIS is required, or that impacts are not significant and an EIS is not required.

Q: ***Does a supplement analysis need a NEPA Document Manager?***

A: Although the DOE NEPA Order does not explicitly require it, designating a NEPA Document Manager for a supplement analysis makes good management sense. Preparation of a supplement analysis is more likely to be efficient, timely, and technically correct when someone has clear responsibility, especially when more than one organization is involved.

EPA Broadens Voluntary EIS Policy

The Environmental Protection Agency (EPA) has withdrawn its 1974 Policy for Voluntary Environmental Impact Statements and instituted a broader Voluntary NEPA Compliance Policy. Proposed changes to the policy were published November 28, 1997 (62 FR 63334) (*Lessons Learned Quarterly Report*, March 1998, page 8). Under the new policy, EPA "will prepare an EA or, if appropriate, an EIS on a case-by-case basis in connection with Agency decisions where the Agency determines that such an analysis would be beneficial." In making such a determination, EPA would consider the potential for: improving coordination with other Federal agencies; using an EA or EIS to comprehensively address large-scale ecological impacts, particularly cumulative effects; facilitating analysis of environmental justice issues; expanding public involvement and addressing controversial issues; and addressing potential impacts on special resources or public health.

For more information, see the EPA's Office of Federal Activities' Web Site at www.epa.gov/oeca/ofa or contact Joseph Montgomery at montgomery.joseph@epamail.epa.gov or phone 202-260-2090.

Historic Preservation Proposed Regulatory Revision Withdrawn

On November 6, 1998, the Advisory Council on Historic Preservation withdrew proposed regulatory revisions to Section 106 of the National Historic Preservation Act (16 USC 470) and abandoned its effort to amend the regulations.

The Advisory Council directed its Task Force on Regulations to develop guidance that will meet requirements of the 1992 amendments to the Act, promote streamlining and reduction of regulatory burdens, and improve the operations of the existing Section 106 regulations.

The Act is one of several that DOE implements through the NEPA process to avoid duplication, as is encouraged under the CEQ NEPA regulations. For more information, contact Katherine Nakata at katherine.nakata@eh.doe.gov or phone 202-586-0801.

George Frampton Serving as Acting Chair at CEQ

In a statement of October 30, 1998, the President appointed George Frampton as acting Chair of the Council on Environmental Quality and announced the intent to nominate him as Chair. Mr. Frampton replaces Katie McGinty, who resigned after almost six years of service as the administration's principal environmental policy adviser.

Mr. Frampton served as Assistant Secretary of the Interior for Fish and Wildlife and Parks from 1993 to 1997 and before that was president of the Wilderness Society. In addition, he was a law clerk for Supreme Court Justice Harry Blackmun, Deputy Director of the Nuclear Regulatory Commission's inquiry into the nuclear accident at Three Mile Island, and a visiting lecturer in constitutional law at Duke University Law School.

Training Opportunities

The NEPA Toolbox: EAs with FOCUS
Environmental Training & Consulting International, Inc.
Dec. 7-8, 1998, Denver, CO
Fee: Regular $750; Early $695
Phone: 303-321-3575 Fax: 303-321-4569

The NEPA Toolbox: Cumulative Impacts Analysis
Environmental Training & Consulting International, Inc.
Dec. 9-10, 1998, Denver, CO
Fee: Regular $750; Early $695
Phone: 303-321-3575 Fax: 303-321-4569

Environmental Impact Assessment: NEPA and Related Requirements
American Law Institute–American Bar Association (ALI-ABA)
Dec. 10-11, 1998, Washington, D.C.
Fee: $695
Phone: 215-243-1630 or 800-253-6397, ext. 1630
www.ali-aba.org

Applying the NEPA Process/ Writing Effective NEPA Documents
Shipley Environmental, Inc.
Feb. 9-12, 1999, San Diego, CA, or
Aug. 14-17, 1999, San Francisco, CA
Fee: $995
Phone: 888-270-2157 Fax: 888-270-2158
www.shipleyenviro.com

Environmental Law
American Law Institute–American Bar Association (ALI-ABA)
Feb. 10-12, 1999, Washington, D.C. (Bethesda, MD)
Fee: $695
Phone: 215-243-1630 or 800-253-6397, ext. 1630
www.ali-aba.org

Overview of the NEPA Process
Shipley Environmental, Inc.
March 2, 1999, Las Vegas, NV
Fee: $195
Phone: 888-270-2157 Fax: 888-270-2158
www.shipleyenviro.com

Writing Effective NEPA Documents
Shipley Environmental, Inc.
March 3-5, 1999, Las Vegas, NV
Fee: $795
Phone: 888-270-2157 Fax: 888-270-2158
www.shipleyenviro.com

The Endangered Species Act
CLE International
March 12-13, 1998, Washington, D.C.
Fee: $495
Phone: 800-873-7130 Fax: 303-321-6320
www.cle.com

Environmental Lessons Learned Seminars

The DOE National Environmental Training Office (NETO) is sponsoring a series of seminars on environmental lessons learned that are broadcast live via satellite across the country. NETO coordinates the overall effort and partners with subject matter experts to produce these programs. The one- to two-hour broadcasts are television productions that promote the sharing of lessons learned on specific environmental activities and provide answers to questions submitted by the viewing audience through toll-free telephone and fax lines.

The seminars also provide references and resource material on each topic to enhance information exchange. Written support material for each broadcast may be downloaded from NETO's web site. Following each seminar, videotapes of each satellite broadcast are sent to lessons learned coordinators throughout the DOE complex. Additional copies of the videos are also available from NETO on request (while supplies last).

To date, NETO has sponsored lessons learned seminars on the following topics:

- Lessons Learned through Implementation of Environmental Management Systems
- Lessons Learned through Privatization of Federal Facilities.

DOE organizations are encouraged to suggest topics and to volunteer to participate in future lessons learned broadcasts with experts from other sites who have similar experiences. For more information on this environmental lessons learned initiative, see NETO's web site at www.em.doe.gov/neto/lessons/ or call David Hoel at 803-725-0818. LL

Litigation Updates

Developments in NRDC v. Peña:

Notice of Intent Issued to Prepare Supplemental EIS for National Ignition Facility

As agreed to in a Joint Stipulation and Order, (October 1997), DOE has issued a Notice of Intent to prepare a supplemental EIS for the National Ignition Facility (NIF) at Lawrence Livermore National Laboratory (63 FR 51341, September 25, 1998). The project-specific EIS for the facility was an appendix to the Stockpile Stewardship and Management Programmatic EIS, and DOE's December 1996 programmatic record of decision included a decision to construct and operate NIF. In September 1997, site excavation uncovered capacitors that had leaked polychlorinated biphenyls into the surrounding soils. In partial settlement of a lawsuit opposing the programmatic EIS *(NRDC v. Peña)*, DOE agreed in the October 1997 Joint Stipulation and Order to prepare a supplemental EIS whose scope would be "reasonably foreseeable significant adverse environmental impacts of continuing to construct and operating the NIF at Lawrence Livermore National Laboratory, with respect to any potential or confirmed contamination in the area by hazardous, toxic, and/or radioactive materials." (See *Lessons Learned Quarterly Report*, December 1997, page 17.) Characterization activities at the site are now complete, and results, now available in the public reading room at Lawrence Livermore National Laboratory, will be analyzed in the supplemental EIS.

Trial Scheduled on Contempt Charge

Unless the parties settle, a trial is scheduled to begin on December 7, 1998, on the charge brought by the National Resource Defense Council (NRDC) that DOE is in contempt of a 1990 Stipulation and Order by having failed to prepare a programmatic EIS that addresses environmental restoration.

Other Cases of Interest

Assumptions Without Factual Support Render EA Inadequate

Homeowners challenged, on NEPA grounds, the U.S. Army Corps of Engineers' issuance of a permit under Section 404 of the Clean Water Act for the proposed construction of a reservoir and dam in Georgia. The plaintiffs alleged that the EA prepared for the permit decision did not adequately consider the potential adverse environmental impacts of an existing liquid petroleum pipeline that would cross under the proposed reservoir. In making its finding of no significant impact and thus deciding not to prepare an EIS, the Corps had assumed that the pipeline would be relocated, but it did not make relocation a condition of the Section 404 permit.

The court found that the administrative record did not support the Corps'assumption that the pipeline would be relocated and that the agency failed to consider the environmental impacts of the pipeline remaining under the proposed reservoir. The court remanded the case to the Corps to consider whether the pipeline would remain and, if so, whether the presence of such a pipeline necessitates the preparation of an EIS for the project. *Hill v. Boy*, 1998 U.S. App. LEXIS 14899 (11th Cir. 1998).

EIS Not Invalidated by Violation of Contractor Disclosure Provision

In this case, plaintiffs challenged a Department of Transportation EIS for a proposed highway interchange, arguing, among other things, that the agency failed to comply with NEPA by allowing a private contractor with a conflict of interest to assist in the preparation of the EIS for the proposed project. Specifically, plaintiffs contended that the EIS should be invalidated because the contractor had an expectation of future work based on the agency's unvarying practice of awarding the final design contract to the company that prepared the EIS, and because the contractor failed to execute the required conflict of

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"Litigation Updates" *(continued from page 13)*

interest disclosure statement until after the final EIS had been issued.

The U.S. Court of Appeals for the 10th Circuit concluded that the contractor had no contractual agreement or guarantee of future work on the project at the time it prepared the EIS. Further, even "accepting for the sake of argument that the Contractor's heightened expectation" for future design work amounted to a conflict, the court found that the degree of oversight exercised by the agency "is sufficient to cure any defect arising from that expectation," and that the ultimate question on a conflict of interest issue is whether the alleged breach compromised the objectivity and integrity of the NEPA process. The court held that the record demonstrated that the agency performed all management activities and only used the contractor personnel for technical expertise, prepared many sections of the EIS without the contractor's assistance, and independently and extensively reviewed all of the contractor's data and analyses. Although the court agreed that the contractor's belated filing of the required disclosure statement violated NEPA regulations, it refused to invalidate the EIS on that ground "given the extensive supervision" by the agency. *Associations Working for Aurora's Residential Environment v. Colorado Department of Transportation*, 1998 U.S. App. LEXIS 1705 (10th Cir. 1998).

DOE NEPA Community Members in Transition

Ted Hinds to Retire

After more than eight years in Federal service, Warren (Ted) Hinds, environmental protection specialist with the Office of NEPA Policy and Assistance, plans to retire at the end of the year. As he puts it, "I'm trying to get my boots off, shut down Windows, and head back to the rural kind of life I started from 60-plus years ago." He and his family will be moving to Georgia to enjoy "the good life."

Ted served in the NEPA Office for the past seven years, primarily assisting the Offices of Defense Programs and Fissile Materials Disposition. His Federal career also included a year with the Office of Energy Research in 1976, when he worked on the Nationwide Programmatic EIS for Surface Mining of Coal. In between, Ted worked in the private sector for 25 years, mostly for Battelle Pacific Northwest Laboratory at the Hanford Reservation. While at Battelle, he also provided technical assistance to the Environmental Protection Agency on acid deposition issues and global climate change. We wish Ted and his family health and happiness.

Shane Collins Goes West(ern)

"They don't have mountains or sky like this back East." In September, Shane Collins, after seven years with the Office of NEPA Policy and Assistance, relocated to the Western Area Power Administration's Colorado River Storage Project Customer Service Center in Salt Lake City, Utah. She is working on the Colorado River Recovery Program, including Endangered Species Act and NEPA activities. We are pleased that she will remain part of DOE's NEPA community in her new duties. Shane may be reached at collins@wapa.gov. or 801-524-5587.

Annual NEPA Planning Summaries Due in January

Members of the DOE NEPA Community are reminded to support the preparation of their organization's Annual NEPA Planning Summary. DOE Order 451.1A requires each Secretarial Officer and Head of a Field Organization to submit an Annual NEPA Planning Summary to EH-1 by January 31 of each year. The Annual NEPA Planning Summary also must be made available to the public. The Summary is to include: (1) the status of ongoing NEPA compliance activities, (2) any environmental assessments expected to be prepared in the next 12 months, (3) any environmental impact statements expected to be prepared in the next 24 months, (4) the planned cost and schedule for completion of each NEPA document identified, and (5) an evaluation of whether a site-wide environmental impact statement would facilitate future NEPA compliance efforts (required every three years, starting in 1995 [but not in 1999]). Annual planning for NEPA reviews promotes efficient resource management and scheduling. Questions may be addressed to Jim Daniel, Office of NEPA Policy and Assistance, at james.daniel@eh.doe.gov, phone 202-586-9760, or fax 202-586-7031.

Performance-based Statements of Work

By: Harold Johnson, *NEPA Compliance Officer, Carlsbad Area Office*

To prepare for the upcoming competition of the Waste Isolation Pilot Plant (WIPP) Management and Operating (M&O) contract, the Carlsbad Area Office sponsored training for technical managers on performance-based statements of work (SOWs). After completing the training, I applied the performance-based approach to the SOW for M&O NEPA activities at the WIPP site. This article shares some of what I learned from the training and from rewriting the SOW.

A performance-based SOW tells the contractor what result or product is desired, rather than prescribe how to perform the work. While the concept is simple, it is often difficult to describe the end product in sufficient detail to ensure that the final result will meet your expectations. To demonstrate this point during our training, we were asked to rewrite existing WIPP SOWs for areas we did not manage. In all instances, the rewritten statement of work described something radically different from what was actually being accomplished under that SOW.

The training on "Performance-Based Statements of Work" and "Monitoring Performance-Based Contracts" highlighted several ways to improve the description of the desired outcome.

- ✔ **Use the introductory section of the SOW to describe the Department's viewpoint and get the contractor thinking in the same manner**. In revising the WIPP SOW, I added an introduction on the importance of conducting an appropriate NEPA review and clarified that NEPA compliance is the responsibility of the Federal government, thus emphasizing that the contractor's role is limited to providing assistance.
- ✔ **List the information that should be contained in a particular deliverable.** This can be done by including a list of items in the SOW, by referring to a checklist attached to the SOW, or by referring to DOE NEPA guidance or checklists available on the NEPA Web at http://tis.eh.gov/nepa/ under NEPA tools. In my rewritten SOW, I described the information to be contained in a NEPA database maintained by the contractor and referred to EH guidance in describing the expectations for preparing environmental assessments.
- ✔ **Attach a good example of the expected product to the SOW and refer to it in the SOW.** I chose not to provide an example yet; however, I am considering adding an attachment to the SOW before the contract is competed. The intent — and the challenge — of providing examples is to establish minimum expectations without discouraging innovation on the part of a prospective contractor.

What you *omit* from a performance-based SOW can be just as important as what you include. For example, specifying minimum staffing levels or expertise that must be maintained, how or how often a particular activity should be done, or other similar requirements should be avoided unless absolutely necessary. Such provisions may inhibit innovative management strategies that would reduce the cost of services to the government. In rewriting the WIPP NEPA SOW, I deleted a provision of the old SOW that required updating the contractor's NEPA procedures once a year. Keeping the procedures current might require updating more than once in a particular year (and perhaps not at all in another year), and the specified one-year interval might not produce the desired result.

I also deleted an old SOW provision that required the contractor to use the NEPA process to identify other regulatory concerns. This change would enable the contractor to use other, perhaps more effective processes.

My revised, fixed price SOW is available electronically to DOE employees upon request. The SOW is a "work in progress," and I would appreciate suggestions for improvement. Please feel free to contact me at johnsoh@wipp.carlsbad.nm.us, phone 505-234-7349, or fax 505-887-6970. LL

For More Information

For information regarding the training courses mentioned in this article, contact the Center for Acquisition Research, Technology, and Education (CARTE), Inc., a subsidiary of Atlantic Management Center, Inc., at CARTE's Web Site at www.carteinc.com, or call 703-256-0509.

NEPA Documents Completed Between July 1 and September 30, 1998

EAs

Albuquerque Operations Office/Environmental Management
Ground Water Compliance at the Riverton, Wyoming Uranium Mill Tailings Site
DOE/EA-1261
Cost: $28,000
Time: 9 months

Bonneville Power Administration
Bonneville-Hood River Transmission Line Corridor Vegetation Management, Hood River County, Oregon
DOE/EA-1257
Cost: $61,000
Time: 5 months

Chicago Operations Office/Office of Science (Formerly Energy Research)
Proposed Decontamination and Disassembly of the Argonne Thermal Source Reactor (ATSR) at Argonne National Laboratory–East, Argonne, Illinois
DOE/EA-1266
Cost: $13,000
Time: 2 months

Fissile Materials Disposition
Pit Disassembly and Conversion Demonstration at Los Alamos National Laboratory, Los Alamos, New Mexico
DOE/EA-1207
Cost: $423,000
Time: 15 months

Nonproliferation and National Security
Project Partnership—Transportation of Foreign-Owned Enriched Uranium from the Republic of Georgia (completed in April 1998 and not previously reported in *Lessons Learned*)
DOE/EA-1255
Cost: $60,000
Time: 1 month

Oakland Operations Office/Environmental Management
Upgrade and Operation of Stanford Positron-Electron Asymmetric Ring (SPEAR3) Facility, Stanford Linear Accelerator Center, Menlo Park, California (completed in June 1998 and not previously reported in *Lessons Learned*)
DOE/EA-1243
Cost: $25,000
Time: 9 months

Richland Operations Office/Environmental Management
Solid Low-Level Mixed Waste Non-Thermal Treatment, Hanford Site, Richland, Washington
DOE/EA-1189
Time: 23 months
[Note: The costs of this EA were not available.]

Transfer of 1100 Area, Southern Rail Connection and Rolling Stock, Hanford Site, Richland, Washington
DOE/EA-1260
Cost: $48,000
Time: 7 months

Rocky Flats Office /Environmental Management
McKay Bypass Canal Extension at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado
DOE/EA-1262
Cost: $19,000
Time: 6 months

Savannah River Site/Environmental Management
Reuse of TNX as a Multi-Purpose Pilot Plant Campus at the Savannah River Site, Aiken, South Carolina
DOE/EA-1231
Cost: $26,000
Time: 11 months

Strategic Petroleum Reserve/Fossil Energy
Bayou Choctaw Pipeline Extension to Placid Refinery, Iberville Parish and West Baton Rouge Parishes, Louisiana
DOE/EA-1251
Cost: $105,000
Time: 7 months

EISs

Rocky Flats Office/Environmental Management
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado
DOE/EIS-0277; EPA Rating: EC-2
Cost: $4.5 Million
Time: 21 months

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 1998. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- Joint scoping with cooperating agency. *DOE integrated the U.S. Army Corps of Engineers' Section 404 wetlands process into the DOE NEPA process. DOE coordinated joint scoping with the private party, the Corps, and the host State's resource agencies, which resulted in early identification of a preferred alternative. The Corps, in turn, adopted DOE's EA.*

Data Collection/Analysis

What Worked

- Availability of previous technical document. *An up-to-date technical background study proved to be a useful source of information; it also helped address related regulatory (RCRA, CERCLA, TSCA) issues.*

- An Environmental Baseline Survey. *Preparation of an Environmental Baseline Survey before EA preparation saved both time and cost in preparing the EA.*

What Didn't Work

- Adding marginally relevant information. *Adding information on various research and development projects increased EA completion time and cost of data collection. The information was generally available, but a fair amount of time was consumed in keeping it current.*

Schedule

Factors that Facilitated Timely Completion of Documents

- A master schedule. *We developed a Government/Support Contractor master schedule early in the process, which we formalized only after the scope of the EA had been agreed upon by other DOE team members.*

Factors that Inhibited Timely Completion of Documents

- Not getting it right the first time. *Because the Document Manager initially was complacent due to consistently good prior experience with the support contractor, he failed to provide sufficient structure for what turned out to be an inexperienced team. The subsequent rewriting to bring the document up to DOE standards resulted in a four-week slip in schedule.*

- Legal and contractual considerations for privatization issues. *These included necessary consistency of EA with the Request for Proposal and lack of common agreement on privatization issues and contractual processes. Care had to be taken to ensure that the NEPA documents and the program solicitation document contained the same information.*

Factors that Facilitated Effective Teamwork

- Standing agenda item. *The NEPA review was maintained as a line item to address in weekly project meetings.*

Process

Successful Aspects of the Public Participation Process

- Addressing local job loss. *The public was primarily concerned that existing positions would be eliminated; however, the NEPA process provided a forum to explain that this would not occur.*

- Web notification. *Notice of the availability of the EA was posted on our Web Site for the benefit of potentially affected and interested parties.*

- Use of local publications. *Notifications in our "Environmental Bulletin" appeared to have been successful.*

continued on page 18

Fourth Quarter FY 1998 Questionnaire Results

(continued from page 17)

- Piggybacking on another agency's procedures. *Integration of another Federal agency's permit notification procedures into DOE's NEPA process effectively made more comprehensive information available to a larger set of stakeholders.*

- Effective identification of stakeholders. *The Area Office provided excellent assistance in assistance for preparing a complete listing of the stakeholders who should receive the draft EA for comment.*

Usefulness

Agency Planning and Decision Making — What Worked

- Combining processes with another agency. *Integrating the U.S. Army Corps of Engineers' Section 404 wetlands process into the DOE NEPA process provided more comprehensive environmental analysis to the public than would typically occur in the 404 process. Conversely, the 404 process enabled resolution of wetlands mitigation concerns upon which a mitigated FONSI could be based. The synergism of the combined processes was real; NEPA facilitated the 404 permit and vice versa. The result was an expedited project approval by the host State and by the Corps.*

- Maximizing the use of EA in project planning and decision making. *The environmental assessment was a good document upon which to base a decision regarding whether to prepare an environmental impact statement. The NEPA process was also very useful in deciding how several aspects of the project would be conducted. It also increased awareness of the need to complete several hazard analyses on time.*

- Incorporating NEPA into privatization process. *The NEPA process forced us to render consistent decisions related to site privatization and reuse processes and corresponding contractual requirements.*

Agency Planning and Decision Making— What Didn't Work

- Underestimating the need for DOE staff involvement. *Support contractor effort would have been much more efficient if Chapter 1, "Purpose and Need for Action," and Chapter 2, "Proposed Action and Alternatives," had been prepared by Federal staff as part of internal scoping and if Federal staff had been more actively involved in structuring the initial draft of Chapter 4, Environmental Impacts. NEPA Document Managers must keep in mind that no EA is so simple or brief that they can drop their guard in overseeing the contractor.*

- Disagreement between program offices. *A related site-wide EIS was being prepared at the same time as our EA, and several coordination meetings were required to define how the environmental impacts would be analyzed in each document. After we thought this issue had been resolved, the site-wide EIS program office indicated a change of position, which delayed obtaining concurrence from the site-wide program office near the end of the EA process.*

Enhancement/Protection of the Environment

- Historical resources protected. *The NEPA process facilitated the appropriate relocation of historic artifacts.*

Cost

What Didn't Work

- Adding extraneous information. *The addition of unconnected information on all of the program's research and development projects to the assessment probably doubled the cost of the EA.*

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 decision making.

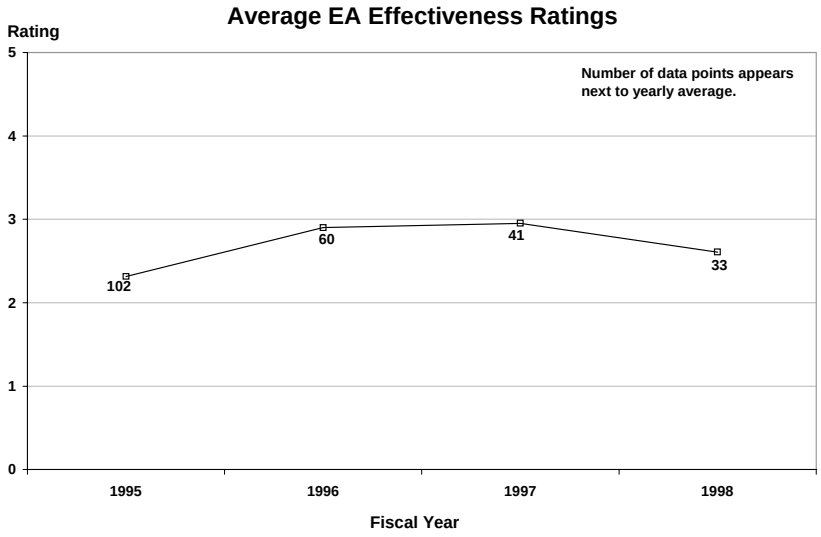
For this quarter, in which 11 EAs and one EIS were completed, nine respondents provided effectiveness ratings for five of the documents (multiple responses were received for three of the EAs). Of these nine respondents, seven rated the NEPA process as "effective." LL

Effectiveness of the NEPA Process

The charts and text below summarize four years of questionnaire data on the effectiveness of the DOE NEPA process. In the questionnaire, respondents are asked to rate the effectiveness of the NEPA process on a scale of 0 to 5, where 0 means "not effective at all" and 5 means "highly effective." The charts present the annual average of these effectiveness ratings. The accompanying text summarizes common explanations given by respondents for their ratings.

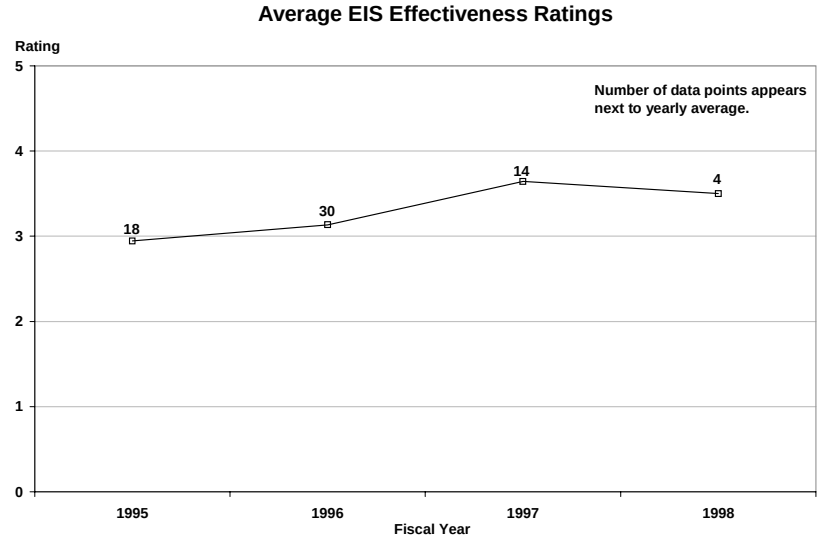
Effective Measures

- Having an experienced document manager — one who provides leadership and maintains "constant vigilance" over the process.
- Early application of NEPA, including a well-defined statement of purpose and need and a full description of the proposed action and alternatives.
- Good teamwork with frequent and open communication among all involved and affected parties.
- Delegation of NEPA document authority to field organizations.
- A well-conceived management plan and a realistic schedule.



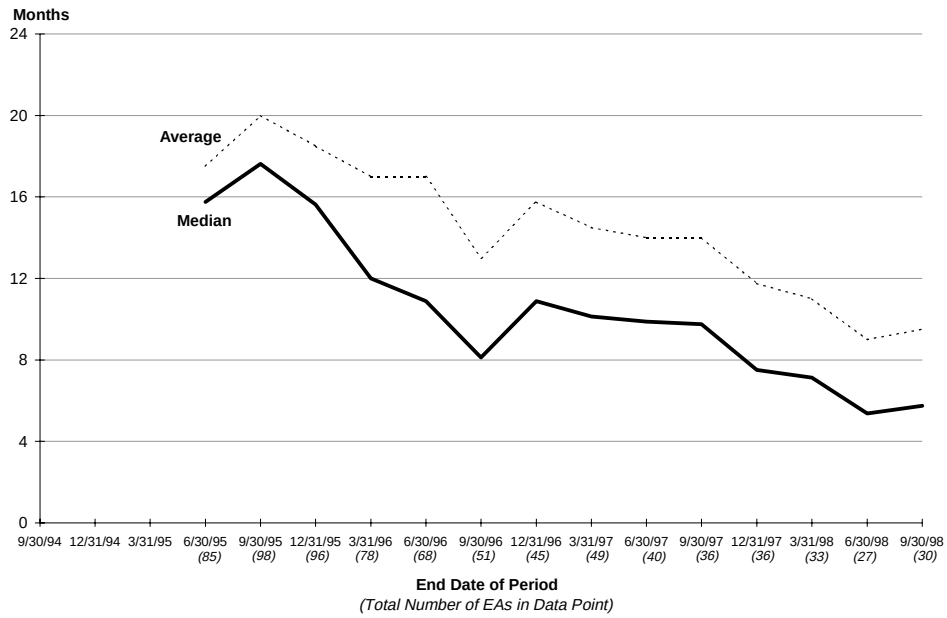
Non-effective Measures

- Viewing NEPA as just another part of project paperwork, not as a planning tool.
- Inexperienced document managers and authors.
- Late changes in project scope or design, or incomplete design information.
- Lack of communication among team members.



EA Completion Times and Costs

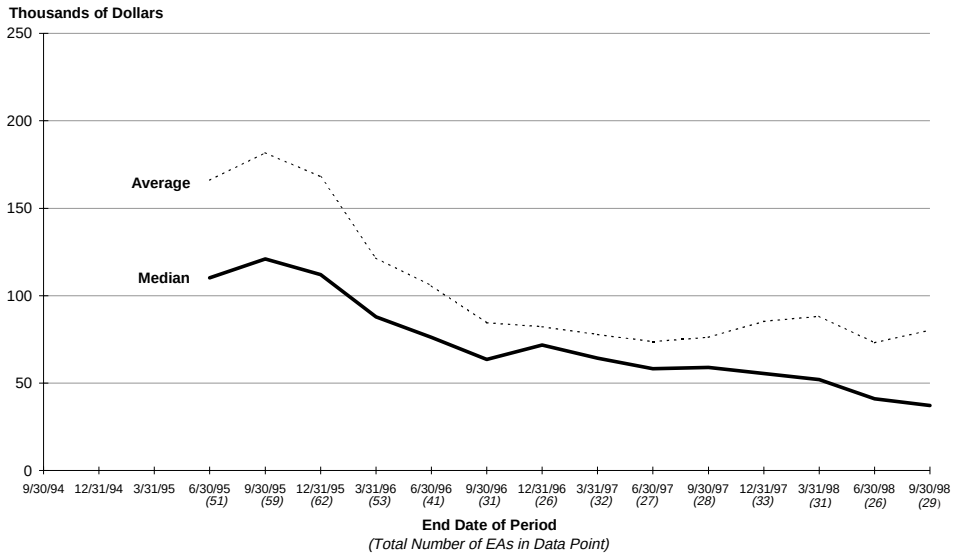
EA Completion Times
12-month moving trendline, revised quarterly*



Completion Time Data

- For this quarter, the median completion time of nine EAs was 7 months; the average completion time was 8 months.
- For FY 1998, the median completion time of 31 EAs was 7 months; the average completion time was 10 months.

Total EA Costs
12-month moving trendline, revised quarterly*



Cost Data

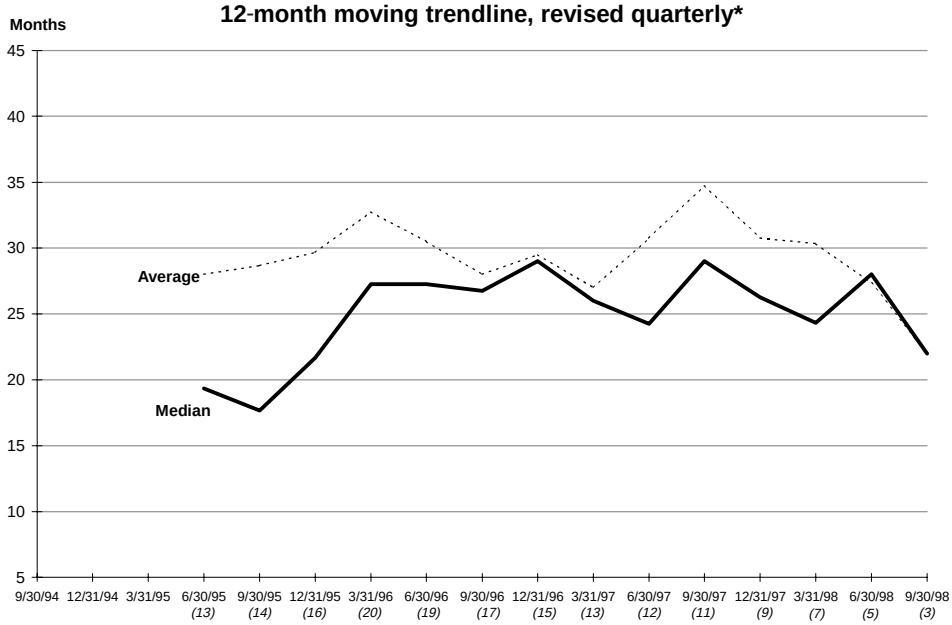
- For this quarter, the median cost of eight EAs was $38,000; the average cost was $90,000.
- For FY 1998, the median cost for the preparation of 30 EAs was $28,000; the average cost was $84,000.

** Each data point represents EAs completed within the 12-month period ending on the indicated date. This technique tends to smooth out quarterly changes. Therefore, each EA is counted in up to four data points.*

EIS Completion Times and Costs

All of the three EISs completed in FY 1998 were project-specific; no programmatic or site-wide EISs were completed.

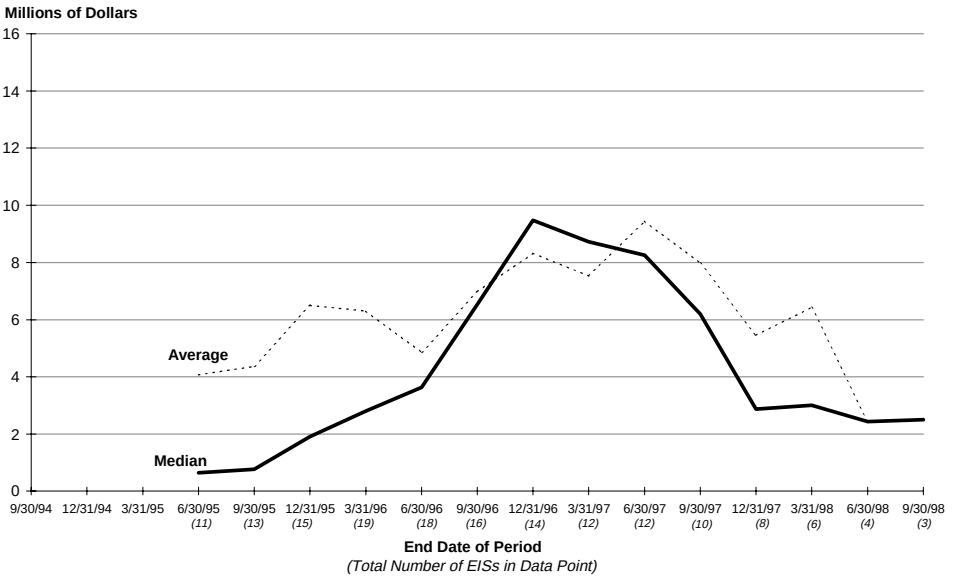
EIS Completion Times
12-month moving trendline, revised quarterly*



Completion Time Data

- For FY 1998, the median completion time of three EISs was 21 months; the average completion time was 22 months.

Total EIS Costs
12-month moving trendline, revised quarterly*



Cost Data

- For FY 1998, the median cost for the preparation of three EISs was $2.4 million; the average cost was $2.5 million.

** Each data point represents EISs completed within the 12-month period ending on the indicated date. This technique tends to smooth out quarterly changes. Therefore, each EIS is counted in up to four data points.*

Other EIS-related Documents
(July 1 to September 30, 1998)

Notice of Intent	DOE/EIS#	Date
Supplemental EIS for the National Ignition Facility Portion of the Programmatic EIS for Stockpile Stewardship and Management	DOE/EIS-0236-S	9/25/98 (63 FR 51341)
Draft EISs		
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory	DOE/EIS-0290	July 1998
Production of Tritium in a Commercial Light Water Reactor	DOE/EIS-0288	August 1998
Records of Decision		
Waste Management Programmatic EIS, Treatment of Non-Wastewater Hazardous Waste	DOE/EIS-0200	8/5/98 (63 FR 41813)
Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS, amended	DOE/EIS-0229	8/13/98 (63 FR 43386)
Bonneville Power Administration/Lower Valley Power and Light Transmission Project, Wyoming	DOE/EIS-0267	8/21/98 (63 FR 44853)
Supplement Analyses		
Acceptance of Foreign Research Reactor Spent Nuclear Fuel Under Scenarios Not Specifically Mentioned in the EIS, Foreign Research Reactor Spent Nuclear Fuel Programmatic EIS (*No further NEPA review required)*	DOE/EIS-0218-SA-02	August 1998
AL-R8 Sealed Insert Container for the Pit Repackaging Program, EIS for the Continued Operation of the Pantex Plant (*No further NEPA review required)*	DOE/EIS-0225-SA-02	August 1998
Storing Plutonium in the Actinide Packaging and Storage Facility and Building 105-K at the Savannah River Site, Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS (amended DOE/EIS-0229 Record of Decision) *(No further NEPA review required)*	DOE/EIS-0229-SA-02	August 1998
Environmental Effects of Changes in DOE's Preferred Alternative for Management of SNF from the K-Basins *(No further NEPA review required)*	DOE/EIS-0245-SA-01	August 1998

Recent EIS Milestones (October 1 to December 1, 1998)

Notices of Intent	DOE/EIS#	Date
Transfer of the Heat Source/Radioisotope Thermoelectric Generator Assembly and Test Operations from the Mound Site	DOE/EIS-0302	10/02/98 (63 FR 53031)
Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Space Missions	DOE/EIS-0299	10/05/98 (63 FR 53398)
Minnesota Agri-Power Project: Biomass for Rural Development, Granite Falls, Minnesota	DOE/EIS-0300	10/07/98 (63 FR 53885)
NRG Energy Services, Inc., Arizona-Baja California 500 kV Transmission Line	DOE/EIS-0301	10/26/98 (63 FR 57109)
Draft EISs		
Sutter Power Plant and Transmission Line Project, California	DOE/EIS-0294	October 1998
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona	DOE/EIS-0297	October 1998
Record of Decision		
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado	DOE/EIS-0277	12/01/98 (63 FR 66136)

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

March 1, 1999; Issue No. 18 For First Quarter FY 1999

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

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

Dr. Michaels said that in considering the suitability of the Yucca Mountain site for a geologic repository for spent nuclear fuel and high-level radioactive waste, for example, the environmental impact statement will be an essential document, used by both decision makers and the public. "The NEPA process provides an open and inclusive forum for the nation to address this significant issue," he said.

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

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

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

Believes in NEPA and Lessons Learned

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

continued on page 3

Inside *LESSONS LEARNED*

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

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Integrated Safety Management Workshop Planned

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

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

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

Be Part of Lessons Learned

We Welcome Contributions

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

Second Quarter Questionnaires Due April 30, 1999

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

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

Feedback on LLQR

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

LLQR Online

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

LLQR Index

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

Assistant Secretary Michaels (continued from page 1)

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

Including Environment in Integrated Safety Management Is a Priority

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

Background in Occupational and Environmental Health

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

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

Society Promotes Lessons Learned Exchange at DOE

Lesson Learned – A "good work practice" or innovative approach that is captured and shared to promote repeat application. It may also be an adverse work practice or experience that is captured and shared to avoid recurrence.
DOE Lessons Learned Standard (DOE-STD-7501-95; May 1995)

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

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

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

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

Partnering Facilitates SPR Pipeline EA

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

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

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

Government-Industry Partnership

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

Initially, Shell Pipe Line Corporation (renamed Equilon Enterprises LLC in 1998) anticipated connecting the Bayou Choctaw Pipeline with one or more third-party pipelines to provide commercial pipeline capability to Baton Rouge refiners located about 16 miles north of the SPR Bayou Choctaw Facility. This plan fell through, however, and Equilon subsequently proposed to construct a new underground crude oil pipeline from the Bayou Choctaw Facility to the Baton Rouge market: a 16-mile pipeline, 24 inches in diameter, to carry 100,000 barrels of oil per day. To allow recovery of the required capital investment, Equilon asked DOE to restructure its annual lease to a 10-year lease. Because DOE's long-term leasing of the existing pipeline would result in the private party construction of a new pipeline, this new proposed action triggered the need for additional environmental review under NEPA.

Interagency Coordination Was Key

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

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

continued on page 5

A Section 404 Primer

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

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

Effective Integration of NEPA and Wetlands Protection Processes

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

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

Mitigation Will Restore Environment

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

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

Selected Project Chronology

February 1998
- DOE made NEPA determination and began EA preparation

March 1998
- Equilon submitted Section 404 permit application to Corps of Engineers
- DOE and Corps of Engineers agreed to integrate NEPA and permit processes

April 1998
- Corps of Engineers issued public notice of Section 404 permit application

May 1998
- U.S. Fish and Wildlife Service responded to Corps of Engineers public notice
- DOE published notice of floodplain and wetlands involvement

June 1998
- U.S. Fish and Wildlife Service responded to DOE floodplain/wetland notice
- Equilon obtained State approval of right-of-way and completed Section 404 permit application

July 1998
- DOE issued EA for pre-approval review
- U.S. Fish and Wildlife Service commented on the EA

August 1998
- Louisiana Departments of Environmental Quality and Wildlife and Fisheries commented on EA
- Louisiana Department of Wildlife and Fisheries approved compensatory wetland mitigation action plan; Corps of Engineers attached plan to permit application

September 1998
- DOE approved EA and issued mitigated FONSI
- Corps of Engineers adopted EA and issued Section 404 permit
- Applicant began construction

(additional concurrent State activities are not listed)

An EIS Needs an Index

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

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

Creating a useful index requires planning and judgment. While word processing software facilitates generating an index, it is not an entirely automated function. During EIS preparation, the NEPA Document Manager, subject area specialists, public involvement staff, and technical editors all should help identify key words. Preparing an index is a craft, however, and an index specialist can likely coordinate the job best.

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

Recommendations:

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

When We Don't Know, Say So

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

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

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

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

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

Recommendations:

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

Extending Public Comment Periods

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

DOE EIS Public Comment Periods Have Varied

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

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

Timeliness of Extension Notice

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

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

Recommendations

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

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

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

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

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

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

NAEP to Hold 24th Annual Conference in June

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

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

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

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

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

Training Opportunities

Implementation of the National Environmental Policy Act on Federal Land and Facilities
Durham, NC: April 5-9, 1999
Fee: $960

New Advances in Ecological Risk Assessment
Durham, NC: April 12-15, 1999
Fee: $960

Cumulative Effects Assessment under the National Environmental Policy Act
Durham, NC: May 3-5, 1999
Fee: $595

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

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

Advanced Environmental Laws and Regulations
Scottsdale, AZ: March 25-26, 1999
Fee: $999

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

Reducing Your Vulnerability to Litigation
Kansas City, MO: June 24, 1999
(See NAEP Conference announcement, above)
Fee: $75

Advanced Environmental Scoping and Decision Analysis
Kansas City, MO: June 24, 1999
(See NAEP Conference announcement, above)
Fee: $75

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

Reviewing NEPA Documents
Reno, NV: April 20-22, 1999
Fee: $795

How to Manage the NEPA Process and Write Effective NEPA Documents
Phoenix, AZ: May 18-21, 1999
Fee: $995

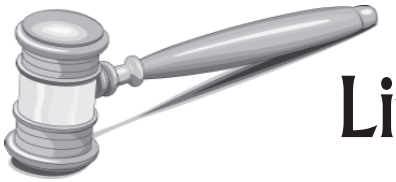
Managing the Environmental Impact Analysis Process
San Antonio, TX: April 26-29, 1999
Washington, DC: June 15-18, 1999
Fee: $995

Shipley Environmental
Phone: 888-270-2157
e-mail vonnie@shipleyenviro.com
http://www.shipleyenviro.com

DOE-wide NEPA Contracts Update

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

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



Litigation Updates

Department Settles SSM PEIS and WM PEIS Lawsuit

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

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

1. Establish and maintain a central database, with links to other DOE databases, available to the public on the Internet and updated annually, with information on:

   (a) contaminated environmental media, contaminated facilities, and waste controlled by the Office of Environmental Management;

   (b) contaminated facilities and waste generated by programs managed by the Offices of Defense Programs, Science, and Nuclear Energy;

   (c) DOE-managed domestic and foreign research reactor spent nuclear fuel;

   (d) closed low-level waste disposal facilities transferred to DOE under Section 151(b) of the Nuclear Waste Policy Act; and

   (e) sites managed under the Formerly Utilized Sites Remedial Action Program, if returned to DOE for management.

2. Conduct a minimum of two national stakeholder forums to address issues relating to implementation of the database. (The first will be held in June 1999 under the terms of the Joint Stipulation.)

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

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

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

Other DOE Cases of Interest

Plaintiff Files Summary Judgment Motion in EBR II Litigation

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

continued on page 11

DOE Sued to Produce Information; Special Counsel Investigation Requested

On November 12, 1998, Tri-Valley Communities Against a Radioactive Environment (Tri-Valley CARES) sued to compel DOE to produce information relating to certain activities at Los Alamos National Laboratory (LANL) and Lawrence Livermore National Laboratory (LLNL). The complaint, filed in the United States District Court for the Northern District of California, concerns two Freedom of Information Act (FOIA) requests by Tri-Valley CARES: one for a document referenced in the LANL Institutional Plan, and the other for documents concerning the air filters and the adequacy of the air filtration methods used at the LLNL main plutonium facility. According to the complaint, DOE did not provide any of the requested documents within the 20-day period required under FOIA, and DOE has a "pattern and practice" of failing to respond to FOIA requests within the required 20-day period.

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

Executive Order Issued on Invasive Species

NEPA Guidance to Be Developed by Three-Agency Council

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

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

(1) prevent the introduction of invasive species,

(2) detect and respond quickly to and control invasive species populations,

(3) monitor invasive species populations,

(4) provide for restoration of native species and habitat conditions where invasions have occurred,

(5) conduct research and develop technologies to control and prevent introduction of invasive species, and

(6) promote public education.

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

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

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

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

Documents Issued Between October 1 and December 31, 1998

Completed EAs and EISs

EAs

Albuquerque Operations Office/Defense Programs
DOE/EA-1250 (12/23/98)
Strategic Computing Complex at the Los Alamos National Laboratory, Los Alamos, New Mexico
Cost: $65,000
Time: 10 months

Savannah River Operations Office/ Environmental Management
DOE/EA-1246 (10/07/98)
A-01 Outfall Constructed Wetlands at the Savannah River Site, Aiken, South Carolina
Cost: $24,000
Time: 8 months

Western Area Power Administration
DOE/EA-1278 (10/20/98)
Refinement of the Power Delivery Component of the Southern Nevada Water Authority Treatment and Transmission Facility
[**Note**: DOE adopted this EA from the Bureau of Reclamation; therefore, cost and time information do not apply to DOE.]

Final EISs

(No EISs were completed in this quarter.)

Other EIS-related Documents

Notices of Intent

DOE/EIS-0302
Transfer of the Heat Source/Radioisotope Thermoelectric Generator Assembly and Test Operations from the Mound Site
10/02/98 (63 FR 53031)

DOE/EIS-0299
Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Space Missions
10/05/98 (63 FR 53398)

DOE/EIS-0300
Minnesota Agri-Power Project: Biomass for Rural Development, Granite Falls, Minnesota
10/07/98 (63 FR 53885)

DOE/EIS-0301
NRG Energy Services, Inc. Arizona-Baja California 500 kV Transmission Line
10/26/98 (63 FR 57109)

DOE/EIS-0303
Savannah River Site Tank Closure, Aiken, South Carolina
12/29/98 (63 FR 71628)

Draft EISs

DOE/EIS-0294
Sutter Power Plant and Transmission Line Project, California
10/30/98 (63 FR 58379)

DOE/EIS-0297
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona
11/6/98 (63 FR 59988)

DOE/EIS-0247
Spallation Neutron Source, Oak Ridge National Laboratory, Oak Ridge, Tennessee
12/24/98 (63 FR 71285)

DOE/EIS-0279
Management of Spent Nuclear Fuel at the Savannah River Site, Aiken, South Carolina
12/24/98 (63 FR 71285)

Record of Decision

DOE/EIS-0277
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado
12/01/98 (63 FR 66136)

Supplement Analyses

DOE/EIS-0265-SA-11
Burgdorf Conservation Easement, Watershed Management Programmatic EIS in Oregon, Idaho, Washington and Montana
(Decision: No further NEPA review required)
December 1998

DOE/EIS-0082-SA-01
High-Level Waste Salt Disposition Alternative Evaluation, Defense Waste Processing Facility Supplemental EIS
(Decision: Prepare second supplemental EIS)
December 1998

What Worked and Didn't Work in the NEPA Process

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

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

Scoping and Data Collection/ Analysis

What Didn't Work

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

Schedule

Factors that Facilitated Timely Completion of Documents

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

Factors that Inhibited Timely Completion of Documents

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

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

Factors that Facilitated Effective Teamwork

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

Process

Successful Aspects of the Public Participation Process

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

Unsuccessful Aspects of the Public Participation Process

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

Usefulness

Agency Planning and Decision Making—What Worked

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

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What Worked and Didn't Work in the NEPA Process

(continued from page 13)

Enhancement/Protection of the Environment

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

Effectiveness of the NEPA Process

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

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

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

Notices of Intent

DOE/EIS-0305
Transuranic Waste Treatment Project at the Oak Ridge Reservation, Oak Ridge, Tennessee
1/27/99 (64 FR 4079)

DOE/EIS-0307
Public Service Company of New Mexico, Arizona-Sonora, Mexico Transmission Lines
2/12/99 (64 FR 7173)

DOE/EIS-0306
Electrometallurgical Treatment of Sodium-Bonded Spent Nuclear Fuel at Argonne National Laboratory-West, Idaho National Engineering and Environmental Laboratory
2/22/99 (64 FR 8553)

DOE/EIS-0082-S2
Supplemental EIS for the Replacement of the In-Tank Precipitation Process at the Savannah River Site, Aiken, South Carolina
2/22/99 (64 FR 8558)

Draft EIS

DOE/EIS-0293
Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
2/26/99 (64 FR 9483)

Final EISs

DOE/EIS-0290
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory
2/12/99 (64 FR 7190)

DOE/EIS-0238
Los Alamos National Laboratory Site-wide, Los Alamos, New Mexico
2/19/99 (64 FR 8338)

Records of Decision

DOE/EIS-0183
Power Subscription Strategy under the Bonneville Power Administration's Business Plan
1/04/99 (64 FR 149)

DOE/EIS-0277
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado; second ROD (for seven categories of residues)
2/18/99 (64 FR 8068)

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

June 1, 1999; Issue No. 19 For Second Quarter FY 1999

Consolidated Decision Ends "Tritium Trilogy" Tale

By: Jay Rose, *Office of Defense Programs*

When Secretary of Energy Bill Richardson signed the Consolidated Record of Decision for Tritium Supply and Recycling on May 6, 1999, he ended a three-year decision making process. This effort had been a high priority for the Office of Defense Programs (DP) since December 1995, when former Secretary O'Leary announced the Department's decisions stemming from the Tritium Programmatic EIS (DOE/EIS–0161) – an announcement that set off a "chain reaction" that would rock DP's world. The programmatic decision triggered the need for DP to prepare simultaneously three related, high-profile project EISs, which became known as the "Tritium Trilogy."

The story begins with the Tritium Programmatic Record of Decision (60 FR 63878; December 12, 1995), in which DOE selected a "dual track" strategy to further evaluate the two most promising tritium supply alternatives: (1) irradiating tritium-producing rods in a commercial light water reactor, and (2) developing a new tritium production linear accelerator, identifying the Savannah River Site in South Carolina as the location for the accelerator, should DOE decide to build one. In addition, DOE decided to construct a new tritium extraction capability at Savannah River.

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Mexican spotted owls are among the protected species at Los Alamos National Laboratory.

NEPA and Habitat Management Plan: Environmental Synergy

By: Elizabeth Withers, *NEPA Compliance Officer, Los Alamos Area Office, with* John Stetson, *Pacific Western Technologies, Ltd.*

On the day DOE issued the Draft EIS for the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility at Los Alamos National Laboratory (LANL), LANL biologists discovered a nesting pair of Mexican spotted owls (*Strix occidentalis lucida*) – which had only recently been listed as threatened – in the canyons directly below the proposed site. Today, this nest site, at the edge of a major explosives testing facility, is one of the most successful breeding nests of spotted owls in the entire Jemez Mountain range.

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Inside *LESSONS LEARNED*

Welcome to the second quarter FY 1999 Quarterly Report on lessons learned in the NEPA process. In addition to the articles beginning on page 1, this issue includes:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Stakeholder Appreciates Fossil Energy's Response

During an EIS public scoping period in March and April of this year for the Arizona-Sonora Interconnect Project (Public Service Company of New Mexico; DOE/EIS-0307), Arizona citizens and interested groups expressed strong concerns about one of three alternative transmission corridors that an applicant under Fossil Energy's Presidential permit program had proposed. (DOE issues Presidential permits under Executive Order 10485 for construction, connection, operation, and maintenance of electric transmission facilities at the U.S. international border.) Fossil Energy staff has worked with the applicant, Public Service Company of New Mexico, to determine additional reasonable alternative corridors and recently notified the public that it would seek additional scoping comments. One citizen's favorable response follows:

On April 13, 1999 I sent an e-mail to you expressing my opposition to proposed transmission towers on highways 82 & 83 in Santa Cruz County, Arizona.

Today I received an e-mail from you titled "Information Letter Regarding Public Service Company of New Mexico's Proposed Arizona-Mexico Transmission Project." In that e-mail you indicated that "residents and interested groups provided thoughtful comments that have led DOE and PNM to identify three additional alternative corridors for study in the EIS (Alternatives 4, 5, and 6 on the DOE Fact Sheet)."

I realize the final decision has not been made, but I feel like I Have Been Heard and Responded To. I can't ask for more than that (except of course to get my own way).

Thank you, thank you! Perhaps there is something to all this new technology after all.

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by July 30, 1999. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone 202-586-9326.

Third Quarter Questionnaires Due July 30, 1999

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

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

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

Historic Preservation Section 106 Regulations Revised

The Advisory Council on Historic Preservation has revised its regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act. This final rule (64 FR 27044; May 18, 1999), which becomes effective June 17, 1999, implements the 1992 amendments to the Act and streamlines the previous regulations. A major new section, 36 CFR 800.8, allows agencies to comply with Section 106 requirements within the NEPA process.

Enhanced Coordination of National Historic Preservation Act and NEPA Processes

In the preamble to the revised regulations, the Council states its belief that "it has streamlined coordination with the NEPA process to the largest extent possible without unduly sacrificing the key components of the section 106 process." Under 36 CFR 800.8, an agency may use the process and documentation required for an EA or EIS to comply with Section 106 in lieu of the procedures set forth in 36 CFR 800.3 to 800.6, provided that the agency notifies the public and the Council and meets certain "standards." The standards address procedures for identifying historic properties, providing for early consultations, conducting public participation and agency reviews, resolving objections, and mitigating adverse impacts.

Native American Roles Defined and Strengthened

Also, under the revised Section 106 review process, state and local governments, Native American tribes, and the public will be more directly involved in Federal activities affecting historic properties. The regulations now particularly emphasize the role of Native American tribes. There are specific provisions for obtaining a tribe's consent when an action occurs on, or affects historic properties on, tribal lands, and for consulting with Native American tribes that attach religious and cultural significance to historic properties off tribal lands. The revised regulations also provide for a Tribal Historic Preservation Officer (THPO) to substitute for the State Historic Preservation Officer (SHPO) when the tribal official has assumed the responsibilities of the SHPO for tribal lands.

Greater Deference to Federal Agency–SHPO/THPO Decision Making

The Advisory Council will also no longer review routine decisions agreed to by the Federal agency and the SHPO or THPO. Instead, the Council will focus on "those situations where its expertise and national perspective can enhance the consideration of historic preservation issues."

The Office of NEPA Policy and Assistance is sending copies of the revised regulations to NEPA Compliance Officers and others in the DOE NEPA Community. For more information on the National Historic Preservation Act, the Advisory Council, and the Section 106 process, visit the Advisory Council Web Site at http://www.achp.gov or contact Lois Thompson, Office of Environmental Policy and Guidance, at lois.thompson@eh.doe.gov or phone 202-586-9581. For questions on incorporating Section 106 process requirements into the NEPA process, contact Katherine Nakata at katherine.nakata@eh.doe.gov or phone 202-586-0801.

Section 106/36 CFR Part 800 Requirements

Section 106 of the National Historic Preservation Act requires Federal agencies to "take into account" the effects of its undertakings on historic properties – i.e., properties listed in or eligible for the National Register of Historic Places – and to afford the Advisory Council on Historic Preservation an opportunity to comment on those undertakings and effects. The Advisory Council, an independent Federal agency created by the National Historic Preservation Act, promulgates regulations entitled "Protection of Historic Properties" (36 CFR Part 800) that implement Section 106. The National Park Service, which administers and maintains the National Register of Historic Places, establishes the criteria for listing properties (36 CFR Part 60).

In the Section 106 process (specified in 36 CFR Part 800), the responsible Federal agency identifies historic properties, reviews background information, and conducts consultations. The purpose of the review and consultation is to identify historic properties that could be affected by a proposed Federal action and to seek ways to avoid or minimize adverse effects. In addition to the Advisory Council, which oversees and administers the process, the agency may consult with the State Historic Preservation Officer (and, if applicable, the Tribal Historic Preservation Officer) and other participating parties.

The "Tritium Trilogy" (continued from page 1)

Three Coordinated EISs Tiered from the Programmatic EIS

Based on commitments in the Programmatic EIS Record of Decision, DP proceeded to tier three project-specific EISs: the "Tritium Trilogy" (text box, below).

While it is not unusual to tier a project-specific EIS from a Programmatic EIS, the tritium NEPA strategy was unusual because the three project-specific EISs shared more than just a similar schedule. What really "rocked" DP's NEPA world was the degree of inter-relatedness among the three tiered EISs – they even shared alternatives:

- No Action for the Commercial Reactor EIS was the Proposed Action for the Accelerator EIS, and No Action for the Accelerator EIS was the Proposed Action for the Commercial Reactor EIS.
- The alternatives for a new tritium extraction capability at the Savannah River Site included not only those in the Tritium Extraction EIS, but also an alternative in the Accelerator EIS that incorporated tritium extraction capability within the accelerator facility.
- The tritium extraction facility was to be capable of extracting tritium not only from commercial reactor targets but also from the alternative accelerator production targets.

The relationships among these technically complicated proposed actions and alternatives would normally indicate that the proposals should be analyzed in a single EIS. After considerable thought, however, DOE decided that three narrowly focused – but carefully coordinated – EISs would be easier to write and to understand, and more useful to the public and DOE. The bottom line was to prepare three tiered, project-specific EISs with common goals: consistency, clarity, accuracy, legal adequacy, and complete analysis of potential impacts to affected resource areas.

Communicate Clearly

The most important factor in successful cooperation is full and open communication. Projects often suffer difficulties or delay because someone, somewhere, did not communicate fully and openly. In the case of the Tritium Trilogy, without such communication, the no action alternatives in the Commercial Reactor EIS and the Accelerator EIS could have been inconsistent, or the alternative of combining the tritium extraction capability with the accelerator facility might not have been analyzed.

Meet Early on "Framework" Issues

One of the best methods for resolving technical and management issues is to meet with the Environment, Safety and Health (EH) Office of NEPA Policy and Assistance, General Counsel (GC), and any other involved Program Offices well before preparing the Notice of Intent. This enables the EIS Document Manager to brief the "team" on the purpose and need and proposed actions, and for the team to design an appropriate NEPA strategy. This "internal scoping" process promotes common understandings among the participants and provides time to resolve issues before public scoping begins. The result is a smarter NEPA Document Manager, better informed EH and GC participants, more effective coordination with other involved offices, a carefully crafted NEPA strategy, a productive public scoping process, and ultimately, a better-informed public and decision maker.

Build Consistency into Your NEPA Documents

Once the interrelationships among the three EISs were recognized (working them out, of course, was an ongoing process), the documents could be prepared better. Communication was the key element in good management. Because both the Accelerator EIS and the Tritium Extraction EIS concerned the Savannah River Site, the two EIS preparation teams shared "affected

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The "Tritium Trilogy"

Final EIS for the Accelerator Production of Tritium at the Savannah River Site
(DOE/EIS–0270)
NEPA Document Manager: Richard Rustad, SR

Final EIS for the Construction and Operation of the Tritium Extraction Facility at the Savannah River Site
(DOE/EIS–0271)
NEPA Document Manager: John Knox, SR

Final EIS for the Production of Tritium in a Commercial Light Water Reactor
(DOE/EIS–0288)
NEPA Document Manager: Jay Rose, DP

The "Tritium Trilogy" (continued from previous page)

environment" data. This enabled each document team to use resources efficiently while providing accurate and consistent data. With respect to the Commercial Reactor EIS, coordination with the Tritium Extraction EIS preparation team was essential because the tritium extraction facility would extract tritium from the rods that were irradiated inside a commercial reactor. It would have been problematic if the Commercial Reactor EIS discussed irradiating 4,000 rods per year while the Tritium Extraction EIS discussed a capability to extract 2,000 rods per year. Likewise, it would be inconsistent for the Tritium Extraction EIS to evaluate operations beginning in 2002 if the commercial reactors were not expected to provide irradiated rods to the tritium extraction facility until 2005.

Make Complex Matters Clear

DOE's complex and dynamic proposed actions can be quite challenging to understand and explain. But if our plans do not make sense to us, how can we expect the public to do any better?

To aid understanding, each of the project-specific tiered EISs contained a common preface to explain the relationships among the projects. Staff from the Savannah River Site, DP, the DOE NEPA Office, and GC participated in preparing this common preface.

After publishing the three draft EISs, DOE received many comments that applied to more than one of the EISs. Many public comments on the Commercial Reactor EIS and the Accelerator EIS overlapped on issues such as nonproliferation, cost, or technical capability. This crosscutting required close teamwork among the NEPA Document Managers to ensure that responses in both EISs were accurate and consistent. We did not want two EISs to give different answers to the same comment!

Finally, after issuing the three Final EISs, DOE published a consolidated Record of Decision (text box) to avoid confusion that might have resulted from three separate RODs. While this, too, challenged our communication skills, the goal – to inform stakeholders and to direct those who must carry out the decisions – was worth it.

In conclusion – while the Tritium Trilogy may have rocked DP's NEPA world – in the end the Department kept the beat.

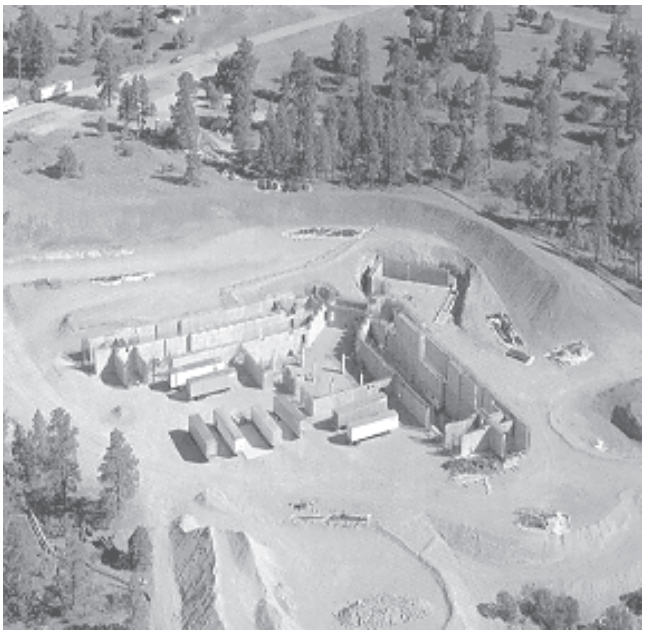
Consolidated Record of Decision for the Tritium Supply Program

DOE's Consolidated Record of Decision for Tritium Supply and Recycling (64 FR 26369; May 14, 1999) describes DOE's plans for a new domestic source for tritium to support the nuclear weapons stockpile. First, this Record of Decision documented Secretary Richardson's December 22, 1998, announcement selecting the commercial light water reactor alternative as the primary tritium supply, and designating an accelerator system at the Savannah River Site as the backup tritium supply source (although the decision did not authorize accelerator construction). Further:

- The Tennessee Valley Authority's Watts Bar Unit 1, Sequoyah Unit 1, and Sequoyah Unit 2 reactors are the specific commercial light water reactors that will provide irradiation services needed to produce tritium.
- The H-Area within the Savannah River Site will be the location for a new tritium extraction facility.
- DOE selected specific technologies and a specific location at the Savannah River Site for the accelerator production of tritium, should an accelerator be needed.

LANL Habitat Plan (continued from page 1)

Looking back over the DARHT project's history, we can discern many NEPA lessons learned. (See, for example, the case study on DARHT in the *Lessons Learned Quarterly Report*, December 1995, page 12, and the Legal Update in June 1996, page 8.) But while the DOE NEPA process for the DARHT facility EIS ended – at least in a technical sense – in January 1996 with the issuance of the Mitigation Action Plan, the environmental stewardship and efficiency initiated by this NEPA process continue.



The nesting site (not shown) is at the edge of the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility.

NEPA Process Leads to Site-wide Habitat Management Plan

LANL sits atop the Pajarito Plateau at an elevation of about 7,000 feet. Erosion has produced a series of finger-like mesas separated by deeply incised canyons. The remote setting, combined with limited public access, made the site suitable for its original defense-related mission and also preserved threatened and endangered species habitats.

After the discovery of the Mexican spotted owls in 1995, DOE and the U.S. Fish and Wildlife Service (USFWS) agreed through the Endangered Species Act consultation process on specific mitigation measures for management of threatened and endangered species habitat. The Record of Decision for the DARHT Facility EIS (60 FR 53588; October 10, 1995) documents these commitments. The Mitigation Action Plan, which followed from the Record of Decision, specifies DOE's plans for implementing these measures.

In accordance with the Record of Decision and the Mitigation Action Plan, DOE and LANL in March 1996 began to develop a site-wide management plan for the long-term protection of LANL's threatened and endangered species. (LANL also contains habitat for bald eagles, peregrine falcons, southwestern willow flycatchers, and several state-listed species.) Under the direction of LANL Project Manager Teralene Foxx, LANL's Ecology Group completed the plan in October 1998 – slightly under the budget of $3 million and within the timeframe of three years. The plan sets goals and objectives, defines species-specific "Areas of Environmental Interest" – areas within LANL that are being protected because of their significance to biological and other resources (map, next page) – and defines levels of monitoring. According to the LANL group leader, Diana Webb, it is the first comprehensive, "fence-to-fence" management plan to consider all threatened and endangered species at a large DOE site. An important milestone was reached in February 1999 when the USFWS concurred with the plan. "Having this inter-agency agreement in hand means that we no longer have to address Endangered Species Act compliance under the piecemeal, case-by-case approach that we formerly used," Ms. Webb said.

Benefits Prove Long-lasting

The Habitat Management Plan has already saved time and money (box, next page). Previously, LANL prepared about 10 to 12 Biological Assessments per year at costs of $30,000 to $50,000 each. USFWS concurrence required three to six months. With the Habitat Management Plan now in hand, only large projects will require Biological Assessments – and these will have a substantial baseline on which to build. The Geographic Information System

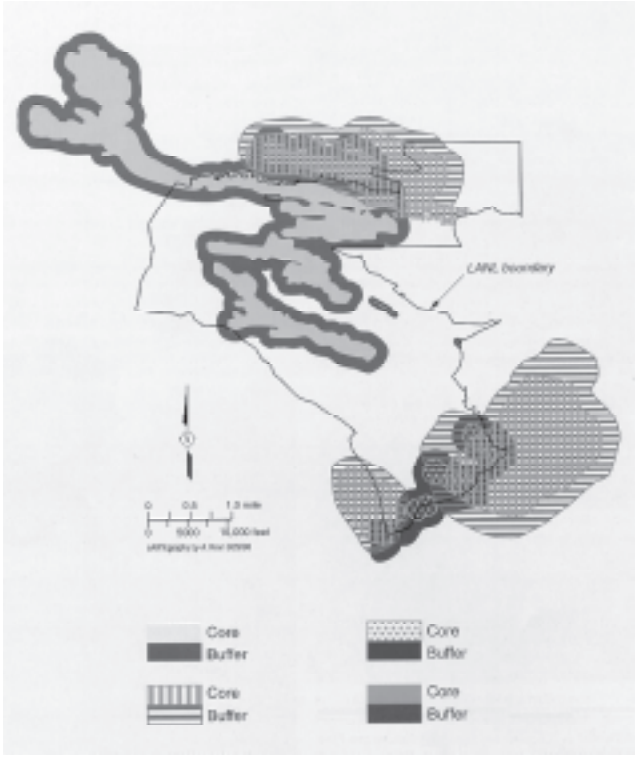
continued on next page

LANL Habitat Plan (continued from previous page)

database and mapping system used in this effort are available for future studies. Already two major EISs – the LANL Site-wide (DOE/EIS-0238, January 1999) and the Conveyance and Transfer of Certain Land Tracts at LANL (DOE/EIS-0293, Draft, February 1999) – have integrated this information into their Ecological Resources analysis. As a result of the Habitat Management Plan process, coordination between DOE and USFWS has been streamlined.

The NEPA process for the DARHT facility not only analyzed impacts to valuable biological resources, but also provided a legacy of mitigation measures developed through inter-agency coordination. We now have a better understanding of threatened and endangered species at LANL. More importantly, the site-wide management program for protection of biological resources will provide important information for decision making regarding future proposed actions.

For more information about the NEPA process for the DARHT facility, contact Elizabeth Withers at ewithers@doe.lanl.gov or phone 505-667-8690. For copies of the Threatened and Endangered Habitat Management Plan Overview and a compact disc of LANL's reports (box, below), or for any related questions, contact Teralene Foxx at foxxt@lanl.gov or phone 505-667-3024.



Buffer areas protect core "Areas of Environmental Interest" within Los Alamos National Laboratory.

Habitat Management Plan Promotes Efficiency in NEPA Reviews

The Habitat Management Plan has proven beneficial to NEPA reviews at LANL, including EAs and categorical exclusions. For an ongoing EA on siting a new power line to the Laboratory, for example, information in the plan enabled the Laboratory Utilities Division to avoid critical habitats from the beginning, thus avoiding potential redesign costs and delays. These avoidances, although not directly quantifiable, are nevertheless important benefits.

Compact Disc Earns Award

LANL published the 30 separate reports related to the Habitat Management Plan (more than 1,850 pages) on compact disc, saving $40,000. Some 254,000 sheets of paper – 25 trees – were spared, as well as the associated printing chemicals. For this innovation, LANL's Environmental Management Division presented the LANL Ecology Group with a pollution prevention award on Earth Day 1999.

In addition, the team received Certificates of Appreciation for contributing to DOE's Pollution Prevention Program from Daniel W. Reicher, Assistant Secretary for Energy Efficiency and Renewable Energy.

Applying "Plain Language" to NEPA *Federal Register* Notices

By: Rita Smith, *DOE Federal Register Liaison, Office of General Counsel*
Yardena Mansoor, *Office of NEPA Policy and Assistance*

One year ago, the President directed Federal Agencies to use "plain language" to make government writing more "responsive, accessible, and understandable" to the public (63 FR 31883; June 10, 1998). His "Plain Language in Government Writing" memorandum set specific requirements for new regulations and documents that explain how to obtain a government benefit or service, or comply with a regulation. The memorandum also expressed a broad policy for all Federal government writing: ***language must serve the purpose of the communication and must be appropriate for the intended reader.***

The memorandum states that the benefits of plain language writing include saving the Government and private sector time, effort, and money. In recent *Federal Register* notices regarding NEPA matters, DOE has made progress in applying the Plain Language recommendations, but we have plenty of room for improvement. By targeting the content of NEPA notices to their purpose and readership, DOE can issue more effective notices.

In this article, we first outline content features of three types of EIS-related *Federal Register* notices and then present some plain language recommendations for writing them. (While the principles of plain language apply to all writing in the NEPA process, in this article we focus on NEPA *Federal Register* notices.)

Three EIS-related *Federal Register* Notices

DOE publishes three kinds of *Federal Register* notices in the EIS process: Notice of Intent to prepare an EIS, Notice of Availability including public involvement procedures (optional), and Record of Decision. Each notice has a distinct purpose and targeted readership, and consequently a desired content, both in terms of substance and style.

Purpose and Readership . . .

A **Notice of Intent** announces the beginning of an EIS process, invites public participation, and provides information to help the public decide whether and how to participate. The reader is not necessarily familiar with the NEPA process or the matter to be addressed in the EIS.

DOE usually publishes a **Notice of Availability** of a draft or final EIS (although a DOE notice is not required) to supplement the required Environmental Protection Agency (EPA) Notice of Availability. A DOE Notice announces the availability of the document and describes public participation activities. The readership includes people who are already informed about the EIS through their involvement in scoping and those who are not informed.

A **Record of Decision** announces and explains the decision. Readers are likely to have some knowledge of the subject.

. . . Have Implications for Substance and Style

Typically, a Notice of Intent identifies the purpose and need for agency action, the sites involved, a proposed action and alternatives that DOE proposes to evaluate, and categories of impacts that DOE would consider. A Notice of Intent also provides public participation information, such as a scoping meeting schedule and commenting procedures. A Notice of Intent should provide enough background information and technical detail for a reader with little previous knowledge of the subject.

EPA's Notice of Availability lists the EIS subject, potentially involved location(s), comment period closing date, and contact person. In contrast, a DOE Notice of Availability usually presents an overview of the EIS and provides detailed public involvement information (including schedule and procedures for a public hearing on a draft EIS), how to obtain copies of the EIS, where to examine background documents, and how to submit comments. A DOE Notice of Availability normally provides enough information for the public to decide whether to obtain the full EIS or its summary. It need not summarize the EIS or the procedural history of the NEPA process.

A Record of Decision states the decision, describes the alternatives considered, identifies the environmentally preferable alternative, explains how the agency balanced various factors in making its decision, and addresses minimizing environmental harm through mitigation. It provides a concise history of the review conducted, decisions made, any decisions deferred, and any additional NEPA review planned. Records of Decision often provide more technical details than the notices discussed above.

Plain Language Recommendations (continued from previous page)

We base these recommendations in part on the Plain Language Action Network resources (address below).

Use Common, Everyday Words to Aid Understanding

- Use ordinary (normally short) words and phrases.

Instead of:	Try using:
adjacent to	next to
due to the fact that	because
initiate	start, begin
in the event that	if
prior to	before

- Minimize technical terms, even if plain language requires more words. An ordinary dictionary may not include technical terms. For example, instead of "nonelutable resin," try "resin from which adsorbed material cannot be separated."
- Use technical terms when needed to specify meaning. For example, "poplar" refers to a different tree in the South (*Liriodendron tulipifera*) than in the rest of the country (genus *Populus*).
- When describing a material or process, choose one appropriate term and stick with it through the document. Otherwise, the reader is likely to assume that different terms mean different things. You may list the equivalent terms, then state which one will be used throughout the notice. For example, solids that settle at the bottom of a liquid-filled tank might be called settled solids, sludge, tank bottoms, or fines; precipitate (the noun) and precipitant mean the same thing; calcining and sintering are two names for one type of thermal treatment.
- Reduce the use of abbreviations, including acronyms. DOE recently published a Record of Decision with 12 abbreviations in three sentences! Use an abbreviation for a term, project, or facility that will be named repeatedly throughout the notice. Typically, "DOE," "EIS," and commonly used site abbreviations are appropriate. Define an abbreviation the first time you use it.

Bravo!

The preliminary draft EIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain (DOE/EIS-0250), currently in preparation, uses only 16 abbreviations! Typical DOE EISs use considerably more.

Keep Sentences Short and Simple

- Keep subject, verb, and object together. Avoid separating them with parenthetical expressions, exceptions, or modifiers.
- Divide a long sentence into shorter sentences.
- Use the active voice instead of passive voice. Instead of "an EIS will be prepared" or "comments may be submitted," say "DOE will prepare an EIS" or "you may submit comments."

Construct Strong, Logical Paragraphs

- Use a topic sentence. Move unrelated information to another paragraph.
- Show logical relationships between sentences. One effective technique is to begin a sentence with a reference to something in the previous sentence – for example, "This waste. . ." or "These shipments. . . ." Another technique is to use words or phrases that indicate *sequence*, such as "first," "then," or "now;" *causality*, such as "therefore" or "as a result;" or *contrast*, such as "in contrast" or "unlike the previous case."
- Use parallel structure and avoid repetition. Typically a notice describes alternatives, each in a paragraph that mentions all relevant features. Instead, first list the features common to all alternatives, then list the unique features of each alternative.

Write to Express, Not to Impress!

Plain language problems may arise when we write as if the work were intended only for our peers or to demonstrate a depth of knowledge to someone who can fully judge its accuracy. Keep in mind, however, that NEPA public notices are primarily intended for a lay public.

Resources

For the Presidential Memorandum on Plain Language, recommendations, resources, and examples, see www.plainlanguage.gov, the Plain Language Network Web Site. (The DOE NEPA guidance on an EIS Summary, September 1998, also includes the Memorandum.) For additional information on preparing *Federal Register* notices, contact Rita Smith, 202-586-3277 or e-mail rita.smith@hq.doe.gov. LL

Distributing a Record of Decision Makes Sense

Distributing copies of the Record of Decision to organizations and individuals who received a Final EIS is logical and courteous, though not required. After all, people to whom we send a Final EIS either have expressed their interest in the proposed action earlier or DOE has concluded on its own that they should receive the document. In either case, the small additional effort and expense to inform these people of the outcome of the NEPA process normally is easily justified. Of course, the NEPA Document Manager also should make the Record of Decision available in the relevant public reading rooms. The Office of NEPA Policy and Assistance posts Records of Decision on the DOE NEPA web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Analyses.

A Helpful Hint for EIS Glossaries

We have encouraged including a glossary to aid lay readers' understanding of specialized terms used in a NEPA document. Marking in bold or italics the first occurrence of terms that are defined in the glossary will effectively signal the reader to consult the glossary, if needed. This system would be explained in a footnote or text box at the beginning of the NEPA document and the glossary. This is an easy but excellent way to make a NEPA document more user-friendly.

When preparing a glossary for a NEPA document, consult "Glossary of Terms Used in DOE NEPA Documents," September 1998. The glossary is available on the DOE NEPA web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Tools.

New Books for the NEPA Practitioner's Bookshelf

Three recently published NEPA-related books, described briefly below, are likely to interest readers of *Lessons Learned*. The Office of NEPA Policy and Assistance from time to time makes this type of information available (without endorsement). "Suggestions for the NEPA Practitioner's Bookshelf" (August 1996) is available in the DOE NEPA Compliance Guide (on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under NEPA Tools) and upon request from the Office of NEPA Policy and Assistance. Also see *Lessons Learned Quarterly Report*, September 1998, page 5.

The National Environmental Policy Act: An Agenda for the Future

Lynton Keith Caldwell; February 1999
Indiana University Press
601 N. Morton Street
Bloomington, IN 47404-3797
Phone: 800-842-6796
Internet: http://www.indiana.edu/~iupress/

ISBN 0-253-33444-6
272 pages, $29.95

Why has "environment" been a difficult issue for U.S. public policy, and what is needed to solve the problem? This book, by one of NEPA's "founding fathers," analyzes where and how NEPA has affected national environmental policy, and where and why the Act's intent has been frustrated. Professor Caldwell discusses the roles of Congress, the President, and the courts in implementing NEPA. He also looks at the conflicted state of public opinion regarding the environment and suggests what must be done to develop a coherent and sustained environmental protection policy.

The NEPA Planning Process – A Comprehensive Guide with Emphasis on Efficiency

Charles H. Eccleston; January 1999
John Wiley & Sons, Inc.
605 Third Avenue
New York, NY 10158
Phone: 800-225-5945
E-mail: kjeon@wiley.com

John Wiley & Sons Inc.,
Product Code 0-471-25272-7
424 pages, $59.95

According to the author, this book provides "a comprehensive, single-source guide for navigating the complexities of the entire NEPA process." Mr. Eccleston, a contractor employee at DOE's Hanford Site, integrates historical, legal, regulatory, guidance, and anecdotal material from a variety of sources. He presents many DOE examples, including references to DOE's NEPA

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NEPA Bookshelf (continued from previous page)

regulations, specific DOE NEPA documents, the sliding scale concept, the EA Process Improvement Team, the EA quality review (*Lessons Learned Quarterly Report*, March 1997, page 8), supplement analyses, and this *Lessons Learned Quarterly Report*. The book contains compilations of NEPA-related information and references, offers methods and tools for streamlining NEPA compliance, and reports on recent developments in the assessment of cumulative impacts, environmental justice, adaptive management, pollution prevention, and integrating NEPA with ISO-14000.

Toward Environmental Justice – Research, Education, and Health Policy Needs

Committee on Environmental Justice
Institute of Medicine; [March] 1999
National Academy Press
2101 Constitution Avenue, N.W., Box 285
Washington, DC
Phone: 202-334-3313 or 800-624-6242
Internet: http://www.nap.edu

ISBN 0-309-06407-4
137 pages, $37.95

This book presents the results of a study sponsored by the National Institutes of Health, Department of Energy, Environmental Protection Agency, and Centers for Disease Control and Prevention. These agencies asked the Institute of Medicine's Committee on Environmental Justice to "assess the potential adverse human health effects caused by environmental hazards in communities of concern and to recommend how they should be addressed in terms of public health, biomedical research, education, and health policy perspectives."

The book begins with a literature review of disparities between the general population and minority and low-income populations in health status and exposure to environmental health hazards. The Committee concludes, based on the literature and site visits (including one to DOE's Hanford Site), that identifiable communities of concern (1) are exposed to higher levels of "environmental stressors" than others, and (2) are less able to deal with these hazards because of "limited knowledge of exposures and disenfranchisement from the political process." The Committee then suggests methodologies for environmental health risk assessment, including a discussion of the inherent obstacles, and offers recommendations and implementing strategies. Finally, the Committee analyzes the lack of medical and public education on environmental health hazards and the challenges faced by policymakers with inconclusive data, and again offers recommendations and implementing strategies.

The full text of the book is available at the above Internet address.

DOE-wide NEPA Contracts Update

These recently awarded tasks have not been previously reported here. For more information on the use of the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov or 505-845-6215. For a complete list of tasks to date, see *Lessons Learned Quarterly Reports,* June 1998, page 6; September 1998, page 7; and March 1999, page 9.

Task Description	DOE Contact	Date Awarded	Contractor Team
Idaho High-level Waste and Facilities Disposition EIS – RCRA Support	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	1/28/99	Tetra Tech, Inc.
Idaho High-level Waste and Facilities Disposition EIS – Accident Analyses	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	1/28/99	Tetra Tech, Inc.
Nevada Test Site ROD Amendment	John Neave, EM 301-903-7678 john.neave@em.doe.gov	3/18/99	Battelle
Site-wide EIS for the Y-12 Plant	Gary Hartman, OR 423-241-9153 hartmangs@oro.doe.gov	3/22/99	Tetra Tech, Inc.
Environmental Studies	Federal Energy Regulatory Commission	4/13/99	Tetra Tech, Inc.

DOE Litigation Update

By: Stephen Simpson, *Office of NEPA Policy and Assistance*

Court Allows WIPP to Open

The United States District Court for the District of Columbia recently issued an Order allowing the Department of Energy to open the Waste Isolation Pilot Plant (WIPP) for the disposal of transuranic waste.

The Order concerns an injunction entered in a lawsuit filed in 1991 by the States of New Mexico and Texas, three Members of Congress, and four environmental groups that challenged DOE's decision to begin a test program at WIPP. The plaintiffs alleged violations of the Federal Land Policy and Management Act (FLPMA), NEPA (with respect to the first WIPP Supplemental EIS), and the Resource Conservation and Recovery Act (RCRA). The injunction was based on violations of FLPMA and RCRA. On appeal, the FLPMA violation was affirmed, but the RCRA violation was reversed and remanded to the District Court. After the appeal, the lawsuit lay dormant until May 1998, when DOE filed a Motion for Expedited Status Conference.[1] Further proceedings followed, including a motion by the plaintiffs alleging that DOE's plans to dispose of non-mixed transuranic waste at WIPP violated both the injunction and RCRA.

On March 22, 1999, Judge John Garrett Penn ruled that the injunction applied only to the WIPP test phase (which DOE cancelled in 1993). Because the enactment of the WIPP Land Withdrawal Act (1992) addressed the FLPMA violation, Judge Penn held that the injunction did not prevent the shipment of transuranic waste to WIPP for disposal. Judge Penn also held that (1) WIPP has "interim status" as a disposal facility under RCRA, and (2) irrespective of whether WIPP has "interim status," the Los Alamos National Laboratory waste that DOE intended to send as the first shipments to WIPP is not a hazardous waste under RCRA. The first shipment of transuranic waste from Los Alamos arrived at WIPP on March 26, 1999.

Judge Penn's decision does not end this litigation, however. He has not yet ruled on DOE's Motion for Entry of Final Judgment or on a Motion to Intervene that Citizens for Alternatives to Radioactive Dumping (CARD) filed on June 9, 1998, challenging the adequacy of the WIPP Disposal Phase Final Supplemental EIS. (See related article in the *Lessons Learned Quarterly Report*, September 1998, pages 11-12.) CARD made no effort to schedule its Motion for a hearing and did not participate in any other aspect of the case.

The status of other NEPA litigation involving the Department of Energy has not changed since the last *Lessons Learned Quarterly Report*. The pending litigation includes cases challenging the Experimental Breeder Reactor-II and the decontamination and decommissioning of three buildings at the K-25 site (*Lessons Learned Quarterly Reports*, March 1999, page 10; September 1, 1998, pages 11-12; and December 1, 1997, page 16). LL

Stephen Simpson Taking Position at the Department of the Interior

Stephen Simpson, who has written the Litigation Updates columns since they first appeared three years ago, is leaving DOE in mid-June to join the Office of the Solicitor, Division of Indian Affairs, at the Department of the Interior as an Attorney-Advisor. He will work on issues relating to NEPA, along with leasing of Indian land, acquisition of land in trust for Tribes, and other environmental laws. Steve looks forward to applying DOE NEPA lessons learned in a new context. The Office of NEPA Policy and Assistance, where he has served for eight years, wishes him well in his new position.

[1] On January 23, 1998 (63 FR 3624), DOE issued a Record of Decision deciding to open WIPP for disposal operations, based on the WIPP Disposal Phase Final Supplemental EIS (DOE/EIS-0026-S2). The Environmental Protection Agency certified that WIPP will comply with the applicable radioactive waste disposal regulations (40 CFR Part 191) on May 18, 1998 (63 FR 27354).

Transitions at the Council on Environmental Quality

George Frampton Confirmation Hearing Held

The Senate held a confirmation hearing April 28, 1999, on George T. Frampton, Jr. as Chairman of the President's Council on Environmental Quality (CEQ). Mr. Frampton has been serving as Acting Chair since November 1998. (See *Lessons Learned Quarterly Report*, December 1998, page 11.)

In his nomination hearing, Mr. Frampton said that the "vision embodied in NEPA is that Federal agencies make important decisions affecting the environment in a democratic way, only after a thorough examination of the likely impacts of alternative courses of action. By putting sound information before the public and government managers, informed public input to such decisions would be guaranteed."

He also emphasized the "practical, problem-solving side of CEQ's mandate: seeing to it that Federal departments and agencies are on the same page, working together." (As of June 1, 1999, the Senate had yet to act on Mr. Frampton's nomination).

Ray Clark Takes Environmental Position at the Pentagon

Ray Clark, former Acting Chair at CEQ and most recently Associate Director for NEPA Oversight, has taken a position with the Army as Principal Deputy Assistant Secretary for Installations and Environment. He will manage activities related to installation real estate and programs for environment, safety, and health, including Army NEPA activities. Mr. Clark joined CEQ in January 1992.

EH Electronic Publishing Standards and Guidelines Updated

An update to the Environment, Safety and Health Electronic Publishing Standards and Guidelines is available on the DOE NEPA Web (http://tis.eh.doe.gov/nepa/ under NEPA Tools). A handy Guidelines-at-a-Glance has been added. The update also reflects experience from publishing EH documents on the Web and advances in Web technology.

The NEPA Document Electronic Publishing Standards and Guidelines that was issued in October 1998 to clarify and supplement the EH Guidelines remains in effect. NEPA Compliance Officers should continue to use the DOE NEPA Document Certification and Transmittal Form to transmit five hard copies and the electronic files to the Office of NEPA Policy and Assistance for: EAs, findings of no significant impact, draft and final EISs, records of decision, mitigation action plans and corresponding annual mitigation reports, and supplement analyses and any determinations based on them (DOE Order 451.1A). For assistance or further information on NEPA Web publishing, please contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov or phone 202-586-7600.

Training Opportunities

The NEPA Toolbox: EAs with Focus
Denver, CO: August 10-11, 1999
Fee: Regular $750; early $695

The NEPA Toolbox: Cumulative Impacts Analysis
Denver, CO: August 12-13, 1999
Fee: Regular $750; early $695

Environmental Training and Consulting International, Inc.
Phone: 303-321-3575
Fax: 303-321-4589
E-mail: info@envirotrain.com

NEPA Tools and Techniques
Kansas City, MO: June 24, 1999
Fee: $75

NEPA Legal Issues: Reducing Your Vulnerability to Litigation
Kansas City, MO: June 24, 1999
Fee: $75

National Association of Environmental Professionals
Phone: 888-251-9902
Internet: www.naep.org
(under "1999 Annual Conference")

Documents Issued, Second Quarter FY 1999

EAs and EISs Completed January 1 – March 31, 1999

EAs

Albuquerque Operations Office/Defense Programs
DOE/EA-1264 (2/10/99)
Rapid Reactivation Project at Sandia National Laboratories, Albuquerque, New Mexico
Cost: $80,000
Time: 9 months

Golden Field Office/Energy Efficiency and Renewable Energy
DOE/EA-1116 (2/22/99)
Geothermal Demonstration Project in Steamboat Hills, Nevada
Cost: $115,000
Time: 64 months

DOE/EA-1277 (3/02/99)
Expanded Ponnequin Wind Energy Project, Weld County, Colorado
Cost: $25,000
Time: 6 months

Richland Operations Office/Environmental Management
DOE/EA-1276 (2/11/99)
Widening Trench 36 of the 218-E-12B Low-Level Burial Ground, Hanford Site, Richland, Washington
Cost: $25,000
Time: 6 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(See March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

Final EISs

Defense Programs
DOE/EIS-0288 (EPA Rating: EC-2)
Production of Tritium in a Commercial Light Water Reactor
February 1999 (64 FR 12318; 3/12/99)
Cost: $3.2 million ($0.3 million Federal, $2.9 million contractor)
Time: 13 months

Defense Programs/Albuquerque Operations Office
DOE/EIS-0238 (EPA Rating: EC-2)
Los Alamos National Laboratory Site-wide, Los Alamos, New Mexico
January 1999 (64 FR 8356; 2/19/99)
Cost: $23.5 million ($2.1 million Federal, $21.4 million contractor)
Time: 44 months

Defense Programs/Savannah River Operations Office
DOE/EIS-0270 (EPA Rating: EC-2)
Accelerator Production of Tritium at the Savannah River Site, Aiken, South Carolina
February 1999 (64 FR 12318; 3/12/99)
Cost: $3.2 million ($0.4 million Federal, $2.8 million contractor)
Time: 30 months

Defense Programs/Savannah River Operations Office
DOE/EIS-0271 (EPA Rating: EC-2)
Construction and Operation of a Tritium Extraction Facility at the Savannah River Site, Aiken, South Carolina
March 1999 (64 FR 12318; 3/12/99)
Cost: $1.4 million ($0.5 million Federal, $0.9 million contractor)
Time: 31 months

Environmental Management/Idaho Operations Office
DOE/EIS-0290 (EPA Rating: EC-2)
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory
January 1999 (64 FR 7190; 2/12/99)
Cost: $2.2 million ($0.5 million Federal, $1.7 million contractor)
Time: 14 months

Nuclear Energy
DOE/EIS-0269 (EPA Rating: EC-2)
Alternative Strategies for the Long-term Management and Use of Depleted Uranium Hexafluoride Resources at Several Geographic Locations
March 1999 (64 FR 19999; 4/23/99)
Cost: $6.0 million (No breakdown of cost available)
Time: 38 months

Western Area Power Administration
DOE/EIS-0297 (EPA Rating: EO-2)
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona
March 1999 (64 FR 15969; 4/2/99)
Time: 12 months
[**Note**: The costs of this EIS were paid by the applicant; therefore, cost information does not apply to DOE.]

Other EIS-related Documents, January 1 – March 31, 1999

Notices of Intent

DOE/EIS-0305
Transuranic Waste Treatment Project at the Oak Ridge Reservation, Oak Ridge, Tennessee
1/27/99 (64 FR 4079)

DOE/EIS-0307
Public Service Company of New Mexico, Arizona-Sonora, Mexico, Transmission Lines
2/12/99 (64 FR 7173)

DOE/EIS-0082-S2
Supplemental EIS for the Salt Disposition Alternatives (formerly known as Alternatives to the In-Tank Precipitation Process) at the Defense Waste Processing Facility, Savannah River Site, Aiken, South Carolina
2/22/99 (64 FR 8558)

DOE/EIS-0306
Treatment and Management of Sodium-Bonded Spent Nuclear Fuel, Idaho Falls, Idaho
*(*Formerly known as *Electrometallurgical Treatment of Sodium-Bonded Spent Nuclear Fuel at Argonne National Laboratory-West, Idaho National Engineering and Environmental Laboratory)*
2/22/99 (64 FR 8553)

DOE/EIS-0309
Site-wide for the Y-12 Plant, Oak Ridge, Tennessee
3/17/99 (64 FR 13179)

DOE/EIS-0304
City of Lakeland McIntosh Unit 4 PCFB Demonstration Project, Lakeland, Florida
3/26/99 (64 FR 14710)

Draft EIS

DOE/EIS-0293
Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
February 1999 (64 FR 9483; 2/26/99)

Records of Decision

DOE/EIS-0183
Power Subscription Strategy under the Bonneville Power Administration's Business Plan
1/04/99 (64 FR 149)

DOE/EIS-0277
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site, Rocky Flats, Colorado; second ROD (for seven categories of residues)
2/11/99 (64 FR 8068)

Supplement Analyses

DOE/EIS-0246-SA-01
Irregular Everett Island Property Project, Wildlife Mitigation Programmatic EIS in Idaho, Montana, Nevada, Washington, and Oregon
(Decision: No further NEPA review required)
February 1999

DOE/EIS-0246-SA-02
Boyle Acquisition, Wildlife Mitigation Programmatic EIS in Idaho, Montana, Nevada, Washington, and Oregon
(Decision: No further NEPA review required)
February 1999

DOE/EIS-0157-SA-01
Site-wide for Continued Operation of Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, California
(Decision: No further NEPA review required)
March 1999

DOE/EIS-0251-SA-01 (also relates to DOE/EIS-0203)
Container System for the Management of DOE Spent Nuclear Fuel Located at the Idaho National Environmental and Engineering Laboratory, Container Systems for the Management of Spent Nuclear Fuel EIS **and** *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS*
(Decision: No further NEPA review required)
March 1999

DOE/EIS-0265-SA-12
Ahtanum Creek Watershed Assessment, Yakima County, Washington, Watershed Management Program in Oregon, Idaho, Washington and Montana EIS
(Decision: No further NEPA review required)
March 1999

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 1999. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- *Publication of a scoping document*. We published a document describing the scoping process, comments received, and DOE's disposition of comments well before the Draft EIS.
- *Combining scoping meetings for related documents.* We held scoping meetings for two related EISs simultaneously in the same locations.
- *Workshop on an additional alternative.* A public workshop helped define an additional alternative that was responsive to public comments.

What Didn't Work

- *Identifying which activities to analyze.* For a supplement analysis on a site-wide EIS, one of the most difficult issues was resolving the difference between what program managers wanted to do versus what would be approved and funded over the next five years.

Data Collection/Analysis

What Worked

- *Coordination.* The Management and Operations (M&O) contractor established a liaison with the project research and safety analysis team, which greatly facilitated data gathering. The program had an environmental coordinator who chaired working group meetings that were used to relay data needs and schedules.
- *A comprehensive first data call.* A comprehensive first data call led to fewer needs later in the process.
- *One manager for two related documents.* Having the same DOE NEPA Document Manager manage an EA and a related EIS improved the consistency of technical information and expedited EA preparation.
- *Key Parameter Teams.* Key Parameter Teams for each resource area included a Federal employee, an EIS contractor employee, and an M&O contractor employee [who served as a data source] to align the type of impact to be analyzed with the analytical methods and available data.
- *Using the M&O contractor as a data source.* The M&O contractor was a very effective source for operations descriptions and other technical information.

What Didn't Work

- *Lack of a baseline.* The site did not have an up-to-date environmental baseline, which added time and cost to the NEPA review.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Using preliminary data*. Use of early design data facilitated timely completion of the EIS, although there was some risk that the data would change.
- *An abbreviated Final EIS.* Use of an abbreviated Final EIS that provided responses to comments and text changes without reprinting the Draft EIS text saved printing and preparation time.
- *Close communication.* Close communication between contractor teams preparing related documents saved time and reduced duplication of effort.
- *Program Office coordination.* One of the most helpful elements in the process was the Program Office's coordination with other DOE Headquarters organizations, such as EH and GC. This facilitated teamwork and greatly simplified the review process and resolution of internal comments.

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What Worked and Didn't Work in the NEPA Process

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Factors that Inhibited Timely Completion of Documents

- *Late completion of transmittal letters and press releases.* Transmittal letters and press releases for Draft and Final EISs were not completed until the week of distribution.
- *New alternatives.* Late addition of a new alternative delayed the EIS.
- *Changes in alternatives.* A major rewrite of the No Action alternative prior to issuance of the Draft EIS made for a tight schedule.
- *Extended public comment period.* An extended public comment period over a holiday season delayed completion of the EA.
- *Lack of coordination.* Members of the Management and Review Team sometimes provided comments directly to the contractor, which made it difficult for the NEPA Document Manager to ensure that all comments were properly addressed.
- *Revisions during the concurrence and approval phase.* Document preparation included both DOE site and Headquarters and contractor staff early in the process. However, the document still required extensive revision during concurrence and approval.
- *Changing management decisions.* Some management team participants were later overruled by their senior management.
- *Multiple programs.* It was difficult to accommodate proposed changes resulting from other programmatic NEPA processes that considered our site as an alternative site for their action.

Factors that Facilitated Effective Teamwork

- *Strong points of contact.* Strong points of contact in the Program Office, the Project Office, and the Office of NEPA Policy and Assistance facilitated teamwork and information flow.
- *Using one contractor for related documents.* The same contractor prepared two related EISs, which facilitated teamwork.
- *DOE subject matter experts.* DOE subject matter experts were useful in facilitating teamwork between M&O and EIS contractors.

Factors that Inhibited Effective Teamwork

- *Competition between project offices.* Two DOE offices for different tritium-related technologies were inherently adversarial, which inhibited communication and teamwork.
- *Multiple office involvement.* The management team had representatives from several different program offices, which slowed the process and inhibited teamwork.

Process

Successful Aspects of the Public Participation Process

- *Having project team members at public meetings.* Having members of the project team present aided information exchange, as questions could be answered on the spot by the experts themselves.
- *Discussions with stakeholders.* Presentations and discussions with individual stakeholder groups were informative for both DOE and the interested parties.
- *Workshop on an additional alternative.* A workshop on an alternative added in response to scoping comments was successful.
- *Going beyond the requirements.* Although not required for a supplement analysis, Headquarters required a formal public participation process because of known public concerns. While a public meeting had not been anticipated in the original schedule, it did help the public gain a better understanding of the issues involved.

Unsuccessful Aspects of the Public Participation Process

- *Lack of a coherent story.* DOE was unable to communicate a coherent story on the relationships of related EISs and the program as a whole.
- *Perception that DOE is not listening.* Generally only the same small percentage of the public participates in the process, and the reaction of that small percentage is that DOE is not listening.

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What Worked and Didn't Work in the NEPA Process

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- *Perceptions of individual employees versus DOE.* Members of the public view openness and honesty as attributes of individual DOE employees, not as characteristics of DOE as a whole.
- *Underlying negative opinion.* Positive aspects of public involvement still do not overcome the perception that "none of this ever results in real change; DOE still does what it wants to do."

Usefulness

Agency Planning and Decision Making—What Worked

- *Preferred Alternative.* The NEPA process clarified the appropriateness of the Preferred Alternative.
- *Timeliness.* The EA was allowed to proceed independently of a related EIS, which allowed for a timely and cost-effective decision.
- *Tiered decision making.* Tiering from a programmatic document simplified preparation of the project-specific document.
- *Defining needs.* The process forced the program to clearly define their programmatic needs.
- *Positive expectations.* Future NEPA reviews should be cheaper and more straightforward with the Site-wide EIS now in place.

Agency Planning and Decision Making—What Didn't Work

- *Making the decision in advance.* It is not clear that the project-specific EIS had any real effect on technology or siting decisions.
- *Other drivers in the process.* The project need was clearly driven by programmatic requirements, and true project planning occurred via engineering and programmatic analyses before the start of the NEPA process.

Enhancement/Protection of the Environment

- *Incorporating protection in the planning process.* The NEPA process made the project managers more aware of how the project can affect the environment.
- *Preferred Alternative.* The Preferred Alternative was found to provide the greatest protection of the environment in the long term.

Cost

Factors that Facilitated Cost Savings

- *Using conference calls to resolve review comments.* Travel money was saved by using conference calls to resolve comments on the Draft and Final EISs.

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 decision making.

- For this quarter, in which there were four EAs and seven EISs, five of the nine respondents rated the NEPA process as "effective."
- One respondent rating the process as "effective" indicated that the NEPA process forced facility engineering personnel to take a "hard look" at the cost effectiveness of the proposal. Another noted that the process helped the program identify programmatic activities that would mature into firmly proposed projects over the next five years.
- A respondent who rated the process as "5" observed that the process addressed cross-cutting issues such as usefulness and waste management, and the document preparers focused on the usefulness of the document to those who implement the NEPA process at the site.
- One respondent who felt that the decision was made before the NEPA process was completed rated the process as "0," but stated that if the process had been used as intended, the rating would have been a "4."

Lessons Learned Questionnaire in Revision

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

EIS Cohort Results

The June 1997 *Lessons Learned Quarterly Report* initiated reporting on a cohort of the first 24 (now 23) EISs started after July 1, 1994; Notices of Intent for these EISs were issued between July 1, 1994, and March 31, 1997. The cohort consists of 10 programmatic or site-wide and 13 project-specific documents. One EIS was removed from the cohort because DOE was not the lead agency.

Table 1. First EIS Cohort Results for Completed Documents

EIS Type	Number Completed	Completion Times (months)			Costs ($M)		
		Median	Average	Range	Median	Average	Range
Total	20 (of 23)	19	20	9 to 44	$3.1	$5.9	$0.02 to $23.5
Programmatic or Site-wide	9 (of 10)	21	23	12 to 44	$8.2	$10.3	$0.1 to $23.5
Project-specific	11 (of 13)	19	18	9 to 31	$2.4	$2.4	$0.02 to $4.5

Based on the elapsed preparation times to date for the three ongoing documents, we have determined that the median completion time of the entire cohort will be 21 months when all EISs are completed, regardless of the actual completion dates. More specifically, the cohort median completion times will be 22 months for programmatic and site-wide documents, and 19 months for project-specific documents. This represents a substantial improvement over the 33-month median completion time for the last 15 DOE EISs completed before July 1994, most of which were project-specific.

New Cohort

Because we now know the median completion time for the above cohort, it can be used as a baseline against which to compare future results. Beginning with this *Lessons Learned Quarterly Report*, we will track a new cohort consisting of 25 EISs started between April 1, 1997 and March 31, 1999 (Table 2). DOE initiated 26 EISs in this time frame, but one has been canceled. As with the first cohort, EISs that were adopted, canceled, or for which DOE was not the lead agency are not included. Table 2 provides information about the distribution of the new cohort EISs among DOE program offices. We will continue to track and report on this new cohort from time to time. In the future, we will refer to the first cohort as Cohort 94 and the new cohort as Cohort 97.

Table 2. New EIS Cohort by Program Office
(EISs started between 4/1/97 and 3/31/99)

EIS Type	Number Started	Programmatic/ Site-wide	Project-specific	Number Completed (through 6/1/99)
Total	**25**	**4**	**21**	**5**
Bonneville Power Administration	2	1	1	0
Defense Programs	5	2	3	1 (13 months)
Energy Efficiency & Renewable Energy	1	0	1	0
Environmental Management	6	0	6	1 (14 months)
Fossil Energy	4	0	4	0
Fissile Materials Disposition	1	1	0	0
Nuclear Energy	2	0	2	0
Office of Science	2	0	2	1 (21 months)
Western Area Power Administration	2	0	2	2 (12 and 14 months)

Recent EIS Milestones (April 1 to June 1, 1999)

Notices of Intent

DOE/EIS-0283
Supplement to the Draft Surplus Plutonium Disposition Programmatic EIS
4/6/99 (64 FR 16720)

Draft EISs

DOE/EIS-0281
Sandia National Laboratories Site-wide, Albuquerque, New Mexico
April 1999 (64 FR 18900; 4/16/99)

DOE/EIS-0222
Hanford Remedial Action and Comprehensive Land Use Plan Programmatic, Hanford Site, Richland, Washington
April 1999 (64 FR 19999; 4/23/99)

DOE/EIS-0283
Supplement to the Draft Surplus Plutonium Disposition Programmatic
April 1999 (64 FR 26410; 5/14/99)

Final EISs

DOE/EIS-0247
Construction and Operation of the Spallation Neutron Source, Oak Ridge National Laboratory, Oak Ridge, Tennessee
April 1999 (64 FR 19999;4/23/99)

DOE/EIS-0294
Sutter Power Plant and Transmission Line Project, California
April 1999 (64 FR 19999; 4/23/99)

Supplement Analysis

DOE/EIS-0236-SA-06
Pit Manufacturing Facilities at Los Alamos National Laboratory, Stockpile Stewardship and Management Programmatic EIS
(Decision: No further NEPA review required)
April 1999

Records of Decision

DOE/EIS-0290
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory
4/7/99 (64 FR 16948)

DOE/EIS-0251 (also relates to DOE/EIS-0203)
Multi-purpose Canister or Comparable System for Idaho National Engineering and Environmental Laboratory Spent Nuclear Fuel
5/4/99 (64 FR 23825)

Consolidated ROD for the following three EISs:
5/14/99 (64 FR 26369)

DOE/EIS-0288
Production of Tritium in a Commercial Light Water Reactor

DOE/EIS-0270
Accelerator Production of Tritium at the Savannah River Site, Aiken, South Carolina

DOE/EIS-0271
Construction and Operation of a Tritium Extraction Facility at the Savannah River Site, Aiken, South Carolina

Withdrawal of Notice of Intent

DOE/EIS-0302
Transfer of the Heat Source/Radioisotope Thermoelectric Generator Operations at the Mound Site EIS
5/18/99 (64 FR 26954)

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

September 1, 1999; Issue No. 20 For Third Quarter FY 1999

Proposed Arizona-Mexico Transmission Project Presents Challenges to NEPA Process and Analysis

By: Ellen Russell, *NEPA Document Manager, Fossil Energy*
with Carolyn Osborne, *Office of NEPA Policy and Assistance*

Fossil Energy (FE) is preparing an environmental impact statement (EIS) for what would be the first cross-border high-voltage transmission project to connect the main power delivery systems of the United States and Mexico (DOE/EIS-0307). EIS scoping has been complex. Through the scoping process, FE has identified and worked with many stakeholders to define a broad range of issues and new alternatives. As the NEPA process continues for this unique project in the sensitive southern Arizona environment, FE hopes to apply the lessons learned to build a strong basis for decision making and consensus.

Stakeholders fill the house at scoping meeting in Tubac, AZ. Tony Como (standing), Deputy Director of FE's Office of Coal and Power Import and Export, explains DOE's and NEPA's role in the proposed transmission project.

Proposed Project and Role of DOE and NEPA

In December 1998, Public Service Company of New Mexico (PNM) applied to DOE for a Presidential Permit, needed to construct and operate electrical transmission lines that cross the U.S. border. The PNM proposal, a business venture, would require building one or two high voltage (345-kilovolt AC or ± 400-kilovolt DC) transmission lines, 75 to 150 feet high, spaced four to six towers per mile, in a single right-of-way 150 to 300 feet wide. The six alternative transmission corridors currently under consideration (shown in map, page 3) would extend from the high-voltage switchyard of the Palo Verde Nuclear Generating Station (about 40 miles west of Phoenix) to the city of Santa Ana in Sonora, Mexico, a distance of up to 300 miles. (In addition, as *Lessons Learned* goes to press, another corridor alternative may be developed.)

In deciding whether to issue a Presidential Permit for a proposed cross-border project, FE considers whether the project is consistent with the "public interest" and factors in both electric reliability and environmental impact information. Under the NEPA process, FE examines environmental impacts from all activities related to a cross-border proposal, not just those at a border. For the PNM proposal, these activities could include constructing and

continued on page 3

Inside *LESSONS LEARNED*

Welcome to the 20th Quarterly Report on lessons learned in the NEPA process. This issue includes a cumulative index for the past five years. Articles in this issue include:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Clarification

The article entitled "Historic Preservation Section 106 Regulations Revised" in the June 1, 1999 issue of the *Lessons Learned Quarterly Report* indicated that tribal "consent" was needed for actions on, or that would affect historic properties on, tribal lands. Under the revised regulations (36 CFR Part 800) for implementing Section 106 of the National Historic Preservation Act, agencies are directed to make every effort to resolve adverse effects and reach agreement with all consulting parties. Section 800.7 of the revised regulations, however, specifies how to proceed when efforts to resolve adverse effects have failed. Although there is provision to proceed without agreement, the Office of Environment will help DOE Offices in any way it can toward achieving resolution.

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by November 1, 1999. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

Fourth Quarter Questionnaires Due November 1, 1999

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

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

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

Transitions

Steven Frank now serves as the NEPA Compliance Officer for the Office of Environmental Management (EM). Mr. Frank, the Acting Director of EM's Office of Environmental and Regulatory Analysis, may be reached at steven.frank@em.doe.gov, or phone 202-586-7478.

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Arizona-Mexico Transmission Project

(continued from page 1)

operating substations, switchyards, and transmission lines on Native American, Federal, state, and private lands in the United States, as well as in Mexico.

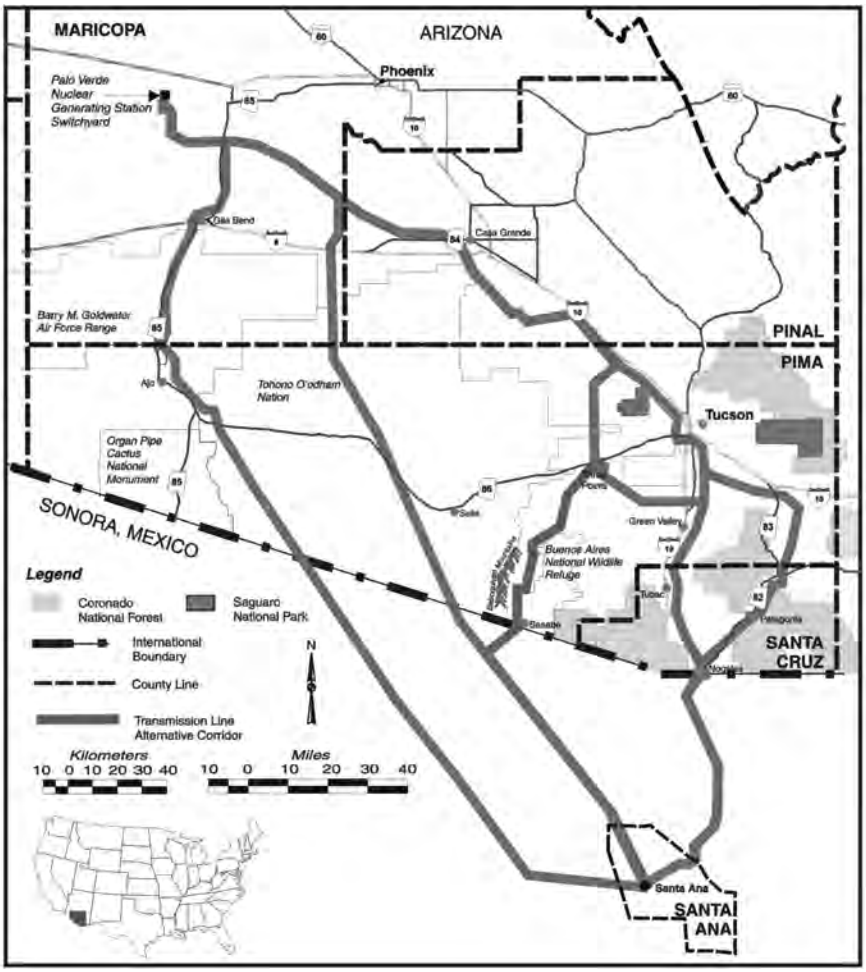
Public Scoping and Outreach Efforts

FE began the EIS process in February 1999 with a 60-day comment period, three alternatives, and about 60 potential stakeholder organizations. When the second scoping period ended five months later in July, about 500 people had attended 12 scoping meetings, the EIS scope had expanded to six alternatives, and the stakeholder list numbered about 1200. (See related item in *Lessons Learned Quarterly Report*, June 1999, page 2.)

FE has made extraordinary efforts to encourage such stakeholder interest and active participation. In addition to the Notice of Intent and initial mailings (based in part on the DOE NEPA Stakeholders Directory) to Native American, Federal, state, and local government officials and citizen organizations, FE distributed 2000 copies of a fact sheet in English and Spanish before the first set of scoping meetings. FE also had arranged for radio and newspaper announcements in both languages, established a toll-free number for this project, and created a Web page through its NEPA contractor where stakeholders can submit comments (http://www.battelle.org/projects/pnmeis).

During the first set of scoping meetings, however, stakeholders expressed concerns about both the scope of the EIS and public participation activities. Stakeholders along the alternative corridors proposed at that time pointed to other apparently reasonable corridors and asked why these routes were not being considered. Stakeholders questioned the apparent lack of local benefits of the project, which would transmit U.S.-generated power directly to Mexico. Stakeholders also expressed concern that electric and magnetic fields from the proposed power lines could cause adverse health effects. Some stakeholders said they were dismayed to learn of the scoping meetings at the last minute or only by chance, and that the comment period was closing too quickly after the meetings.

FE responded by extending the scoping period, working with PNM to identify other apparently reasonable alternatives, and reopening the public scoping period in June, with additional meetings, for comment on an expanded set of alternatives. To better overcome the obstacles to reaching all potentially interested and affected stakeholders in southern Arizona (e.g., there are many seasonal residents, limited print media, and many remote households), FE asked a postal official to place fact sheets in each post office box.



Six alternative transmission corridors considered in the EIS extend about 140 to 230 miles in the U.S. and about 60 to 120 miles in Mexico, crossing Native American lands and lands managed by the Bureau of Land Management and other agencies.

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Arizona-Mexico Transmission Project

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Is It Possible to Go from Here to There Through Southern Arizona — Traversing a Sensitive Environment?

Placing and operating transmission lines would have significant impacts under any of the six alternatives currently being considered. Although the EIS analysis of impacts and mitigation measures is still ongoing, stakeholders have expressed strong concerns about a range of possible impacts that the EIS will need to describe objectively, thoroughly, and clearly.

High voltage transmission lines cause visual impacts, whether in isolated areas where they contrast with natural surroundings or in populated areas where people see them every day. Residents in many areas have stated that visibility impacts will lower property values, and they as well as residents along a state scenic highway and isolated routes predict tourism decreases.

Secretary of Energy Sees DOE, Private Sector Role in Developing Border Infrastructure

Speaking at the Third U.S.-Mexico Border Infrastructure Conference (June 2, 1999, at Tijuana, Mexico), Secretary Bill Richardson reflected on the commitment made five years ago – in the North American Free Trade Agreement (NAFTA) – to bring a better future to the border region. He outlined DOE and private sector activities that can be key to strengthening the region's infrastructure, emphasizing that "the private sector will play the most critical role to ensure that long-term energy needs are met." Referring to U.S. companies that have built natural gas supply lines to Mexico and to those that have applied for Presidential Permits for transboundary transmission lines, he stated that "the importance of the private sector is central to NAFTA's success and to the success of all of our border development efforts."

At a later June meeting, Secretary Richardson and Mexico's Secretary of Energy reviewed options for optimizing the power connections between both countries. The Secretaries recognized the fundamental role of the energy sector in ensuring economic development and abating greenhouse emissions and stressed sustained joint efforts for the growth of an adequate, reasonably priced, environmentally responsible, and secure energy supply to the region.

Significant cultural and historic resources are found throughout southern Arizona. Generations of Native Americans have lived there, and parts of four proposed corridors cross the Tohono O'odham Nation. The Nation's Chairman has stated its opposition to any routing of the transmission lines across its lands and requested that DOE respect its sovereignty. Further, some of the proposed corridors may be near the Juan Bautista de Anza National Historic Trail, recently named a Millennium Trail, which traces a route followed by 16th and 17th century Spanish colonial soldiers and settlers.
In addition, parts of alternative corridors are near floodplains, known to be early settlement sites and expected to be rich in cultural resources.

Southern Arizona also contains the northern part of the Sonoran Desert, described as one of the largest intact arid ecosystems in the world, and an important part of Arizona's riparian habitat (e.g., along the Santa Cruz River). Hundreds of bird species live in or migrate through the area, which also contains habitat for many threatened or endangered species, including the recently identified critical habitat of the cactus ferruginous pygmy owl.

Looking Across the Border — Transboundary Impact Analysis

If the proposed project is permitted, one-fourth to one-half the length of the transmission line (about 60 to 120 miles) could be built in Mexico. PNM is preparing an environmental report required by Mexico, a *Manifestacion Impacto Ambiental*, which will present available information from professional sources. FE plans to summarize the *Manifestacion* in the draft EIS and incorporate it by reference as the means of analyzing transboundary impacts.

Next Steps

Assessing the impacts of six alternative corridors, each having several transmission and structure options, within a two-mile wide study corridor in the U.S. and Mexico, is proving to be a daunting task, and in the end might not optimally help focus stakeholder concerns nor DOE's decision making. FE is working with PNM and with Native American, Federal, state, and private citizen stakeholders to narrow the range of alternatives and options to those that are reasonable – practical or feasible from a technical and economic standpoint and using common sense – for analysis in the draft EIS. FE will apply the lessons from scoping – communicate broadly, listen to stakeholders, be open-minded and flexible – in this next step of the EIS process.

CEQ Issues Memo on Non-Federal Cooperating Agencies

The Council on Environmental Quality (CEQ) on July 28, 1999, issued a memorandum urging Federal agencies to solicit more actively in the future the participation of non-federal agencies as cooperating agencies (40 CFR 1508.5) in an agency's EIS process.

"As soon as practicable, but no later than the scoping process," Federal agencies should identify state, tribal, and local government agencies that have jurisdiction by law or special expertise with respect to reasonable alternatives or significant impacts associated with a proposed action in an EIS. The Federal agency should then determine whether such non-federal agencies are interested in assuming the responsibilities of becoming a cooperating agency under 40 CFR 1501.6. If a non-federal agency agrees to become a cooperating agency, CEQ encourages agencies to document (e.g., in a memorandum of agreement) their specific expectations, roles, and responsibilities. Cooperating agencies are normally expected to use their own funds for routine activities; however, to the extent available funds permit, the lead agency should fund or include in its budget requests funding for major activities or analyses that it requests from cooperating agencies.

According to the CEQ memorandum, the benefits of granting cooperating agency status "include disclosure of relevant information early in the analytical process, receipt of technical expertise and staff support, avoidance of duplication with state, tribal and local procedures, and establishment of a mechanism for addressing intergovernmental issues." CEQ reminds agencies that cooperating agency status neither enlarges or diminishes the decision making authority of either Federal or non-federal entities.

The Office of NEPA Policy and Assistance distributed copies of the CEQ memo to the DOE NEPA Compliance Officers in August. The CEQ memorandum is also available via DOE NEPA Tools module of the DOE NEPA Web (http://tis.eh.doe.gov/nepa/). For further information, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov, or phone 202-586-4596.

New NEPA Stakeholders Directory Issued

The Office of NEPA Policy and Assistance issued the 12th edition of the Directory of Potential Stakeholders for DOE Actions under NEPA on July 31, 1999. The Directory has been distributed and is available on DOE's NEPA Web at http://tis.eh.doe.gov/nepa/tools/tools.htm. This edition replaces the 11th edition, which should be recycled.

For futher information, contact Katherine Nakata, Office of NEPA Policy and Assistance, at katherine.nakata@eh.doe.gov, or phone 202-586-0801.

EPA Issues Guidance on Reviewing Cumulative Impacts in NEPA Documents

The Environmental Protection Agency (EPA) issued guidance in May 1999 on the "Consideration of Cumulative Impacts in EPA Review of NEPA Documents." This guidance, based on the Council on Environmental Quality's handbook on "Considering Cumulative Effects Under the National Environmental Policy Act" (January 1997), is intended for EPA's NEPA document reviewers and focuses on specific cumulative impact issues that are critical in EPA's review of NEPA documents under Section 309 of the Clean Air Act. EPA reviewers are to use this guidance in reviewing and commenting on DOE NEPA documents, particularly draft EISs.

The Office of NEPA Policy and Assistance distributed EPA's guidance to members of the DOE NEPA community in July. For more information, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov, or phone 202-586-4596.

DOE NEPA Web Demonstrated to Site-Specific Advisory Board Administrators

By: Lee Jessee, *DOE NEPA Webmaster, Office of NEPA Policy and Assistance*

On August 11, 1999, DOE NEPA Webmaster Lee Jessee guided a virtual tour (i.e., online and with telephone voice communication) of the DOE NEPA Web for Environmental Management (EM) Site-Specific Advisory Board (SSAB) Administrators during their monthly teleconference with the EM Office of Intergovernmental and Public Accountability. The Administrators support the activities of the SSAB, which routinely provides advice and recommendations on DOE NEPA documents through its 12 local Citizens Advisory Boards associated with DOE sites. Administrators of the local boards of five sites – Fernald, Idaho National Engineering and Environmental Laboratory, Oak Ridge Reservation, Rocky Flats, and Savannah River – participated in the tour.

At EM's invitation and at the Board's request, Ms. Jessee showed the Administrators how to quickly identify and retrieve full texts of draft and final EISs, notices of intent and availability, records of decision, mitigation action plans, and EAs that various DOE Offices had issued. (DOE also publishes other NEPA-related documents on the NEPA Web, such as findings of no significant impact, supplement analyses, and floodplain and wetlands

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SSAB Facilitator Finds DOE NEPA Web Invaluable Tool and Recommends Tour

Lee Jessee received this e-mail message after the NEPA Web virtual tour. The author, Wendy Green Lowe of Jason Associates Corporation, is the Administrator and Facilitator for the INEEL Citizens Advisory Board.

Subject: NEPA Homepage orientation for SSAB Administrators

The Idaho National Engineering and Environmental Laboratory (INEEL) Citizens Advisory Board submits consensus recommendations transmitting their comments on virtually every National Environmental Policy Act (NEPA) document that addresses the INEEL. Staying on top of all of the NEPA documents progressing through DOE's system is very difficult.

The DOE NEPA homepage is an invaluable tool to me, the facilitator for the CAB. It helps me stay informed in an efficient manner. Lee Jessee's virtual tour of the homepage gave me confidence that I can access the homepage effectively and efficiently. I would recommend a virtual tour for anyone/everyone who could benefit from touring the homepage routinely.

The search engine is a powerful tool for accessing countless NEPA documents. The ability to quickly review a document allows for a cost-effective way to determine its potential value, often avoiding a request for a hard copy that turns out to have limited usefulness. An unexpected surprise was all of the valuable links to other federal homepages.

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assessments.) Participants in the virtual tour practiced using the DOE NEPA Announcements module to obtain public hearing and schedule information, open e-mail links to NEPA Document Managers, and follow hyperlinks to full texts of *Federal Register* notices, draft EISs, and the Web resources of DOE Offices proposing the actions evaluated in the NEPA documents. Participants successfully opened portable document format (pdf) files in the DOE NEPA Process Information module, such as the Schedule of Key EISs, EIS/EA Status Chart, and *Lessons Learned Quarterly Reports*. The virtual tour also demonstrated the Council on Environmental Quality's NEPANet (http://ceq.eh.doe.gov/nepa/nepanet.htm), and state and international environmental impact assessment resources.

For further information on the DOE NEPA Web or to arrange a virtual tour, contact Lee Jessee at lee.jessee@eh.doe.gov, or phone 202-586-7600.

Publishing a Draft EIS on DOE NEPA Web; Timing is Key

Web publication of a draft EIS increases the document's accessibility at low cost and makes the draft available immediately for interested parties to browse, transfer, or print sections at will. To be most useful, though, a Web-published draft EIS should be accessible from the very beginning of the public comment period, which means that the document must be prepared for Web publication during the normally brief period between approval of the EIS and publication of the notice of availability.

To facilitate timely Web publication of a draft EIS on the DOE NEPA Web, we emphasize the following recommendations based on implementation of the NEPA Document Electronic Publishing Standards and Guidelines, issued October 1998. (See related article in the *Lessons Learned Quarterly Report*, September 1998, page 6.) While these tips apply to Web publishing for any kind of NEPA document, they are especially important to facilitate the public comment process for a draft EIS.

Tips for Success: Plan Early for Web Publishing

- *Use the Web Standards*: Start out right. Prepare and submit the electronic file of a NEPA document in Web-ready format: that is, portable document format (pdf) or hypertext markup language (html). Microsoft Word 6.0 and WordPerfect 6.0 and their more recent versions directly convert files to html. When a NEPA Document Manager transmits an electronic file in software that does not conform to these standards, the document cannot be directly posted on the Web.

  Information on Web publishing standards is provided in the EH Electronic Publishing Standards and Guidelines (updated April 1999) and the 1998 NEPA guidance referred to above, both available via the DOE NEPA Tools module of the DOE NEPA Web (http://tis.eh.doe.gov/nepa/).

- *Coordinate Early*: The NEPA Document Manager should coordinate early with the DOE NEPA Webmaster to identify technical and timing requirements.

- *Certify:* The NEPA Document Manager or NEPA Compliance Officer should complete a DOE NEPA Document Certification and Transmittal Form, also available via the DOE NEPA Tools module, to ensure that the DOE NEPA Webmaster receives the correct electronic file. *Please do not lock or password-protect these files because EH must open these files during publishing.*

Server Reports Available

The NEPA Compliance Officer or Document Manager may request a server report of electronic access to a draft EIS and other NEPA documents. The server report profiles users by country, region, city, state, province, and most active organizations, and indicates kilobytes downloaded or transferred to the user.

To coordinate Web publication of a draft EIS, to request a server report, or for further information on the DOE NEPA Web resources or Web publishing standards, contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov, or phone 202-586-7600.

Kansas City NAEP Conference Explores NEPA Topics

The National Association of Environmental Professionals (NAEP) held its 24th Annual Conference June 20 to 24, 1999, in Kansas City, Missouri. As at its past conferences, NEPA was one of the main subjects. The conference included NAEP's Tenth Annual NEPA Symposium comprised of two panel discussions and 14 NEPA papers.

Good Internet Use Supports NEPA Public Involvement and Internal Coordination

Ahmed Mohsen, Bureau of Land Management, California, described using the Internet to improve agency compliance with NEPA. According to Mr. Mohsen, the versatility of the Internet makes it a potent tool for improving NEPA public involvement and interagency coordination. He described the Bureau's use of the Internet in preparing a joint Federal and state Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for a proposed gold mine in California (http://www.ca.blm.gov/GoldenQueen/). The NEPA team created a user-friendly Web Site to allow easy public access to the EIS/EIR, public and agency comments, project-related background and technical information, local news articles on the project, and notices of meetings and other public participation opportunities. A search engine helps readers locate subjects of interest in the NEPA document, and technical information is linked to illustrations, maps, and a glossary. Posting a broad range of relevant information on-line allows interested parties to make informed comments and better understand agency responses, thus increasing the effectiveness of the public comment process.

NEPA document preparation requires tracking text changes and timely updating the EIS team of those changes. Posting administrative draft documents on a secure internal Web Site provides the EIS team with a communication infrastructure to increase coordination in document preparation. The effectiveness of conference calls can be increased dramatically if team members can access the same Web Site. BLM has used this method to improve internal communications for several EISs, including the Golden Queen EIS, where they estimate saving $30,000 to $40,000 in duplication costs alone. The procedure uses readily available software.

Mr. Mohsen also suggested using the Internet in the compliance and enforcement of permit conditions. Tracking of mitigation measures (implementation and success in reducing impacts) also can be automated with a program that links tasks with the mitigation schedule. This method allowed timely tracking of the mitigation measures implemented for the Golden Queen EIS, making the EIS a living document – virtually an electronic administrative record.

NAEP Activities

NAEP is a multidisciplinary, professional association founded in 1975, with 17 affiliated state and regional chapters and 20 university chapters. (See related articles in *Lessons Learned Quarterly Reports*, September 1998, page 9, and March 1998, page 9.) The organization publishes a quarterly research journal, *Environmental Practice,* and administers an environmental professional certification program. NEPA practitioners may be interested in NAEP's NEPA Working Group, which coordinates the annual NEPA Symposium, arranges NEPA training, develops and promotes improved techniques, and coordinates annual awards for NEPA practice.

Planning is underway for the 2000 NAEP Conference to be held June 25 to 29 in Portland, Maine. Abstracts will be due in October 1999. For more information on NAEP, to obtain a copy of the conference proceedings, or to inquire about membership, contact the organization's offices at 888-251-9902, or view http://www.naep.org.

The Office of NEPA Policy and Assistance thanks Lance McCold, Matt McMillen, Ahmed Mohsen, and Lucy Swartz for their contributions to this article.

Arizona Electric Power Cooperative Wins NEPA Award

Arizona Electric Power Cooperative (Arizona Power) received the NAEP Presidential Award for NEPA Excellence for a wildlife and recreation project that grew out of an EA for replacement of a power plant ash disposal facility. As the replacement project was partially funded by the U.S. Department of Agriculture's Rural Utilities Service, Arizona Power prepared the required NEPA document as an applicant. The disposal facility site is located next to the Apache Station Wildlife Area, the wintering location for 4,000 to 6,000 sandhill cranes. When EA preparation identified the site as an important bird watching area of great interest to the public, Arizona Power constructed a self-service public access viewing area.

Forest Service's "Decision Protocol" Offers Structured Approach to Decision Making

By: Joy E. Berg, *Forest Service, U.S. Department of Agriculture*

Forest Service personnel presented this topic at the Kansas City NAEP conference (preceding page). This guest article reflects the Forest Service staff's wish to make their "Decision Protocol" available to other Federal agencies.

Picture a "typical" interdisciplinary team: while one person is describing the problem, another already has a proposed solution, a third is wondering how stakeholders and other agencies will react, another is questioning how the project will be financed, and another is predicting environmental effects. Where's the structure that brings these perspectives together?

It was thinking like this – plus a concern over a trend of increasingly frequent NEPA litigation – that helped launch the U.S. Forest Service's "Decision Protocol" about five years ago. Forest Service and Council on Environmental Quality staff with backgrounds in training, planning, NEPA, law, and decision science began to develop a series of questions that a team leader or facilitator could ask in order to organize decision making. After pilot testing on some 20 proposed projects across the country, the Forest Service issued Decision Protocol 2.0 in April 1999 for optional use in its projects.

What is a High Quality Decision?

Adapted from "The Protocol and Decision Quality" in the "Roadmap to the U.S. Forest Service Decision Protocol," available at http://www.fs.fed.us/forum/nepa/dp2roadmap.htm.

The Forest Service "Decision Protocol" is based on the belief that a high quality decision:

- Accurately describes the problem and the criteria for solving it
- Uses available information effectively
- Collects new information wisely
- Generates and chooses from a wide range of alternatives
- Distinguishes facts, myths, values, and unknowns
- Describes consequences associated with alternative solutions
- Leads to choices that are consistent with organizational, stakeholder, personal or other important values

A System for Planning and Streamlining the NEPA Process

The protocol is a question-based, administrative aid that helps decision making teams within the Forest Service manage and document their reasoning. When a Forest Service project is subject to NEPA review, the Decision Protocol can help in planning for and meeting the applicable requirements. Scoping, for example, has become more productive because "the protocol allows us to ask better questions, and better helps us understand what the public gives us," according to Rhey Solomon, Assistant Director for Ecosystem Management Coordination. Following the protocol can help improve decision rationale, information collection and use, and interactions among team members and decision makers, thereby simplifying the production of EAs and EISs and improving their content.

Five Cycles in the Decision Process

Decision Protocol 2.0 is organized around five "cycles" – Process, Problem, Design, Consequences, and Action – each with its own outcome.

- ***Process.*** *This cycle* – in which the team determines the decision to be made, how it may be implemented, and potential constraints – *results in a decision process roadmap that the team agrees to follow.*
- ***Problem.*** *This cycle results in setting the context through verbal and graphic depictions of the situation, a set of goals and objectives, and a description of the information base, including uncertainties and gaps.* The team organizes available information and describes the situation in biological, social, economic, and other terms. The team also evaluates the reasons for taking action, the perspectives of stakeholders, the strength of available information, and the need for additional expertise.
- ***Design.*** *This cycle results in a proposal description.* The team proposes activities to accomplish the objectives, combines these into alternatives, and describes cause-and-effect relationships. The team also considers refinements – for example, mitigation measures – to respond to expected consequences. In this cycle, the team also develops monitoring measures to evaluate performance and guide adaptive responses, and identifies stakeholders to be consulted.

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Forest Service's Decision Protocol

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- ***Consequences.*** *This cycle results in a set of refined alternatives and their expected consequences.* The team considers interactions among proposed activities and other projects, uncertainties, and design changes that could affect key consequences.
- ***Action.*** *This cycle results in a comparison of alternatives, a rationale for the preferred alternative, and an implementation plan.* The team compares alternative proposals for meeting objectives and avoiding adverse effects, and considers factors such as cost and feasibility. The team chooses (or hybridizes) a preferred design, develops a logical, defensible rationale for the choice, and examines the sensitivity of the choice to changes in assumptions. The team then develops plans for implementation and monitoring activities to guide future adaptation and problem solving.

Applications of the Protocol

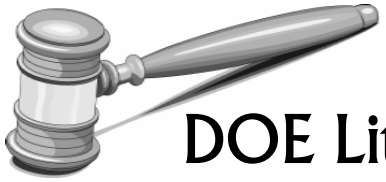
The Decision Protocol is being used in tandem with the development of EAs and EISs for several Forest Service projects, including the analysis of 100 routes for off-road vehicle use in the Grand Mesa-Uncompaghre National Forest in Colorado. An unexpected bonus of using the protocol became apparent when there was a change in NEPA team membership: all the information a new member needed to get up to speed was readily available and well organized. EIS teams are currently using the Decision Protocol for two integrated resource projects in the Modoc National Forest in California. In the Wenatchee National Forest in Washington, a Ranger District used the protocol to decide how to redesign their National Register-listed office to be barrier-free. The "protocol skeptic" on the team offered to draft the EA. He later reported that it was the easiest EA he had ever written: all the information needed was contained in the results of the Decision Protocol. The NEPA team responsible for this EA has estimated a time savings of about 40 percent from the use of the protocol.

The Forest Service's Decision Protocol 2.0 can be found at http://www.fs.fed.us/forum/nepa/dp2roadmap.htm. For more information, contact Joy Berg at berg_joy/wo@fs.fed.us, or phone 202-205-1277.

DOE-wide NEPA Contracts Update

These recently awarded tasks have not been previously reported here. For more information on the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov, or phone 505-845-6215. For a complete list of tasks to date, see *Lessons Learned Quarterly Reports,* June 1998, page 6; September 1998, page 7; March 1999, page 9; and June 1999, page 11.

Task Description	DOE Contact	Date Awarded	Contractor Team
Environmental Studies – 2 tasks	Los Alamos National Laboratory	1/99 – 3/99	Tetra Tech, Inc.
Environmental Studies – 5 tasks	Federal Energy Regulatory Commission	4/99 – 6/99	Tetra Tech, Inc.
Idaho High-Level Waste and Facilities Disposition EIS – Incidental Waste and HLW Tank Closure Studies	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	4/22/99	Tetra Tech, Inc.
High-Level Waste Salt Disposition Alternatives Supplemental EIS and Radiological Performance Assessment	Larry Ling, SR 803-208-8248 l.lingl@srs.gov	4/29/99	Tetra Tech, Inc.
NEPA Document Support (Office of River Protection)	Jon Peschong, RL 509-376-9327 jon_c_peschong@rl.gov	6/05/99	Tetra Tech, Inc.
Idaho High-Level Waste and Facilities Disposition EIS – INEEL Facility Prevention of Significant Deterioration Baseline and Contingency Air Analysis and Non-Involved Worker Dose Re-Baseline	Tom Wichmann, ID 208-526-0535 wichmatl@inel.gov	6/17/99	Tetra Tech, Inc.
Environmental Studies	Federal Energy Regulatory Commission	7/7/99	Battelle Memorial Institute



DOE Litigation Update

Court Cannot Require an EIS for Part of a CERCLA Action; Remaining Portion of Lawsuit over Oak Ridge's Metal Recycling is Dismissed

The U.S. District Court for the District of Columbia in June 1999 declined to order DOE to prepare an EIS for recycling and selling radioactively contaminated metal resulting from the decontamination and decommissioning of three buildings at Oak Ridge's East Tennessee Technology Park (formerly the K-25 Gaseous Diffusion Plant). (See *Lessons Learned Quarterly Reports,* September 1998, page 11; December 1997, page 17.)

The plaintiffs, Oil, Chemical and Atomic Workers International Union and others, initially sought an EIS for the decontamination and decommissioning action, including possible recycling and sale of the resulting contaminated metal. In June 1998, Judge Gladys Kessler found that decontamination and decommissioning is a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) removal action and dismissed that portion of the suit, because CERCLA Section 113(h) prohibits legal challenges to a removal or remediation action selected to clean up a site until the action has been completed. However, she allowed the portions of the suit concerning the recycling and sale, which she then considered to be an optional action (not an "organic element" of the CERCLA action), to proceed to trial to determine whether an EIS should be prepared.

The plaintiffs argued that the decision to recycle radioactive metal is an action subject to NEPA, independent of the ongoing CERCLA removal action at the site. The court, however, in reconsidering its earlier ruling in light of additional information, determined that the recycling was an integral part of the overall CERCLA action. Judge Kessler noted that nearly every court to address the scope of Section 113(h) has concluded that litigation that interferes with even the most tangential aspects of a cleanup action is prohibited, and she believed that the record showed that the metal recycling option had long been regarded as an integral part of the cleanup action.

Judge Kessler's opinion stated that "if recycling were outside the scope of 113(h), the proposed plan is exactly the type of action which would come within the scope of NEPA." She also concluded that there is potential for environmental harm from the recycling project, a lack of a national standard governing the unrestricted release of contaminated metals, and that plaintiffs and intervenors "raised legitimate concerns as to the lack of public notice and comment surrounding the entire process by which Defendants settled on recycling as a disposal method." *Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., v. Peña,* (Civil Action No. 97-1926, U.S. District Court for the District of Columbia, Filed June 29, 1999).

In response to the decision, in an August 11 letter, some 185 public interest, labor, environmental, and antinuclear organizations asked Vice President Gore to stop the proposed recycling project.

Other Agency NEPA Cases

Timing and Applicability of Categorical Exclusion for "Bioprospecting" Challenged, Based on Administrative Record and Agency NEPA Procedures

The U.S. District Court for the District of Columbia ordered the Department of the Interior to suspend a Cooperative Research and Development Agreement with a biotechnical company pending completion of an EA or an EIS. The company was "bioprospecting" microbial organisms in Yellowstone National Park – i.e., sampling biological resources within the unique Park ecosystems in search of commercially valuable genetic materials. Under the agreement, the Park was to receive annual fees for bioprospecting rights and royalties on any future commercial use or products.

The Department of the Interior argued that the activities being performed under the agreement fell under its categorical exclusion for "day-to-day resource management and research activities." The court, however, expressed doubt concerning the applicability of the Department's categorical exclusion (and the timing of its application) and ordered Interior to suspend the bioprospecting pending completion of an EA or an EIS.

While the court made clear that it did "not intend to establish a requirement that an agency prepare a full-blown statement of reasons" when applying a categorical exclusion, it held that "a post hoc assertion" of a categorical exclusion "during litigation, unsupported by any evidence in the administrative record or elsewhere that such a determination was made at the appropriate time, cannot justify a failure to prepare either an EA or an

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Other Agency NEPA Cases (continued from page 11)

EIS." Further, the court indicated that, even if the Department had invoked the categorical exclusion at the appropriate time, such a position might still not have survived judicial review under the arbitrary and capricious standard because (1) the commercial exploitation of natural resources is probably not equivalent to "day-to-day resource management and research activities" and, more importantly, (2) the activities involve extraordinary circumstances associated with "unique geographic characteristics" and "ecologically significant or critical areas," thus making the activities ineligible for categorical exclusion under Interior's own Departmental Manual. *Edmonds Institute v. Department of the Interior*, No. 42 F. Supp. 2d 1, 1999 U.S. Dist. LEXIS 4168 (D.D.C. March 24, 1999).

Environmental Assessment and Administrative Record Inconsistent with FONSI

The U.S. District Court for the District of Montana found that the Department of Transportation, Department of the Interior, Federal Highway Administration, and National Park Service violated NEPA by issuing a Finding of No Significant Impact (FONSI) rather than preparing an EIS for a parking lot at Glacier National Park, Montana.

The controversy involved the potential impacts of a proposed parking lot on a site that contains 500-year-old cedars and other rare and vulnerable vegetation. Construction of the parking lot would require removing some cedars, resulting in impacts that the administrative record characterized as "significant in light of the cumulative impacts that have occurred and the extreme rarity of the habitat involved." The draft and final EAs also contained statements regarding significance of impacts that implied that an EIS was needed to consider the project's impacts on unique resources. Further, the court noted that although the original FONSI identifies only nine important trees that would be removed, other Park Service analysis identified about 200 important trees likely to be removed. The court found the FONSI inadequate and the Park Service's decision to proceed without an EIS was arbitrary and capricious.

In its decision, the court also addressed the issue of mitigation, noting that an agency "may reach a FONSI if mitigation measures are proposed that directly address the impacts identified in the Environmental Assessment." In this case, however, the type of mitigation proposed by the Park Service – removal of a nearby picnic area and its regeneration as forest (which, the court noted, would take more than 500 years if it was even possible) – lacked "the scientific analysis and supporting data to constitute sufficient mitigation to support a FONSI." The court enjoined the agencies from implementing actions in connection with this case until an EIS had been completed. *Coalition for Canyon Preservation and Wildlands Center for Preventing Roads v. Department of Transportation,* No. CV 98-84-M-DWM, 1999 U. S. Dist. LEXIS 835 (D. Mont. January 19, 1999).

Bridge EIS Remanded; Agency Must Analyze Alternatives, Take "Hard Look" at Impacts, Identify Historic Properties

The U.S. District Court for the District of Columbia ordered the Department of Transportation's Federal Highway Administration (FHWA) not to begin implementing its decision to replace the congested and deteriorating Woodrow Wilson Memorial Bridge (a Potomac River crossing between Maryland and Virginia that serves as part of the Washington, D.C., Beltway and Interstate Highway 95) before meeting its obligations under NEPA and several other laws. Among other conclusions, the court found that the FHWA violated NEPA by failing to analyze all reasonable alternatives and by failing to take the required "hard look" at the environmental impacts.

FHWA's 1991 Draft EIS considered repairing the bridge (the "no-build" alternative – in effect, a "no action" alternative) and six alternatives to build a new river crossing. The six "build" alternatives all considered designs with 12 or more lanes. Acknowledging deficiencies regarding traffic assumptions and analysis of construction and regional impacts in its 1991 Draft EIS, the FHWA reopened scoping and issued a 1996 Supplemental Draft EIS and 1997 Final EIS that again considered six build alternatives, each with 12 lanes but differing in form (bridge or tunnel) and exact location. In its 1997 Record of Decision, the agency documented its selection of two parallel drawbridges with six lanes each.

The court criticized the FHWA for not assessing an apparently reasonable ten-lane alternative – a design the agency had used to characterize the project for purposes of its Clean Air Act conformity determination. The court found that FHWA also failed to take the required "hard look" at the reasonably foreseeable impacts of construction activities: the "terse summaries" provided in the EIS "do not come close to providing the public with the kind of information necessary to weigh the environmental costs and benefits of the project." In addition, the court found that FHWA failed to meet its obligations under Section 106 of the National Historic Preservation Act (NHPA), for example, by not completing identification of potentially affected protected historic properties; the bridge stands four blocks south of the National Historic Landmark District of the City of Alexandria. Issuing a ROD that approves a project while postponing full compliance with the NHPA would, according to the court, vitiate the requirements of NHPA because project design could commence without knowledge of the extent of needed mitigation.

The court remanded this matter for further agency action. *City of Alexandria, Virginia, and Alexandria Historic Restoration and Preservation Commission v. U.S. Department of Transportation,* No. 46 F. Supp. 2d 35, U. S. Dist. LEXIS 5254, (D.D.C. April 13, 1999). LL

EAs and EISs Completed April 1 – June 30, 1999

EAs

Amarillo Area Office/Defense Programs
DOE/EA-1190 (5/27/99)
Pantex Plant Waste Water Treatment Facility Upgrade, Texas
Cost: $115,000
Time: 31 months

Bonneville Power Administration
DOE/EA-1282 (5/07/99)
Mid-Columbia Coho Restoration Feasibility Project, Washington
Cost: $62,000
Time: 6 months

Chicago Operations Office/Science
DOE/EA-1267 (4/14/99)
Proposed 8 GeV Fixed Target Facility at the Fermilab Booster and Booster Neutrino Detectors at Fermi National Accelerator Laboratory, Batavia, Illinois
Cost: $34,000
Time: 10 months

Los Alamos Area Office/Defense Programs
DOE/EA-1269 (6/25/99)
Decontamination and Volume Reduction System Project at Los Alamos National Laboratory, New Mexico
Cost: $52,000
Time: 12 months

Ohio Field Office/Environmental Management
DOE/EA-1273 (4/20/99)
Proposed Final Land Use at the Fernald Environmental Management Project Site, Ohio
Cost: $28,000
Time: 8 months

DOE/EA-1239 (6/18/99)
Disposition of Mound Plant's South Property, Ohio
Cost: $67,000
Time: 20 months

Oak Ridge Operations Office/Nuclear Energy
DOE/EA-1299 (4/13/99)
Receipt and Storage of Uranium Materials from the Fernald Environmental Management Project Site, Ohio
Cost: $95,000
Time: 4 months

Richland Operations Office/Environmental Management
DOE/EA-1135 (5/06/99)
Offsite Thermal Treatment of Low-Level Mixed Waste, Hanford Site, Richland, Washington
Time: 43 months
[**Note**: The costs of this EA were paid by the applicant; therefore, cost information does not apply to DOE.]

Rocky Flats Field Office/Environmental Management
DOE/EA-1292 (3/22/99)
Onsite Treatment of Low-Level Mixed Waste at the Rocky Flats Environmental Technology Site, Colorado (not previously reported in Lessons Learned*)*
Cost: $33,000
Time: 10 months

DOE/EA-1293 (5/04/99)
Vegetation Management at the Rocky Flats Environmental Technology Site, Colorado
Cost: $27,000
Time: 9 months

Savannah River Operations Office/Environmental Management
DOE/EA-1205 (4/28/99)
Implementation of the Wetland Mitigation Bank Program at the Savannah River Site, Aiken, South Carolina
Cost: $26,000
Time: 24 months

Final EISs

Science/Oak Ridge Operations Office
DOE/EIS-0247 (EPA Rating: EC-2)
Construction and Operation of the Spallation Neutron Source, Oak Ridge National Laboratory, Oak Ridge, Tennessee
April 1999 (64 FR 19999; 4/23/99)
Cost: $2.1 million
Time: 21 months

Western Area Power Administration
DOE/EIS-0294 (EPA Rating: EO-2)
Sutter Power Plant and Transmission Line Project, California
April 1999 (64 FR 19999; 4/23/99)
Time: 14 months
[**Note**: The costs of this EIS were paid by the applicant; therefore, cost information does not apply to DOE.]

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

Other EIS-related Documents, April1 – June 30, 1999

Notices of Intent

DOE/EIS-0283
Supplement to the Draft Surplus Plutonium Disposition Programmatic
4/06/99 (64 FR 16720)

DOE/EIS-0280
Proposed Clean Power from Integrated Coal/Ore Reduction Project (CPICOR) at Vineyard, Utah
6/28/99 (64 FR 34640)

Draft EISs

DOE/EIS-0281
Sandia National Laboratories Site-wide, Albuquerque, New Mexico
April 1999 (64 FR 18900; 4/16/99)

DOE/EIS-0222
Hanford Remedial Action and Comprehensive Land Use Plan, Hanford Site, Richland, Washington
April 1999 (64 FR 19999; 4/23/99)

DOE/EIS-0283
Supplement to the Draft Surplus Plutonium Dispostion Programmatic
April 1999 (64 FR 26410; 5/14/99)

Records of Decision

DOE/EIS-0290
Advanced Mixed Waste Treatment Project, Idaho National Engineering and Environmental Laboratory
4/07/99 (64 FR 16948)

DOE/EIS-0251 (also relates to DOE/EIS-0203)
Multi-purpose Canister or Comparable System for Idaho National Engineering and Environmental Laboratory Spent Nuclear Fuel
5/04/99 (64 FR 23825)

DOE/EIS-0297
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona
5/28/99 (64 FR 29023)

DOE/EIS-0294
Sutter Power Plant and Transmission Line Project, California
6/15/99 (64 FR 32041)

DOE/EIS-0247
Construction and Operation of the Spallation Neutron Source, Oak Ridge National Laboratory, Oak Ridge, Tennessee
6/30/99 (64 FR 35140)

Consolidated ROD for the following EISs:

DOE/EIS-0288
Production of Tritium in a Commercial Light Water Reactor

DOE/EIS-0270
Accelerator Production of Tritium at the Savannah River Site, Aiken, South Carolina

DOE/EIS-0271
Construction and Operation of the Tritium Extraction Facility at the Savannah River Site, Aiken, South Carolina
5/14/99 (64 FR 26369)

Supplement Analyses

DOE/EIS-0169-SA-01
Fall Chinook and Coho Salmon Research Program for the Yakima River Basin Fisheries Project EIS
(Decision: No further NEPA review required); June 1999

DOE/EIS-0246-SA-04
Southern Idaho Wildlife Mitigation – Krueger Acquisition (Partial Mitigation for Black Canyon), Wildlife Mitigation Programmatic EIS in Idaho, Montana, Nevada, Washington, and Oregon
(Decision: No further NEPA review required); April 1999

DOE/EIS-0246-SA-05
Albeni Falls Wildlife Mitigation Project: Boundary Creek Acquisition Project, Wildlife Mitigation Programmatic EIS in Idaho, Montana, Nevada, Washington, and Oregon
(Decision: No further NEPA review required); May 1999

DOE/EIS-0246-SA-06
Steigerwald Lake Property Acquisition, Wildlife Mitigation Programmatic EIS in Idaho, Montana, Nevada, Washington, and Oregon
(Decision: No further NEPA review required); June 1999

DOE/EIS-0265-SA-13
Mitigate Effects of Runoff and Erosion on Salmonid Habitat in Pine Hollow Watershed, Watershed Management Program in Oregon, Idaho, Washington and Montana EIS
(Decision: No further NEPA review required); April 1999

Withdrawal of Notice of Intent

DOE/EIS-0302
Transfer of the Heat Source/Radioisotope Thermoelectric Generator Assembly and Test Operations from the Mound Site
5/18/99 (64 FR 26954)

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 1999. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- *Internal scoping.* An internal scoping meeting enabled the preparation of concise documents.
- *Working with legal counsel*. The NEPA document manager worked closely with the field office's legal counsel to define the scope of the EA.
- *Working with local government.* Project personnel worked with local government agencies to develop alternatives for the proposed action.
- *Alternative design.* The initial scope was changed because an environmental program staff member suggested a more "environmentally friendly" alternative. During the course of EA preparation, the scope changed again when the EA team and DOE staff suggested changes that improved the project.

Data Collection/Analysis

What Worked

- *Geographic Information Systems (GIS).* Use of GIS data from other agencies assisted in data collection.
- *Use of applicant data.* The process relied on project information and impact analyses that the project applicant was required to submit. DOE and the responsible state agency then independently reviewed this information.
- *Use of site future use plans.* Plans for future uses of the site helped to define potential commercial operations at the site and bound the consequent potential impacts of changing site uses.

What Didn't Work

- *Disparities in data from multiple sites.* Wide disparities in the data available from multiple DOE sites made it difficult to compare alternative sites.

Schedule

Factors that Facilitated Timely Completion

- *In-house production resources.* Using in-house printing and distribution resources facilitated timely completion of the EIS.
- *Use of scheduling software.* Using commercial project management software helped keep the NEPA process on schedule.
- *A dedicated editor.* An excellent writer-editor kept everyone on track and reminded team members to submit information on time.
- *NEPA Compliance Officer involvement.* The involvement of the NEPA Compliance Officer, who also served as the NEPA Document Manager, from beginning to end facilitated timely completion of the EA.
- *Extra time on scoping*. Some extra time spent defining the scope made the impact analysis more effective and efficient.

Factors that Inhibited Timely Completion

- *Low priority for the proposed action.* The EA was placed on hold whenever there were NEPA actions of higher priority.
- *Ending scoping early.* The scoping process closed before supporting studies were completed, resulting in a need to back track and add new project components and alternatives.
- *Lack of clear direction.* Not having a clear definition of the minimum required information for the EIS, and conflicting review comments, made timely completion difficult.
- *Joint Federal-state responsibility*. Developing the EIS as a joint document with a state agency tied the EIS schedule to the process and schedule requirements of the state agency's siting process.

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What Worked and Didn't Work in the NEPA Process

(continued from page 15)

- *Unresolved policy issues.* Unresolved policy issues and disagreements about potential impacts among Tribes and state and Federal resource agencies made timely completion of the EA difficult.
- *Defining purpose and need.* It was difficult to define the purpose and need because DOE had already decided to proceed with the proposed action. However, the NEPA process was useful in determining alternative means of carrying out the proposed action.
- *Poorly defined scope*. The scope of the proposed action was not specific or well defined.
- *Public comment resolution for overlapping documents*. The EA and the site planning document were issued to the public at the same time. Because of considerable overlap between the two documents, it was difficult at times to determine which document was the subject of a comment. The FONSI was delayed until all comments were resolved for both the EA and the plan; comments on the plan had to be addressed in concert with other agencies.

Factors that Facilitated Effective Teamwork

- *Good communications.* Good communications and electronic transfer of documents facilitated effective teamwork.
- *In-house counsel.* Use of in-house legal counsel personnel facilitated effective teamwork.
- *Delegation of approval authority.* Delegation of approval authority for the EIS facilitated effective DOE teamwork. The NEPA Office was also available to discuss unusual procedural and regulatory issues associated with the project.
- *Assistance from the NEPA Office.* Assistance from the Office of NEPA Policy and Assistance during development of the EA, particularly in bounding the impacts, was extremely helpful.
- *Inviting the contractor to panel meetings.* DOE invited the contractor to panel meetings, which helped pull the document together in a spirit of teamwork.

Factors that Inhibited Effective Teamwork

- *Perception of a decision already made.* The perception of a decision made in advance made the project team hesistant about including all reasonable alternatives or fully analyzing the alternatives.
- *Defining contractor work scope.* The integrating management contractor needed to be convinced that providing data for the EA was part of their existing scope of work.

Process

Successful Aspects of the Public Participation Process

- *Internet Publication.* Placing a copy of the EA on our website generated the most public comment. This may be the most effective way to get public input.
- *Use of local publications.* A notice of the proposal in the site's Environmental Bulletin was beneficial to public participation.
- *Combined Federal and state processes.* Public participation in the EIS was performed in concert with a much more extensive state process. This was well received, although most public participants ultimately felt there were too many meetings on this particular project.
- *Addressing scoping comments in the EA.* Scoping comments were summarized in Chapter 1 of the EA, with references to later sections so the reader could see where the comments were addressed.
- *Use of the public reading room.* Placing the draft EA in the CERCLA public reading room, and advertising this in the local newspaper, was effective.
- *Discussions with Tribes.* Careful coordination with Federal and state-recognized Tribes was important, especially since the Tribes had conflicting interests.
- *Meeting with a single stakeholder.* Meeting with a stakeholder who was both interested and concerned was useful.
- *Good use of a citizens advisory board.* The project was introduced at several citizens advisory board meetings, which provided a foundation for disseminating information.

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What Worked and Didn't Work in the NEPA Process

(continued from page 16)

Unsuccessful Aspects of the Public Participation Process

- *Lack of coordination with local and state processes.* A public participation process that was independent of local and state processes for the project may have caused some confusion.

Usefulness

Agency Planning and Decision Making—What Worked

- *Facilitating public review.* The NEPA process allowed the public to review a wetland mitigation bank memorandum of agreement on the project after it had been signed by the regulatory and resource agencies.
- *Involving EPA early.* It was important to involve EPA early on and to distribute documents directly to regional offices as well as to EPA headquarters.
- *Helping resolve differences.* The NEPA process helped the state and Tribe resolve their differences regarding the proposed action, and gave the public and other agencies a chance to review the data and move forward in the face of uncertainty.
- *Providing a forum.* The EA provided a mechanism for the public to comment on the proposed land use plan and the options expressed in the EA.
- *Improving the decision.* The NEPA process was a major success story because it helped to identify better methods and technologies to meet the purpose and need. Ultimately a better decision was made; through the evolution of the project, a combination of project alternatives was determined to be the best design choice.

Enhancement/Protection of the Environment

- *Development of mitigation.* The NEPA process influenced the siting of facilities and the development of mitigation measures, which helped resolve concerns that surfaced during the Draft EIS review.
- *Increased sensitivity to impacts.* The NEPA process made the project proponents more sensitive to potential impacts on groundwater and on nearby research projects, leading to a more environment-friendly project design.
- *Minimizing impacts.* NEPA was instrumental in facilitating informed and sound decision making and in minimizing potential project impacts. As a result of the NEPA process, adjustments were made to the project that conserved natural resources and protected the environment.
- *Demonstrating benefits of a project.* The NEPA process demonstrated that a beneficial waste treatment project could be accomplished at a very low risk.
- *Implementing potentially unpopular decisions.* The NEPA analysis provided the information necessary to make a decision and allowed DOE to implement some decisions that are not popular in all arenas.
- *Informing the public.* The NEPA process helped make both DOE management and the public more aware of the wetlands issues involving the proposed action.

Cost

Factors that Facilitated Cost Savings

- *Use of existing resources.* Using a writer-editor knowledgeable about project issues and using the expertise of cooperating agencies saved the major costs of having the EA prepared totally by a contractor.

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 decision making.

- For this quarter, in which two EISs and 11 EAs were completed, a total of 15 questionnaire reponses were received; 12 of the 15 respondents rated the NEPA process as "effective."
- One respondent (who rated the process as "5") stated that the environmental impact analysis showed a very low risk to the environment, workers, and the public.
- Two respondents who rated the process as "not effective at all" (for the same document) believed that the decision was made well before the start of the NEPA process.

NEPA Document Cost and Completion Time Facts

Cost Data

EISs

- Two EISs were completed this quarter; one cost DOE $2.1 million and the other was paid for by an applicant and, therefore, cost information does not apply to DOE.
- Cumulatively, for the 12 months that ended June 30, 1999, the median DOE cost to prepare eight EISs was $3.2 million; the average cost was $5.8 million. Two other EISs were paid for by applicants.

EAs

- For this quarter, the median cost of nine EAs was $52,000; the average was $56,000. One other EA was paid for by an applicant.
- Cumulatively, for the 12 months that ended June 30, 1999, the median cost for the preparation of 24 EAs was $41,000; the average cost was $66,000. Two other EAs were paid for by applicants.

Completion Time Data

EISs

- For this quarter, the completion times of two EISs were 14 and 21 months.
- Cumulatively, for the 12 months that ended June 30, 1999, the median completion time for the preparation of ten EISs was 21 months; the average was 24 months.

EAs

- For this quarter, the median completion time of ten EAs was 11 months; the average was 17 months.
- Cumulatively, for the 12 months that ended June 30, 1999, the median cost for the preparation of 26 EAs was nine months; the average was 14 months.

Training Opportunities

How to Manage the NEPA Process and Write Effective NEPA Documents
Jacksonville, FL: September 14-18, 1999
Salt Lake City, UT: December 7-12, 1999
Fee: $995

Reviewing NEPA Documents
Phoenix, AZ: September 7-9, 1999
Jacksonville, FL: October 26-28, 1999
San Antonio, TX: November 2-4, 1999
Fee: $795

The Shipley Group
Phone: 888-270-2157 or 801-298-7800
E-mail: shipley@shipleygroup.com
Internet: www.shipleygroup.com

An Overview of Environmental Laws and Regulations for Managers
Germantown, MD: October 4, 1999
Fee: $220

Environmental Laws and Regulations
Germantown, MD: October 5-7, 1999
Fee: $850

U.S. Department of Energy
National Environmental Training Office (NETO)
Phone: 803-725-7153
E-mail: neto@srs.gov
Internet: www.em.doe.gov/neto

Implementation of the National Environmental Policy Act on Federal Lands and Facilities
Durham, NC: November 1-5, 1999
Fee: $960

Socioeconomic Impact Analysis Under the National Environmental Policy Act
Durham, NC: November 17-19, 1999
Fee: $595

Duke University, Center for Environmental Education
Phone: 919-613-8082
E-mail: Bonnie Britt at britt@duke.edu
Internet: www.env.duke.edu/cee.html

The NEPA Toolbox: EAs with Focus
Denver, CO: December 7-8, 1999
Fee: Regular $750; early $695

The NEPA Toolbox: Assessing Cumulative Impacts
Denver, CO: December 9-10, 1999
Fee: Regular $750; early $695

Environmental Training and Consulting International, Inc.
Phone: 720-859-0380
Fax: 720-859-0381
E-mail: info@envirotrain.com
Internet: www.envirotrain.com

"Time is Money" (Or is It?)

By: Eric Cohen, *Office of NEPA Policy and Assistance*

The Office of NEPA Policy and Assistance has been studying the preparation process for EAs and EISs to better understand how management practices and other factors may favorably and unfavorably affect NEPA document cost and completion time. This report examines a widely-held belief that, for NEPA documents, "time is money" – that is, that documents that take a long time to prepare generally cost a lot, and reducing preparation times would reduce costs. This study, however, found essentially no correlation between document cost and preparation time.

This report focuses on NEPA document preparation costs and does not consider the potentially substantial project cost increases from delays in completing NEPA documents. Timely document preparation is important to avoid such increases, and to make NEPA documents more useful to decision makers and the public.

The major finding of this report does not suggest that reducing preparation time is unimportant. Rather, this report suggests that NEPA Document Managers trying to reduce document costs should focus on factors other than preparation time, as we will discuss below. However, it is useful first to examine the 56 EISs and 177 EAs completed between August 1992 and June 1999 for which we have cost and time data. (See Figures 1 and 2.)

Statistical tests confirm what appears obvious by visual inspection of Figures 1 and 2: there is essentially no linear correlation between document cost and preparation time. As discussed below, sorting and slicing the data do not change this result.

Examining the 21 programmatic and site-wide and 35 project-specific EISs separately shows no significant correlation between cost and time for either type of document.

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Figure 1. EIS Costs versus Completion Times

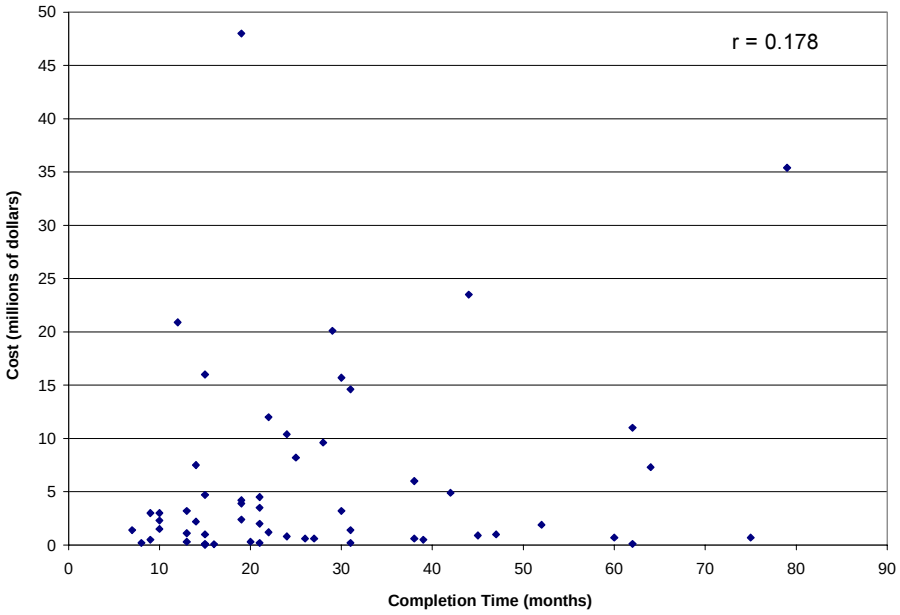
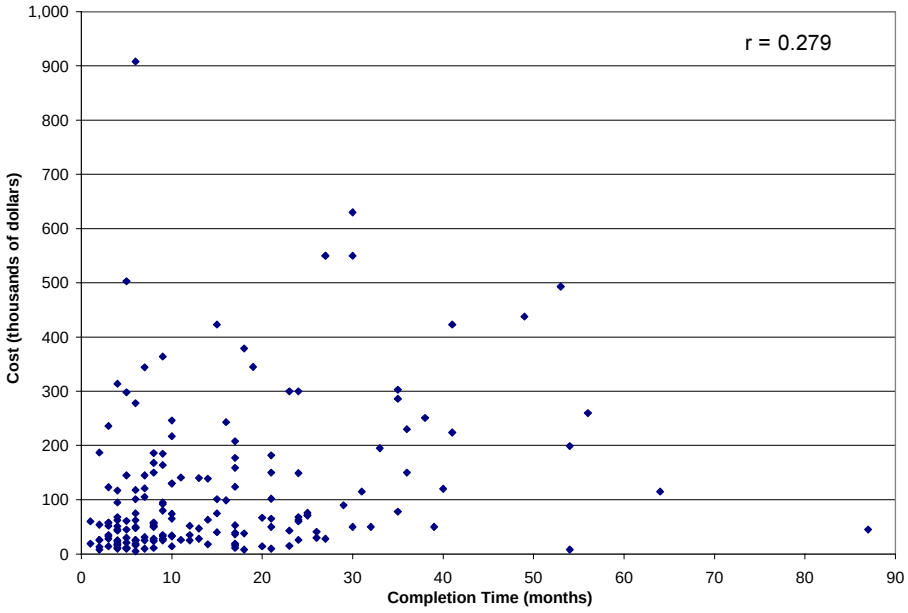


Figure 2. EA Costs versus Completion Times



Note: "r" is the correlation coefficient. r = 0 indicates no relationship and r = 1 represents a perfect positive correlation.

Cost and Time Information

(continued from page 19)

Eliminating "outliers" also does not change the result. For example, most of the EISs with the longest completion times are among the least costly. These include several power market adminstration EISs (project-specific and programmatic documents prepared in substantial part with in-house resources), an electrical transmission line EIS prepared by the Office of Fossil Energy, and an EIS on a cleanup action at Fernald prepared by the Office of Environmental Management. However, eliminating these EISs from the data (e.g., on the theory that they skew the data and do not represent the rest of the DOE complex) does not change the lack of correlation between document cost and time.

Eliminating "outliers" in another way illustrates how robust is the lack of correlation between cost and time. Data in Figures 1 and 2 are not uniformly distributed – most of the data points are clustered in the lower left corner (more obviously for EAs). This indicates a tendency toward shorter completion times and lower cost. However, numerical analysis shows that the data clustered in the lower left corners of Figures 1 and 2 show no correlation between cost and completion times, regardless of where boundaries defining "lower left" are assumed.

With one exception, EIS data for each program office demonstrate the same lack of correlation. A statistically significant but weak positive correlation between cost and time was observed for Bonneville Power Administration (BPA) EISs. This result should be interpreted cautiously in view of the weakness of the correlation and the relatively small range of costs in the data set (14 of the 15 BPA EISs cost less than $1 million), and does not necessarily imply a causal relationship between cost and time.

Implications for Reducing Document Costs

NEPA Document Managers should focus on factors other than preparation time to reduce costs. We have had a few reports that delays in issuing a NEPA document have increased costs associated with retaining a document preparation contractor, so it would not be prudent to ignore the potential effect of completion time on preparation costs. (This study did not examine the effect of NEPA preparation contract type; however, most contracts were cost plus fee arrangements.) Nevertheless, the data suggest that efforts to reduce document preparation times, by themselves, may not be effective in reducing preparation costs. Indeed, in some cases such efforts could be counterproductive. For example, the need to complete the Spent Nuclear Fuel Programmatic EIS quickly, as required by a court order, contributed to the unusually high cost of that document (notwithstanding that its timely completion was vital to the Department and may have saved millions in overall program costs).

What other practices or factors are likely to be important to preparation costs? The December 1996 issue of *Lessons Learned,* page 13*,* reported on common factors associated with NEPA documents that had unusually high and low costs and completion times. Based on that report and subsequent experience, following are a few recommendations (primarily for EISs) to reduce costs:

- Use existing environmental information (e.g., affected environment, accident analyses)
- Use in-house resources to prepare portions of the document
- Manage the public participation process efficiently for proposals that may affect multiple DOE sites or require several public meetings
- Use an efficient approach to preparing responses to public comments, especially when there are many of them (see the September 1996 issue of *Lessons Learned,* page 4, for some suggestions).

Recent EIS Milestones (July 1 to September 1, 1999)

Amended Notice of Intent

DOE/EIS-0236-S
Supplemental EIS for the National Ignition Facility Portion of the Programmatic EIS for Stockpile Stewardship and Management
8/05/99 (64 FR 42684)

Draft EISs

DOE/EIS-0250
Geologic Repository for the Disposal of Spent Nuclear Fuel and High-level Radioactive Waste at Yucca Mountain, Nye County, Nevada
July 1999 (64 FR 44217; 8/13/99)

DOE/EIS-0285
Bonneville Power Administration Transmission System Vegetation Management Program
July 1999 (64 FR 45542; 8/20/99)

DOE/EIS-0289
Jacksonville Electric Authority (JEA) Circulating Fluidized Bed Combustor Project, Jacksonville, Florida
July 1999 (64 FR 46911; 8/27/99)

DOE/EIS-0306
Treatment and Management of Sodium-Bonded Spent Nuclear Fuel, Idaho National Engineering and Environmental Laboratory, Idaho
July 1999 (64 FR 41420; 7/30/99)

Records of Decision

DOE/EIS-0269
Programmatic for the Long-term Management and Use of Depleted Uranium Hexafluoride Resources at Several Geographic Locations
8/10/99 (64 FR 43358)

DOE/EIS-0200
Waste Management Program: Storage of High-level Radioactive Waste
8/26/99 (64 FR 46661)

DOE/EIS-0277
Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site - Amended
9/1/99 (64 FR 47780)

Supplement Analyses

DOE/EIS-0169-SA-02
Natural Spawning Channels, Increased On-site Housing, and Upgrades to the Prosser Hatchery, Yakima Fisheries Project EIS
(Decision: No further NEPA review required)
August 1999

DOE/EIS-0244-SA-02
Environmental Effects of Changes in DOE's Preferred Alternative for Batch Thermal Stabilization Metals, Oxides, and Process Residues, Plutonium Finishing Plant EIS, Richland, Washington
(Decision: No further NEPA review required)
August 1999

DOE/EIS-0265-SA-15
Teanaway River Instream Flow Restoration Project, Watershed Management Program in Oregon, Idaho, Washington and Montana EIS
(Decision: No further NEPA review required)
August 1999

DOE/EIS-0265-SA-17
Union County Small Acreage Aerator, Watershed Management Program in Oregon, Idaho, Washington and Montana EIS
(Decision: No further NEPA review required)
August 1999

DOE/EIS-0265-SA-18
Ladd Creek Alternatives Watering System, Watershed Management Program in Oregon, Idaho, Washington and Montana EIS
(Decision: No further NEPA review required)
August 1999

DOE/EIS-0265-SA-19
Yarrington Road Improvement Project and Grande Ronde River/Moses Creek Lane – Slide Improvement
(Decision: No further NEPA review required)
August 1999

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

December 1, 1999; Issue No. 21 For Fourth Quarter FY 1999

Good Information, Good Government

Using Technology to Improve NEPA Decisionmaking

"By easing citizens' access to good information, we help to fulfill the vision of NEPA, strengthen our democracy, and ensure a clean, healthy environment for future generations," President Clinton stated in his recent message to Congress transmitting the latest (1997) Annual Report on Environmental Quality.

The Annual Report, prepared by the Council on Environmental Quality (CEQ), emphasizes the "explosive growth of information" pertaining to environmental issues available on the World Wide Web. CEQ's Annual Report provides a comprehensive guide to Federal environmental information resources available electronically and to useful Web sites provided by nongovernmental groups and professional organizations.

"One of the foundations of good government is good information," President Clinton observed. NEPA is "at its core, a mandate for informed, democratic decisionmaking. And its contribution to environmental protection is incalculable."

continued on page 3

Managing a National Public Participation Program for the Yucca Mountain EIS

When a proposed action involves 77 sites and 45 states, conducting a meaningful, yet manageable, public participation program requires considerable planning and extra effort. Such is the challenge facing the Office of Civilian Radioactive Waste Management's Yucca Mountain Site Characterization Office (the Site Office) in providing adequate opportunities for public involvement for the Yucca Mountain Repository EIS.

To date, public comments on the recently issued draft EIS confirm Nevadans' keen interest in the proposed geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste. Interest is high nationally as well, especially along potential transportation routes. At a recent international conference in Denver on geologic repositories, Secretary of Energy Bill Richardson said, "The management of spent nuclear fuel and high-level waste is an issue that affects us all, and one that we have to address together."

continued on page 4

Stakeholders at a public hearing in Caliente, Nevada, were interested in local issues such as potential transportation routes in Lincoln County.

Inside *LESSONS LEARNED*

Welcome to the 21st Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by February 1, 2000. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

First Quarter Questionnaires Due February 1, 2000

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2000 (October 1 to December 31, 1999) should be submitted as soon as possible after document completion, but no later than February 1, 2000. The Questionnaire is available interactively on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

Printed on recycled paper

New Executive Order Addresses Environmental Impacts of Trade Agreements

Executive Order 13141, "Environmental Review of Trade Agreements" (64 FR 63167; November 18, 1999), directs responsible agencies to carefully assess and consider environmental impacts of trade agreements "through a process of ongoing assessment and evaluation, and, in certain instances, written environmental review." The purpose of the Executive Order is to "further the environmental and trade policy goals of the United States."

Environmental reviews are recognized as an important method to identify potential positive and negative environmental effects of trade agreements. The Executive Order requires environmental reviews to be: (1) written, (2) published in the *Federal Register* to solicit public comment on both the proposed agreement and scope of the review, (3) developed early in the negotiating process, (4) available for public comment in draft form, where practicable, (5) released to the public in final form, and (6) focused on impacts in the United States and, as appropriate, global and transboundary impacts.

Among other provisions, the Executive Order designates the United States Trade Representative and the Chair of the Council on Environmental Quality to manage its implementation and develop procedures in consultation with appropriate foreign policy, environmental, and economic agencies. The Trade Representative is also responsible for conducting the environmental reviews through the Interagency Trade Policy Staff Committee. LL

CEQ Annual Report (continued from page 1)

Part I of the CEQ Annual Report is devoted to NEPA: Using Information Technology to Improve NEPA Decisionmaking and Management, and Selected NEPA [Litigation] Cases in 1997. CEQ's Web site and its component sites are described: NEPAnet, the DOE NEPA Web, the U.S. Geological Survey's Environmental Impact Analysis Data Links, and the Virtual Law Libraries.

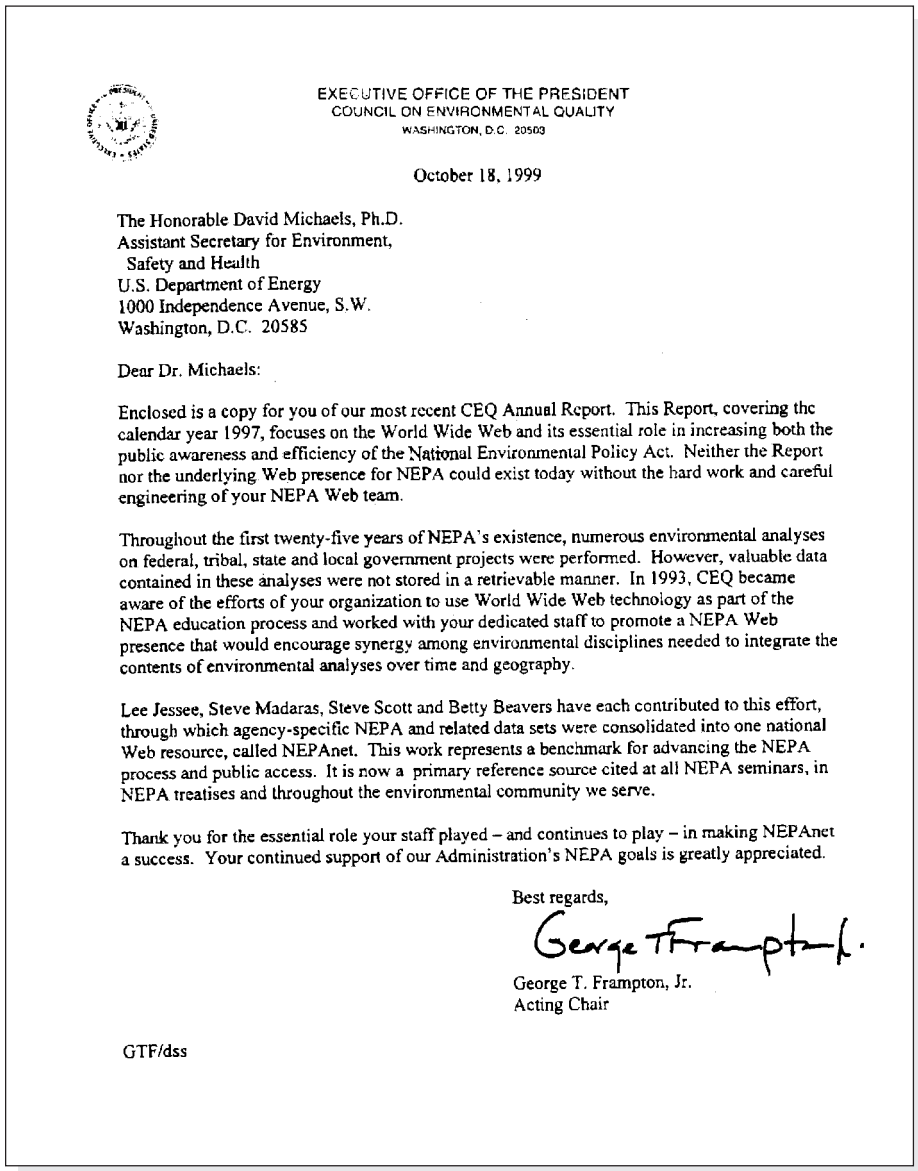
The Annual Report envisions continued Federal agency progress in "reengineering information technology" to provide environmental information quickly and efficiently to the interested public and within the community of environmental professionals. Nevertheless, the Annual Report notes that not all Americans have access to computer technology. Therefore, CEQ "continues to recommend and follow a dual course of providing information in traditional paper format as well as on the Internet."

Part II of the CEQ Report describes Environmental Quality Trends and Access to Information Resources. Each chapter (e.g., Ecosystems and Biodiversity, Air Quality, Aquatic Resources, Energy, Pollution Prevention, Recycling, Toxics and Waste) includes a description of current environmental trends and a listing of useful online sources of information. Part III includes statistical tables covering Environmental Data and Trends. The Report is available on the White House Web site at http://www.whitehouse.gov/ceq.

DOE a Leader in NEPA Web Resources

DOE has been a leader in developing the CEQ Web resources. In 1994, at CEQ's request, DOE designed the CEQ Web site and NEPAnet. DOE continues to host and maintain NEPAnet, and serves as a consultant to other agencies in the development of their NEPA resources. Acting CEQ Chair George T. Frampton, Jr., in an October 18, 1999, letter to David Michaels, DOE's Assistant Secretary for Environment, Safety and Health, acknowledged the "essential role" EH staff played in making NEPAnet a success. The DOE NEPA Web (http://tis.eh.doe.gov/nepa/) and NEPAnet (http://ceq.eh.doe.gov/nepa/nepanet.htm) have been featured in *Lessons Learned Quarterly Reports*: September 1999, September 1998, and June 1997.

For further information on the DOE NEPA Web or NEPAnet resources, contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov, or phone 202-586-7600. LL



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

October 18, 1999

The Honorable David Michaels, Ph.D.
Assistant Secretary for Environment,
Safety and Health
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Dr. Michaels:

Enclosed is a copy for you of our most recent CEQ Annual Report. This Report, covering the calendar year 1997, focuses on the World Wide Web and its essential role in increasing both the public awareness and efficiency of the National Environmental Policy Act. Neither the Report nor the underlying Web presence for NEPA could exist today without the hard work and careful engineering of your NEPA Web team.

Throughout the first twenty-five years of NEPA's existence, numerous environmental analyses on federal, tribal, state and local government projects were performed. However, valuable data contained in these analyses were not stored in a retrievable manner. In 1993, CEQ became aware of the efforts of your organization to use World Wide Web technology as part of the NEPA education process and worked with your dedicated staff to promote a NEPA Web presence that would encourage synergy among environmental disciplines needed to integrate the contents of environmental analyses over time and geography.

Lee Jessee, Steve Madaras, Steve Scott and Betty Beavers have each contributed to this effort, through which agency-specific NEPA and related data sets were consolidated into one national Web resource, called NEPAnet. This work represents a benchmark for advancing the NEPA process and public access. It is now a primary reference source cited at all NEPA seminars, in NEPA treatises and throughout the environmental community we serve.

Thank you for the essential role your staff played – and continues to play – in making NEPAnet a success. Your continued support of our Administration's NEPA goals is greatly appreciated.

Best regards,

George T. Frampton, Jr.
Acting Chair

GTF/dss

Repository Public Participation Program (continued from page 1)

The Site Office faced a logistical challenge in planning for public participation because it could not possibly have a hearing in every city that might want one. This required an appropriate balancing of limited resources with the desire to meet and listen to all interested parties. "We have tried to encourage as much public participation as possible by soliciting comments through the public hearing process, the project Web site, a toll-free telephone number, and other methods. In addition, because the draft EIS is a complex document, we have provided background information at the hearings and through our information products to help explain the key issues," said Wendy Dixon, EIS Program Manager.

Six-month Comment Period

The 180-day comment period for the Yucca Mountain Draft EIS extends through February 9, 2000. (For comparison, the average public comment period for DOE programmatic and site-wide EISs issued since 1994 was about 80 days, and the longest was 120 days.) During this time, 17 hearings have been scheduled: ten in Nevada and seven elsewhere across the country. As of the end of November, approximately 300 people have given formal statements and more than 1,000 persons have attended ten hearings. Lake Barrett, Acting Director, Office of Civilian Radioactive Waste Management, said, "The essential purpose of the public comment period and hearing process is to provide an opportunity for the Department to receive comments from our stakeholders. That's what we want, and that's what we are getting."

The Caliente Youth Center provided a comfortable setting for stakeholders to express their views and concerns.

Nation-wide EIS Distribution

Several months before issuing the draft EIS, the Site Office sent post cards asking about EIS format preferences (paper copy, CD-ROM, or both) to individuals and groups who had indicated an interest in the Yucca Mountain Project, including scoping process participants. (See related article on CD-ROM publishing, page 8.) Based on the responses, the Site Office produced 3,000 CD-ROM copies of the draft EIS and sent more than 2,200 of them to people in all 50 states – Federal, state, tribal and local government officials and agencies, and other persons known to be interested. Further, the Site Office placed the 1,670-page draft EIS in 38 reading rooms across the country, and posted it on both the Department's NEPA Web (http://tis.eh.doe.gov/nepa/) and the Yucca Mountain Project Web site (http://www.ymp.gov).

Because of the large number and volume of EIS reference materials (423 documents, 65,000 pages) – enough to fill a small library – making them widely available posed a special challenge. The Site Office has placed a complete set of all paper copy references in four public reading rooms (three in Nevada and one in Washington, DC), and is using electronic means to make the references more widely available. The Site Office electronically scanned the non-copyrighted references, posted them on the Yucca Mountain Project Web site, and made CD-ROMs that were placed in 38 reading rooms.

Public Hearings

While a public hearing provides an opportunity to make oral comments on the draft EIS, it also encourages discussion and mutual understanding of the proposed action and the NEPA process, and provides an opportunity for interested people to meet one another and listen to each other's concerns.

To promote participation, the Site Office advertises each hearing in local newspapers, including Spanish-language newspapers where available. The Site Office also faxes announcements to 160 media outlets, including radio, television, print media and scientific journals, stakeholder organizations, and Affected Units of Local Government (as defined by the Nuclear Waste Policy Act). Elected officials in each hearing location, including Members of Congress, governors, county commissioners, and mayors, receive special notices via fax. Further, the Site Office posts hearing notices in community centers, libraries, and other public bulletin boards for Nevada hearings when possible.

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Repository Public Participation Program (continued from page 4)

The hearings include DOE's brief introduction and an informal (not recorded) question and answer session. This is followed by a formal session at which comments are recorded. Several stakeholders requested this format to obtain more information about the project and to help people prepare their formal comments.

Other successful measures include use of an independent facilitator and providing fact sheets and other informational materials. Tailoring the fact sheets and the DOE introductory remarks to address local concerns, such as local transportation, has been especially effective.

In general, the Site Office has chosen meeting places that would maximize local public participation. For example, the Caliente Youth Center in Lincoln County, Nevada, provided a comfortable, familiar, and central gathering place.

Locating the hearing in Washington, DC, at an easily accessible facility near the Capitol fostered public participation and was convenient for Members of Congress and their staffs. About 30 people commented formally, including supporters and opponents of the proposed action. The 140 attendees included representatives of stakeholder organizations, Indian tribes, government agencies, states, public utilities and commercial interests, news media, and concerned citizens. A nearby park provided the setting for a peaceful rally for stakeholders opposed to the proposed action, which attracted additional news media interest.

Major Public Concern: Transportation

A major concern, expressed at all of the hearings, is the safety of transporting radioactive wastes to a repository. Many commentors want to know specifically what roads or railway lines DOE would use. The draft EIS analyzes national transportation routes that meet Department of Transportation regulations for highway shipments and follow standard industry practices for rail. Separately, the draft EIS analyzes alternative transportation corridors within the State of Nevada for the potential construction of a rail line. Although this EIS may be used to select a rail corridor, additional NEPA documentation will be necessary to select an alignment within that corridor.

Tours – Bringing People to the Mountain

The Site Office routinely conducts tours of the Yucca Mountain Site for interested individuals and groups, and also provides a monthly public open house tour for the general public. In 1999, seven open house tours brought over 1,500 visitors to the Site. These are excellent opportunities for people to learn about the project and the EIS from DOE's technical experts.

Other Information Meetings

The Site Office meets regularly with interested parties in Nevada, including Tribal Nations and Affected Units of Local Government, to provide updates on the project and the EIS and exchange information. Shortly before DOE issued the draft EIS, the Site Office held three public update meetings, in Las Vegas, Amargosa Valley, and Reno, Nevada. Meetings with involved tribes resulted in the tribes producing a reference document to the draft EIS dealing with tribal issues and concerns.

Next Steps

The Nuclear Waste Policy Act directs the Secretary of Energy to determine whether to recommend to the President that the Yucca Mountain Site be developed as a geologic repository. The final EIS, which will address public comments, must accompany any such recommendation. The Office of Civilian Radioactive Waste Management plans to issue a final EIS in November 2000, and then, also using additional information required by the Nuclear Waste Policy Act, determine whether to recommend the Site.

When Planning Public Events, Consider Location and Access

Recently, DOE was criticized for conducting a public scoping meeting in Portland, Oregon, at a downtown hotel where parking is expensive. On the other hand, the public hearing for the Yucca Mountain EIS in downtown Washington, DC, was convenient to public transportation and within walking distance of Capitol Hill.

When selecting locations for scoping meetings and similar public events, balance considerations of public accessibility and cost. Central city locations are likely to be accessible by public transportation but impose high parking fees on those who drive. Suburban locations are likely to require that attendees have private transportation but may offer free parking.

Deregulated Energy Market Poses NEPA Process Challenges for Western Area Power Administration

Deregulation of the electric industry is bringing NEPA challenges to DOE's Power Marketing Administrations, as well as to regulatory and reviewing agencies. Within the industry, deregulation has led to the rise of "merchant power plants" – power-generating facilities that are not owned by a utility and have no long-term obligation to sell the energy they generate to a utility. Merchant plants usually sell power to retail and wholesale customers on a mid- or short-term basis.

The Western Area Power Administration (Western) operates and maintains a high-voltage electric transmission system in 15 western states. Under Federal Energy Regulatory Commission (FERC) Order 888 (1996), public utilities that own or control interstate transmission lines must offer open access transmission services. While Western is not a public utility by law, it nevertheless is operating under the intent of the FERC Order through Western's 1998 Open Access Transmission Service Tariff. This Tariff specifies that if capacity is available on the requested transmission line, Western must provide nondiscriminatory access. Under DOE NEPA regulations, Western is required to prepare an EIS for proposals to incorporate new power sources (i.e., "interconnect" proposals) greater than 50 megawatts into its system.

In this article, Western's EIS Document Managers describe lessons learned in NEPA compliance on two merchant plant interconnection projects – the Sutter Power Plant in California, and the Griffith Power Plant in Arizona. Western learned the following lessons from these projects that may apply to the broader DOE NEPA community: (1) Integrating the NEPA process with another agency's assessment processes requires planning to address potential complications; and (2) Before committing resources to the NEPA review, be sure that project components are adequately defined.

Sutter Power Plant and Transmission Line EIS:

Look Ahead for Potential Complications in Integrated Review Processes

By: Loreen McMahon, *Environmental Project Manager and NEPA Document Manager, Sierra Nevada Region, Western Area Power Administration*

In 1997, Calpine Corporation asked Western to agree to transmit power to be produced by Calpine's proposed merchant plant. Calpine proposed to construct a 500-megawatt, natural gas-fueled, combined-cycle, electric generation facility on 77 acres in Sutter County, California, and interconnect its facilities to a Western transmission line. The project would be funded by the applicant.

A Combined Federal-State Process

Because the Sutter Power Plant was the first merchant plant to be built in California under deregulation, the project review process was a new one for Western – and for the California Energy Commission (CEC), the state agency responsible for permitting new plants. In California, the CEC's siting process, which includes issuing Preliminary and Final Staff Assessments of the potential environmental impacts, is functionally equivalent to the California Environmental Quality Act (CEQA) process.

Western and CEC conferred on combining the two environmental review processes and agreed to act as joint lead agencies for the purposes of NEPA and CEQA, respectively. Combining documents – specifically, by integrating the NEPA elements into the CEC Final Staff Assessment so it could serve as the Draft EIS – could eliminate duplication of analyses and streamline processes, a potential benefit to the agencies and the public.

Extensive Public Involvement

In general, this integrated approach worked well, particularly for public involvement. Western and CEC held more than 20 public meetings, data request workshops, evidentiary hearings, and committee conferences, mostly in the local area, to inform and involve the public. This resulted in a more extensive public involvement process than usual under NEPA. Although the public meetings were costly for the agencies and the applicant, time-consuming for the public, and became somewhat redundant as issues were repeated, the public provided valuable information and the project proponent adopted many suggestions.

Challenges of an Integrated Process and Deregulation

The CEC process in many ways is similar to a judicial proceeding. The CEC Preliminary and Final Staff

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(continued from page 6)

Assessments consist of a series of individually authored statements on environmental impact areas, such as air quality or cultural resources. The authors swear under oath to their analyses and conclusions. The Commission does not analyze or endorse the statements as official positions, but considers them as testimony of individual expert staff. This posed a problem when Western disagreed with an analysis because CEC does not require its staff to modify their testimony to respond to comments, even from an agency with joint authorship and responsibility. This conflict became most apparent where the state and Federal processes differed, such as in dealing with alternatives, characterizing "significance," and incorporating mitigation.

Merging the documents posed perhaps the biggest challenge. Western adopted the CEC format because the NEPA regulations provide greater format flexibility than CEC's process. The Environmental Protection Agency staff, however, had difficulty reviewing the report as a NEPA document. They were invited into the process early, and to the meetings. Nevertheless, EPA chose to rely primarily on formally commenting to Western on the Final Staff Assessment/Draft EIS. Earlier substantive discussions would have facilitated their understanding of the underlying issues of this unique project.

Western Decided to Issue a Separate Final EIS

After CEC and Western issued the Final Staff Assessment/ Draft EIS, Western reexamined the remaining CEC process and determined that combining the CEC's Presiding Members Proposed Decision (PMPD) with the Final EIS would not be appropriate. This is because the PMPD provides a judicial recommendation for a project decision, which is more definitive than a "preferred alternative" designation. Western determined that it would have been inappropriate to label its Final EIS as a "proposed decision." Therefore, Western issued its own Final EIS and Record of Decision. This approach also provided Western the opportunity to structure the Final EIS in standard NEPA format and clarify other aspects of the Draft EIS. Because Western did not anticipate this separation, it posed last-minute resource problems.

As a result of the NEPA process, the applicant made adjustments to conserve natural resources and protect the environment, including a major and costly design change from a water-cooling system to dry-cooling to avoid the potential for groundwater drawdown and warm water discharge into irrigation systems. In the end, the NEPA review achieved its goal of helping the participants to make environmentally informed decisions.

For more information, contact Loreen McMahon at mcmahon@wapa.gov, or phone 916-353-4460.

Griffith Power Plant and Transmission Line EIS:

Be Sure Projects Are Adequately Defined before Undertaking an EIS

By: Dave Swanson, *NEPA Document Manager, Corporate Services Office, Western Area Power Administration*

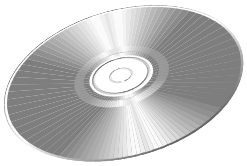
Griffith Energy, LLC, applied to Western for transmission access in 1997. The company planned to construct a 520-megawatt natural-gas-fired, combined-cycle merchant power plant on 40 acres in Mohave County, Arizona, and asked to connect this facility with Western's transmission system near Kingman, Arizona. Western, funded by the applicant, would construct the connecting transmission lines and substation. The Bureau of Land Management was a cooperating agency in the NEPA review.

Western agreed to conduct a transmission system impact study, and, with Griffith Energy, set the environmental review schedule to accommodate a year-2000 power plant operation date. Western used the EIS scoping results to define the study area in which environmental resource data would be collected. Western conducted the scoping process for the EIS before finishing the system impact study, but determined from the finished study that additional system improvements were needed to accommodate expected power flows from Griffith's power plant. The environmental analyses were stopped and Western reopened scoping to address these improvements, which extended the schedule for the environmental review process. Western then determined that the applicant would need to obtain additional environmental resource data and analysis to address the potential effects of the additional system improvements.

For future projects with system impact study requirements, Western will ensure that all project components have been adequately defined before closing the EIS scoping process and starting the environmental analyses.

For more information, contact Dave Swanson at swanson@wapa.gov, or phone 720-962-7261 (new phone number effective December 9, 1999).

CD-ROM – A Useful Complement to Printed NEPA Documents?



On occasion, DOE and other Federal agencies distribute EISs and supporting documents on CD-ROM (Compact Disc-Read Only Memory) to some recipients as a partial alternative to distributing only paper copies. For a DOE EIS, however, CD-ROM publishing is at most an adjunct to preparing a required electronic file that EH publishes on the DOE NEPA Web. Most of the convenience and functional features of CD-ROMs as an alternative to paper NEPA documents, as discussed below, are greater with Web publication.

Decide Early Whether to Use CD-ROM Publishing

Stakeholder demand for a DOE NEPA document on CD-ROM should be determined early during document development, primarily to allow time to plan an overall publication strategy and make any necessary technical arrangements. (For example, DOE NEPA Document Managers have mailed inquiries to a preliminary distribution list and have inquired at public meetings and through announcements and Web pages.) The CD-ROM format may appeal most to people who are facile with computers but do not have access to the Internet.

NEPA practitioners experienced in CD-ROM publishing report diverse advantages and disadvantages of this distribution method. For this article, *Lessons Learned* staff consulted several DOE offices, other Federal agencies, and contractors who have used CD-ROMs to distribute NEPA documents. (See related article on the Yucca Mountain EIS, page 1, which was distributed, in part, on CD-ROM.)

Advantages of CD-ROM versus Paper

Cost savings. CD-ROMs are generally less expensive to produce, package, and distribute than paper copies, especially in large batches. Replication costs of CD-ROMs are lower, and color is not a cost factor as it is for paper copies. The smaller size of a CD makes packaging easier and shipping less expensive. For example, mailing a five-pound EIS coast-to-coast would cost about $6.45, while mailing a CD-ROM with an accompanying letter would cost $1.21 – a sizable difference if many copies are involved. (As reported in *Lessons Learned Quarterly Report,* June 1999, page 7, publishing the 30 reports that comprise the Los Alamos National Laboratory Habitat Management Plan on CD-ROM saved $40,000.)

Ease of use. Instead of having to thumb through many printed pages, a CD-ROM user can search large volumes of data electronically if the CD-ROM contains a search engine. CD-ROM users may search by key words and create bookmarks. When formulating comments, CD-ROM users can quickly locate the sections they need, then copy and paste text into their comments.

Portability. CD-ROMs are much easier to transport than paper copies.

Less Time to Produce. Once the planning and formatting for a CD-ROM is done, it takes less time to produce the CD-ROM copies than to print similar quantities of paper copies.

Reduced Storage Space. CD-ROMs consolidate a lot of information into a small space. CD-ROMs also allow compact storage of one "original" from which multiple paper copies can be printed later as needed.

Disadvantages of CD-ROM versus Paper

More Early Planning Required. Using a CD-ROM to publish and distribute documents requires more planning and access to CD-writing hardware, software, and a specialist's services.

Ensuring Compatibility. CD-ROMs should be formatted for both Windows and Macintosh readability.

In summary, so long as DOE continues to distribute NEPA documents in paper and Web-accessible electronic formats, it is not clear that CD-ROM versions should routinely be made available. Rather, it seems better to first check whether there is sufficient stakeholder interest in CD-ROM before deciding to produce that additional format.

Note: CD-ROM may not meet EH electronic file requirements for Web publishing. See "NEPA Document Electronic Publishing Standards and Guidelines," Office of Environment, Safety and Health, October 1998, available on the DOE NEPA Web. LL

Pollution Prevention and NEPA

This article reminds readers of DOE, Council on Environmental Quality (CEQ), and Environmental Protection Agency (EPA) guidance on considering pollution prevention in the NEPA process.

Major environmental laws enacted in the 1970s and 1980s (e.g., Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act) focused on controlling pollution and cleaning up immediate environmental problems, largely by limiting releases to environmental media. These laws have brought about substantial improvements in environmental quality, but they do not encourage consideration of the multimedia "big picture." They create no direct incentives to reduce pollution at the source.

Recognizing this, Congress passed the Pollution Prevention Act in 1990 (42 U.S.C. 13101 et seq.), which established a national policy to prevent or reduce pollution at the source, recycle waste, treat pollution in an environmentally safe manner, and dispose of waste only as a last resort.

DOE Guidance on Pollution Prevention and NEPA

A 1992 memorandum from the Office of NEPA Policy and Assistance to NEPA Compliance Officers encouraged the use of the NEPA process to incorporate pollution prevention principles into DOE's planning and decision

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Recent Conference Spotlights NEPA and Pollution Prevention

At the DOE Pollution Prevention Conference held in Albuquerque, New Mexico, November 15-19, 1999, Mary Greene, from the Office of NEPA Policy and Assistance, chaired a session entitled "NEPA, Pollution Prevention and Clean Air Act Conformity: Working Together for a Common Goal." Ms. Greene reviewed the existing guidance on pollution prevention and NEPA (next page) and discussed the recently issued DOE draft guidance on "Coordinating Clean Air Act Conformity Requirements and the NEPA Process" (page 11).

The Council on Environmental Quality guidance on pollution prevention (58 FR 6478; January 29, 1993) encourages all Federal agencies to incorporate pollution prevention principles, techniques, and mechanisms into their NEPA planning, decision making, and document preparation. In Albuquerque, three NEPA practitioners related recent experiences coordinating pollution prevention efforts with the NEPA process.

- Mike Hickman, an engineer with the Savannah River Operations Office, discussed concurrent preparation of the *Process Waste Assessment, Pollution Prevention Design Assessment* and the *EIS for the Construction and Operation of a Tritium Extraction Facility at the Savannah River Site.* Mr. Hickman indicated that the Design Assessment helped to identify more than 50 pollution prevention opportunities that were incorporated into the proposed action analyzed in the NEPA review.
- Douglas Chapin, a physical scientist with the Richland Operations Office, and Rajendra Sharma, NEPA Compliance Officer for the Office of Nuclear Energy, discussed how a waste minimization and management plan is being developed for the Fast Flux Test Facility. The Facility is evaluated in the EIS being prepared for *Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States*. Mr. Chapin indicated that the plan would focus on using less hazardous substances and reducing waste generation, and would provide information for the Fast Flux Test Facility analysis in the EIS.

Some conference participants indicated that the Department should, but often does not, take credit for pollution prevention efforts that become integral to the proposed action or alternatives. Others recommended increased emphasis on pollution prevention in NEPA reviews of proposed actions.

Incorporating pollution prevention efforts within NEPA reviews will help meet Secretary Richardson's pollution prevention and energy efficiency goals announced at the Pollution Prevention Conference. The goals set targets for reducing the generation of solid, hazardous, and radioactive waste; improving energy efficiency; reducing the use of ozone-depleting substances and emission of greenhouse gases; buying items with recycled content; and increasing vehicle fleet efficiency and use of alternative fuels.

Existing Pollution Prevention and NEPA Guidance

Documents marked with "*" may be found in the DOE NEPA Compliance Guide and also on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Tools.

1992 DOE's Office of NEPA Policy and Assistance guidance on Integrating Pollution Prevention with NEPA Planning Activities *

DOE's Policy on Waste Minimization and Pollution Prevention

1993 CEQ's Memorandum to Federal Agencies on Pollution Prevention and the National Environmental Policy Act *

EPA's Guidance on Incorporating EPA's Pollution Prevention Strategy into the Environmental Review Process *

1994 DOE's Office of Energy Research Guidance on Incorporating Pollution Prevention into the National Environmental Policy Act (NEPA) Process, http://epic.er.doe.gov/epic/scripts/epic.exe?ShowProfile/388

1995 EPA's Pollution Prevention/Environmental Impact Reduction Checklists for NEPA/309 Reviewers, http://es.epa.gov/oeca/ofa/pollprev.html

1996 DOE's Pollution Prevention Program Plan

DOE's Office of Environmental Management Guidance on Incorporating Pollution Prevention into the National Environmental Policy Act Process

Other references

- The DOE Pollution Prevention Information Clearinghouse Home Page is found at http://epic.er.doe.gov/epic/.
- ESAVE (formerly Pollution Prevention Advisor), the DOE Defense Programs Quarterly Newsletter, is available at www.dp.doe.gov/dp45/p2/.
- The DOE Office of Environmental Management Pollution Prevention Home Page is at www.em.doe.gov/wastemin/.

Pollution Prevention
(continued from page 9)

making, in anticipation of CEQ and EPA guidance. The Office of Science (formerly Energy Research) issued its own guidance entitled "Incorporating Pollution Prevention into the National Environmental Policy Act Process" in September 1994 (ER NCO Communication 94-05). Other Offices, including Environmental Management and Defense Programs, also have provided pollution prevention guidance, but not with a NEPA focus.

CEQ and EPA Guidance

CEQ has issued guidance to Federal agencies emphasizing that NEPA provides "a longstanding umbrella for a renewed emphasis on pollution prevention in all federal activities" (58 FR 6478; January 29, 1993). The CEQ guidance provides techniques for incorporating pollution prevention into Federal planning and decision making processes and for reporting on those efforts in NEPA documents. CEQ indicated that Federal policies, projects, procurements, and approvals are all areas in which pollution prevention efforts might be warranted. In addition, CEQ noted that pollution prevention could be incorporated into the NEPA process through scoping, the description of the proposed action and alternatives, and mitigation.

EPA's Office of Federal Activities issued guidance in February 1993 to promote a clearer understanding of how pollution prevention can be incorporated into the NEPA environmental review process. In addition, in January 1995, EPA issued pollution prevention checklists for 30 types of projects (including energy management, power plants, hazardous waste incinerators, hazardous materials storage and treatment facilities, and cleanup activities).

Recommendations for Incorporating Pollution Prevention in the DOE NEPA Process

Implementing pollution prevention principles is good management and the right thing to do, consistent with the letter and spirit of NEPA, compliant with laws and guidance, and likely to produce efficiencies and savings. Pollution prevention approaches must be incorporated into project plans, however, not just discussed as elements in a NEPA review. The following recommendations, based on CEQ and EPA guidance, may assist in identifying and incorporating pollution prevention into the NEPA process and project decision making.

continued on next page

Pollution Prevention
(continued from page 10)

- Evaluate early in project planning the potential for including pollution prevention in a proposed project. Potential approaches include reducing the amount or toxicity of waste generated; substituting materials; increasing efficiency in use of raw materials, energy, and water; purchasing energy-efficient equipment or materials with recycled content; modifying procedures to reduce waste; and reusing or recycling materials on the same or another project.
- In an EIS Notice of Intent, explicitly include pollution prevention as a scoping topic. Define pollution prevention and include examples to stimulate stakeholders' consideration of the subject.
- Design the proposed action and alternatives with pollution prevention approaches incorporated as project features. For example, when proposing the size and location of a facility, consider how its impacts depend on its size and on its distance to sensitive resources or transportation routes. In an EA or EIS, identify particular pollution prevention measures that were incorporated into the proposed action and alternatives and describe how they would reduce or prevent pollution.
- Identify recycling and energy recovery options in an EA or EIS that would be employed if the proposed action or alternatives were implemented.
- In an EA or EIS, identify pollution prevention approaches that could be mitigation measures and describe how they could reduce or prevent pollution.
- Consider including a distinct section entitled "Pollution Prevention" in an EA or EIS. This section could recap the pollution prevention measures incorporated into the proposal, alternatives, and potential mitigation measures. LL

Guidance Update: Clean Air Act Conformity and NEPA

Draft Guidance Issued – Comments Requested

The Office of Environment recently distributed draft guidance to help the DOE environmental community integrate Clean Air Act (CAA) conformity requirements for criteria pollutants and the NEPA process. (Conformity refers to emissions of criteria pollutants being consistent with an implementation plan, usually a state plan.) In a November 12, 1999, memorandum, Ray Berube, Deputy Assistant Secretary for Environment, asked environmental managers and NEPA Compliance Officers to follow the draft guidance on an interim basis, pending revision in response to comments, which he requested by January 7, 2000.

The draft – "Guidance on Clean Air Act (CAA) General Conformity Requirements and the National Environmental Policy Act (NEPA) Process" – describes how to apply the conformity requirements to proposed actions, address conformity requirements in NEPA documents, and coordinate the CAA conformity and NEPA public participation processes.

Under the guidance, DOE is to conduct a conformity "review" process for all proposed actions (and alternatives). The steps in the conformity review process lead to a conclusion on whether the conformity requirements apply to an action, and therefore, whether a conformity "determination" is needed for the action.

Also, under the guidance, DOE is to prepare a conformity determination, when needed, only for the preferred alternative in an EA or EIS, unless circumstances warrant determinations for other alternatives. The determination process leads to conclusions on how an action would conform to an implementation plan, including what mitigations would be necessary. It may be beneficial to conduct determinations for alternatives other than the preferred alternative if time is at a premium (in case the preferred alternative would not succeed for any reason) or if DOE wanted to know the full cost requirements (including costs for mitigations) before choosing among alternatives.

Ted Koss, an air specialist in the Office of Environmental Policy and Assistance, provided assistance in developing the guidance.

The draft guidance is posted on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Tools. Please provide comments through your NEPA Compliance Officer. Direct any questions to Mary Greene at mary.greene@eh.doe.gov or phone 202-586-9924. LL

Considering National Natural Landmarks in NEPA Reviews

Park Service Issues Revised Regulations

National natural landmarks – areas designated by the Secretary of the Interior as outstanding examples of the nation's major biological and geological features – are among the environmentally sensitive resources to be considered in all NEPA reviews. These areas include terrestrial and aquatic natural ecosystems, landforms, geological features and processes, habitats of native plant and animal species, and fossil evidence of the development of life. The National Park Service has issued revised regulations (64 FR 25708; May 12, 1999, effective June 11, 1999) for the National Natural Landmark Program (36 CFR Part 62), which state (62.6(f)): "Federal agencies should consider the existence and location of designated national natural landmarks, **and of areas found to meet the criteria for national significance,** in assessing the effects of their activities under [NEPA]." (The revision is in boldface type above.)

> ***"National significance,"*** as defined in the Department of the Interior's regulations (36 CFR 62.2), refers to an area that is one of the best examples of a biological community or geological feature within a natural region of the United States. The primary criteria for determining national significance are illustrative character and present condition of the feature. Secondary criteria include rarity, diversity, and value for science and education.

Landmark Program in Effect Since 1962

The National Natural Landmark Program was established by the Secretary of the Interior in 1962 under the authority of the Historic Sites Act. Currently, the National Registry of Natural Landmarks lists 587 sites in 48 states (all except Delaware and Louisiana), the U.S. Virgin Islands, Puerto Rico, and the Pacific Trust Territories. Approximately half are administered solely by Federal, state, county, or municipal governments; nearly one-third are privately owned; and the rest are owned or administered by a mix of public and private owners.

Designation as a landmark could have state or local planning and land use implications, but is not a land withdrawal, does not change the ownership, and does not dictate activity. The program seeks to identify and preserve nationally significant examples of the nation's natural heritage while respecting ownership interests.

In issuing the revised regulations, the National Park Service lifted a 10-year moratorium on designation of new national natural landmarks. Several thousand candidates, or "potential national natural landmarks," were identified in inventories funded by the Park Service between 1971 and 1986. Federal agencies and other organizations also may recommend sites for consideration.

Park Service Provides Requested Information for NEPA Reviews

When the National Park Service participates in scoping or reviewing a draft EIS, the Service will notify a Federal agency of a national natural landmark near a proposed action. But the National Park Service does not participate in all DOE EISs, and a NEPA Document Manager may appropriately ask the Service for information on national natural landmarks that may be affected by a proposed action or on potentially affected areas that meet the national significance criteria. For an EA, which often would not come to the Park Service's attention, it is also necessary to determine whether there could be significant impacts to any such resources.

Recommendations for DOE NEPA Practitioners; Consult with the Park Service

- When it is not clear whether a proposal might affect a national natural landmark or an "area that meets the significance criteria," contact the appropriate

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Park Service Coordination on NNL Part of Scoping for Recent EIS

During scoping for the Arizona-Sonora Interconnect Project (DOE EIS-0307), Margaret Brooks, the National Natural Landmarks Coordinator for the Park Service's Intermountain Region informed DOE's Office of Fossil Energy that one of the proposed transmission line corridors might affect the Patagonia-Sonoita Creek national natural landmark in Santa Cruz County, Arizona, and recommended that the EIS address any associated potential impacts. This landmark is a permanent stream-bottom habitat supporting rare aquatic biota, including the Gila topminnow, and the only known U.S. nesting spot for a rare bird, the rose-throated becard. (See *Lessons Learned Quarterly Report*, September 1999, page 1.)

National Natural Landmarks
(continued from page 12)

National Natural Landmarks Field Coordinator (box, right) to request information needed to determine potential impacts.

- For a categorical exclusion, ensure that the proposed action meets the DOE NEPA regulations, which identify national natural landmarks as one of the environmentally sensitive resources that must not be adversely affected for a proposed action to qualify for categorical exclusion (Appendix B.(4)(iv)).
- For an EA or EIS, assess potential impacts to national natural landmarks or areas found to meet the criteria for national significance. If the action would not affect any national natural landmarks, state this in the EA or EIS.

For more information about the National Natural Landmark Program, visit the Park Service's Web site at http://www.nature.nps.gov/partner/nnlp.htm. For additional information, contact the National Natural Landmark Program National Coordinator at 202-219-8934 or a Field Coordinator.

National Natural Landmarks Field Coordinators

Northeast Region
CT, MA, ME, NH, NJ, NY, RI, VT
Carol Daye
617-223-5064

PA, VA, WV
Stephen Smith
215-597-5199

National Capital Region
KY, MD, NC, VA, WV
Ann Brazinski
703-285-2558

Southeast Region
AL, FL, GA, LA, MS, PR, SC, TN, VI
Chuck Schuler
404-562-3113

Midwest Region
AR, IA, IL, IN, KS, KY, MI, MN, MO, ND, NE, OH, SD, WI
Michael Gallagher
402-221-3418

Intermountain Region
CO, MT, UT, WY
Karen Scruby
303-969-2929

AZ, NM, OK, TX
Margi Brooks
520-670-6501 ext. 232

Pacific West Region
ID, OR, WA
Steve Gibbons
M-W 360-856-5700 ext. 306
Thurs. 206-220-4105

American Samoa, CA, Guam, HI, NV
Jonathan Bayless
415-427-1427

Alaska Region
AK
Judy Alderson
907-257-2635

An EIS Must Include Its Distribution List

The Council on Environmental Quality (CEQ) NEPA regulations at 40 CFR 1502.10 require that an EIS include a list of agencies, organizations, and individuals to whom copies of the EIS are sent. This requirement does not distinguish between a draft and final EIS.

Having a reliable record of EIS distribution is also a useful management tool, particularly for follow-up public involvement such as distributing a Record of Decision (*Lessons Learned Quarterly Report*, June 1999, page 10) or preparing a Supplemental EIS. A distribution list also can prove helpful in litigation. When a litigant raises issues regarding the adequacy of public notice, the distribution record can help demonstrate DOE's compliance with requirements. Recently, when DOE was questioned regarding distribution of an EIS to an adjoining state, it was helpful to refer to the distribution list printed in the EIS.

Recommendations for DOE NEPA Practitioners

The NEPA Document Manager should plan, develop, and maintain a distribution list throughout the entire EIS document preparation and publication process.

- Plan the distribution list from the beginning based on early knowledge of parties interested in the proposed action, such as is obtained during EIS scoping.
- Identify people who are interested in DOE actions generally, and are likely to be interested in the proposed action.
- Use resources such as Program or Field Office mailing lists and the "Directory of Potential Stakeholders for DOE Actions under the National Environmental Policy Act," which the Office of NEPA Policy and Assistance publishes in January and July of each year.
- As appropriate, coordinate with field and headquarters public affairs staffs, and headquarters Congressional Affairs staff.
- Assemble the distribution list before the draft or final EIS is at the approval stage to avoid delaying document printing.
- Develop the final EIS distribution list by modifying the draft EIS distribution list; include people who request the draft EIS after its initial distribution and those who comment on the draft EIS.
- Indicate which parties on the distribution list received the entire EIS and which received only the summary, if distribution is made under 40 CFR 1502.19.
- Do not publish personal contact information, such as full addresses, for private individuals.

For further assistance in planning EIS distribution, contact your NEPA Compliance Officer. For matters regarding the DOE NEPA Stakeholders Directory, contact Katherine Nakata at katherine.nakata@eh.doe.gov or phone 202-586-0801.

Significant Reforms Achieved Under DOE-Wide NEPA Contracts

By: Dawn Knepper, *Contracting Officer, Albuquerque Operations Office*

The success of the DOE-wide NEPA contracts continues to expand. So far, 13 different DOE offices and contractors have issued 50 task orders for a value of more than $32 million. More than 90 percent of awards (by value) were made using competitive proposals. More than 50 percent of awards (by value) were made on a fixed-price or incentive-fee basis. The administrative lead time to make a task order award averages 23 calendar days. Clearly, the DOE-wide NEPA contracts have helped to fulfill the vision of NEPA contract reform.

How have the DOE-wide NEPA contractors been performing? Excellent! Remember that document managers are required to evaluate contractor performance annually and at the completion of each task order.

Performance Quality

Twenty of the task orders issued are physically complete. The average performance rating for NEPA task orders is "excellent," a numerical score of 4.3 points on a scale of 1 to 5. Average performance ratings for specific performance areas are listed below. The highest ratings overall occurred in the areas of communications and teamwork.

Quality	4.2
Cost control	4.0
Timeliness	4.2
Responsiveness	4.5
Application of requirements	4.4
Innovation	3.6
Planning	4.2
Staffing	4.0
Communications	4.8
Deliverables	4.4
Teamwork	4.7

Cost Performance

Cost performance is measured by comparing the original and the final value of the task order. Increased cost can be attributed to DOE program changes or contractor overrun. It is best to contact the DOE document manager for specific information when evaluating cost performance.

Given that understanding, here is a summary of information on total cost performance for all contractors.

Completed task orders	20
Tasks completed at or below original cost	12 60%
Cost growth on completed tasks	26%

Schedule Performance

Data also are available on the completion schedules for NEPA task orders. Again, schedule growth measures the actual task duration against the original schedule. This may change due to DOE program changes or contractor delay. Talk to the document manager for details on task orders relevant to your prospective task. Schedule performance has been very good, with few tasks delayed and total task duration extended by only 17 percent.

Completed task orders	20
Tasks completed within original schedule	15 75%
Schedule growth on completed tasks	17%

Transition

Together, we have made NEPA contract reform a reality in DOE. In my view, this is helping us to prepare NEPA documents better, faster, and cheaper than ever before. David Gallegos is taking over my contracting role for the DOE-wide NEPA contracts. You can reach him at 505-845-5849 or dgallegos@doeal.gov. I know he will serve you well in the continued effort to improve. I have appreciated being welcomed into the NEPA community. You have taught me so much. Thank you, and congratulations on the great progress we have made.

Thanks to Dawn Knepper

The Office of NEPA Policy and Assistance thanks Dawn Knepper for her enthusiastic and spirited efforts in initiating and serving as the point of contact for the DOE-wide NEPA contracts. Much of the credit for the success is due to Dawn's vision and expertise.

New Book for the NEPA Practitioner's Bookshelf

From time to time the Office of NEPA Policy and Assistance announces (without endorsement) new books and other reference material that may be useful or interesting to the DOE NEPA community. "Suggestions for the NEPA Practitioner's Bookshelf" (August 1996) is available in the DOE NEPA Compliance Guide (on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under NEPA Tools) and upon request from the Office of NEPA Policy and Assistance. (See *Lessons Learned Quarterly Reports*, June 1999, page 10, and September 1998, page 5.)

The NEPA Reference Guide

Lucinda Low Swartz, Esq. and Danny C. Reinke, Ph.D.
Battelle Press
505 King Avenue
Columbus, Ohio 43201-2693
Phone: 614-424-6393; 800-451-3543
Fax: 614-424-3819
Internet: www.battelle.org/bookstore
E-mail: press@battelle.org

ISBN 1-57477-068-3
267 pages, $45.00 (Softcover)

The NEPA Reference Guide compiles information associated with NEPA, including other laws (Environmental Quality Improvement Act of 1970 and Clean Air Act Section 309), Council on Environmental Quality (CEQ) regulations and guidance, precedent-setting and representative case law, Environmental Protection Agency guidance, and Executive Orders. The volume also contains a glossary of NEPA and environmental terms. The index is uniquely useful because page numbers are coded to indicate the type of information on the pages. The index listing for "cumulative," for example, makes clear whether each referenced page contains a regulation, guidance, litigation abstract, glossary definition, or one of the CEQ "Forty Most Asked Questions." This guide illuminates NEPA concepts; it is not a "how-to" manual. LL

Training Opportunities

DOE Order 435.1, Radioactive Waste Management
Idaho Falls, ID: December 7, 1999
Ashford, NY: December 14, 1999
Oak Ridge, TN: January 11, 2000
Oakland, CA: January 18, 2000
Albuquerque, NM: January 25, 2000
Fee: $750.00

U.S. Department of Energy National Environmental Training Office (NETO)
Phone: 803-725-7153
E-mail: neto@srs.gov
Internet: www.em.doe.gov/neto

How to Manage the NEPA Process and Write Effective NEPA Documents
Albuquerque, NM: December 7-10, 1999
Honolulu, HI: February 22-25, 2000
Denver, CO: April 11-14, 2000
Fee: $995

How to Manage the Environmental Impact Analysis Process
Ft. Walton Beach, FL: December 14-17, 1999
Dayton, OH: March 21-24, 2000
San Antonio, TX: May 23-26, 2000
Fee: $995

Clear Writing for NEPA Specialists
Portland OR: February 15-17, 2000
San Antonio, TX: March 15-17, 2000
Honolulu, HI: April 4-6, 2000
Fee: $795

Overview of the NEPA Process
San Antonio, TX: March 14, 2000
Fee: $195
(This course can be taken with Clear Writing for NEPA Specialists; see above)

Reviewing NEPA Documents
Washington, DC: January 11-13, 2000
Portland, OR: January 18-20, 2000
Honolulu, HI: February 28-March 1, 2000
Fee: $795

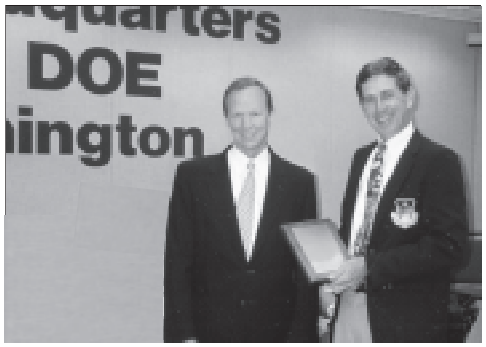
The Shipley Group, Inc.
Phone: 888-270-2157 or 801-298-7800
E-Mail: shipley@shipleygroup.com
Internet: www.shipleygroup.com

Advanced Topics in Environmental Impact Analysis
Irving, Texas: March 15-17, 2000
Fee: $695

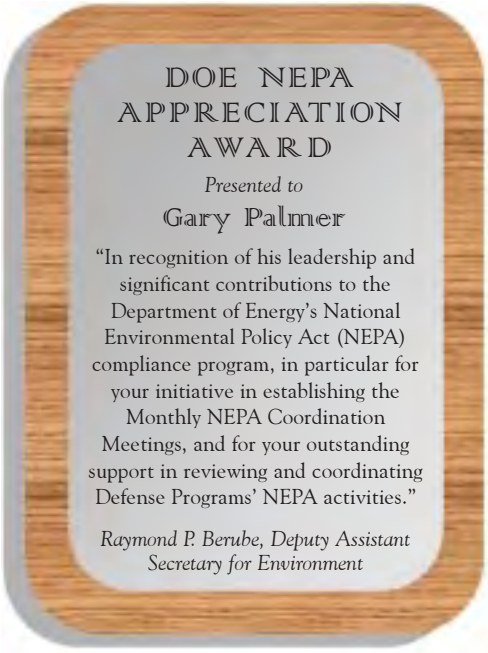
Environmental Impact Training
Phone: 405-321-2730
E-mail: Info@ieatraining.com
Internet: www.eiatraining.com

Gary Palmer Receives NEPA Appreciation Award, Takes DOE Position at the Pentagon

At the September 1999 Defense Programs (DP) monthly NEPA coordination meeting, Ray Berube, Deputy Assistant Secretary for Environment, presented Gary Palmer with a NEPA Appreciation Award for his contributions to the DOE NEPA program. During his six years as the DP Deputy NEPA Compliance Officer, Gary emphasized teambuilding and effective communication, as exemplified by the well-organized monthly videoconferences on NEPA matters with DP Field Offices and the Offices of Environmental Management, Materials Disposition, General Counsel, and Environment, Safety and Health.



Gary Palmer (right) receives NEPA Appreciation Award from Ray Berube.



"This office greatly appreciated Gary's responsiveness, his coordination of cross-cutting issues, and his efforts to facilitate consensus," said Carol Borgstrom, Director, Office of NEPA Policy and Assistance. He established a DP NEPA Web Page (www.dp.doe.gov/nepa/default.htm) and issued guidance to the DP NEPA community on a variety of NEPA topics, including checklists for a finding of no significant impact, record of decision, and mitigation action plan. Gary now serves as DOE Liaison to the Nuclear Weapons Council and as Executive Secretary of the Council's Standing and Safety Committee. This position is in DOE's Office of Military Application and Stockpile Operations, located at the Pentagon with the Office of Nuclear, Chemical, and Biological Defense Programs. He is responsible for ensuring effective communications between the Department of Defense and DOE on nuclear weapons issues and operations.

Gary Palmer can be reached at palmergt@acq.osd.mil or phone 703-693-9409. James (Jay) Rose, DP Office of Environmental Support, will now serve as the Deputy NEPA Compliance Officer.

In transitioning from his NEPA role, Gary offered the following observations.

I have several thoughts on NEPA as applied by DOE. First, the people I worked with were great folks who get a view of the Department and its activities that few others obtain, because of the breadth of resources and information that is needed to prepare an excellent NEPA document. While there may be day-to-day frustrations, the education we get supports career growth and development.

Next, it is critical that the NEPA professional realize the importance of forming a team of program, project, resource (especially budget), legal and technical people at the Headquarters, Operations Office, Managing and Operating Contractor, and NEPA document preparer levels. Form the team early in the process to ensure that everything, from the "Purpose and Need" to the final cover page, is successfully coordinated, and that the program and/or project person gets the NEPA document that is needed to support the decision at the end of the process. This is not easy and is certainly time-consuming, but it is vital.

Third, the NEPA professional must have a long-term view; a focus on the end of the process will ensure that the NEPA professional can maintain his or her own morale as well as that of the team. My own long-term view was that I would ensure that Defense Programs was able to continue its mission of supporting the nuclear deterrence of the United States; with that view in mind, day-to-day setbacks seemed small in comparison.

Finally, I had the opportunity to make acquaintances and friends across the Department that I know I will meet again and have a chance to work with; the common bond of having worked on a NEPA document will assuredly help in all our future activities. I look forward to that opportunity with great anticipation.

DOE Litigation Updates

Court Finds DOE EA Sufficient for Idaho Reactor Shut Down

In a case involving the Experimental Breeder Reactor-II (EBR-II) at Argonne National Laboratory-West, the U.S. District Court for the District of Idaho has found that the Department's EA for the deactivation of EBR-II met NEPA requirements. The proposed action included draining the liquid sodium reactor coolant, which would permanently disable the reactor. (That is, for this technology, "shutting-down" is irreversible.) Coalition 21, an Idaho not-for-profit organization, brought suit last July to stop the action, arguing that deactivation was a commitment to decommissioning and that DOE should prepare an EIS that would analyze the complete decontamination and decommissioning (D&D) of the reactor. The organization also argued that the EA was technically inadequate and that DOE illegally segmented the NEPA process by failing to analyze decommissioning in detail. (See related article in *Lessons Learned Quarterly Report*, September 1998, page 12.)

Background

After Congress terminated the EBR-II mission in 1994, DOE prepared an EA, held two public hearings during a 45-day comment period, and in September 1997, issued a finding of no significant impact on a proposal to shut down and deactivate EBR-II. Although DOE analyzed certain D&D-related activities in the EA, the Department did not propose D&D as an agency action for evaluation under NEPA. The reactor containment building could be used for other purposes, such as dry storage of spent nuclear fuel and other wastes. Also, methods for carrying out D&D activities are evolving and the enabling technology is likely to change between deactivation and such time as DOE proposes to decommission this reactor and associated facilities.

Plaintiff's Interest in Nuclear Energy Was Sufficient for Standing to Sue

First addressing whether Coalition 21 had standing to sue, the court noted that the group's purpose was to promote nuclear technology and that one of the organization's central tenets was that nuclear energy is environmentally superior to other forms of energy generation. For this reason, the court found that Coalition 21's interest in avoiding a "botched shutdown" was arguably within the zone of interests protected by NEPA and that the group had standing to bring the lawsuit.

DOE Prevails on the Substantive Issues

Turning to the substantive issues, however, the court found for DOE on all counts. In response to the plaintiff's argument that the deactivation of EBR-II was part of decommissioning, which "normally requires the preparation of an EIS" under DOE's NEPA regulations (10 CFR 1021, Subpart D, Appendix D), the court accepted DOE's argument that deactivation and decommissioning could be viewed as two separate actions. The judge found that DOE's proposed action –

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"Deactivation" versus "Decommissioning"

Deactivation: Placing a facility in a safe and stable condition to minimize the long-term cost of a surveillance and maintenance program that is protective of workers, the public, and the environment until decommissioning is complete. Actions include the removal of fuel, draining and/or de-energizing of nonessential systems, removal of stored radioactive and hazardous materials, and related actions. As the bridge between operations and decommissioning, deactivation can accomplish operations-like activities such as final process runs, and also decontamination activities aimed at placing the facility in a safe and stable condition.

Decommissioning: Activities which take place after deactivation including surveillance and maintenance, decontamination, and/or dismantlement. These actions are taken at the end of life of the facility to retire it from service with adequate regard for the health and safety of workers and the public and protection of the environment. The ultimate goal of decommissioning is unrestricted release or restricted use of the site.

Adapted from the *DOE Decommissioning Resource Manual* (DOE/EM-0246,1995).

Litigation Updates (continued from page 17)

removal of radioactive sodium and other hazardous materials from the reactor – falls under DOE's definition of deactivation, not decommissioning. (See text box, previous page.) Thus, an EIS is not required by DOE's regulation. Further, the EA did not violate CEQ's requirement to consider connected actions together in the same NEPA document because deactivation does not "automatically trigger" decommissioning.

Coalition 21 also argued that DOE had failed to address particular environmental concerns. The court found either that DOE had, in fact, addressed those issues in the EA or, citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519 (1978), that the plaintiff was barred from raising those issues in litigation because it failed to bring the issues to DOE's attention during the public comment period.

What the EBR-II Decision Means to DOE

This outcome is important to the Department because EBR-II is one of several major nuclear facilities that DOE wants to deactivate quickly to reduce environmental risks and management costs (tens of millions of dollars per year). This reactor and the associated facilities are low in priority on DOE's list of facilities and sites requiring immediate environmental remediation, however, and decommissioning might not occur for several decades. An adverse ruling could have resulted in significant costs associated with delays to deactivation of EBR-II and other planned facility deactivations. *Coalition 21, Inc. v. U.S. Department of Energy*, Civil Case No. 98-0299-E-BLW, September 30, 1999.

Court Denies Motion to Stop Idaho Incinerator

The U.S. District Court for the District of Wyoming on October 22 denied a motion for temporary restraining order and preliminary injunction by Keep Yellowstone Nuclear Free and the Environmental Defense Institute (later joined by the Sierra Club, the Snake River Alliance, and the Jackson Hole Conservation Alliance) to stop DOE from proceeding with the Advanced Mixed Waste Treatment Project (AMWTP) at the Idaho National Engineering and Environmental Laboratory (INEEL). The court found that the plaintiffs had failed to prove that they would suffer irreparable injury if project planning and site preparation for the project would continue while the lawsuit proceeds. Although the plaintiffs contend that DOE, in approving the project, violated NEPA, the court has not yet heard and did not rule on the substantive NEPA issues. The court, however, did indicate that the issues in the case could be decided on motions and the Department of Justice has proposed a briefing schedule through the end of March 2000 to allow start of construction this spring.

Objection to Project Focused on Incinerator

As part of the AMWTP, DOE contracted with a private company to treat and prepare for shipment and disposal 65,000 cubic meters of DOE transuranic waste, alpha-contaminated low-level mixed waste, and low-level mixed waste currently stored at INEEL, and up to 120,000 cubic meters of additional waste from INEEL or other DOE sites. Several processes will be used to treat this waste, including incineration for approximately 25 percent of it. The AMWTP Final EIS was issued in January 1999, and a Record of Decision was issued on March 22, 1999 (64 FR 16948; April 7, 1999). The plaintiffs filed their complaint on September 17, 1999, and amended it on November 5, 1999.

The original plaintiffs include an environmental group with members from the Jackson, Wyoming, area, approximately 90 miles east of INEEL, who are seeking to halt DOE's implementation of its decision to construct and operate the AMWTP incinerator. In their motion for a preliminary injunction, the plaintiffs alleged that downwind exposure to contaminants would then cause injury and that airborne radioactive emissions from the AMWTP would adversely affect areas around Jackson, including Yellowstone and Grand Teton National Parks.

Court Agreed with DOE that Injury Is Not Imminent

To win an injunction to stop construction, the plaintiffs needed to show, among other things, that injury would occur before startup and operation. The court disagreed, noting that construction could not begin until three permits were issued (two from the State of Idaho, one from the Environmental Protection Agency), and that operation is not anticipated to begin until 2003.

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Litigation Updates (continued from page 18)

NEPA Issues Not Yet Addressed by Court

The plaintiffs claim that DOE violated NEPA by selecting one of four privatization proposals without any environmental review under NEPA – that is, without the public notice, comment, and environmental review required under NEPA. (DOE entered into a phased contract, with construction contingent on completion of the NEPA process, in accordance with the DOE NEPA regulations, at 10 CFR 1021.216.) The plaintiffs also allege that the EIS is inadequate and that the affected public was not provided adequate notice regarding the proposed action or the AMWTP EIS process.

Keep Yellowstone Nuclear Free v. Richardson, Docket No. 99-CV-1042-3, October 22, 1999. LL

Other Agency NEPA Cases

Court Defers to Agency's Interpretation of Its Categorical Exclusion

The United States Court of Appeals for the Ninth Circuit found that the Forest Service was not arbitrary and capricious in its applications of a categorical exclusion (CX) for issuing and then renewing a one-year permit for helicopter-guided skiing and hiking in the Chugach National Forest in Alaska. The court held that the judicial principle of given controlling weight to an agency's interpretation of its own regulations applies to its application of a categorical exclusion unless its application was plainly erroneous or inconsistent with the terms used in the regulations. (By this decision, the Ninth Circuit joins the Fourth and Fifth Circuits in specifically applying to CX determinations this well-established general principle of deference.)

The Forest Service Handbook lists a CX for "approval, modification, and continuation of minor, short-term (one year or less) special uses of National Forest System lands." The Handbook then gives examples of approvals: for intermittent use by a State-licensed outfitter or guide, for apiaries, and for gathering forest products for personal use. The plaintiff had several claims: that the Forest Service renewal made the permit in fact a two-year permit, the CX makes no mention of – and therefore does not cover – actions with motorized vehicles, the permitted land use is not intermittent because it allows access all day for most of the year, and the permitted activities are not "minor. "

The court disagreed on all claims and upheld the Forest Service interpretation and applications of its categorical exclusion. The Forest Service's CX could reasonably be interpreted as including a one-year "continuation" of a one-year permit, the court said. The court also found that the helicopter permit falls within the general scope of the first example, which specifically refers to guiding, and the absence of mention of motorized uses does not make the CX's application to motorized uses unreasonable. The court also found that the word "intermittent" in the CX could reasonably be interpreted to include activities limited to daytime use. The court held that the agency's interpretation of its own categorical exclusion should be given controlling weight unless its application was plainly erroneous or inconsistent with the terms used in the agency's NEPA procedures or regulation.

To support its claim that the permit activities were not "minor," the plaintiff argued that the presence of conditions and mitigation measures on the permit, concerning such factors as flight path, operation time, and noise reduction, indicated that the impacts of the permit would not be minor and therefore should be examined in an EA. The appellate panel disagreed, stating that to hold otherwise would create undesirable incentives for agencies to leave out important conditions of permits for fear that their presence would preclude the use of the CX and would require an EA or EIS.

The appellate panel also addressed a procedural issue regarding an agency's vulnerability to suit when applying a CX: whether the appeal was moot because the challenged helicopter skiing permit had already expired by the time the appeal came to trial. Generally, a suit is moot (and will be summarily dismissed) when its issues are no longer live and the court cannot grant a remedy. The Supreme Court has established an exception to this principle, however, when the challenged conduct is capable of repetition. This exception requires the plaintiff to show that: (1) the duration of the challenged action is too short to allow full litigation before it ceases, and (2) there is reasonable expectation that the plaintiff will be subject to it again. The court held that the appeal met both of these criteria

continued on page 20

Other Agency NEPA Cases (continued)

Categorical Exclusion (continued from page 19)

and was therefore not to be dismissed as moot. On the second criterion, the court noted that the issue was not whether another permit would be issued to the same applicant, but whether similar permits would likely be issued to other applicants. *[The lesson, then, is that a categorically excluded action is not invulnerable to legal challenge merely because the action would be completed before a lawsuit could be pursued to completion.]* (In separate litigation, the same plaintiff is also challenging a Forest Service EA and FONSI for a five-year permit for the same applicant.) *Alaska Center for the Environment v. U.S. Forest Service,* No. 97-36128 (9th Cir. September 7, 1999).

Changed Impacts, Not Changed Conditions, Trigger Need for a Supplemental EIS

In 1995, the Route 29 Riverfront Spur was the only link yet to be constructed in a roadway system called the Trenton Complex, connecting several major routes near South Trenton, New Jersey. The Federal Highway Administration (FHWA) issued a Final EIS on the Complex in 1981, which identified a six-lane highway as the preferred alternative for the Riverfront Spur. In subsequent years, as the rest of the Complex was constructed, land use in the riverfront area changed from largely industrial to mixed commercial uses, including major recreational attractions.

Recognizing the lapse of time since the Final EIS, the state transportation agency and the FHWA prepared an "environmental reevaluation" pursuant to FHWA's NEPA implementation regulations (23 CFR Part 771). The purpose of the reevaluation was to determine whether the Final EIS remained valid, or whether a Supplemental EIS was required. The reevaluation, which consisted of several studies and surveys, concluded that the environmental impacts of the four-lane alternative were substantially less than those identified in the 1981 EIS for the six-lane alternative. Residents of South Trenton and various environmental groups filed suit, contending that Federal and state agencies violated NEPA because town meetings and community outreach programs are not an adequate substitute for a Supplemental EIS.

In light of the "extensive" environmental reevaluation, which failed to identify any new significant adverse effects, the court found that the agencies were justified in not preparing a Supplemental EIS. Citing a U.S. Supreme Court opinion that "a Supplemental EIS is not necessary every time new information comes to light after the EIS is finalized" *(Marsh v. Oregon Natural Resources Council)*, the court stated that "the key to whether a Supplemental Environmental Impact Statement is necessary is not whether the area has undergone significant change, but whether the proposed roadwork will have a significant impact on the environment in a manner not previously evaluated and considered." *South Trenton Residents Against 29 v. Federal Highway Administration,* 176 F.3d 658 (3rd Cir. May 5, 1999). LL

Lessons Learned Thanks Steve Ferguson

The Litigation Updates section of the Lessons Learned Quarterly Report *is always reviewed by the Office of the Assistant General Counsel for Environment. Most often, the attorney who does this review is Steve Ferguson, Deputy Assistant General Counsel for Environment. We would like to thank him for his prompt and always judicious comments.*

EAs and EISs Completed July 1 – September 30, 1999

EAs

Albuquerque Operations Office/Defense Programs
DOE/EA-1238 (7/21/99)
Environmental Assessment for the Proposed Construction and Operation of the Nonproliferation International Security Center, Los Alamos National Laboratory, Los Alamos, New Mexico
Cost: $95,000
Time: 21 months

Bonneville Power Administration
DOE/EA-1283 (6/11/99)[1]
Reedsport-Fairview Transmission Project
Cost: $60,000
Time: 7 months

Fissile Materials Disposition
DOE/EA-1216 (9/08/99)
Environmental Assessment for the Parallex Project Fuel Manufacture and Shipment
Cost: $194,000
Time: 29 months

Fossil Energy
DOE/EA-1297
Fontera Generation's Rio Bravo Electrical Interconnection near Mission, Texas (7/9/99)
Time: 4 months
[**Note:** The costs of this EA were paid by the applicant; therefore, cost information does not apply to DOE.]

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

Golden Field Office
DOE/EA-1265 (8/27/99)
Biomass to Ethanol Demonstration Project, BC International Corporation's Ethanol Facility in Jefferson Davis Parish, Louisiana
Cost: $67,000
Time: 28 months

Naval Petroleum Reserves in California/Fossil Energy
DOE/EA-1304 (9/15/99)
West Elk Hills 3-D Seismic Survey of Off-Unit Property at Occidental of Elk Hills, Inc., Kern County, California
Time: 3 months
[**Note:** The Bureau of Land Management was the lead agency for this EA, and DOE was a cooperating agency. The costs of this EA were paid by the applicant; therefore, cost information does not apply to DOE.]

Rocky Flats Environmental Technology Site/ Environmental Management
DOE/EA-1303 (8/27/99)
Temporary Storage of Transuranic and Transuranic Mixed Waste
Cost: $120,000
Time: 8 months

Savannah River Operations Office/ Environmental Management
DOE/EA-1285 (9/27/99)
Environmental Assessment for the Pond B Dam Repair Project at the Savannah River Site
Cost: $16,000
Time: 9 months

EIS

Environmental Management/Richland Operations Office
DOE/EIS-0222 (EPA Rating: EC-2)
Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement
September 1999 (64 FR 53379; 10/01/99)
Cost: Data not yet provided.
Time: 85 months[2]

[1] *Not previously reported in* Lessons Learned.

[2] *DOE issued a revised draft EIS in April 1999 that reflected a substantial redirection in the scope of the document since the original draft EIS was issued in August 1996.*

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 1999. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- *Internal scoping.* Internal scoping by the NEPA team contributed to a better understanding of the proposed project and a better document.

What Didn't Work

- *Unclear distinctions between alternatives.* Some of the alternatives had only subtle differences. DOE had difficulty explaining these subtleties to the public, and consequently the public found it difficult to understand the differences between some of the alternatives.

- *Numbering alternatives.* Numbering some, but not all, of the alternatives made the document harder to read. We should have given each one an appropriate, descriptive name.

Data Collection/Analysis

What Worked

- *Geographical Information Systems (GIS).* GIS data collection was used effectively in the analysis of alternatives.

What Didn't Work

- *Data analyses provided by cooperating agencies after scoping.* Some of the cooperating agencies provided draft analyses of the impacts of alternatives; however, the methodologies and/or terminology were not consistent with those used by the EIS document preparers.

Schedule

Factors that Facilitated Timely Completion of Documents

- *NEPA support service contractor oversight.* Strict oversight of the NEPA support service contractor by the NEPA Compliance Officer (NCO) helped ensure that draft materials were prepared in a timely manner.
- *Availability of specialists.* The availability of specialists required for this project helped the EIS to stay on schedule.

Factors that Inhibited Timely Completion of Documents

- *Disinterested middle-level management.* Although timely completion of an adequate EIS was important to the highest level of DOE management, middle-level management was disinterested in its preparation, making its timely completion extremely difficult.
- *Design engineering changes.* Changes in the design engineering for the project resulted in unexpected redrafting of the EA materials.
- *Additional alternative after the draft EA.* A decision to add an alternative required time-consuming additional analyses.
- *Project sponsor delays.* Delays by the project sponsor in supplying information delayed completion of the document.
- *Data analyses provided by cooperating agencies after scoping.* Reconciling data analyses prepared by cooperating agencies with those prepared by DOE contributed to delay in preparing the EIS.
- *Change in scope.* A significant change in EIS scope after publication of the first draft EIS made it necessary to issue a revised draft EIS, making it impossible to meet the original schedule.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

- *Late comments.* Comments received after the 60-day comment period for the EA were significant and took several months to address.

Factors that Facilitated Effective Teamwork

- *Effective lines of communication.* Establishing good lines of communication between DOE and its contractors fostered teamwork and helped avoid delays.
- *Involvement of senior management.* Biweekly meetings between reviewers and document preparers included senior managers when a high-level decision was required.

Factors that Inhibited Effective Teamwork

- *Change in DOE NCO.* A change in the DOE NCO during the preparation of this EA disrupted its progress.
- *Change in DOE Project Manager.* A change in the DOE project manager during the preparation of this EA disrupted its progress.
- *Doubts about the effectiveness of NEPA.* The DOE project manager maintained a negative attitude about NEPA.
- *Subcontractor changes.* A change of subcontractors on the site's contract disrupted the team preparing this EA.
- *Many cooperating agencies.* The large number of cooperating agencies for this EIS impeded efficient interactions between the various DOE team members.

Process

Successful Aspects of the Public Participation Process

- *Local library services.* Placing the draft EA in the local library helped foster public participation because the library also served as a community center.
- *Use of site's Environmental Bulletin.* Placing notices about the EA in the site's Environmental Bulletin was an effective means of notifying the public.
- *Outreach to local newspaper.* Press releases announcing the draft and final EA and Finding of No Significant Input (FONSI) were sent to the local newspaper, and an interview was held with the Acting NCO. These efforts helped notify the public about the proposed action.
- *Related environmental reviews.* A floodplain and wetland involvement notice in the *Federal Register* was beneficial to the NEPA public participation process.
- *Involvement of cooperating agencies.* Active participation by cooperating agencies improved DOE's and other parties' understanding of one another's perspectives and of the conflicting values involved in land use planning at the site.

Agency Planning and Decision Making—What Worked

- *NEPA compliance helped timeliness.* NEPA is continually shown to help construct projects in a timely manner.

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 decision making.

- For this quarter, in which questionnaire responses were received for 5 EAs and 1 EIS, 6 of the 9 respondents rated the NEPA process as "effective."
- One respondent who rated the process as "5" stated that "NEPA was critical to the decisions for the project."
- Another respondent who rated the process as "5" noted that the highest levels of DOE management were interested in the EIS to support decisions.
- One respondent who rated the process as "not effective at all" explained that the decision was made well before the start of the NEPA process.

Other EIS-related Milestones (September 2 to November 30, 1999)

Withdrawals of Notice of Intent

Bonneville Power Administration
DOE/EIS-0296
South Oregon Coast Reinforcement Project, Coos Bay/ North Bend, Oregon
Canceled (9/99)

Energy Efficiency and Renewable Energy
DOE/EIS-0300
Minnesota Agri-Power Project: Biomass for Rural Development, Granite Falls, Minnesota
9/20/99 (64 FR 50806)

Nuclear Energy
DOE/EIS-0299
Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Space Missions (Programmatic)
9/15/99 (64 FR 50064)
*[**Note**: This EIS is being consolidated with a broader-scope EIS; see DOE/EIS-0310, below.]*

Office of Science
DOE/EIS-0291
High Flux Beam Reactor Transition Project at Brookhaven National Laboratory, Upton, New York
11/30/99 (64 FR 66904)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0312
Bonneville Power Administration, Fish and Wildlife Implementation Plan Environmental Impact Statement
10/08/99 (64 FR 56489)

Nuclear Energy
DOE/EIS-0310
Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility
9/15/99 (64 FR 50064)

Draft EIS

Defense Programs
DOE/EIS-0236-S
Draft Supplemental Environmental Impact Statement for the National Ignition Facility Portion of the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management
October 1999 (64 FR 61635; 11/12/99)

Final EISs

Defense Programs/Sandia National Laboratories
DOE/EIS-0281
Sandia National Laboratories, Albuquerque, New Mexico, Site-Wide Environmental Impact Statement
October 1999 (64 FR 58404; 10/29/99)

Fissile Materials Disposition
DOE/EIS-0283
Surplus Plutonium Disposition
October 1999 (64 FR 63313; 11/19/99)

Records of Decision

Defense Programs/Los Alamos National Laboratory
DOE/EIS-0238
Site-Wide Environmental Impact Statement for the Continued Operation of the Los Alamos National Laboratory
9/20/99 (64 FR 50797)

Environmental Management/Richland
DOE/EIS-0222
Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement
11/02/99 (64 FR 61615)
*[**Note:** The U.S. Fish and Wildlife Service adopted this EIS and issued a ROD.]*

Supplement Analyses

Defense Programs
DOE/EIS-0236, SA-06
Final Programmatic Environmental Impact Statement for Stockpile Stewardship and Management; Pit Manufacturing Facilities at Los Alamos National Laboratory
(Decision: No further NEPA review required) September 1999

Environmental Management/Richland
DOE/EIS-0244-SA-02
Plutonium Finishing Plant, 200 West Area, Hanford Site, Richland, Washington; Environmental Effects of Changes in DOE's Preferred Alternative for Batch Thermal Stabilization Metals, Oxides and Process Residues
(Decision: No further NEPA review required) August 1999[1]

[1] *Not previously reported in Lessons Learned*

EIS Cohort Update

With the June 1, 1999 *Lessons Learned Quarterly Report,* we began tracking a new cohort ("Cohort 97") consisting of EISs started between April 1, 1997 and March 31, 1999. DOE initiated 26 EISs in this time frame, but five EISs have been cancelled or withdrawn, bringing the total number of EISs remaining in Cohort 97 to 21. Two EISs were completed in this reporting period, bringing the total number of completed Cohort 97 EISs to seven – too few to support general conclusions about completion times. Table 1 provides an update to the EIS information for Cohort 97.

Table 1. EIS Cohort by Program Office (EISs started between 4/1/97 and 3/31/99)

EIS Type	Number in Cohort	Programmatic/ Site-wide	Project-specific	Number Completed through 12/1/99 (Completion Times)
Total	21	4	17	7
Bonneville Power Administration	1	1	0	0
Defense Programs	5	2	3	3 (13, 18, and 29 months)
Environmental Management	6	0	6	1 (14 months)
Fossil Energy	4	0	4	0
Fissile Materials Disposition	1	1	0	0
Nuclear Energy	1	0	1	0
Office of Science	1	0	1	1 (21 months)
Western Area Power Administration	2	0	2	2 (12 and 14 months)

We will continue to track and report on this cohort from time to time. LL

EA and EIS Times and Costs for Fiscal Year 1999 and Last 5 Fiscal Years

	FY 99*	5 years ending FY99*
EAs		
Time (months)		
Median	10 (26)	11 (246)
Average	15 (26)	16 (246)
Cost		
Median	$60,000 (23)	$60,000 (176)
Average	$63,000 (23)	$114,000 (176)
EISs		
Time (months)		
Median	21 (11)	24 (57)
Average	29 (11)	29 (57)
Cost		
Median	$3,203,000 (7)	$2,998,000 (49)
Average	$5,939,000 (7)	$6,422,000 (49)

* *Parentheses indicate number of data points*

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

March 1, 2000; Issue No. 22 For First Quarter FY 2000

Hanford Comprehensive Land-Use Plan EIS Helps DOE Preserve Unique Resources

By: Thomas W. Ferns, NEPA Document Manager, *Richland Operations Office*, and Yardena Mansoor, *Office of NEPA Policy and Assistance*

A 50-year land-use plan for the Hanford Site? Some said it couldn't be done. Too many factions, they said, with irreconcilably different visions for the future. Would NEPA be a help or a hindrance in developing such a land-use plan?

It turns out that the Hanford Comprehensive Land-Use Plan EIS Record of Decision (ROD) (64 FR 61615; November 12, 1999) marks the end of a successful, albeit long and arduous planning process. It was a process that many stakeholders – whose diverse views could not all be accommodated – acknowledged was open and fair. Importantly, the EIS allowed DOE to make decisions immediately to preserve uniquely valuable natural resources at the Site – notably expanding a National Wildlife Refuge on the Wahluke Slope, on the northern shore of the Columbia River within the Hanford Site. Over a longer term, the Record of Decision seeks to balance the Department's continuing land-use needs at the Hanford Site with its desire to preserve important ecological and cultural values of the Site and allow for economic development in the area.

The White Bluffs of the Wahluke Slope rise above the Hanford Reach of the Columbia River.

Mapping out a long-term comprehensive blueprint for the 586-square-mile Hanford Site in southeastern Washington was no easy task. The experience demonstrates the versatility and usefulness of the NEPA review process in land-use decision making, and the importance of a robust stakeholder involvement process.

This article examines the relationship between Hanford's remedial action and land-use decision making, describes the stakeholder involvement approaches (first with a stakeholder working group and then with cooperating agencies), and describes the environmental benefits from this NEPA process.

Initial EIS Scope: Remediation and Land Uses for Contaminated Areas

Early in 1989, DOE negotiated a Federal Facility Agreement with the U.S. Environmental Protection Agency (EPA) and the Washington State Department of Ecology (Ecology) that established decision-making responsibilities and an enforceable schedule for remediation of the Hanford Site.

continued on page 4

Inside *LESSONS LEARNED*

Welcome to the 22nd Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by April 26, 2000. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

Second Quarter Questionnaires Due May 1, 2000

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2000 (January 1 to March 31, 2000) should be submitted as soon as possible after document completion, but no later than May 1, 2000. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

Printed on recycled paper

NEPA Compliance Officers to Meet in May

The Office of NEPA Policy and Assistance is planning to convene a meeting of the NEPA Compliance Officers in Washington, DC, May 2 and 3, 2000. Speakers at the meeting will include Brian Costner, Senior Policy Advisor to the Secretary for Environment, Safety and Health. (See related article, page 9.) Members of the DOE NEPA Community are encouraged to provide input for meeting discussions through their NEPA Compliance Officers.

Office of NEPA Policy and Assistance, EH-42
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0119

DOE Inspector General Report Questions Application of a Categorical Exclusion

A recent DOE Inspector General report highlights the importance of using the most appropriate categorically excluded class of action for a proposed action and, more fundamentally, considering the full scope of a proposed action when determining the level of NEPA review. The report, *Inspection of Selected Issues of the Chem-Bio Facility at the Oak Ridge National Laboratory* (INS-O-00-1, November 1999), is available at the DOE Inspector General Web site at www.ig.doe.gov/oig_public_documents.htm.

Issues Include Choice of Categorical Exclusion and Scope of Action

In 1996, the Oak Ridge Operations Office entered into an interagency agreement with the Department of the Army to design, build, and demonstrate instruments for detecting and identifying chemical and biological warfare agents. The agreement stated that the work would be restricted to simulants and killed biological agents; work with live agents would not be performed.

The proposed action that the Oak Ridge Operations Office categorically excluded was to modify an existing facility by installing material and equipment that would result in a Biosafety Level-3 facility (for research and development on instruments to detect chemical and biological warfare agents). The Office applied categorical exclusion B3.6 of the DOE NEPA regulations, 10 CFR Part 1021, Appendix B – facilities for bench-scale research, conventional laboratory operations, small-scale research and development, and pilot projects.

As the Inspector General Report noted (Appendix B, Management Alert on "Inspection of the Chem-Bio Facility at ORNL;" June 30, 1999*)*, another categorical exclusion more specifically addresses the proposed action – B3.12 – for microbiological and biomedical facilities. Under B3.12, however, facilities with Biosafety Level-3 or -4 containment are *excluded*, a restriction that should have been identified by DOE program and environmental staff. (The higher containment levels accommodate work requiring greater health protection, such as research on live biological warfare agents.)

In addition, the Inspector General report indicated that reasonably foreseeable activities at the Chem-Bio Facility appeared to be broader than the scope of the interagency agreement, which did not include work with live agents. The report concludes that "should future projects for the facility include live agents and…a favorable determination for live agents could not be reached through an environmental assessment [and FONSI], then the taxpayers would have been better served if alternatives and future plans for the facility had been fully evaluated, in the spirit of NEPA compliance, prior to the expense of procurement and installation of the facility."

Recommendations for NEPA Practitioners

✓ Several categorical exclusions may need to be considered to determine which best matches the scope of a proposed action and thus ensure that a categorical exclusion is the appropriate level of NEPA review. Pay particular attention to the requirements for applying categorical exclusions at 10 CFR 1021.410, as well as the integral elements for classes of actions in Appendix B to DOE's NEPA regulations. Consider not just what is allowed under a categorical exclusion, but also what is disallowed.

✓ Accurately defining the scope of a proposed action is essential to determining the appropriate level of NEPA review, including a categorical exclusion. For example, the NEPA review for the construction and operation of a facility must be based on its anticipated uses over the reasonably foreseeable future, not just initial uses. LL

Consider Which Categorical Exclusion Applies

There may be other instances where similar categorical exclusions will need to be thoughtfully considered to best match the scope of a proposed action to a categorical exclusion. For example, categorical exclusion:

- A7 applies to the transfer, lease, disposition, or acquisition of property when the property use would remain unchanged; that is, the types and magnitude of impacts would remain essentially the same.
- B1.24 applies to the transfer, lease, disposition, or acquisition of uncontaminated structures and the land needed to transfer the structures when the use would be different but the impacts would remain virtually the same as before the action.
- B1.25 applies to the transfer, lease, disposition, or acquisition of uncontaminated land for habitat preservation or wildlife management and only associated buildings that support these purposes.

Hanford Comprehensive Land-Use Plan EIS (continued from page 1)

The cleanup negotiators soon realized that a plan for land uses could facilitate remediation planning. Otherwise, specific land-use decisions would have to be made on a project-by-project basis, using EPA's default cleanup goal – residential use – in areas where many were advocating a less costly environmental preservation goal. For some parts of the Hanford Site, such as the 200-Area waste management facilities, a residential use goal would be technically infeasible or economically prohibitive, and could cause more environmental injury and human health risks than it would avoid.

In August 1992, DOE published a Notice of Intent to prepare an EIS on cleanup strategies to meet alternative objectives for contaminated areas of the Hanford Site. These alternatives included unrestricted uses (including residential and agricultural); uses with limitations, such as on groundwater use; and exclusive future use by DOE (for waste management and buffer zones).

Working Group Established Common Ground

EPA, Ecology, and DOE organized a process to involve stakeholders in developing a vision for the future uses of the Hanford Site. The agencies established the Hanford Future Site Uses Working Group, with representatives of labor, environmental, governmental, agricultural, economic development, and citizen interest groups, and of Tribal governments. The Working Group was charged with establishing the common ground from which priorities and preferences could be debated. In December 1992, the Working Group submitted its final report, *The Future for Hanford: Uses and Cleanup*, to DOE as EIS scoping input, thus framing the key elements of the EIS:

- dividing the Site into sub-areas,
- identifying reasonable alternative uses for each sub-area, and
- stating a set of group values to be respected in the land-use planning process.

Building on the Working Group's report, DOE issued a Draft Hanford Remedial Action EIS (August 1996) that assessed the potential environmental impacts of attaining the cleanup conditions needed for alternative land uses and the impacts of the uses themselves.

Changed EIS Focus: Land Uses for Entire Site

Based on comments on the 1996 Draft EIS, DOE decided to refocus the EIS on a proposed Comprehensive Land-Use Plan because remediation decisions would be made by EPA and Ecology, as lead regulatory agencies, and DOE as an implementing agency.

With the scope of the EIS limited to land-use issues, DOE also decided to consider the entire Site (not just contaminated areas). Because of this change, DOE decided to prepare a Revised Draft EIS,

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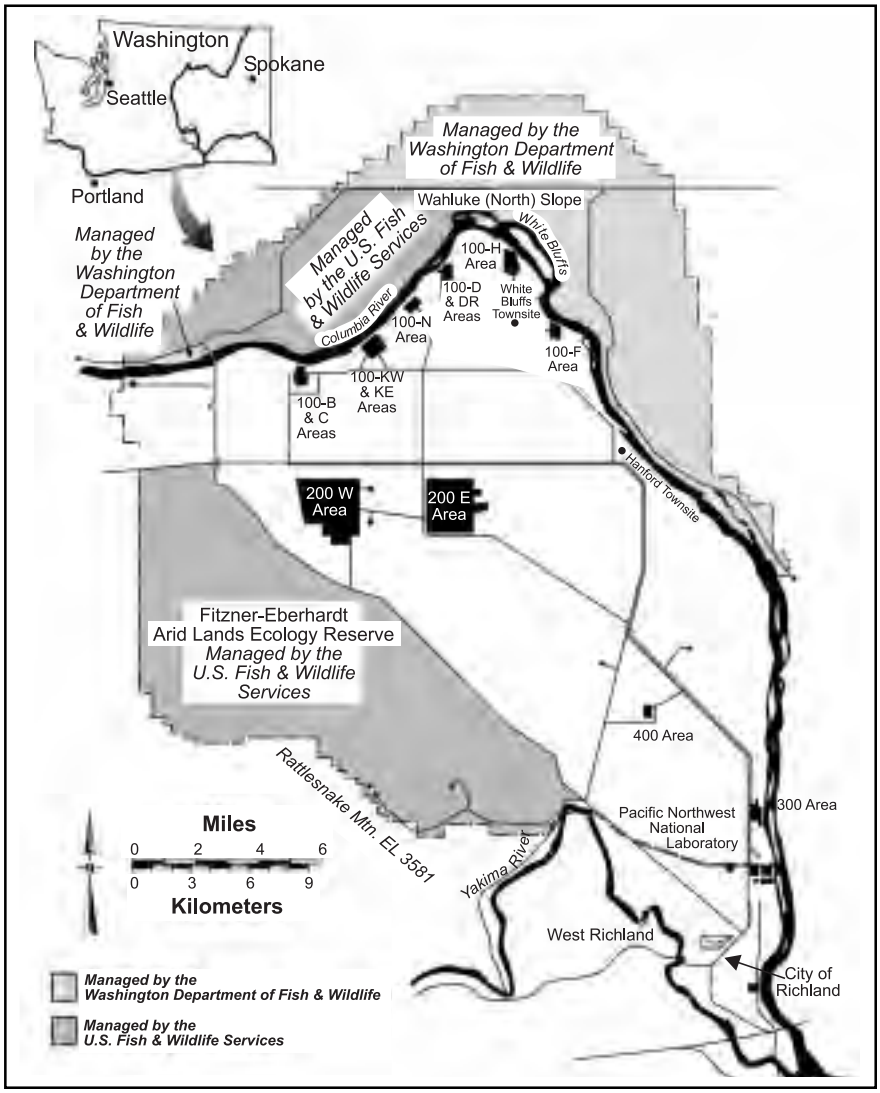

Hanford Comprehensive Land-Use Plan EIS (continued from previous page)

and also to expand stakeholder participation by involving agencies and Tribes with land-use interests.

Agencies and Tribes: Full NEPA Partners with Irreconcilable Interests

Nine parties responded to DOE's invitation to participate as either a cooperating agency or, in the case of the Tribal Nations, a consulting government: the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service within the U.S. Department of the Interior; the City of Richland and Benton, Franklin, and Grant Counties; the Department of Environmental Restoration and Waste Management of the Nez Perce Tribe; and the Confederated Tribes of the Umatilla Indian Reservation. Together they reached substantial agreement on the land-use category definitions, a framework for the environmental analyses, and the Comprehensive Land-Use Plan's policies and implementing procedures.

However, some of the cooperating agencies and consulting Tribal governments strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To provide fair voices for competing interests, cooperating agencies and consulting Tribes developed their own alternatives for consideration in the revised Draft EIS, using guidelines and a common outline to yield technically parallel information. The EIS presented these alternatives as written by these parties. Although this collaborative process required time, it ultimately saved time by enabling preparation of an EIS that adequately considered the full range of reasonable alternatives.

DOE and the cooperating agencies created six land-use alternatives, each consisting of a map that designated allowable uses for sub-areas within the Site. Except for No Action (continuing current land uses, land management processes, and intergovernmental relationships), each alternative represents one or more Tribe, Federal, or local agency preferred alternative.

These elk are part of a herd that migrates through the Hanford Site. The EIS considered how to manage large portions of the Site to preserve biological resources.

Hanford's Unique Resources

- The Hanford Site contains a large tract of rare and unfragmented shrub-steppe habitat and rare animal and plant species.
- Along the north and east of the Hanford Site runs the last free flowing stretch of the Columbia River, known as the Hanford Reach, valued for its recreational uses and as prime salmon spawning habitat. The Reach's northern shore, known as the Wahluke Slope, rises in a chalk bluff formation whose stability has been threatened by agricultural irrigation.

DOE's preferred alternative in the Revised Draft EIS would consolidate waste management operations in the Central Plateau of the Site, allow industrial development in the eastern and southern portions of Hanford, increase recreational access to the Columbia River, expand an existing Saddle Mountain National Wildlife Refuge on the north side of the Site to include all of the Wahluke Slope, and allow limited commercial grazing on the Site.

The Department of the Interior agencies' alternative would increase Federal stewardship of Hanford's natural resources. The local governments' alternative would allow agricultural and grazing activities on the Hanford Site and increase industrial development. Two Tribal alternatives called for increasing traditional Tribal uses while preserving natural and cultural resources. The Tribes and DOE "agreed to disagree" on the interpretation of treaty rights in the interest of moving the EIS forward.

NEPA Process Enhanced Environmental Values

Public comments on the Revised Draft EIS primarily addressed environmental issues such as Hanford's unique shrub-steppe habitat, the importance of protecting the Hanford Reach to preserve salmon spawning sites, the proposed Congressional designation of the Hanford Reach as a Wild and Scenic River, and the historic significance of the Hanford Site's first nuclear reactor. Comments overwhelmingly favored a more environmentally protective alternative – with no cattle grazing, less gravel mining for remediation activities, and more preservation of wildlife and habitat than DOE's Revised Draft preferred alternative.

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DOE Decides Disposition of Surplus Plutonium After Complex NEPA Process

On January 4, 2000, the Department announced its decision to dispose of up to 50 metric tons of surplus weapons-usable plutonium by immobilizing approximately one-third of it and using the remainder to fabricate mixed oxide (MOX) fuel, which will be irradiated in existing commercial nuclear reactors to make the plutonium inaccessible and unattractive for weapons use. Three new facilities will be constructed and operated at the Savannah River Site for pit disassembly, plutonium immobilization, and MOX fuel fabrication, the latter facility to be licensed by the U.S. Nuclear Regulatory Commission.

This major decision, the culmination of a complex NEPA process that began with a programmatic EIS initiated six years ago, was based on a tiered project-specific EIS that included a supplement to the draft EIS. (In a parallel procurement process, DOE also prepared an environmental critique and synopsis under Section 216 of the DOE NEPA regulations.)

In the project-specific Surplus Plutonium Disposition EIS (DOE/EIS-0283), DOE evaluated 15 action alternatives involving seven DOE sites and three commercial reactor sites. Planning and executing an appropriate NEPA compliance strategy required extensive discussions among numerous affected Program and Field Offices, and the Offices of General Counsel and NEPA Policy and Assistance.

In preparing this EIS and the resulting Record of Decision (ROD) (65 FR 1608; January 11, 2000), the Office of Fissile Materials Disposition discovered that its EIS affected, or was affected by, many other DOE EISs and EAs. These interrelationships required close coordination between that Office and other involved Program and Field Offices to ensure that the EIS used current information. According to Bert Stevenson, the Materials Disposition NEPA Compliance Officer and NEPA Document Manager, "Close coordination was especially important in preparing the cumulative impact analysis. A total of 35 NEPA documents contributed to it. We had to cope with several moving targets and tie them all together into a credible analysis. I was in almost daily contact with my counterparts in Defense Programs, Environmental Management, and the Field Offices."

Tiering and an Amended Programmatic ROD

The Surplus Plutonium Disposition EIS was tiered from the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic EIS (DOE/EIS-0229). In the Programmatic ROD (62 FR 3014; January 21, 1997), DOE selected strategies for storage of weapons-usable fissile materials and disposition of surplus plutonium; the strategy included consolidating part of DOE's weapons-usable plutonium storage at the Savannah River Site. The Programmatic ROD made moving plutonium to the Savannah River Site for storage contingent on completing a new storage facility and selecting Savannah River as the site for immobilizing plutonium in the subsequent Surplus Plutonium Disposition ROD. However, when Environmental Management identified possible difficulties in meeting the closure schedule for the Rocky Flats Environmental Technology Site, DOE amended the programmatic ROD (63 FR 43386; August 13, 1998) to allow for earlier shipment of plutonium from Rocky Flats by upgrading existing storage facilities at the Savannah River Site.

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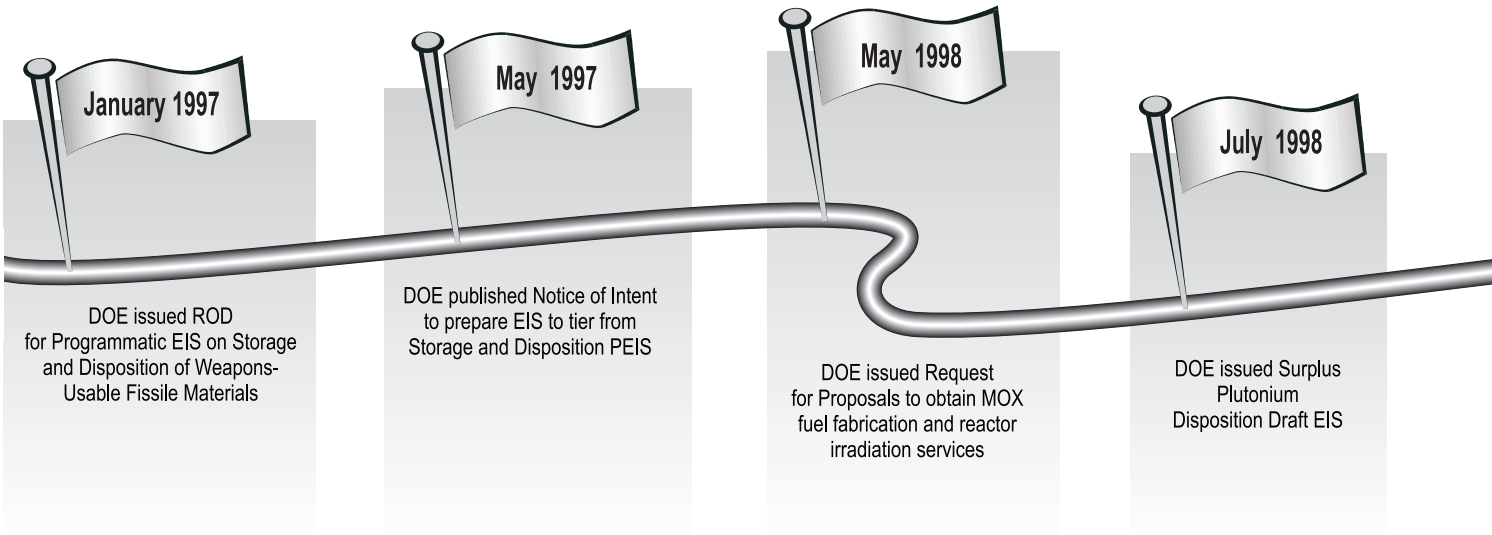


"216 Process" and a Supplemental Draft EIS

While preparing the Surplus Plutonium Disposition Draft EIS, DOE initiated a procurement consistent with DOE's NEPA regulations at 10 CFR 1021.216 (the "216 process") to obtain MOX fuel fabrication and reactor irradiation services under a privatization approach. (Section 216 establishes an environmental review process within the procurement process for evaluating proposals. DOE uses the 216 process when it needs to meet significant acquisition objectives before the NEPA process can be completed, as often is inherent to a privatization approach. See *Lessons Learned Quarterly Report*, September 1997, page 8.)

The May 1998 Request for Proposals for this work defined limited activities that could be performed before a Surplus Plutonium Disposition EIS ROD. Per the 216 process, DOE requested that each offeror provide, as part of its proposal, information on facility design for MOX fuel fabrication and on commercial reactors proposed for irradiation services. This information was used in the procurement process to identify potential environmental impacts of the proposals and was documented in an environmental critique. In addition, an environmental synopsis, based on the environmental critique, was provided to the U.S. Environmental Protection Agency and made available to the public. In March 1999, DOE awarded a contract (contingent on DOE selecting the contractor's approach after completing NEPA review) for fuel fabrication and reactor irradiation services. The award decision was based, in part, on the analysis documented in the environmental critique.

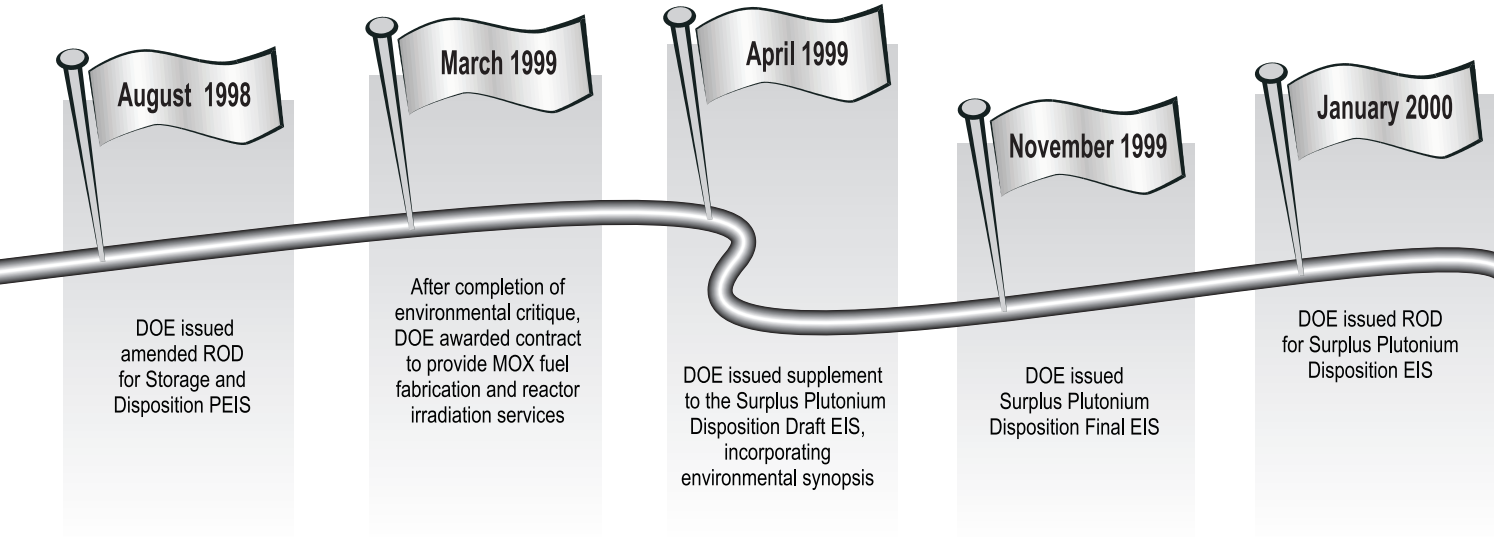
Meanwhile, DOE issued the Surplus Plutonium Disposition Draft EIS in July 1998, which generically assessed the potential environmental impacts of using MOX fuel in commercial nuclear reactors. In April 1999, DOE issued a Supplement to the Surplus Plutonium Disposition Draft EIS that incorporated the synopsis and analyzed the potential environmental impacts of using MOX fuel in the specific commercial reactors. "This approach helped save us some time in that we issued the Draft EIS, followed by a Supplement to the Draft EIS, a Final EIS, and a ROD," said Mr. Stevenson.

Meeting Milestones Through Teamwork

As the Office of Fissile Materials Disposition was preparing the Final EIS and identifying Los Alamos National Laboratory as the preferred alternative for fabrication of test MOX fuel rods, Defense Programs raised questions about the Laboratory's capability to support this activity in addition to its existing mission requirements. Materials Disposition, however, was concerned that delays in the Surplus Plutonium Disposition EIS would affect its overall program schedule, which included Environmental Management's commitments to the State of Colorado regarding the shipment of Rocky Flats surplus plutonium to the Savannah River Site.

After much internal discussion, the matter was resolved by compromise: DOE selected Los Alamos National Laboratory for the manufacture of the test fuel rods, but deferred deciding which facility at the Laboratory will be used for the final stages of the test assembly work. Materials Disposition and Defense Programs established a process, which may involve further NEPA review, to resolve the longer-term issues.

Timely publication of the Surplus Plutonium Disposition Final EIS and ROD could not have been accomplished without extraordinary teamwork among many offices. Mr. Stevenson advises NEPA Document Managers to identify possible linkages to other proposals and NEPA reviews early in the internal scoping process: "When numerous sites and programs are involved in a NEPA review, coordinating data calls and project milestones is the only way to avoid potential conflicts and inefficiencies." LL



Lessons Learned Talks with Horst Greczmiel
New NEPA Director at CEQ Requests DOE Input

Horst G. Greczmiel *is the Associate Director for NEPA at the Council on Environmental Quality (CEQ).*
Lessons Learned *recently interviewed Mr. Greczmiel on his vision for NEPA and CEQ.*

Q: **As NEPA reaches its 30th anniversary, what opportunities do you see for further improvements under NEPA?**

A: The fact that NEPA has remained virtually unchanged for 30 years testifies to its enduring purpose and goals. The NEPA process, an environmental impact analysis and the documentation of that analysis, enables us to meet the responsibilities set out in NEPA Section 101. The opportunities that lie ahead are for continued refinements to ensure that the environmental impact analysis process is efficient and effective. Our challenge is to increasingly focus on the environmental issues of concern and produce analyses that are truly useful to decision makers, their agencies, and the public.

Q: **What are your priorities for NEPA initiatives at the Council on Environmental Quality?**

A: To a significant extent, the people who prepare and use the NEPA analyses drive my priorities. I convened a meeting of Federal agency NEPA Liaisons early in my time at CEQ, and I recognized the value of working with them to address the needs and concerns they and their agencies face. There are few situations where one approach will serve all. Accordingly, I intend to work with NEPA Liaisons to reassess the needs and concerns of those who prepare NEPA analyses and help them get the tools they need to do their work. Many times other agencies have such tools and solutions, and establishing a forum for exchanging lessons learned and best practices is one of my primary goals. For example, our first NEPA Liaison meeting began providing useful exchanges regarding categorical exclusions.

I also will focus on several Administration initiatives, from the specific – applying NEPA to the problem of invasive species – to the more general – seeking ways to reduce regulatory burdens while maintaining environmental protection. Finally, integrating the NEPA process with agency decision making and other environmental processes is an area that continues to change and require our attention. By using my position to help strengthen the NEPA process (a fundamental step in addressing the environmental component of any decision), the broader environmental initiatives designed to make communities more livable and to address preservation of habitat and biological diversity will continue to move forward.

Q: **Do you see a need to refocus Federal agencies' overall vision and approach to environmental impact analysis?**

A: Not generally, but sometimes a specific agency may not understand the need for, or appreciate the value of, the NEPA process. In any agency, occasionally new senior leaders arrive who are unfamiliar with the NEPA process – and especially the need for their leadership in agency NEPA efforts. I intend to continue CEQ's tradition of helping those leaders focus on meeting their NEPA responsibilities in a way that makes sense, supports their missions, and adds value to their decision making.

Q: **How did your experience color your vision of the NEPA process and the environmental benefits it could bring about?**

A: My experience in the Coast Guard, the Army, and the private sector helped shape my views of NEPA's value. As a young attorney, I learned the value of proactive or preventive advice. Being in situations where lack of planning, time, or knowledge prevented achieving NEPA's full potential drove home the value of using NEPA early in decision making. Using NEPA to identify environmental concerns and integrate economic, operational, and environmental considerations is a proactive approach that results in environmental benefits.

Q: **Do you have any specific advice for NEPA practitioners in the Department of Energy?**

A: Rather than offering specific advice, I have a request. As you continue doing NEPA work, please find the time to identify and pass on to Carol Borgstrom (DOE's NEPA Liaison) and her staff the challenges, successes, and "bumps in the road" that you encounter. I want to bring the *Lessons Learned Quarterly Report* and the self-examination you have undertaken to improve DOE's NEPA process to the attention of the entire Federal NEPA community. I thank Carol for agreeing to make a presentation to the Federal NEPA Liaisons on your program in the coming year. My goal is to work with Carol and the other NEPA Liaisons to identify those issues that need attention and to find ways to help the NEPA practitioners. Together, we can make NEPA's next 30 years successful and rewarding, both for the environment and the people we serve.

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Horst G. Greczmiel joined CEQ in December 1999 as its Associate Director for NEPA. He is responsible for overseeing and implementing NEPA and CEQ mandates to ensure that Federal agencies integrate environmental values into decision making.

Previously, in the Office of Environmental Law at U.S. Coast Guard Headquarters in Washington, DC, he was responsible for all facets of environmental planning, including policy development and defensive litigation arising from compliance responsibilities under NEPA, the Endangered Species Act, and the National Historic Preservation Act. While at the Coast Guard, he received the Commandant's Award for Superior Achievement and a Department of Justice Commendation for his work on environmental planning and species protection litigation.

Earlier, Mr. Greczmiel had practiced law in the New Jersey Public Defender's Office (Camden, NJ), in a private firm, and for the U.S. Army. His service in the Army included tours with the Office of the Judge Advocate General's Environmental Law Division and as environmental advisor to the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health.

Mr. Greczmiel received his B.A. from Lafayette College, a J.D. from Rutgers-Camden School of Law, and a L.L.M. in environmental law from George Washington University.

Transitions

Costner Named Secretary's Advisor for Environment, Safety and Health

Brian Costner has been named as Senior Policy Advisor for Environment, Safety and Health to advise the Secretary of Energy in a wide range of areas affecting environmental policy, worker health and safety, and public health. Mr. Costner's perspectives on DOE ES&H activities come from his longstanding public-sector involvement in the Department's major environmental impact statements. "NEPA compliance is important to the Department's effective management of many projects and programs," he observed, "as well as to relations with people interested in the Department's activities."

Most recently, Mr. Costner served as a consultant to the Institute for Energy and Environmental Research. Previously, he had been the Director of the Energy Research Foundation, a nonprofit environmental organization in Columbia, South Carolina, that addressed site-specific and national DOE issues. He also has served on advisory and working committees of DOE, the National Research Council, Consortium for Risk Evaluation with Stakeholder Participation, Aspen Institute, Medical University of South Carolina, South Carolina Research Authority, and Risk Assessment Corporation. From 1994 until 1999, he served as a member of DOE's Environmental Management Advisory Board and its Worker Health and Safety Committee. Mr. Costner has a Master of Arts degree from Antioch University's Environment and Community Program in Seattle, Washington.

Gearo to Lead Environmental Services at Dugway Site

Joe Gearo, who has served in DOE's Office of NEPA Policy and Assistance since 1989, left DOE in late January to become Environmental Services Division Director for the U.S. Army's Dugway Proving Ground in Utah. Mr. Gearo will be responsible for developing and managing the Proving Ground's environmental compliance program, including actions taken to enhance the environment. Mr. Gearo will be applying NEPA lessons learned in a very practical and challenging context. The Office of NEPA Policy and Assistance wishes him well.

DOE Issues Decisions for Low-level and Mixed Low-level Waste

Last Planned Decisions for the Waste Management Programmatic EIS

On February 25, 2000, DOE published a Record of Decision for the Department's Waste Management Program: Treatment and Disposal of Low-level Waste (LLW) and Mixed Low-level Waste (MLLW) (65 FR 10061). The decisions enable DOE to integrate waste management activities among sites to promote expeditious, compliant, and cost-effective cleanup.

In brief, for the management of LLW analyzed in the Final Waste Management Programmatic EIS (DOE/EIS-0200), DOE decided to perform minimum treatment at LLW generator sites. In addition, the Hanford Site in Washington and the Nevada Test Site will be made available to all DOE sites for LLW disposal and, to the extent practicable, some other LLW disposal operations at DOE sites will continue as specified in the Record of Decision.

For the management of MLLW analyzed in the Waste Management Programmatic EIS, the Department decided to treat MLLW at the Hanford Site, Idaho National Engineering and Environmental Laboratory, Oak Ridge Reservation, and Savannah River Site, and to dispose of MLLW at the Hanford Site and the Nevada Test Site. In the same *Federal Register* notice, DOE amended the December 1996 Record of Decision for the Nevada Site-wide EIS (DOE/EIS-0243) to accord with these decisions regarding Nevada.

This is the last planned Record of Decision under the Waste Management Programmatic EIS issued May 1997. The previous Records of Decision for DOE's Waste Management Program were:

- Treatment and Storage of Transuranic Waste (63 FR 3629; January 23, 1998);
- Treatment of Non-wastewater Hazardous Waste (63 FR 41810; August 5, 1998); and
- Storage of High-level Radioactive Waste (64 FR 46661; August 26, 1999).

Hanford Comprehensive Land-Use Plan EIS (continued from page 5)

Influenced by this public preference, DOE ultimately decided to increase environmental protection of parts of the Site. Accordingly, the Washington Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and DOE modified their management agreements to allow expansion of the Saddle Mountain National Wildlife Refuge to the entire Wahluke Slope. The Record of Decision, which adopts the Comprehensive Land-Use Plan, "creates a roadmap for planning appropriate industrial development in the eastern and southern parts of Hanford while defining areas of the site where waste management will be handled," said Assistant Secretary for Environmental Management Dr. Carolyn L. Huntoon.

Plan Includes Implementation Procedures

To help ensure that future decisions are consistent with the Comprehensive Land-Use Plan and that appropriate NEPA review takes place for future land-use proposals, the EIS includes an unusual chapter on implementation procedures. Under these procedures, adopted in the Record of Decision, proposals for new facilities and activities on the Site, whether from private or government proponents, will be evaluated by DOE's Realty Officer and NEPA Compliance Officer, jointly with a Site Planning Advisory Board that includes representatives from the cooperating agencies and affected Tribal governments.

For more information on the Hanford Comprehensive Land-Use Plan EIS, contact Tom Ferns at thomas_w_ferns@rl.gov or call 509-372-0649.

Sandia Book Tells 25-Year History of Waste Isolation Pilot Plant

DOE's NEPA Experience Grew as Project Took Shape

It was 1975 when the Energy Research and Development Agency (a DOE predecessor agency) first assigned Sandia National Laboratories major responsibility for the scientific investigations related to a proposed radioactive waste repository in southeastern New Mexico. The first shipment of waste arrived in 1999. The 25-year history of the Waste Isolation Pilot Plant (WIPP) is now detailed in *Sandia and the Waste Isolation Pilot Plant, 1974 – 1999,* by Carl J. Mora, a historian at Sandia National Laboratories. The Department's three EISs for WIPP (DOE/EIS-0026 and supplements) and their associated Records of Decision are part of this history.

This book tells a multi-faceted story (generously illustrated with historic photographs and newspaper cartoons) – of shifting missions, high public interest, political infighting, scientific controversy, technical challenges, and naivete replaced with hard-won experience – and of Sandia's role in helping to develop the nation's first geological repository for the permanent disposal of transuranic radioactive waste. It also tells of DOE's growing sophistication in performing complex NEPA reviews.

Dr. Mora describes how an initial test site seven miles northwest of the eventual WIPP site had to be abandoned because unexpected subsurface conditions were discovered in the form of steeply dipping salt beds and a brine reservoir under artesian pressure (which nearly killed one of the Sandia staff during exploratory drilling). Even as the search ensued for a new site, background work was beginning for an EIS. At first, there were only three members of the EIS preparation team, and as one of them recalled 20 years later, "people were still trying to learn what an EIS means." (People still thought an EIS could be about a dozen pages.) After several iterations, a draft EIS was finally issued in 1979. Subsequently, the EIS was extensively supplemented in 1990 and 1997.

Photograph courtesy of Sandia National Laboratories

WIPP Project Manager Wendell Weart, dressed in his official Sultan of Salt uniform, wields a scimitar at a gathering in April 1997 to honor his 35th anniversary at Sandia and being named a Sandia Fellow.

The book chronicles how opposition to WIPP grew as construction proceeded. Disagreements raged among proponents and opponents at all levels – from activists arrested at the construction site, to disputes between Presidents and Congress. Some early opponents later became proponents. Among the many personalities in the book is Bill Richardson who, as a former Congressman from the host state of New Mexico, stressed that WIPP should be required to meet Environmental Protection Agency (EPA) standards for waste disposal. Congress eventually enacted requirements setting out a new role for EPA, and, in 1998, EPA certified that WIPP met the agency's disposal standards. The facility began waste disposal operations in March 1999 under the leadership of Bill Richardson as Secretary of Energy.

At first, there were only three members of the EIS team. As one recalled 20 years later, "people were still trying to learn what an EIS means." (People still thought an EIS could be about a dozen pages.)

Over the 25 years of facility development, five U.S. Presidents held office, the Energy Research and Development Agency evolved into DOE (with many changes in leadership), and Congress debated WIPP's funding and future numerous times. Among the few constants over time were some of the initial Sandia players, including the project manager, Wendell Weart, nicknamed "The Sultan of Salt" by former Secretary of Energy Hazel O'Leary. Dr. Weart himself writes in the book's forward that, although WIPP took a 25-year trip that had many potholes and detours, the fact that it finally came to fruition "provides a positive signal to the world that radioactive waste disposal is not too difficult a problem to overcome."

Sandia and the Waste Isolation Pilot Plant, 1974 – 1999, publication SAND99-1482, is available from the National Atomic Museum Store at 505-284-3242.

Considering Essential Fish Habitat in NEPA Reviews

Avoiding adverse impacts to environmentally sensitive resources is a consideration in project planning, so these resources receive special attention – often including interagency consultation – in the NEPA process. Lessons Learned Quarterly Report *recently described regulations for considering historic properties (June 1999, page 3) and national natural landmarks (December 1999, page 12) in NEPA reviews. This article highlights requirements for considering another environmentally sensitive resource: essential fish habitat.*

The 1996 Amendments to the Magnuson Fishery Conservation and Management Act require the National Marine Fisheries Service (NMFS) to designate "essential fish habitat" for species covered by a Federal fisheries management plan. The renamed Magnuson-Stevens Act (16 U.S.C. 1801, et seq.) defines these habitats as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." These habitats are in marine and estuarine areas as well as rivers that support Federally managed anadromous fish (that is, species that return from the sea to breed in rivers).

Under the Act, Federal agencies must consult with NMFS regarding any authorized, funded, undertaken, or proposed actions that may adversely affect essential fish habitat. Although the concept of essential fish habitat is similar to "critical habitat" under the Endangered Species Act, measures recommended by the NMFS are advisory, not prescriptive. If a project would have adverse effects, NMFS must develop recommendations to avoid or offset the effects. Federal agencies have 30 days to respond in writing to those recommendations.

NMFS interim final implementing regulations 50 CFR 600, Subparts J and K, effective January 20, 1998 (62 FR 66531; December 19, 1997), specify that consultations on essential fish habitat should be incorporated into environmental review procedures already established, including those for NEPA. If a proposal has potential impacts on essential fish habitat, a draft EIS or an EA prepared for pre-approval review should contain the required provisions of an essential fish habitat assessment:

- A description of the proposed action;
- An analysis of the effects of the proposed action (and alternatives, when appropriate) on essential fish habitat and associated species;
- The agency's views regarding those effects; and
- Proposed mitigation, if applicable.

An essential fish habitat assessment should appear under its own heading in an EIS or EA, and may incorporate by reference any relevant information contained elsewhere in the document.

Essential Fish Habitat Assessment Prepared for DOE EIS

In response to NMFS comments on a draft EIS for a proposed Clean Coal project in Florida, DOE prepared and will incorporate an essential fish habitat assessment into the final EIS for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS-0289).

Recommendations for DOE NEPA Practitioners

NEPA practitioners should include essential fish habitat among the environmentally sensitive resources to be considered when assessing environmental impacts of a proposed action.

- ✓ In applying a categorical exclusion, ensure that the proposed action meets the requirements of DOE NEPA regulations, which specify that environmentally sensitive resources must not be adversely affected (Appendix B.(4)).
- ✓ If a proposed action could adversely affect the habitat of a marine or anadromous fish, consult with NMFS early during preparation of an EA or EIS.
- ✓ Distribute a draft and final EIS, or an EA for pre-approval review, to the appropriate NMFS Regional Coordinator if the document addresses a proposal with potential impacts on essential fish habitat.

For more information and for links to Regional Fishery Management Council Web sites, see the NMFS Office of Habitat Conservation Web site at www.nmfs.gov/habitat.

NMFS Essential Fish Habitat Regional Coordinators

Northeast Region: Lou Chiarella, 978-281-9277
Southeast Region: Ric Ruebsamen, 727-570-5317
Southwest Region: Mark Helvey, 707-575-6078
Pacific Islands: John Naughton, 808-973-2935
Northwest Region: Nora Berwick, 503-231-6887
Alaska Region: Jeanne Hanson, 907-271-3029

NEPA Guidance Updates

The following documents were recently distributed by the Office of NEPA Policy and Assistance.

Directory of Potential Stakeholders for DOE Actions under NEPA
(13th edition; January 31, 2000)
Office of NEPA Policy and Assistance
Available at tis.eh.doe.gov/nepa/ under DOE NEPA Tools

Katherine Nakata
202-586-0801
katherine.nakata@eh.doe.gov

EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews
(EPA 315-B-99-001; July 1999)
Environmental Protection Agency
Office of Federal Activities

(DOE contact: Carolyn Osborne, 202-586-4596
carolyn.osborne@eh.doe.gov)

Web Site of Interest: www.ehsfreeware.com

For a "virtual library" of environmental, health, and safety information, take a look at www.ehsfreeware.com. This informative and entertaining Web site provides links to more than 600 online databases, assorted government and non-government Web sites, and downloadable software ("freeware"). Information is organized in categories such as:

- Information/Data (including analytical methods, emergency response, energy conservation, nature/wildlife, pollution, and waste management)
- Tools for Environmental Responsibility, Compliance Assistance (including links to sites on environmental laws and regulations)
- Investigation/Cleanup Assistance, Education/Training, and "Neat Stuff" (including collections of photographs and maps)

The site, online since July 1999, was created by Donley Technology, a publisher of environmental software and a clearinghouse for environmental software information.

DOE-wide NEPA Contracts Update

Based on the performance evaluations provided by NEPA Document Managers and Ordering Contracting Officers, DOE plans to exercise the first option period on its contracts with Tetra Tech, Inc., and Science Applications International Corporation for DOE-wide NEPA document preparation services. The contracts, issued in June 1997, cover a basic period of three years and two one-year options. (A contract with Battelle Memorial Institute was awarded in March 1998, and a decision on exercising an option will be due in early 2001.) For questions or comments on the DOE-wide contracts, contact David Gallegos at dagallegos@doeal.gov or phone 505-845-5849.

The following tasks have been awarded under the DOE-wide contracts; for previously reported tasks, see *Lessons Learned Quarterly Report*, September 1999, page 10.

Task Description	DOE Contact	Date Awarded	Contract Team
Environmental Studies	Federal Energy Regulatory Commission	8/3/99	Tetra Tech, Inc.
EA for Transfer of DOE Grand Junction Office to non-DOE Ownership	Tracy Plessinger 970-248-6197 tplessinger@doegjpo.com	8/13/99	Tetra Tech, Inc.
Nuclear Infrastructure Programmatic EIS	Colette Brown, NE 301-903-6924 colette.brown@hq.doe.gov	12/21/99	SAIC

NEPA Training Opportunities

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

National Environmental Policy Act
May 23-25, 2000
Fee: Free to Federal employees

National Advocacy Center
Office of Legal Education
Executive Office for United States Attorneys
Department of Justice
Columbia, SC
Phone: 803-544-5100
Fax: 803-544-5110
Internet: www.usdoj.gov/usao/eousa/ole.html

National Environmental Policy Act and Related Requirements
Washington, DC: April 27-28, 2000
Fee: $695

American Law Institute – American Bar Association
Dinah Bear, William M. Cohen, David Paget
Phone: 800-CLE-NEWS
Fax: 215-243-1664
Internet: www.ali-aba.org

Advanced Topics in Environmental Impact Assessment
Irving, TX: March 15-17, 2000
Fee: $695

Cumulative Effects Assessment
Irving, TX: May 10-12, 2000
Fee: $695

Environmental Impact Assessment
Irving, TX: July 26-28, 2000
Fee: $695

Environmental Impact Training
Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Phone: 405-321-2730
E-mail: info@eiatraining.com
Internet: www.eiatraining.com

The NEPA Toolbox: Essentials for NEPA Practitioners
Denver, CO: June 5-6, 2000
Fee: $650 (Early Bird $595)

The NEPA Toolbox: Assessing Cumulative Impacts
Denver, CO: June 7, 2000
Fee: $425 (Early Bird $395)

The NEPA Toolbox: EAs with FOCUS
Denver, CO: June 8-9, 2000
Fee: $650 (Early Bird $595)

Environmental Training and Consulting International, Inc.
Phone: 720-859-0380
Fax: 720-859-0381
Internet: www.envirotrain.com

Environmental Planning – National Environmental Policy Act
(Offered through a General Services Administration Environmental Advisory Services contract. Location and date by arrangement with vendor.)
Fee: $8,740 (Minimum class of 10 students)
$960 (Each additional student)

Marc Enviro Services L.L.C.
Contact: Mark E. Schafer
Phone: 402-492-8025
E-mail: marcsvc@uswest.net
Internet: www.marcservices.com

Cumulative Effects Assessment in the NEPA Process
Levine Science Research Center, Duke University
Durham, NC: May 31-June 2, 2000 (Register by April 12)
Fee: $595

The Nicholas School of the Environment
Duke University
Phone: 919-613-8063
E-mail: cee@env.duke.edu
Internet: www.env.duke.edu/alternative.html

Clear Writing for NEPA Specialists
San Antonio, TX: March 15-17, 2000
Fee: $795

Cultural and Natural Resource Management
Reno, NV: April 5-6, 2000
Salt Lake City, UT: June 7-8, 2000
Fee: $595

Clear Writing for NEPA Specialists/Reviewing NEPA Documents (Advanced)
Denver, CO: May 1-5, 2000
Fee: $1,289

Reviewing NEPA Documents
Albuquerque, NM: May 9-11, 2000
Fee: $795

Risk Communication: Strategies and Implementation
Phoenix, AZ: May 16-18, 2000
Fee: $795

The Shipley Group, Inc.
Phone: 888-270-2157 or 801-298-7800
E-mail: shipley@shipleygroup.com
Internet: www.shipleygroup.com

Related Training Opportunities

Introduction to Section 106 Review
Kansas City, MO: March 14-15, 2000
Riverside, CA: March 21-22
Riverside, CA: March 23-24
Philadelphia, PA: April 9-11
Anchorage, AK: May 2-3
Chicago, IL: May 16-17
Dallas, TX: June 6-7
Memphis, TN: June 20-21
Phoenix, AZ: July 11-12
Washington, DC: July 25-26
Portland, OR: August 1-2
Minneapolis/St. Paul, MN: August 8-9
Fee: $425

Advisory Council on Historic Preservation
(with the University of Nevada, Reno)
Phone: 775-784-4046 or 800-233-8928
E-mail: crystalm@unr.edu
Internet: www.achp.gov/

Environmental Laws and Regulations
Chicago, IL: March 21-23, 2000
Aiken, SC: May 9-11
Fee: $950

An Overview of Environmental Laws and Regulations for Managers
Richland, WA: June 14, 2000
Fee: $250

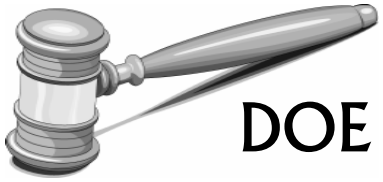
DOE National Environmental Training Office (NETO)
Phone: 803-725-7153
E-mail: neto@srs.gov
Internet: www.em.doe.gov/neto

Section 106: An Advanced Seminar
Austin, TX: March 13-15, 2000
Madison, WI: March 21-23
Fee: $475

Consultation with Indian Tribes on Cultural Resource Issues
Riverside, CA: April 18-19, 2000
Fee: $325

Section 106: Working with the Revised Regulations
Honolulu, HI: April 25-26, 2000
Sacramento, CA: May 1-2
Fee: $325

National Preservation Institute
Phone: 703-765-0100
E-mail: info@npi.org
Internet: www.npi.org



DOE Litigation Updates

Court Allows DOE Shipment of Test Fuel to Canada

On December 6, 1999, several Michigan residents and the Citizens for Alternatives to Chemical Contamination sued DOE in the U.S. District Court for the Western District of Michigan, alleging several NEPA violations in DOE's environmental assessment (DOE/EA-1216) for the Parallex Project. This project is a test that will fuel a research nuclear reactor in Ontario, Canada, with mixed oxide (MOX) fuel (consisting of uranium oxide and weapons-grade plutonium oxide) fabricated in the United States and Russia. The plaintiffs requested a preliminary injunction, which would have prevented the DOE MOX shipment to Canada until the merits of the case could be heard and decided.

On December 17, the court declined to issue a preliminary injunction but concluded that some of the plaintiffs' NEPA claims may have merit. On January 15, 2000, the DOE MOX shipment arrived in Canada without incident. Nevertheless, the lawsuit is still active; *Lessons Learned Quarterly Report* will report on future developments. *Hirt v. Richardson*, Case No. 1:99-CV-933; December 17, 1999. LL

DOE Radioactive Waste Management Order and Categorical Exclusion Challenged

In issuing the Radioactive Waste Management Order (DOE O 435.1) in July 1999, replacing a previous such Order, DOE applied categorical exclusion A5 of the DOE NEPA Regulations, "Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended." On January 3, 2000, the Natural Resources Defense Council and the Snake River Alliance petitioned the U.S. Court of Appeals for the Ninth Circuit to review and to set aside as arbitrary, capricious, and contrary to law – both the Order and the application of the categorical exclusion.

The Natural Resources Defense Council's brief is due to the court on March 27, 2000, and DOE's responding brief is due on April 24. *Lessons Learned Quarterly Report* will report on future developments in this case. LL

Appeals Court Upholds Decision Not to Stop International Nuclear Waste Shipments; Rationale is NEPA, Not Mootness

On February 3, 1998, a British-flag freighter carrying vitrified high-level radioactive waste passed through the Mona Passage (between the islands of Puerto Rico and Hispaniola) bound from France to Japan by way of the Panama Canal. A day earlier, a group of fishermen and environmental organizations from Puerto Rico, fearing an accident or maritime disaster, sued DOE, the Department of State, the Coast Guard, and the companies involved in the treatment and transport of the waste. The plaintiffs requested an injunction to stop the shipment until the U.S. prepared an EIS. The District Court dismissed the action as moot because the shipment had already left U.S. waters. (See Lessons Learned Quarterly Report*, March 1998, page 14.) The plaintiffs appealed.*

On December 20, 1999, the United States Court of Appeals for the First Circuit found that this case was not moot – because shipments of vitrified high-level waste through the Mona Passage continue – but also found that the shipments do not constitute a major Federal action subject to NEPA.

Nuclear Waste Shipments a Federal Action?

In the appeal, the plaintiffs argued that because the United States plays some role in the transport of this waste under various international agreements and international law, the shipments constitute a "major Federal action" under NEPA. The United States responded that the "action" is the waste shipment, which is being carried out by private parties.

The Council on Environmental Quality (CEQ) NEPA regulations state that actions by non-Federal actors "with effects that may be major and which are potentially subject to Federal control and responsibility" can be major Federal actions (40 CFR 1508.18). Under CEQ regulations, these "actions" include "projects and

continued on next page

programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies." The Appeals panel found that the shipments are not Federal actions because the U.S. performs none of these activities with respect to the waste shipments.

Is Failure to Regulate the Shipments a Federal Action?

Under CEQ regulations, an agency's failure to act is an "action" within the meaning of NEPA only when the failure to act is reviewable by the courts under the Administrative Procedure Act or other applicable law (40 C.F.R. §1508.18). The plaintiffs argued that the U.S. Government's failure to regulate shipments of nuclear waste through its Exclusive Economic Zone waters (which extend 200 nautical miles offshore) falls within this provision of the regulations.

In general, foreign ships do not require U.S. permission to pass through its Exclusive Economic Zone, but the plaintiffs argued that the U.S. granted or was required to grant specific authorization for these shipments under the U.S.-EURATOM Agreement (Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community, H.R. Doc. No. 104-138). The Government successfully responded that the U.S. authorities under this Agreement end when nuclear material becomes "practically irrecoverable" through vitrification. The Appeals Court concluded that "the United States has chosen not to regulate shipments of nuclear waste through its [Exclusive Economic Zone] – there is no requirement that it do so, nor is it evident that it would have that authority if it so chose. Under these circumstances, there is no major Federal action." *Mayaguezanos por la Salud y el Ambiente v. United States*, 38 F. Supp. 2d 168, 178 (D.P.R. 1999) and No. 99-1412, 1999 U.S. App. LEXIS 33416 (1st Cir. December 20, 1999). LL

Other Agency NEPA Cases

Appeals Court Reverses Wilson Bridge NEPA Decision

The U.S. Court of Appeals for the District of Columbia Circuit on December 17, 1999, reversed a District Court ruling on the adequacy of a Federal Highway Administration (FHWA) EIS for replacing the Woodrow Wilson Bridge across the Potomac River, finding that the EIS satisfied the requirements of NEPA, the National Historic Preservation Act, and the Department of Transportation Act. (See *Lessons Learned Quarterly Report*, September 1999, page 12.)

The District Court had concluded that the FHWA violated NEPA in failing to consider a ten-lane bridge as a "reasonable alternative." The Appeals Court, stating that "reasonable alternatives" must be viewed in light of the action's objective, found that the FHWA reasonably identified its objective as addressing traffic needs in 20 years and correctly concluded that the ten-lane bridge alternative would not provide sufficient capacity for 2020 traffic projections.

The District Court, in finding the ten-lane bridge a reasonable alternative, had noted that the FWHA's Clean Air Act conformity analysis was conducted for a ten-lane alternative. The Appeals Court disagreed with this reasoning, stating that "the Clean Air Act and NEPA inquiries have different time horizons; while a project must show conformity with the Clean Air Act at the time it is approved, see *42 U.S.C. § 7506*(c)(1) (1995), the consideration of reasonable alternatives under NEPA requires an assessment of traffic needs in 2020."

The District Court also had found the EIS's treatment of the temporary construction impacts inadequately brief and general, and – in postponing identification of construction staging sites – in violation of section 106 of the National Historic Preservation Act and section 4(f) of the Department of Transportation Act. Criticizing the District Court's assessment as "too harsh," the Appeals Court found that the EIS did address a number of construction impacts and the brevity of the discussion was justified by FHWA's practice of identifying construction staging sites (an "ancillary activity") after detailed design. The Appeals Court further found that the FHWA is not prohibited from completing its section 106 analyses and certain requirements of section 4(f) during final design of the project. *City of Alexandria v. Slater*, 46 F. Supp.2d 35 (D.D.C. 1999)

Although the Appeals Court decision would allow construction to proceed, the FHWA has issued a draft supplemental EIS that addresses design changes and new information on resource needs and impacts. LL

EAs and EISs Completed October 1 – December 31, 1999

EAs

Environment, Safety and Health
DOE/EA-1249 (11/03/99)
10 CFR 850 Chronic Beryllium Disease Prevention Program
Cost: $200,000
Time: 32 months

National Energy Technology Center
DOE/EA-1306 (10/12/99)
Cedar Lane Farms Atmospheric Fluidized Bed Combustor System, Wooster, Wayne Co., Ohio
Cost: $27,000
Time: 4 months

Oakland Operations Office/Defense Programs
DOE/EA-1305 (10/29/99)
Terascale Simulation Facility, Lawrence Livermore National Laboratory, California
Cost: $50,000
Time: 7 months

Savannah River Operations Office/Environmental Management
DOE/EA-1302 (12/08/99)
Interim Measures for the Mixed Waste Management Facility Groundwater at the Burial Ground Complex at the Savannah River Site, Aiken, South Carolina
Cost: $36,000
Time: 6 months

EISs

Defense Programs/Albuquerque Operations Office
DOE/EIS-0281 (EPA Rating: LO)
Sandia National Laboratories, Albuquerque, New Mexico, Site-wide
October 1999 (64 FR 58404; 10/29/99)
Cost: $10.1 million
Time: 29 months

DOE/EIS-0293 (EPA Rating: EC-2)
Proposed Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
October 1999 (65 FR 5635; 2/04/2000)
Cost: $2.0 million
Time: 18 months

Fissile Materials Disposition
DOE/EIS-0283 (EPA Rating: EC-2)
Surplus Plutonium Disposition
November 1999 (64 FR 63313; 11/19/99)
Cost: $12.2 million
Time: 29 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 1999. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- *Meetings with stakeholder groups.* By meeting with various non-government organizations (including proponent and opposing organizations), DOE was able to anticipate the type and content of comments we could expect on the draft.
- *Cost-free methods to submit comments.* The public liked the use of toll-free telephone numbers to provide spoken and faxed comments. They also used the Program's Web site to submit comments.

Data Collection/Analysis

What Worked

- *Early calls for data.* Data collection was expedited by issuing data calls on the alternatives to labs and sites before the Notice of Intent was issued.

Schedule

Factors that Facilitated Timely Completion of Documents

- *An aggressive schedule.* A schedule was established that was aggressive for both the contractor and DOE, yet allowed adequate DOE review time.
- *Use of a template.* A template for the EA was provided to the members of the team for use in preparing and incorporating their analyses.
- *Electronic communications.* All document communications were electronic, so individual sections could be easily transmitted for review, adjusted as necessary, and imported into a draft EA.
- *Offsite reviews.* Offsite meetings brought together reviewers from headquarters, sites, and labs. Many issues were resolved at these meetings, where everyone could devote full time to reviewing the EIS.
- *Stable contracting and budget situation.* Although costs increased due to program changes, a stable support contract situation and contingency budget kept the document preparation on track.

Factors that Inhibited Timely Completion of Documents

- *Preparation of the EA during the design phase.* Because of design changes, the EA underwent several unanticipated revisions before approval.
- *Extra comment review periods.* The EA underwent several rounds of comments even after the advertised public review period closed.
- *Delays caused by the approval process.* The DOE approval process caused EA schedule delays. The process needs to be streamlined. This could be achieved by obtaining multiple reviewer concurrences on a single draft rather than revise the EA for each new reviewer in the step-wise concurrence process.
- *Multiple comment response.* We provided changes to the EA in response to one stakeholder's comments several times, allowing this individual to essentially "control" the NEPA process and the completion schedule.
- *Unforeseen development of supplemental materials.* The NEPA process was started on time. A major portion of the draft had to be supplemented, however, taking many months and adding significant cost.

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What Worked and Didn't Work (continued from page 19)

- *Late submission of applicant data.* If NEPA review had been conducted earlier, there would have been more time for construction and placement of components before winter. NEPA review was started as soon as possible; however, the applicant did not submit the required Environmental Questionnaire in a timely manner as had been requested.

Factors that Facilitated Effective Teamwork

- *Positive historical relationship between DOE and contractor.* The relationship that existed between DOE and the contractor personnel who participated in the NEPA process facilitated teamwork.
- *Periodic conference calls.* Periodic conference calls were held, with an agenda distributed beforehand. In addition, all persons needed on the conference calls were included.

Factors that Inhibited Effective Teamwork

- *Insufficient time availability by some team members.* Some team members were expected to take on this assignment as an addition to their ongoing work, although they had insufficient time availability. This created difficulties for the team as a whole.
- *Lack of familiarity with NEPA process.* The project team was unfamiliar with the NEPA process; this was the first EA the team prepared.
- *Insufficient availability of DOE project manager.* Better accessibility of the DOE project manager during the development of the NEPA document would have made the process more efficient.

Process

Successful Aspects of the Public Participation Process

- *Face-to-face meetings with municipal officials.* Face-to-face meetings with municipal officials helped us provide them advanced notice of and information on the proposed action, and helped them to establish their interest in and prepare for review of the draft document.
- *Floodplain and wetland involvement.* The *Federal Register* floodplain and wetland involvement notification helped the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *Lack of public understanding about the NEPA process.* The public thought that the project was good for the environment and could not understand why an EA was needed. The public thought the project should have been categorically excluded.
- *Insufficient newspaper publicity.* We missed placing a notice about the EA in one of the local papers. Consequently, a group requested and was granted more time to comment because they did not learn of the EA until later in the comment period.

Usefulness

What Worked

- *A better understanding of the project by stakeholders and regulators.* Preparation of the EA and the Finding of No Significant Impact was an effective planning tool; stakeholders and regulators better understood the overall objective and benefit of the proposed action.
- *A shift in the basis for project decision making using the results of the environmental impact analysis.* The process was useful in that it showed that there was not a great amount of environmental difference between the alternatives and, therefore, other considerations (non-proliferation, costs, etc.) could become deciding factors.

What Didn't Work

- *Compliance with NEPA was viewed only as a regulatory requirement.* The EA was not used as a planning tool; it was a process required by regulations.

continued on next page

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

- *Conflict between NEPA decision making and CERCLA/RCRA decision making.* NEPA review was completed early – perhaps too early to be effective in the final action. Agencies that drive CERCLA/RCRA decisions do not really care about NEPA and do not want NEPA messing up their RCRA decisions.
- *Project decision making preceded NEPA compliance.* Management had made a decision to implement the proposed action as approved by regulators and the NEPA process was used to justify that action.

Enhancement/Protection of the Environment

- *Increased awareness of environmental protection by participant.* DOE's decision to prepare an EA imparted to the participant an awareness of the seriousness of environmental concern regarding the proposed action. The participant maintained an interest in the potential environmental effects of the proposed action on a level equal to his interest in the economic benefits.
- *Protection of wetlands.* Wetlands will be better protected, and potential impacts to wetlands will be better understood.
- *NEPA compliance validated environmental analysis.* The environment was protected because the NEPA process required technical personnel and decision makers to ensure that the lack of major differences in the environmental consequences of the alternatives was real and not just a result of the analysis process.

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 of 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decision making.

- For this quarter, in which questionnaire responses were received for 3 EAs and 1 EIS, 5 of the 9 respondents rated the NEPA process as "effective."
- A respondent who rated the process as "5" stated that, "Without the NEPA process, potential impacts to sensitive species may not have been identified until later in the project, which could have affected the project schedule and timely completion."
- A respondent who rated the process as "not effective at all" explained that, "Stakeholders thought it was very evident that this project, which would have put out of service an old, inefficient stoker boiler, should not have undergone this [NEPA] process and should have been given a categorical exclusion." LL

NEPA Document Cost Facts

EISs

- Three EISs were completed this quarter. The median cost for the three EISs was $10.1 million, and the average cost was $8.1 million.
- Cumulatively, for the 12 months that ended December 31, 1999, the median cost for the preparation of 10 EISs was $3.2 million; the average cost was $6.6 million. Three other EISs were paid for by applicants.

EAs

- For this quarter, the median cost of four EAs was $43,000; the average was $78,250.
- Cumulatively, for the 12 months that ended December 31, 1999, the median cost for the preparation of 25 EAs was $52,000; the average cost was $67,000. Three other EAs were paid for by applicants.

NEPA Document Completion Time Facts

EISs

- For this quarter, the average and median completion times of three EISs were 25 and 29 months, respectively.
- Cumulatively, for the 12 months that ended December 31, 1999, the median completion time for the preparation of 13 EISs was 29 months; the average was also 29 months.

EAs

- For this quarter, the median completion time of four EAs was seven months; the average was 12 months.
- Cumulatively, for the 12 months that ended December 31, 1999, the median completion time for preparation of 28 EAs was nine months; the average was 15 months.

Other EIS Documents and Milestones

(December 1, 1999 – February 29, 2000)

Draft EIS

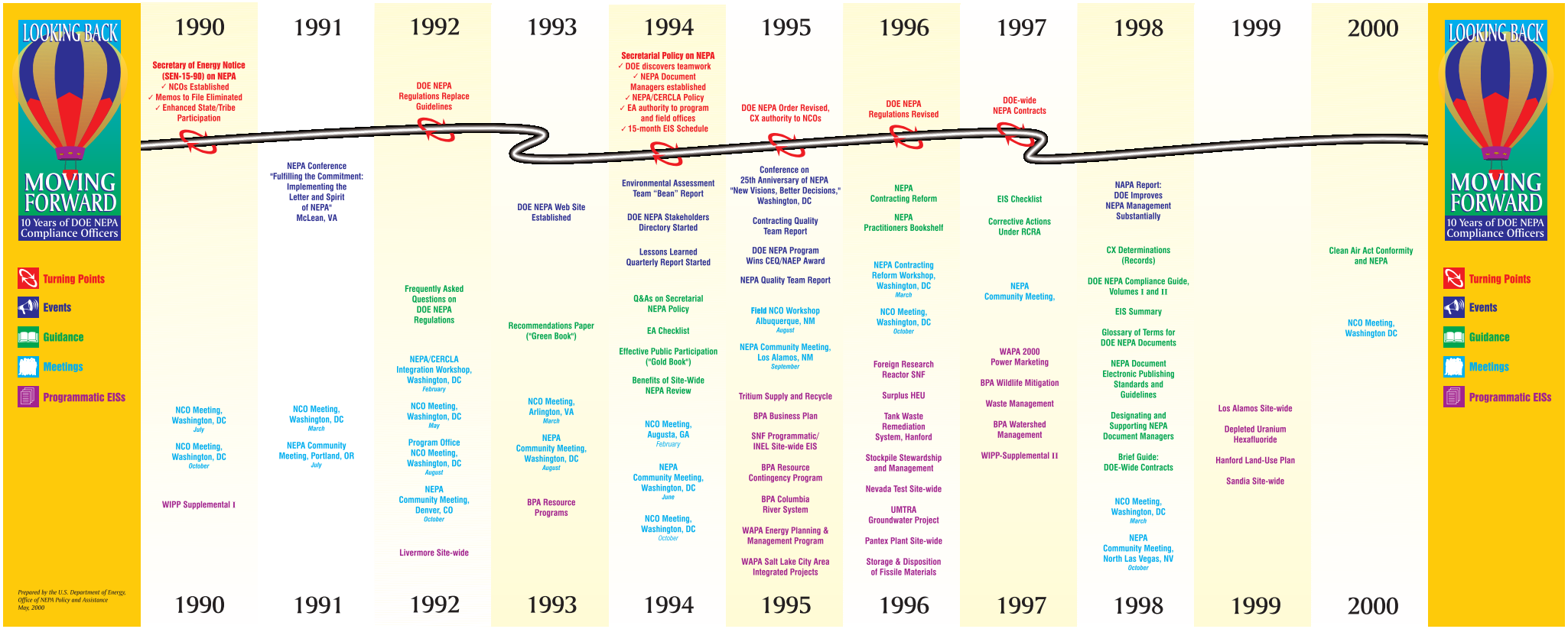
Idaho Operations Office
DOE/EIS-0287
Idaho High-Level Waste and Facilities Disposition
December 1999 (65 FR 3448; 1/21/2000)

Records of Decision

Defense Programs/Sandia National Laboratories
DOE/EIS-0281
Sandia National Laboratories, Albuquerque, New Mexico, Site-wide
12/06/1999 (64 FR 69996; 12/15/1999)

Environmental Management
DOE/EIS-0200 and DOE/EIS-0243
Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment of the Record of Decision for the Nevada Test Site
02/18/2000 (65 FR 10061; 2/25/2000)

Fissile Materials Disposition
DOE/EIS-0283
Surplus Plutonium Disposition
01/04/2000 (65 FR 1608; 1/11/2000)


LOOKING BACK
MOVING FORWARD
10 Years of DOE NEPA Compliance Officers
Turning Points
Events
Guidance
Meetings
Programmatic EISs
Prepared by the U.S. Department of Energy, Office of NEPA Policy and Assistance May, 2000
1990
Secretary of Energy Notice (SEN-15-90) on NEPA
✓ NCOs Established
✓ Memos to File Eliminated
✓ Enhanced State/Tribe Participation
NCO Meeting, Washington, DC July
NCO Meeting, Washington, DC October
WIPP Supplemental I
1991
NEPA Conference "Fulfilling the Commitment: Implementing the Letter and Spirit of NEPA" McLean, VA
NCO Meeting, Washington, DC March
NEPA Community Meeting, Portland, OR July
1992
DOE NEPA Regulations Replace Guidelines
Frequently Asked Questions on DOE NEPA Regulations
NEPA/CERCLA Integration Workshop, Washington, DC February
NCO Meeting, Washington, DC May
Program Office NCO Meeting, Washington, DC August
NEPA Community Meeting, Denver, CO October
Livermore Site-wide
1993
DOE NEPA Web Site Established
Recommendations Paper ("Green Book")
NCO Meeting, Arlington, VA March
NEPA Community Meeting, Washington, DC August
BPA Resource Programs
1994
Secretarial Policy on NEPA
✓ DOE discovers teamwork
✓ NEPA Document Managers established
✓ NEPA/CERCLA Policy
✓ EA authority to program and field offices
✓ 15-month EIS Schedule
Environmental Assessment Team "Bean" Report
DOE NEPA Stakeholders Directory Started
Lessons Learned Quarterly Report Started
Q&As on Secretarial NEPA Policy
EA Checklist
Effective Public Participation ("Gold Book")
Benefits of Site-Wide NEPA Review
NCO Meeting, Augusta, GA February
NEPA Community Meeting, Washington, DC June
NCO Meeting, Washington, DC October
1995
DOE NEPA Order Revised, CX authority to NCOs
Conference on 25th Anniversary of NEPA "New Visions, Better Decisions," Washington, DC
Contracting Quality Team Report
DOE NEPA Program Wins CEQ/NAEP Award
NEPA Quality Team Report
Field NCO Workshop Albuquerque, NM August
NEPA Community Meeting, Los Alamos, NM September
Tritium Supply and Recycle
BPA Business Plan
SNF Programmatic/ INEL Site-wide EIS
BPA Resource Contingency Program
BPA Columbia River System
WAPA Energy Planning & Management Program
WAPA Salt Lake City Area Integrated Projects
1996
DOE NEPA Regulations Revised
NEPA Contracting Reform
NEPA Practitioners Bookshelf
NEPA Contracting Reform Workshop, Washington, DC March
NCO Meeting, Washington, DC October
Foreign Research Reactor SNF
Surplus HEU
Tank Waste Remediation System, Hanford
Stockpile Stewardship and Management
Nevada Test Site-wide
UMTRA Groundwater Project
Pantex Plant Site-wide
Storage & Disposition of Fissile Materials
1997
DOE-wide NEPA Contracts
EIS Checklist
Corrective Actions Under RCRA
NEPA Community Meeting,
WAPA 2000 Power Marketing
BPA Wildlife Mitigation
Waste Management
BPA Watershed Management
WIPP-Supplemental II
1998
NAPA Report: DOE Improves NEPA Management Substantially
CX Determinations (Records)
DOE NEPA Compliance Guide, Volumes I and II
EIS Summary
Glossary of Terms for DOE NEPA Documents
NEPA Document Electronic Publishing Standards and Guidelines
Designating and Supporting NEPA Document Managers
Brief Guide: DOE-Wide Contracts
NCO Meeting, Washington, DC March
NEPA Community Meeting, North Las Vegas, NV October
1999
Los Alamos Site-wide
Depleted Uranium Hexafluoride
Hanford Land-Use Plan
Sandia Site-wide
2000
Clean Air Act Conformity and NEPA
NCO Meeting, Washington DC
LOOKING BACK
MOVING FORWARD
10 Years of DOE NEPA Compliance Officers
Turning Points
Events
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Programmatic EISs

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

June 1, 2000; Issue No. 23 For Second Quarter FY 2000

NEPA Compliance Officers Celebrate 10 Years of Progress, Look to Future

Celebrating the 10th anniversary of the establishment of DOE NEPA Compliance Officers (NCOs), the Office of NEPA Policy and Assistance convened a meeting of NCOs in Washington, DC, May 2 and 3, to consider "What Have We Learned?" and "Where Are We Going?" Focused on the theme "Looking Back, Moving Forward," the NCOs reviewed progress made in the past decade and set goals for further improvements. A large timeline chart was displayed to show DOE NEPA accomplishments, including turning points, key events, guidance, NEPA community meetings, and major programmatic EISs in the past 10 years. (See text box, page 5.)

In welcoming the NCOs, Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, said: "I'm impressed with the NEPA process and its results. Everything DOE does is under scrutiny. Doing NEPA well helps answer questions, keeps DOE out of trouble, and helps DOE do the right thing." The NCOs deserve thanks, he noted, for their role in strengthening the foundations of DOE decision making.

Headquarters and Field Office NEPA Compliance Officers at the 10th Anniversary Meeting in Washington, DC.

Environmental Excellence Award Announced

Dr. Michaels announced that the DOE NEPA Lessons Learned Program has been selected to receive an Environmental Excellence Award from the National Association of Environmental Professionals and thanked the NCOs for their contribution to this effort. (See related article on page 2.) He also presented Certificates of Recognition to four NCOs who have served for 10 years.

continued on page 4

Los Alamos Site-wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions

A "sign" of the Los Alamos wildfire at Technical Area (TA)-53.

As DOE and the Los Alamos region cope with the effects of last month's devastating fire, the 1999 Los Alamos National Laboratory (LANL) Site-wide EIS has proved to be a valuable reference document. In fact, the NEPA process had earlier focused DOE attention on the risks of wildfire at LANL and prompted mitigation actions within the past year that reduced the severity of impacts of the fire. Moreover, the analyses in the Site-wide EIS will be useful in planning recovery programs.

The LANL Site-wide EIS (DOE/EIS-0238) included an accident scenario – an extensive wildfire initiated to the southwest of LANL near the border with the Bandelier National Monument – that closely mirrored the actual

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Inside *LESSONS LEARNED*

Welcome to the 23rd quarterly report on lessons learned in the NEPA process. This issue features highlights from the May 2000 NEPA Compliance Officers Meeting. Also featured is an article on NEPA and the wildfire at Los Alamos. This is an unusually long issue, due simply to the abundance of information to be shared. I encourage you to read the report cover to cover and file it for future reference.

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by August 1, 2000. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

Third Quarter Questionnaires Due August 1, 2000

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2000 (April through June, 2000) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

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NEPA Lessons Learned Program to Receive NAEP Environmental Excellence Award

Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, proudly announced at the May NCO Meeting that the DOE NEPA Lessons Learned Program had been selected to receive a National Association of Environmental Professionals (NAEP) award. This award, in the category of Excellence in Environmental Education, will recognize DOE's NEPA Lessons Learned Program for "its significant contribution to self examine, share and measure program effectiveness and continuously improve NEPA," said Association President Andrew J. McCusker in a May 1 letter informing Dr. Michaels of the selection.

The NEPA Lessons Learned Program, conducted by the Office of NEPA Policy and Assistance for almost 6 years, aims to reduce the cost and time for NEPA document preparation while maintaining and improving document quality and effectiveness. Largely through this *Lessons Learned Quarterly Report,* DOE measures performance and distributes guidance and information within the Department and to people who use the DOE NEPA Web.

Dr. Michaels noted that many people contribute to the success of the DOE NEPA Lessons Learned Program and its quarterly report. Most essential is the information provided by the front lines of the DOE NEPA Community – the NCOs and NEPA Document Managers. Without their time and cost metrics, lessons and recommendations, and contributed articles, he said, we could not have a successful NEPA Lessons Learned Program, which the Council on Environmental Quality also has held up as a model to other Federal agencies.

NAEP will present the award plaque to DOE on June 27 at the Association's conference in Portland, Maine. (See related article on page 16.) LL

Los Alamos EIS Analyzed Wildfire Impacts (continued from page 1)

Cerro Grande Fire. That fire, ignited as a "prescribed burn" by the National Park Service on May 4, 2000, went out of control and burned about 50,000 acres of forest and residential land, including about 9,000 acres (approximately 30 percent) of the LANL site.

During the fire, DOE relied upon the EIS analyses to answer public inquiries and concerns, particularly regarding the potential adverse affects from the fire burning over contaminated areas. According to Elizabeth Withers, Los Alamos Area Office NEPA Compliance Officer, the EIS was "an extremely valuable tool for public relations credibility in a very emotional and difficult time." The completeness of the assessment in the EIS, coupled with the onsite air monitoring, "helped to establish early on that there was no imminent danger to people resulting from the fire," she said.

The detailed accident analysis (Appendix G of the EIS, which is posted on the DOE NEPA Web at tis.eh.doe/nepa/docs/docs.htm) covered the immediate impacts of such a wildfire on workers, the public and the environment. The analysis assumed that about 8,000 acres on LANL would be burned as well as portions of the Los Alamos townsite. "These scenarios are quite credible, in view of the present density and structure of fuel surrounding and within LANL and the townsite, as well as the occurrence of three major fires in the past 21 years," the EIS stated. In considering the combined probability of fire-favorable conditions, the EIS concluded "that a major fire moving up to the edge of LANL is not only credible, but likely . . ."

Comments Focused Attention on Wildfire

The Draft LANL Site-wide EIS did not analyze a wildfire accident because under the initial screening methodology that scenario had not been considered plausible. However, comments at the public hearing on the Draft EIS from a forester at the nearby Santa Fe National Forest and written comments from the Department of the Interior focused attention on the issue. The commenters referenced a recent Forest Service report about the threat of wildfire. The Final EIS estimated that the frequency of this type of fire is 1 in 10 years.

Based on this high chance of fire identified in the EIS analysis, actions were begun immediately to reduce the wildfire risks at certain key facilities, including TA-54 (waste facility) and TA-16 (Weapons Engineering Tritium Facility). Trees were cut and wooden pallets on which waste drums were stacked were replaced with aluminum pallets.

With the completion of these actions, the Final EIS stated (conservatively) that the population dose from a site-wide fire would be reduced from an estimated 675 person-rem to 50 person-rem, thereby avoiding a potential for approximately 0.3 latent cancer fatalities.

The EIS also addressed the longer-term environmental impacts resulting from a fire, e.g., loss of protective

Wildfire scorched the grounds near Building 326 at Technical Area-46.

cover, runoff, soil erosion and sedimentation, effects on legacy contaminants, effects on biological systems, and effects on cultural resources. As stated in the EIS, "The consequences of a wildfire are diverse, continuing through time and space, and frequently having significant changes in geomorphology and biological communities and processes . . . Loss of vegetative cover will create a setting that can have pronounced effects on flow dynamics, soil erosion and sediment deposition."

Mitigation Reduces Hazard

In the LANL Site-wide EIS Record of Decision (September 1999), DOE committed to develop by December 1999 a preliminary program plan for comprehensive wildfire mitigation, including construction and maintenance of strategic fire roads and fire breaks, creation of defensible space surrounding key facilities, and active forest management to reduce fuel loadings. The Mitigation Action Plan, October 1999, states that the wildfire hazard at LANL was currently being reduced by thinning trees, maintaining fire roads and fire breaks, and other measures.

The Los Alamos Area Office was about to issue a Wildfire Management Plan Programmatic EA for pre-approval review when the fire forced a change in plans. That EA is now being revised in light of the fire and will be issued shortly.

An interagency Burned Area Emergency Rehabilitation Team is working onsite to address immediate recovery actions. The Team has a NEPA unit, which has initiated an informal consultation with the Council on Environmental Quality regarding emergency NEPA procedures.

According to John Ordaz, Defense Programs project manager for the LANL Site-wide EIS, the NEPA process worked well in this case because the EIS team "was determined from the outset to prepare a useful document." When the EIS team heard the concerns about wildfire at the public hearing, "we investigated the claims and the science behind the analysis." Then the team found ways to reduce the fire load for the high risk areas. "It was the dedication of the EIS team that got the mitigations implemented," Mr. Ordaz said. LL

NCOs Celebrate 10 Years (continued from page 1)

Dr. David Michaels (center) with 10-year NCOs (from left) Gary Walker, National Petroleum Technology Office; Raj Sharma, Office of Nuclear Energy, Science and Technology; Paul Dunigan, Richland Operations Office; and Jim Johnson, Fossil Energy.

To set the stage for the ensuing discussions, three veteran NCOs – Drew Grainger, Jim Johnson, and Raj Sharma – shared their sometimes humorous insights about what they have learned from their NEPA experiences. (See page 7.) A presentation on EA and EIS cost, time and effectiveness metrics (related article, page 23) provided the context for assessing the results of recent reforms. Invited guest speakers, including Brian Costner, Senior Policy Advisor to the Secretary for Environment, Safety and Health, and Betty Nolan, Senior Advisor in the Office of Congressional, Intergovernmental, and External Affairs, offered their advice on ways to further improve the DOE NEPA process.

Perspectives "From the Outside In"

Brian Costner shared his views as an "outsider," working for DOE watchdog groups, and now as an "insider," working for Secretary of Energy Bill Richardson. "NEPA is integral to my life," he said. "It was the process through which I learned about DOE activities, reactor safety, and nuclear energy. It was my vehicle for information availability, and my primary opportunity to influence the decision process." Mr. Costner noted that the NEPA process provides information to the public in a comprehensible framework. "It's easy to explain to the public how NEPA works. Alternatives analysis is common sense," he said.

Mr. Costner offered suggestions for DOE to improve its NEPA process:

- ✓ Ask the right questions. The way a NEPA review is framed can bias the outcome.
- ✓ Use the NEPA process to identify ways to more effectively mitigate adverse impacts.
- ✓ Improve the usefulness of NEPA documents by making them more concise. As a citizen activist, he often needed to reduce a bulky EIS to a few-page fact sheet.
- ✓ Keep aware of changes in DOE policy during the sometimes long period needed to develop a major EIS.
- ✓ Integrate public participation plans when preparing multiple EISs for a site. Regulators and the public need integrated information and appreciate integrated review processes such as joint public meetings.
- ✓ As an alternative to DOE hosting public meetings, go to the regularly scheduled meetings of citizen groups to present information and get feedback.
- ✓ Talk directly with stakeholders rather than relying on moderators and contractors.
- ✓ Use the NEPA process to empower people; for example, invite community contributions on modeling assumptions.

Brian Costner speaks from the "outside in" perspective.

"NEPA prepared me for my participation in DOE. I'm still reading DOE EISs, just sooner than before," Mr. Costner concluded.

Making the Most of Meeting the Public

Betty Nolan discussed how to achieve the greatest benefits from NEPA public involvement opportunities. She stated that the NEPA process is the only planning process that the public ever sees, so stakeholders usually have very high expectations. They expect the NEPA process to be substantive, responsive, and transparent. Her advice to the NCOs included:

- ✓ Strive for honesty always, as credibility is cumulative. Each NEPA process encounter affects DOE credibility.
- ✓ Keep Federal employees in the forefront of public events. Do not turn meetings over to contractors.

- ✓ Provide information that is as timely and complete as possible.
- ✓ Provide information before meetings, so stakeholders can develop meaningful questions and comments.
- ✓ Study local issues, concerns, standard practices, and procedures before setting up a public meeting. For example, some stakeholder communities prefer formal agendas and structured meetings, while others operate primarily through informal, conversational encounters.
- ✓ Involve the DOE site's Public Affairs staff at meetings and as part of the NEPA team.
- ✓ Alert the Office of Congressional, Intergovernmental, and External Affairs early during the NEPA process for proposals that are highly controversial.

Discussions Examined Issues for EISs, EAs, and CXs

EIS Teamwork: How Is It Working?

Panelists reflected on the results of a 1994 turning point in DOE NEPA practice – the renewed emphasis on teamwork in the Secretarial Policy Statement on NEPA, under the leadership of a NEPA Document Manager and involving participants from all cognizant organizations.

Tony Como, Fossil Energy NEPA Document Manager, credits teamwork for the marked NEPA schedule reduction that applicants to his program have noted. He also views teamwork as an efficient means to educate participants in the NEPA process on project and NEPA goals. Elizabeth Withers, Los Alamos Area Office NCO, expressed concern that teams will be hard to staff adequately if downsizing continues. She added, however, that seasoned NEPA Document Managers, especially those with designated working groups, can still conduct the NEPA process efficiently.

Idaho Operations Office NCO, Roger Twitchell, described his organization's internal NEPA Planning Board, to which each Assistant Manager designates a representative for NEPA planning, coordination, and issue resolution. He stated that the Board's decisions have impact, and expressed concern that issues are often revisited or introduced as documents are reviewed by successive management levels at Headquarters. Steve Ferguson, Deputy Assistant General Counsel for Environment, observed that effective teamwork depends on early interactions, and the most successful NEPA Document Managers have been those willing to discuss issues early in the process. He stated that although team members cannot commit higher levels of management to any particular action on an EIS, effective teamwork should allow critical issues that arise at any time to be resolved efficiently.

The Office of NEPA Policy and Assistance promised to review concerns expressed about the Headquarters EIS review and approval process.

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Looking Back, Moving Forward

A decade of DOE NEPA accomplishments was represented in a timeline chart that highlighted six turning points:

- ✓ Secretary of Energy Notice 15 in 1990 on reforms and innovations to the DOE NEPA compliance program, which established the system of NCOs and enhanced opportunities for State and Tribal participation in the NEPA process
- ✓ The 1992 replacement of the NEPA Guidelines with the DOE NEPA Regulations (10 CFR Part 1021)
- ✓ The 1994 Secretarial Policy Statement on NEPA, which emphasized teamwork, instituted NEPA Document Managers, assigned EA authorities to Program and Field Offices, and established a continuous improvement program to measure NEPA performance and share lessons learned
- ✓ The 1995 revision of the DOE NEPA Order, which assigned NCOs the authority to apply categorical exclusions
- ✓ The 1996 revision to the DOE NEPA regulations, which added CXs and streamlined the EIS process
- ✓ The 1997 establishment of the DOE-wide NEPA contracts

(The timeline is an attachment to this issue of the Lessons Learned Quarterly Report *and available on the DOE NEPA Web at* tis.eh.doe.gov/nepa/ *under DOE NEPA Process Information.)*

NCOs Celebrate 10 Years (continued from page 5)

Programmatic and Site-wide Reviews: What Do They Buy Us?

Three NCOs that were involved in one (or more) of the more than 25 programmatic and site-wide EISs that DOE prepared in the past decade were asked to consider to what extent these broadly scoped reviews – which represent major commitments of DOE personnel, time, and money – will save DOE resources in the future.

Paul Dunigan, Richland Operations Office NCO, referred to the recently completed Hanford Comprehensive Land Use Plan EIS process as being the best mechanism they could have had for framing the needed land use decisions, and that regularly updated site characterization reports that supported that EIS (and others) will continue to be used to reduce the size of Hanford EISs.

Janine Sweeney, Office of General Counsel, leads the NCO panel on programmatic and site-wide EISs.

Harold Johnson, Carlsbad Area Office NCO, described the great usefulness of the Waste Management Programmatic EIS in preparing the second Waste Isolation Pilot Plant Supplemental EIS, estimating the savings from not repeating certain analyses at about $4 million. He observed that well-prepared programmatic and site-wide EISs can support flexibility in program implementation. Many recent DOE supplement analyses have shown that the broad documents had already anticipated and adequately reviewed proposed actions.

Preparation of a major programmatic EIS and several site-wide reviews has put the Office of Defense Programs in a position to comply with NEPA more efficiently in the future, stated Jay Rose, several times a NEPA Document Manager and now Deputy NCO for that Office. He noted that site-wide EISs are especially helpful when there are multiple project-specific proposals at a site and in resolving questions about NEPA review for continuing operations. He referred specifically to the site-wide EIS in preparation for the Y-12 Plant site at the Oak Ridge Reservation. The Y-12 EIS will tier from the Stockpile Stewardship and Management Programmatic EIS, which helped decide the Plant's mission, and its scope, in effect, will encompass two project-specific EISs (for storage of highly enriched uranium and a special materials complex).

[Also see the benefits from the Los Alamos National Laboratory Site-wide EIS, described in the article beginning on page 1.]

Managing the EA Process

In a discussion co-facilitated by Jeff Robbins, Albuquerque Operations Office NCO, and Jim Daniel, Office of NEPA Policy and Assistance, NCOs exchanged experiences in preparing EAs for their offices, especially with regard to public participation procedures. As one NCO noted, the DOE NEPA implementing regulations only require DOE to provide a host state or tribe the opportunity to review an EA before approval, so it can be difficult to convince a project manager of the benefits of providing broader public participation opportunities. Nevertheless, NCOs told of various efforts to involve the public, including: public distribution of the Annual NEPA Planning Summary, monthly public roundtable meetings or NEPA status reports, newspaper advertisements and postcards announcing the availability of an EA for review and posting an EA on the Web. Another NCO commented that the opportunity to improve DOE's credibility is a strong justification for involving the public in EAs.

Several NCOs expressed interest in revising their Office's EA management plans for internal scoping, quality assurance, and public participation, which each Office is required to have under DOE Order 451.1. The Office of NEPA Policy and Assistance encouraged NCOs to examine sample plans it had placed on display.

CXs: What Works? What Doesn't Work? Do We Need More?

NCOs revisited some old and considered some new issues regarding their responsibilities to make categorical exclusion (CX) determinations under DOE Order 451.1, in a discussion co-facilitated by Bill White, NCO, Chicago Operations Office, and Carolyn Osborne, Office of NEPA Policy and Assistance. NCOs emphasized that finding the proper balance between using CXs as much as possible to avoid unnecessary paperwork – yet knowing enough about the specific facts of a proposal to judge extraordinary circumstances – continues to be a challenge for them. This dichotomy was emphasized as well in a January 2000 Council on Environmental Quality paper on CXs, provided at the NCO Meeting.

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Lessons that Seasoned NCOs Have Learned...

Compiled from remarks by Drew Grainger, Savannah River Operations Office; Jim Johnson, Fossil Energy; and Raj Sharma, Nuclear Energy, Science and Technology

About the NCO's Job

- ☞ Trust, but verify. Everything. Particularly contractors' assurances that they have made all requested corrections in your document or that they know what EH wants, and project managers' assertions that we already have met NEPA requirements for a proposed activity or that it should be CXed.
- ☞ Successfully completing the NEPA process earns kudos for the project manager, while delaying the project because of environmental inadequacies almost always is blamed on the NEPA Document Manager and the NCO.
- ☞ Review the CEQ and DOE regulations periodically – don't have mini-guidance in the *Lessons Learned Quarterly Report* written just for you. In addition to applying regulations, use common sense.
- ☞ EH and GC are your allies.

About NEPA Documents

- ☞ If you think it's easy to *prepare* an EIS, you're wrong. Preparers have multiple priorities (their own, their supervisors', and other organizations') that only rarely coincide with yours, and they must consider a lot of written and unwritten guidance. No matter how it may seem, though, they really are committed to achieving better decisions.
- ☞ If you think it's easy to *review* an EIS, ditto the above.

About Working with Management

- ☞ NEPA may be the only planning that senior managers in the Department see. The only time your manager hears about a project may be when presented with a FONSI to sign. Make sure you know something about the project, not just the NEPA process.
- ☞ For important projects, involve your senior management from the very start to guide and drive the NEPA process.
- ☞ Project managers may need to be reminded that the NEPA process is as much their responsibility as are other facets of the project.
- ☞ EAs and FONSIs are harder to defend than EISs, but it is even harder to convince a project manager that an EIS will save time and money in the long run. You must show why an EIS is needed.

On Public Involvement

- ☞ Prepare for scoping meetings by becoming aware of other important issues at the sites. The public thinks of a DOE site in its entirety, whereas DOE staff tend to compartmentalize a site into projects.
- ☞ Stakeholders may try to use the NEPA process to change DOE policy, not to see that DOE programs are conducted in an environmentally benign manner. Most public comments on an EIS are about policy, not impact analysis; assign Feds to write the responses.
- ☞ Credibility with the public is crucial. Protect your credibility, and DOE's.

On NEPA Costs and Schedules

- ☞ Lower the cost of a site's NEPA reviews by standardizing site descriptions, background sections, regulatory descriptions, and any other sections that may be appropriate.
- ☞ Spending contractor time and money on elaborate schedules and cost reports wastes time and money.

On NEPA Effectiveness

- ☞ Canceling a project (and its NEPA review) for reasons (including weakness of purpose and need) discovered in the course of NEPA review is a NEPA success.
- ☞ Likewise are changes managers make to a proposed action "behind the scenes" in order to minimize the environmental impacts presented to the public. LL

NCO Drew Grainger makes a point.

NEPA and Clean Air Act Conformity Guidance Issued

To facilitate the integration of the Clean Air Act conformity and NEPA processes, the Office of Environment, Safety and Health has issued detailed guidance, consistent with the Environmental Protection Agency (EPA) policy encouraging agencies to couple the two processes.

The final guidance, entitled *Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process,* was issued on April 21, 2000, and discussed at the May NCO Meeting. It provides detailed information to facilitate compliance with EPA regulations at 40 CFR Part 93, Subpart B, pertaining to emissions of criteria air pollutants that affect designated nonattainment or maintenance areas.

In his memorandum transmitting the guidance, Assistant Secretary David Michaels asked Secretarial Officers and Heads of Field Organizations to reassess their general conformity review procedures to ensure that they are consistent with the conformity requirements.

The guidance, circulated to the DOE NEPA and Clean Air Act community for review and comment in November 1999, has three parts. The first part describes how to coordinate the conformity and NEPA processes, including:

- When the conformity determination requirements apply to a Federal action,
- How to address the conformity determination requirements in NEPA documents, and
- How to coordinate the NEPA and conformity public participation processes.

Conformity Review —

A step-wise process for determining whether the conformity regulations apply to an alternative

✓ Conduct a conformity review for all proposed actions and alternatives.

Conformity Determination –

A process of demonstrating how an alternative would conform to the applicable air quality implementation plan

✓ Normally, conduct a conformity determination, if needed, for only the preferred alternative.

The second part (Appendix I) provides greater detail on:

- The Clean Air Act statutory requirements for general conformity,
- How to conduct a conformity review, and
- How to conduct a conformity determination.

The third part (Appendix II) provides related references.

Copies of this guidance can be obtained through NEPA Compliance Officers. The guidance is also available on DOE's NEPA Web at tis.eh.doe.gov/nepa/. Questions about this guidance should be directed to Mary Greene, Office of NEPA Policy and Assistance, at mary.greene@eh.doe.gov, or phone 202-586-9924. Questions about the general conformity regulations should be directed to Ted Koss, Office of Environmental Policy and Guidance, at ted.koss@eh.doe.gov, or phone 202-586-7964.

Comments Requested on Draft Environmental Justice, Accident Analysis Guidance

The Office of NEPA Policy and Assistance sent two draft guidance papers to NEPA Compliance Officers on April 21, 2000, to coordinate comments from their Offices. The draft guidance was discussed at the NCO Meeting.

Environmental Justice Considerations and NEPA

A draft paper, "Guidance on Incorporating Environmental Justice Considerations into the Department of Energy's National Environmental Policy Act Process," addresses how to assess environmental impacts on minority and low-income populations and how to enhance participation of those populations in the NEPA process. The guidance also provides definitions, resources, and other information to apply when identifying minority or low-income populations potentially affected by a particular proposed action.

The guidance would not establish any new requirements under DOE's NEPA implementing regulations (10 CFR Part 1021) but would assist DOE in implementing Executive Order 12898, on Federal actions addressing environmental justice in minority or

low-income populations, and an accompanying Presidential Memorandum (February 11, 1994). The draft guidance replaces previous DOE draft guidance provided in October 1996 and at the NEPA Community Meeting in October 1998. In preparing the final guidance, the Office of NEPA Policy and Assistance will continue to coordinate with Robert Moore, Coordinator of the Environmental Justice Program in DOE's Office of Economic Impact and Diversity, who briefly shared his perspectives at the NCO Meeting. The NEPA Office also will solicit comments from stakeholders who participated in guidance development. Comments are due through NEPA Compliance Officers by June 29, 2000, to Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone 202-586-4596, or fax 202-586-3071.

Incorporating Environmental Justice Considerations into DOE's NEPA Process

✓ The basic assessment principle:

- Do not merely draw conclusions from an assessment of impacts on the general population, but
- Specifically consider the environmental impacts of a proposed action and alternatives on minority and low-income populations.

✓ Specific consideration for certain impact categories would be appropriate when the populations may be affected differently by an action than the general population (e.g., special exposure pathways, cultural use of natural resources).

✓ To conclude that there would be any environmental justice concerns, DOE would need to identify adverse environmental impacts on minority or low-income populations that would be

- Significant within the meaning of NEPA (that is, "high and adverse," as used in the Executive Order) and
- Disproportionately so, relative to impacts on the general population.

✓ To enhance the participation of minority and low-income populations, DOE should

- Be sensitive to cultural differences
- Use a variety of communication methods
- Consult with potentially affected populations.

✓ In addition, where appropriate and if practical, DOE could

- Translate announcements and documents into a prevalent non-English local language
- Provide training on the NEPA process and NEPA documents.

✓ In all cases – identifying populations, assessing impacts, enhancing participation – use the "sliding scale" approach:

- Make analytical or outreach efforts commensurate with the potential for significant impacts, unless
- Substantial interest in or controversy regarding a proposed action, despite relatively insignificant potential environmental impacts, warrants a higher degree of public participation opportunities.

Accident Analysis under NEPA

The revised draft accident analysis guidance, "Analyzing Accidents under NEPA," would clarify and supplement *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements (Recommendations)*, which the Office of Environment, Safety and Health issued in May 1993. The Office of NEPA Policy and Assistance expects to issue final guidance this summer and recommends that the draft guidance be used in the interim.

The draft guidance addresses NEPA policy and requirements, and presumes that accident analysts have the appropriate technical skills. It defines an accident as "an unplanned event or sequence of events that results in undesirable consequences. An accident may be caused by equipment malfunction, human error, or natural phenomena."

While the paper provides general principles to guide the development of accident analyses in NEPA documents, document preparers must apply considerable judgment on

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Accident Analysis (continued from page 9)

a case-by-case basis. Document preparers will need to determine the appropriate range and number of accident scenarios to consider and the level of analytical detail and degree of conservatism that should be applied. In this regard, the draft guidance suggests using the "sliding scale" approach established in *Recommendations*.

Accidents are analyzed in NEPA reviews to inform decision makers and the public about reasonably foreseeable adverse consequences associated with proposed actions and alternatives. Accident analyses are necessary for a reasoned choice among alternatives and for appropriate consideration of mitigation measures.

The draft guidance cautions that bounding analyses may not enable a reasoned choice among alternatives and appropriate consideration of mitigation, because they tend to mask differences among the alternatives. Also, the paper notes that in some circumstances it may be appropriate to consider analyzing an accident scenario in which the public has expressed a keen interest, even when the scenario is unrealistic.

To ensure that accident analyses meet their intended purposes, the guidance discusses the appropriate use of conservatism in addressing uncertainties. Other topics addressed are accident scenarios and associated probabilities/frequencies, accident consequences, and risk. The scope includes analysis of radiological and nonradiological impacts on involved and noninvolved workers, the general public, and ecological systems. A related topic, analysis of acts of sabotage or terrorism, is addressed in an appendix.

The draft accident analysis guidance accommodates comments and several suggestions for additional content that reviewers provided on an earlier draft working paper, which was distributed and discussed at the NEPA Community Meeting held in North Las Vegas, Nevada, October 1998. The current draft guidance is not comprehensive, however, and further guidance on this topic is planned. Accordingly, some earlier suggestions for additional content are not yet addressed.

Comments are due by June 5, 2000, to Eric Cohen at eric.cohen@eh.doe.gov, phone 202-586-7684, or fax 202-586-7031. LL

NCOs Celebrate 10 Years (continued from page 6)

Much of the discussion focused on CX B3.6 (in Appendix B to Subpart D of DOE's NEPA implementing regulations, 10 CFR Part 1021), for indoor bench-scale research, conventional laboratory operations, small-scale research and development projects, and small-scale pilot projects. Some NCOs described restrictions they place on use of the CX, and others told of proposed actions for which application of the CX could be controversial. The Office of NEPA Policy and Assistance requested suggestions for improving the wording of this CX, revising other CXs or other parts of the regulations, and establishing new CXs.

A Path Forward

In the course of the meeting, participants identified needs and opportunities for further improving the DOE NEPA program:

- ✓ Revisions to the DOE NEPA regulations, focusing on additional and revised CXs, particularly B3.6
- ✓ Revision of the DOE Floodplain/Wetlands regulations (10 CFR Part 1022), focusing on public notification requirements and exempt actions
- ✓ Guidance on shortening EISs to make them more useful to decision makers and the public
- ✓ Review of the Headquarters EIS review and approval process.

The DOE Office of NEPA Policy and Assistance will coordinate these efforts and has already begun follow-up actions. Suggestions for revising the DOE NEPA and Floodplain/Wetlands regulations should be forwarded through a NEPA Compliance Officer by June 23, 2000. LL

e-NEPA: What's New and What's Next

By: Denise Freeman, *Acting DOE NEPA Webmaster, Office of NEPA Policy and Assistance*

At the May NCO Meeting, Denise Freeman provided an overview of the history and purpose of the DOE NEPA Web, offered guidelines on effective Web publishing of NEPA documents, and outlined proposed improvements to make the site easier to use. The following is based on her presentation.

The DOE NEPA Web (tis.eh.doe.gov/nepa/), the first Federal agency NEPA Web site, was established in 1993 to provide up-to-date NEPA information to the NEPA Community and to serve as an electronic repository for DOE NEPA-related documents. The site provides announcements of current DOE NEPA activities, including public involvement opportunities and notices of document availability; DOE NEPA documents; relevant regulations, guidance, and orders; information on the DOE NEPA process; and links to NEPAnet and other NEPA sites and to Internet resources.

DOE NEPA Web Publishing Goals

The Office of NEPA Policy and Assistance has three goals for NEPA Web publishing, which are to post:

- Full texts of EISs when the Environmental Protection Agency publishes the Notice of Availability in the *Federal Register*
- Announcements and links to Notices of Availability, Notices of Intent, and Records of Decision on the same day they are published in the *Federal Register*
- EAs and FONSIs within a week of receiving electronic files.

Most Frequent Problems in Web Publishing

Ms. Freeman noted the most frequently encountered problems in DOE's NEPA Web publishing experience:

- The electronic file is not submitted for Web publishing, or is submitted late
- The electronic file is incomplete (for example, missing a volume)
- The electronic file is corrupt, password protected, in read-only format, or in a format incompatible with Web publishing
- Inappropriate transmission of e-files (e.g., e-mail transmission of a large electronic file causes server capacity problems)
- A completed DOE NEPA Document Certification and Transmittal Form is not submitted.

What to Do

An important key to avoiding problems is to follow EH's *Electronic Publishing Standards and Guidelines*, available on the Internet at tis.eh.doe.gov/style/index.htm.

Prepare a document for Web publishing by converting it into an acceptable file format. Problems can be avoided from the beginning of the process if preparers create documents using software such as later versions of MS Word or Corel WordPerfect, which are easy to convert to Web-compatible file formats.

Preparers should convert the entire document into appropriate Web publishing media such as hypertext markup language (HTML) for document text, graphics

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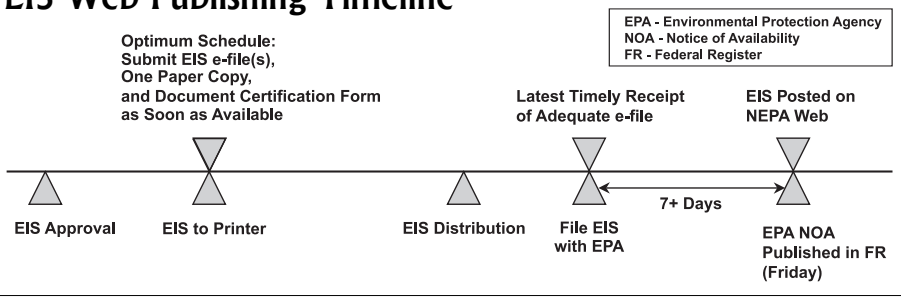
DOE NEPA Documents Online

As of May 2000, the DOE NEPA Web collection of documents, which is extensive but not yet complete, includes:

- 41 of the 63 EISs issued since 1995, and 16 of the 18 EISs issued since 1998
- 139 of the 243 EAs issued since 1995, and 25 of the 51 EAs issued since 1998
- All Records of Decision and Notices of Intent issued since 1998

The Office of NEPA Policy and Assistance is seeking the missing EAs and EISs, and is adding these documents to the Web site as they arrive.

EIS Web Publishing Timeline



e-NEPA (continued from page 11)

interchange format (GIF) for graphics, or Joint Photographic Experts Group (JPEG) for photos. Or they can convert the entire document to portable document format (PDF), which preserves the exact appearance of the document, while allowing users to select and copy blocks of text.

To expedite Web-publishing, preparers should break a large document file into smaller segments (e.g., chapters or sections) and prepare a logical subdirectory structure in accordance with EH's *Electronic Publishing Standards and Guidelines*. This makes downloading and viewing sections of interest easier for readers lacking high-speed Internet connections.

Plan for Web publishing at the time of the NEPA determination, and consult with the Office of NEPA Policy and Assistance when uncertain how to proceed. Successful and timely Web publishing requires a NEPA Document Manager's active involvement in the process to ensure that the document meets the EIS Web Publishing Timeline. To successfully publish an EIS on the Web on the same day that the Notice of Availability appears in the *Federal Register*, printing and distribution must be well-coordinated with electronic publishing. The e-files should be submitted to EH the same day as to the printer.

Planned Improvements

The NEPA Office is planning a number of improvements to make the DOE NEPA Web site easier to use, including better organization and menu structure, more efficient document search features, more user-friendly navigation features, and a site content map. Suggestions, comments, and questions should be sent to Acting NEPA Webmaster Denise Freeman at denise.freeman@eh.doe.gov or phone 202-586-7879. Also, users encountering any difficulties with the NEPA Web site (e.g., in locating an EIS or EA) should contact Ms. Freeman so that the problem may be corrected.

e-file Submittal Procedures

For EISs, after consulting with Office of NEPA Policy and Assistance staff, send the following as soon as available (preferably when the document is sent to the printer) by overnight courier to:

Attn: Ms. Patsy Hosner, NEPA Project Manager
Waste Policy Institute, Suite 1000
2000 Kraft Drive, Blacksburg, VA 24060-6354

- One paper copy of the EIS
- Web-formatted electronic files
- A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/nepa/docs/docs.htm).

Send four printed copies of the EIS as soon as available to Carol Borgstrom at the Office of NEPA Policy and Assistance.

For EAs and FONSIs, send the following within two weeks of their availability directly to the Office of NEPA Policy and Assistance:

- Five printed copies of the EAand FONSI
- Web-formatted electronic files
- A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/nepa/docs/docs.htm).

Special Assignment for Lee Jessee

At the request of George T. Frampton, Acting Chair, Council on Environmental Quality, Secretary of Energy Bill Richardson has assigned Lee Jessee as the DOE representative to CEQ's Environmental Technology Task Force. The purpose of this assignment is to link Federal technology programs with key stakeholders in industry, state and local governments, universities, and other organizations. Ms. Jessee created DOE's NEPA Web and served as Webmaster. We wish Lee success in her new assignment, which extends through the end of 2000.

Web Site of Interest: Federal Highway Administration's "Environmental Guidebook"

The Federal Highway Administration's (FHWA) "Environmental Guidebook" is now available both online (www.fhwa.dot.gov/environment/guidebook/contents.htm) and on compact disc (CD). The Guidebook is a multi-volume collection of environmental and project development guidance, policy, and reference information related to NEPA and the transportation decision-making process. While some of the material is specific to FHWA's environmental and transportation programs, much of the material is of general interest to NEPA practitioners.

Visitors to the FHWA Web site may also wish to browse the agency's Environmental page (www.fhwa.dot.gov/environment/genrlenv.htm) for offerings on additional topics such as air quality, environmental justice, historic and cultural resources, noise, and public involvement.

The Environmental Guidebook CD is available free while supplies last from Benita Smith, Office of NEPA Facilitation, at benita.smith@igate.fhwa.dot.gov or phone 202-366-2065. For more information on the CD or the Web site, contact Lamar Smith at lamar.smith@fhwa.dot.gov, or phone 202-366-8994.

Adopting Another Agency's EIS or EA

By: Beverly Stephens, *Office of NEPA Policy and Assistance (on detail)*

To make the NEPA process efficient, the Council on Environmental Quality (CEQ) encourages agencies to adopt, where appropriate, draft or final EISs (or portions thereof) prepared by other Federal agencies. CEQ recognizes three cases where an EIS prepared by another Federal agency can be adopted (*Memorandum to Agencies Containing Guidance on Agency Implementation of NEPA Regulations*, 48 FR 34263, July 28, 1983*).

Cooperating Agency May Adopt a Lead Agency's EIS

The first case is when a cooperating agency wishes to adopt a final EIS prepared by a lead agency. After independently reviewing the EIS to ensure that its comments have been satisfied and that its proposed action is substantially the same as the action described in the EIS, the cooperating agency may adopt the EIS without recirculating it (40 CFR 1506.3(c)). An agency cannot adopt another agency's record of decision, however, but must prepare its own (or issue one jointly with another agency).

Adopting an EIS When the Proposed Action is Substantially the Same

The second case is when an agency has not participated in the preparation of an EIS as a cooperating agency, but its proposed action is substantially the same as the action described in the original EIS. The adopting agency must perform an independent evaluation of the statement to determine that the EIS satisfies the adopting agency's NEPA procedures, and the agency must recirculate the document (i.e., distribute and file with the Environmental Protection Agency) as a final EIS before issuing a record of decision.

Adopting an EIS When the Proposed Action is *Not* Substantially the Same

In the third case, an agency's proposed action is not substantially the same as the action described in the original EIS. As in the second case, the adopting agency must perform an independent evaluation, but in this case the adopting agency must recirculate the EIS as a draft (40 CFR 1506.3(b)) before preparing a final EIS and issuing a record of decision.

Other CEQ Provisions for Certain Cases

Finally, CEQ regulations provide that an adopting agency must specify: (1) when the EIS it is adopting is not final within the agency that prepared it, (2) when the statement's adequacy is the subject of pending litigation, or (3) when the action it assesses is the subject of a referral to CEQ under 40 CFR Part 1504 (40 CFR 1506.3(d)).

Adopting an EA

Although CEQ regulations are silent on whether an agency may adopt an EA, CEQ's memorandum encourages agencies to develop procedures for adoption of EAs prepared by other agencies. In response to the question, "May DOE adopt another agency's EA and finding of no significant impact if DOE was not a cooperating agency?," DOE has provided the following guidance (*Frequently Asked Questions on the Department of Energy's National Environmental Policy Act Regulations*, revised August 1998, Question 15*):

> Any Federal agency may adopt another Federal or state agency's EA and is encouraged to do so when such adoption would save time or money. In deciding that adoption is the appropriate course of action, DOE (as the adopting agency) must conclude that the EA adequately describes DOE's proposed action and in all other respects is satisfactory for DOE's purposes. Alternatively, DOE may add necessary information by adding a cover sheet. (For example, the originating agency's action may be to issue a permit for a proposed activity, whereas DOE's action may be to fund the activity.)

Once DOE determines that the originating agency's document is adequate for DOE's purposes, possibly after adding information, DOE would assign an EA number and transmit the EA to the states(s), Indian tribes, and, as appropriate, the public for preapproval review and comment, unless the originating agency already has done so equivalently through its public involvement process. In the latter case, it would be prudent to consult with the states and Indian tribes to ensure that they agree that they have been provided an adequate preapproval review opportunity. DOE, after considering all comments received, would issue its own finding of no significant impact, if appropriate.

* *Included in the DOE NEPA Compliance Guide and on the DOE NEPA Web.*

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Adopting Another Agency's EIS or EA

(continued from page 13)

Performing an Independent Evaluation is Key

Because it is each agency's responsibility to comply with NEPA, the adopting agency must perform an independent evaluation of the document to be adopted. For this purpose, the EIS and EA checklists developed by the Office of NEPA Policy and Assistance can serve important functions: the checklists can remind NEPA practitioners of the applicable requirements and provide records of the independent evaluations. Finally, the fact that the adopting agency performed an independent evaluation should be explained in the adopted EIS or EA if it is recirculated, or, if not recirculated, explained in the finding of no significant impact or record of decision. LL

Convenient Compilation of *Lessons Learned* Mini-guidance Prepared

At the May NEPA Compliance Officers Meeting, the Office of NEPA Policy and Assistance distributed a handy compilation of mini-guidance articles selected from past issues of *Lessons Learned Quarterly Reports* (December 1994 through March 2000). Mini-guidance articles in this collection contain procedural interpretations and recommendations developed by the Office of NEPA Policy and Assistance in consultation with the Office of General Counsel and others. The collection will soon be widely distributed to DOE's NEPA Community, after format improvements are completed. For further information, contact Yardena Mansoor, Office of NEPA Policy and Assistance at yardena.mansoor@eh.doe.gov or 202-586-9326.

Keeping back issues of *Lessons Learned* also is a convenient way to refer to information or guidance on a specific topic. The cumulative index is published in the September issue each year to help readers locate articles of interest.

A DOE EIS Must Include Contractor Disclosure Statement

Council on Environmental Quality (CEQ) NEPA regulations require a contractor preparing an EIS to be free of financial or other interest in the outcome of the environmental review and related agency decisions. Contractors must execute a disclosure statement prepared by the lead agency or, where appropriate, a cooperating agency specifying that they have no financial or other interest in the outcome of the project (40 CFR 1506.5(c)).

DOE NEPA implementing regulations require such disclosure statements from EIS contractors and subcontractors, and that the statements be included in a draft and final EIS (10 CFR 1021.310).

Recommendations for Contractor Disclosure Statements

For an EIS prepared by a contractor, the NEPA Document Manager, with assistance from the Contracting Officer as appropriate, should consider these recommendations:

- ✔ Confirm the absence of conflict of interest early in the process, ideally before awarding the EIS task order or contract.
- ✔ Provide the contractor with a sample disclosure statement.
- ✔ Direct the contractor to execute a disclosure statement and to obtain disclosure statements from any subcontractors. Preferably, such direction should be in the statement of work for any contract for NEPA document preparation. Paragraph 5.1 in the statements of work in the DOE-wide NEPA contracts addresses the requirement for disclosure statement(s) and could be used as a model.
- ✔ Include the disclosure statement(s) in the draft and final EIS. Any logical location is acceptable (for example, near the list of EIS preparers or in a labeled appendix).
- ✔ If a long period elapses between first executing the disclosure statement(s) and issuing the final EIS, confirm that the statement(s) remains valid. LL

Transitions: An NCO's Retirement Reflections

By: Bert Stevenson, *Retired NEPA Compliance Officer, Fissile Materials Disposition*

In the past 6 years as a DOE NEPA Compliance Officer and Document Manager, I have found two aspects of my job to be the most interesting, rewarding, and enjoyable.

Working with Technical Managers

Working with the program managers to develop a clear statement of what they have to do (the purpose and need) and ways of doing it (the proposed action and alternatives) has been quite rewarding. However, the process has an inherent tension. As the Document Manager, I needed specific information on which to base impact analysis, while the program and technical managers generally wanted to keep options open as they refined designs and processes. Finding a working balance between specificity and flexibility is necessary but challenging. The reward for achieving that balance is a document that serves both the decision maker and the public.

While preparing a programmatic EIS, I learned that I needed to maintain close working relationships with these managers all the way through the process, until issuing the final document. We tracked all potential changes to the proposed action or the alternatives so that new analyses could be done in time and at the lowest cost. By keeping the proposed action and alternatives very clear, we helped top level managers make timely decisions. Nothing beats having one of these managers thank you when they see the Secretary's signature on that record of decision and they can proceed with their job.

Meeting the Public, not Holding a Meeting

Another rewarding activity is working with the public. This involves translating technical details, including jargon, into something meaningful for the layperson. It also requires careful listening to members of the public, then translating beliefs, emotions, politics, and values in ways understandable to the technical managers, who may believe that decisions should be based only on technical factors.

I could write a book about DOE public meetings, and would call it "*The Good, the Bad, and the Ugly*" if that title were not already taken. The book would illustrate how to prepare for and enjoy public meetings while collecting public comments to improve NEPA documents.

"The good" (and beautiful) would include the Native American woman who danced at a hearing to explain how we should protect the earth, and a courageous commentor who articulated why she opposed our program, although she was probably the only opponent present. At one public meeting a school-age child, brought by a parent to "see democracy in action," asked questions that led to a 15-minute dialogue with the DOE safety expert. This young man's success in obtaining information left a critic wishing that he had asked those questions, and our expert wanting to do more public participation work!

It was "good" that people who strongly disagree with us treated us civilly. Even when there were exceptions, other people sometimes would intervene to temper the rhetoric.

"The bad" includes a group who planned to dump five tons of manure in front of our meeting room, a tactic they abandoned only on learning that DOE planned not to react. "The bad" also included times when we Federal officials blundered, such as in responding to a woman who blamed DOE for her friend's death from cancer. Our expert tried to prove that radiation from a large DOE site was statistically unlikely to have caused the cancer, which only further upset the speaker and other listeners.

The times a man disrobed at a hearing and a retired teacher called me Hitler incarnate clearly exemplify "the ugly." (I learned not to take personally even such deeply hurtful comments.)

I would also include in the book some stories about "my pixies," those bewildered, whimsical sprites who sometimes have a hard time grasping reality. We have contemplated offers for a nuclear reactor that someone built for $100 but would sell to the Government for only $101, and for tritium by the bucket from a farmer who makes it in his barn. We have been asked to hold a public meeting for the extraterrestrials, to dispose of plutonium in truncated granite pyramids, and to store plutonium in tethered balloons several hundred feet above the earth. Then there are people who come to public meetings dressed to make a point: as Uncle Sam, in gas masks, or in a pig costume (because our project was just more Government pork).

All of my NEPA experiences have taught me that "the good" greatly outweighs "the bad" and "the ugly." My only regret is that I could not have worked as a NEPA Compliance Officer and a NEPA Document Manager for a longer part of my career. To the NEPA practitioners who have helped me through the years, I say thank you. Continue to help this Department comply with one of the best laws on the books.

God's richest blessings on you all.

Bert Stevenson retired from DOE at the end of April 2000. On that occasion, Bert was given a Certificate of Appreciation from the Deputy Assistant Secretary for Environment for his "leadership and significant contributions" to DOE's NEPA Compliance Program. The Office of NEPA Policy and Assistance offers him best wishes for the next chapter of his life.

NAEP to Celebrate NEPA's 30th Anniversary

The Annual Conference of the National Association of Environmental Professionals (NAEP), will be held June 25 to 29, in Portland, Maine.

The conference theme is "Overcoming Barriers to Environmental Improvement." As in previous years, much of the conference will focus on NEPA. A symposium, "Making NEPA More Effective," will explore NEPA topics such as new regulatory guidance, case studies, current legal issues, integration with ISO 14000, environmental document streamlining, Native American issues, transportation analysis, and assessment techniques. The conference will celebrate NEPA's 30th anniversary with a special session on perspectives on NEPA practice and management in the new century.

Several short courses associated with the conference will be offered on June 29. "NEPA Legal Issues" addresses ways to minimize litigation risk. "NEPA: Advanced Tools for Powerful Planning" offers techniques for determining the scope of a review, integrating the NEPA process with environmental management systems, and analyzing cumulative impacts. A course on "NEPA for Managers and New Practitioners" also is offered.

NAEP is a multidisciplinary, professional association with 17 affiliated state and regional chapters and 20 university chapters. The organization publishes a quarterly research journal, *Environmental Practice*, and administers an environmental professional certification program.

For more information, including a registration form, visit the NAEP conference Web site at www.naep.org/Conference/Portland.html, call 877-679-3913, or send an e-mail to conference@naep.org. Abstracts of conference papers are available at www.ornl.gov/ceea/NAEP_Conference_Abstracts/.

Training Opportunities

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

How to Manage the NEPA Process and Write Effective NEPA Documents
San Diego, CA: June 20-23, 2000
Jacksonville, FL: July 11-14, 2000
Las Vegas, NV: October 24-27, 2000
Fee: $995

Overview of the NEPA Process
Ft. Walton Beach, FL: August 22, 2000
Fee: $195

Reviewing NEPA Documents
Ft. Walton Beach, FL: August 23-25, 2000
Dayton, OH: September 12-14, 2000
Las Vegas, NV: December 12-14, 2000
Fee: $795

The Shipley Group, Inc.
Phone: 888-270-2157 or 801-298-7800
E-mail: shipley@shipleygroup.com
Internet: www.shipleygroup.com

Environmental Laws and Regulations
Aiken, SC: June 13-15
Oakland, CA: August 16-18
Fee: $545

An Overview of Environmental Laws and Regulations for Managers
Richland, WA: June 26, 27, & 28
Oakland, CA: July 19
Fee: $335

DOE National Environmental Training Office
Phone: 803-725-7153
E-mail: neto@srs.gov
Internet: www.em.doe.gov/neto

Introduction to Section 106 Review
Memphis, TN: June 20-21
Phoenix, AZ: July 11-12
Washington, DC: July 25-26
Portland, OR: August 1-2
Minneapolis/St. Paul, MN: August 8-9
Fee: $425

Advisory Council on Historic Preservation (with the University of Nevada, Reno)
Phone: 775-784-4046 or 800-233-8928
E-mail: crystalm@unr.edu
Internet: www.achp.gov/

Environmental Impact Assessment
Irving, TX: July 26-28, 2000
Fee: $695

Cumulative Effects Assessment
Irving, TX: November 1-3, 2000
Fee: $695

Environmental Impact Training
Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Phone: 830-596-8804
E-mail: info@eiatraining.com
Internet: www.eiatraining.com

Implementation of NEPA on Federal Lands and Facilities
Durham, NC: October 30 – November 3, 2000
Fee: $960

Nicholas School of the Environment
Duke University
Phone: 919-613-8082
E-mail: britt@duke.edu
Internet: www.env.duke.edu/

DOE Litigation Updates

DOE Settles Lawsuit on Advanced Mixed Waste Treatment Project

In September 1999, Keep Yellowstone Nuclear Free and the Environmental Defense Institute (later joined by the Sierra Club, the Snake River Alliance, and the Jackson Hole Conservation Alliance) filed a lawsuit challenging the adequacy of DOE's EIS for construction of the Advanced Mixed Waste Treatment Project (AMWTP) at Idaho National Engineering and Environmental Laboratory (INEEL). The U.S. District Court for the District of Wyoming has now issued an order dismissing the lawsuit pursuant to the parties' settlement agreement.

As part of the AMWTP, DOE contracted with a private company to treat and prepare for shipment and disposal 65,000 cubic meters of DOE transuranic waste, alpha-contaminated low-level mixed waste, and low-level mixed waste currently stored at INEEL, and up to 120,000 cubic meters of additional waste from INEEL or other DOE sites. Several processes were to be used to treat this waste, including incineration. DOE and its contractor, BNFL Inc., have applied to the State of Idaho and the U.S. Environmental Protection Agency (EPA) for three regulatory permits needed to begin construction.

Key Elements of the Settlement Agreement

Under the settlement agreement, DOE and BNFL will ask the State and EPA to postpone the permit processes for the incinerator and evaporator units of the AMWTP. However, DOE and BNFL have asked the State and EPA to proceed with regulatory approvals for all other units of the AMWTP. (In the event that the State and EPA issue regulatory approvals for the entire AMWTP, including the incinerator and the evaporator units, plaintiffs may refile their original claims.)

To explore technological alternatives to incineration that may be used DOE-wide, DOE will set up a panel of independent scientific experts appointed by the Secretary. The plaintiffs will nominate one scientific expert panel member, and the panel's conclusions will be made public. *[This panel has since been established.]* DOE cannot resume the regulatory process for the incinerator and evaporator units until after (1) the panel issues its recommendations and (2) DOE has decided based on discussions with regulatory authorities that there are no regulatory or technological alternatives to incineration.

The plaintiffs agreed not to challenge any AMWTP regulatory approvals unless and until DOE decides to resume the permit process for the incinerator and evaporator units. In this case, the plaintiffs' appeal would be limited to the incinerator and evaporators. The settlement also calls for DOE to pay plaintiffs $150,000 in attorneys and expert witness fees. (See *Lessons Learned Quarterly Report*, December 1999, page 18.)

Update: CX Claim Dropped from Challenge to DOE Radioactive Waste Management Order

In January, the Natural Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the Ninth Circuit to review and to set aside as arbitrary, capricious, and contrary to law both the Radioactive Waste Management Order (DOE O 435.1) and the application of the categorical exclusion used in issuing the order. In its brief of May 22, 2000, however, the plaintiff stated its decision not to proceed with the NEPA claim raised in its Petition for Review. The Government's reply is due June 19. (See *Lessons Learned Quarterly Report*, March 2000, page 16).

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Litigation Updates (continued from page 17)

NEPA Review for Vortec Project Challenged Again

The Regional Association of Concerned Environmentalists, Mark Donham, and Ronald Lamb sued DOE in the U.S. District Court for the Western District of Kentucky on April 17, 2000. The plaintiffs are challenging an EA and Finding of No Significant Impact issued for DOE's proposed Vortec demonstration project for the treatment of wastes at the Paducah Gaseous Diffusion Plant.
Mark Donham sued DOE in 1997 regarding DOE's use of a categorical exclusion for the Vortec project. DOE settled that lawsuit by agreeing to prepare an EA.

The plaintiffs allege that NEPA has been violated because the proposed Vortec project involves an incinerator and is a major Federal action significantly impacting the environment, for which an EIS is required. They also allege that the Paducah site is a large, multiple-facility site for which DOE's NEPA regulations require a site-wide EIS to be prepared. (See *Lessons Learned Quarterly Reports*, September 1997, page 13, and June 1997, page 8.) LL

Other Agency NEPA Cases

Disagreement over Scientific Opinions and Conclusions Does Not Constitute a NEPA Violation

Department of the Interior EIS Upheld on Appeal

The U.S. Court of Appeals for the Tenth Circuit upheld Department of the Interior (DOI) final rules governing the reintroduction of a nonessential experimental population[1] of gray wolves in Yellowstone National Park and central Idaho, finding that DOI's final rules are consistent with the Endangered Species Act. The Appeals Court also found that NEPA had not been violated.
A District Court had ruled that DOI had violated the Endangered Species Act, but had not violated NEPA.

DOI and its agencies the Fish and Wildlife Service and the National Park Service, and the Department of Agriculture and its agency the Forest Service (hereafter the "Agencies") prepared an EIS that analyzed environmental impacts associated with five wolf recovery alternatives. Subject to certain mitigation measures identified during the public review process, the Secretary of the Interior decided on an annual reintroduction of 15 wolves into two nonessential experimental population areas (Yellowstone National Park and central Idaho).

The plaintiffs argued on appeal that the District Court had erred by rejecting their contention that the Agencies inadequately analyzed the impacts of reintroducing an experimental wolf population into a naturally occurring wolf population. The plaintiffs also argued that the Agencies did not investigate the need for additional research.

NEPA Prescribes the Necessary Process, Requires a "Hard Look"

The Appeals Court noted that courts have long acknowledged that NEPA "prescribes the necessary process, but does not mandate particular results." The court also said that it will not second guess the Agencies' decision or their conclusions regarding whether

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[1] *Section 10 (j) of the Endangered Species Act, 16 U.S.C. § 1539 (j) provides that:*

(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2) (A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is **essential** *to the continued existence of an endangered species or a threatened species [emphasis added].*

Other Agency NEPA Cases (continued)

additional research is needed, so long as they took the necessary "hard look" at the environmental consequences of their actions on naturally occurring wolf populations or subspecies.

In reviewing the administrative record, the Appeals Court found that the Agencies did take the requisite "hard look." The Agencies analyzed the alleged existence of naturally occurring wolf populations in the experimental population areas, analyzed the arguments on subspecies identification, and documented the studies they used in their analysis. Because the Agencies found no wolf pack activity in Yellowstone and central Idaho and the scientific evidence suggested a reduction in the number of recognized subspecies, the Agencies did no further analysis of these issues in the draft or the final EIS. The Agencies also determined that these issues would not be significantly affected under any of the reintroduction alternatives because these alternatives would not prevent further study of wolf activity. The conclusions reached by the Agencies were based on the data they gathered and the reasoned opinions of agency experts.

The plaintiffs disagreed with the Agencies' conclusions concerning the existence of naturally occurring wolf populations, the existence of an alleged subspecies of wolf unique to Yellowstone National Park, and the significance of any effect the wolf reintroduction program would have on naturally occurring wolves. The plaintiffs also cited evidence in the administrative record to support their position. Finding that this case amounted to a disagreement over scientific opinions and conclusions, the Appeals Court held that "the mere presence of contradictory evidence does not invalidate the Agencies' actions or decisions." The plaintiffs failed to show that the Agencies' decision was not supported by the evidence in the record, nor did they prove that the EIS was inadequate to inform the public or decision makers. *Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224 (10th Cir. January 13, 2000).

Courts Defer to Agency's Interpretation of Categorical Exclusion – *Unless* Incorrect or Inconsistent

Federal Highway Administration Case Reversed and Remanded

The U.S. Court of Appeals for the Ninth Circuit reversed and remanded a District Court ruling that upheld the Federal Highway Administration's (FHWA) decision to categorically exclude a two-stage highway interchange project from review under NEPA.

Question of Mootness Dismissed

First, the FHWA argued that this appeal should be dismissed as moot because stage 1 of the interchange had been completed and was carrying traffic. In assessing this argument, the Appeals Court cited a 1981 Ninth Circuit NEPA case *(Columbia Basin Land Protection Ass'n. v. Schlesinger*) and concluded that "the question is whether there can be any effective relief." The court reasoned that stage 2 has not yet begun and that, upon a finding that the FHWA failed to comply with NEPA, the appropriate NEPA review could be ordered and the remedy could include closing or tearing down the interchange. Despite the fact that stage 1 of the interchange was complete and carrying traffic, the case was not moot.

FHWA's Use of "Documented Categorical Exclusion" Questioned

The plaintiff argued that the FHWA should have prepared an EA or an EIS instead of proceeding with the interchange project under a categorical exclusion. The FHWA regulations identify two types of categorical exclusions. The first type consists of a list of 20 actions that meet the criteria for a categorical exclusion and generally do not require further NEPA documentation. The second type is referred to as a documented categorical exclusion (DCE) and requires documentation demonstrating compliance with the categorical exclusion criteria. The FHWA regulations provide a list of examples for which a DCE may be appropriate. The FHWA argued that the project fits most appropriately under the DCE example, "Approvals for changes in access control" (23 CFR 771(d)(7)), because the FHWA was required to approve the new interchange in advance of construction.

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Other Agency NEPA Cases (continued from page 19)

Courts May Defer to Agency's Interpretation – But Not in This Case

The Appeals Court applied the test of giving deference to an agency's interpretation of the meaning of its own categorical exclusion regulations unless its interpretation is incorrect or inconsistent with the terms used in the regulations. Because the FHWA regulations, legislative history, or case law did not provide a definition of "Approvals for changes in access control," the Appeals Court analyzed the examples identified in the FHWA regulations for DCEs, as well as the list of 20 categorically excluded actions.

Based on its review of these lists, the Appeals Court found that the types of projects found in these lists are of a lesser magnitude than an entirely new $18.6 million four-lane interchange built over a former Superfund site. The Appeals Court further explained that use of a DCE was inappropriate because FHWA's regulations prohibit a categorical exclusion for projects that will have "significant impacts on travel patterns." This interchange was intended to have significant (albeit beneficial) impacts on travel patterns.

Case Remanded; Further NEPA Review Required

With respect to the remedy applied in this case, the court reasoned that ordering the interchange to be torn down would not have any beneficial environmental effect, but this does not render a thorough environmental review pointless. An environmental review may identify ways to mitigate impacts that may have been identified if an environmental review had been done before the start of stage 1. Therefore, the Appeals Court remanded the case back to the District Court, directing that it order the requisite review for stage 1.

The Appeals Court found that stages 1 and 2 are independent projects requiring independent environmental review. The Appeals Court also found that it was inappropriate for the FHWA to use a DCE for both stage 1 and stage 2, especially since the parameters of stage 2 are not yet defined. Reiterating its holding that use of a DCE is inappropriate for a highway interchange project, the Appeals Court found that the type of environmental review required for stage 2 cannot be determined until stage 2 is more defined. *West v. Secretary of the DOT,* No. 97-36118 (9th Cir. March 20, 2000).

The lesson is that although the court gives deference to an agency's interpretation of a categorical exclusion, it will not uphold an agency's use of a categorical exclusion if the agency's interpretation is inconsistent or incorrect. LL

New Leadership at EPA Office of Federal Activities

Anne N. Miller now serves as the Acting Director of the Environmental Protection Agency's Office of Federal Activities. The previous director, Richard Sanderson, retired in April.

Joseph C. Montgomery is the new Director of the NEPA Compliance Division of the Office of Federal Activities, replacing William Dickerson, who also retired.

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 2000. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Data Collection/Analysis

- Data from a recent EIS for a project located close by were used for this EA, saving several weeks of data collection time.

Factors that Facilitated Timely Completion of Documents

- High level management's attention helped to complete the EA on schedule.
- A motivated review team pitched in and solved, rather than just raised, issues.
- The document manager worked side-by-side daily with the support contractor, particularly in the final stages of EIS preparation and incorporation of concurrence comments.

Factors that Inhibited Timely Completion of Documents

- A change in NEPA document managers, as well as a need to transfer funds from one DOE prime contractor to another, lengthened the schedule.
- The scope of this EA was revised after the first round of public comments. After this revision, a second public comment period occurred, which was extended to 60 days at the request of a member of the public.

Factors that Facilitated Effective Teamwork

- Staff from various DOE offices had all worked together previously.
- Excessive conservatisms were discovered in some of the accident analyses late in the concurrence process for the Final EIS. The document manager worked with management and operating contractor staff, DOE site staff, and the preparers of another EIS to reevaluate assumptions and make the analysis more realistic.

Factors that Inhibited Effective Teamwork

- Substantial distances between the EA writers, the site, the review and approval team, and DOE headquarters.
- Transfer of the original DOE document manager to another DOE site.

Successful Aspects of the Public Participation Process

- A large number of public reactions were obtained, both for and against the project.
- Notices in the local paper, individual scoping letters to affected landowners, and the option to respond via e-mail were all effective.

Unsuccessful Aspects of the Public Participation Process

- Newspaper advertisements and letters describing the project and the EA did not elicit any comments.
- One group used the NEPA process to stall, delay, and attempt to cancel the project, through the exacting nature of the public participation process.

Agency Planning and Decision Making — Usefulness

- The NEPA process helped management decide that the project could be performed with no significant impacts. This was definitely not known before the EA was prepared.
- As a result of the NEPA process, a project alternative was selected that had fewer environmental impacts and lower cost than other initially identified approaches.
- Without an EIS, I do not believe the Department would have made a commitment to a non-reprocessing technology for the spent nuclear fuel.

continued on next page

What Worked and Didn't Work (continued)

Enhancement/Protection of the Environment

- The proposed action was defined in a manner to mitigate potential environmental effects.

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 of 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decision making.

- For this quarter, in which questionnaire responses were received for 3 EAs and 1 EIS, 3 of the 5 respondents rated the NEPA process as "effective."
- One respondent who rated the process as "4" stated that "As a result of the NEPA process, a project alternative was selected that had fewer environmental impacts and cost less than other project alternatives initially identified."
- One respondent who rated the process as "1" explained that the NEPA process started too late to truly be considered a planning document.

EAs and EISs Completed January 1 – March 31, 2000

EAs

Albuquerque Operations Office/
Defense Programs
DOE/EA-1332 (2/16/2000)
Leasing Land for the Siting, Construction, and Operation of a Commercial AM Radio Antenna at Los Alamos National Laboratory, New Mexico
Cost: $18,500
Time: 2 months

Idaho Operations Office/
Environmental Management
DOE/EA-1310 (3/9/2000)
Decommissioning and Dismantlement of the Advanced Reactivity Measurement Facility and Coupled Fast Reactivity Measurements Facility at the Idaho National Engineering and Environmental Laboratory, Idaho
Cost: $46,000
Time: 12 months

Naval Petroleum Reserve in California/
Fossil Energy
DOE/EA-1288 (12/17/1999)
Waste Remediation Activities at Elk Hills (Former Naval Petroleum Reserve No. 1), Kern County, California
Cost: $100,000
Time: 12 months
(Note: Not previously reported in Lessons Learned.*)*

Oak Ridge Operations Office/
Environmental Management
DOE/EA-1230 (3/8/2000)
Proposed Demonstration of the Vortec Vitrification System for Treatment of Mixed Wastes at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky
Cost: $225,000
Time: 29 months

Western Area Power Administration
DOE/EA-1287 (03/20/2000)
Curecanti-Lost Canyon 230 kV Transmission Line Reroute Project, Montrose County, Colorado
Cost: $73,000
Time: 14 months

EISs

Savannah River Operations Office/
Environmental Management
DOE/EIS-0279 (EPA Rating: EC-2*)
Management of Spent Nuclear Fuel at the Savannah River Site, Aiken, South Carolina
March 2000 (65 FR 20155; 4/14/2000)
Cost: $1.6 million
Time: 39 months

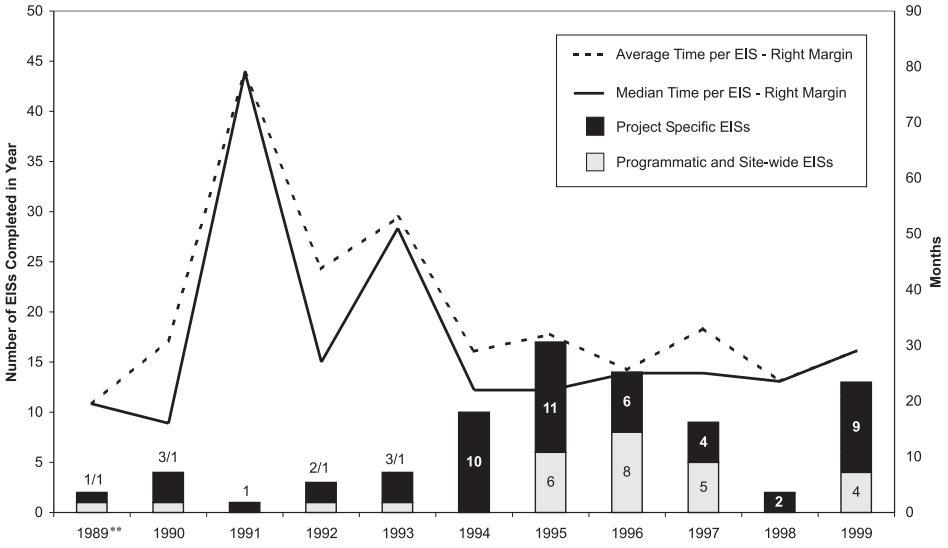
** See the March 1997* Lessons Learned Quarterly Report *for an explanation of the EPA ratings.*

EA and EIS Metrics

By: Hitesh Nigam and Eric Cohen, *Office of NEPA Policy and Assistance*

The Department started to collect NEPA process data – including EA and EIS cost, preparation time, and measures of effectiveness – in 1994. To foster continuing improvement in the Department's NEPA process, the Office of NEPA Policy and Assistance analyzes and reports on these metrics from time to time in the *Lessons Learned Quarterly Report*.

In keeping with the theme of the May 2000 NEPA Compliance Officers Meeting of "Looking Back, Moving Forward," the Office of NEPA Policy and Assistance examined the available data on DOE NEPA process performance from 1989 through 1999. During this 11-year period, DOE completed 80 EISs and 585 EAs (excluding documents that DOE adopted and those for which DOE was a cooperating agency). Following are excerpts from a summary of the data presented at the NEPA Compliance Officers Meeting. For a complete set of the charts and figures presented, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov or phone 202-586-0750.



	Number of Completed EISs 1989-1999	Average Time (months)	Median Time (months)	Min / Max (months)
Project Specific EISs	52	30	21	6 / 86
Programmatic and Site-wide EISs	27	33	29	9 / 85
Overall	79	32	26	6 / 86

*Does not include adopted or cooperating agency EISs.

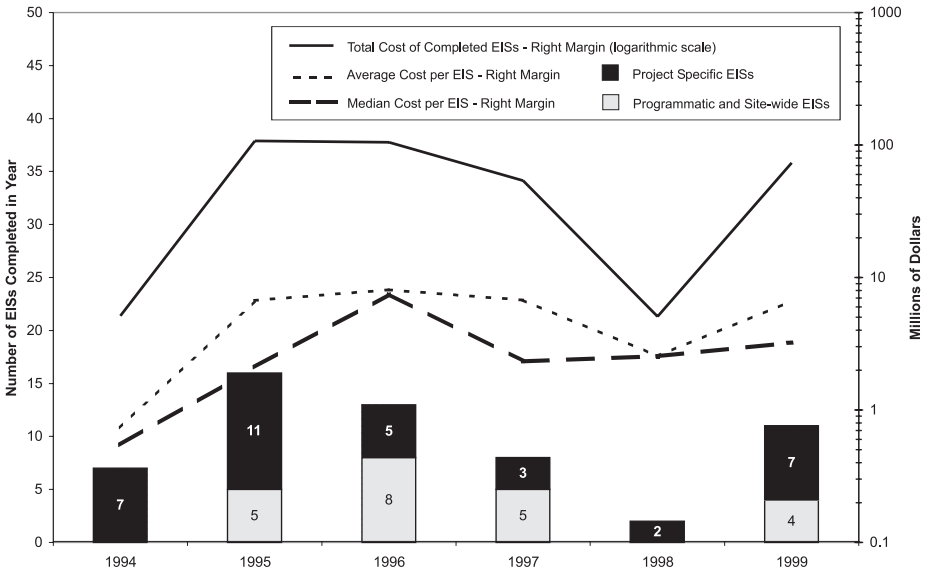
** Time data not available for a third EIS that was completed in 1989.

EIS Completion Times*

- During the five years from 1989 through 1993, DOE completed relatively few (one to three) EISs per year. In contrast, from 1994 through 1999, the average EIS completion rate was about 10 per year.
- Median completion times for EISs decreased from about 33 months for the first half of the period to about 24 months for the second half. Programmatic/site-wide EISs differ from project-specific EISs with respect to median completion times – about 21 months for 52 project-specific EISs and 29 months for 27 programmatic/site-wide documents.
- For 1995 through 1999, DOE completed 23 programmatic and site-wide EISs, a rate of almost five per year.

Note: A median is less sensitive to outlier results than an average.

EA and EIS Metrics (continued from page 23)



	Number of Completed EISs 1994-1999	Average Cost ($M)	Median Cost ($M)	Min / Max ($M)
Project Specific EISs	35	1.7	1.3	0.02 / 4.7
Programmatic and Site-wide EISs	22	12.7	10.1	0.2 / 48
Overall	57	6.1	2.4	0.02 / 48

*Does not include adopted or cooperating agency EISs or 8 EISs for which costs were paid for by applicants.

EIS Costs*

- The total cost of EISs completed in a given year depends on the number of documents completed and the cost per document.
- Increased cost per EIS since 1994 reflects an increased proportion of programmatic and site-wide EISs.

Program	Number of EISs with Time Data	Median Number of Months	Average Number of Months	Number of EISs with Cost Data**	Median Cost ($M)	Average Cost ($M)
BPA	19	26.0	30	15	0.3	0.8
DP	11	24.0	23	11	10.1	9.9
EM	18	20.0	28	18	4.0	8.6
FE	4	24.5	36	4	0.9	1.2
MD	3	29.0	24	3	12.2	13.5
NE	2	24.0	24	2	4.5	4.5
SC	1	21.0	21	1	2.1	2.1
WAPA	7	48.0	42	3	4.9	5.3
Total	65			57		

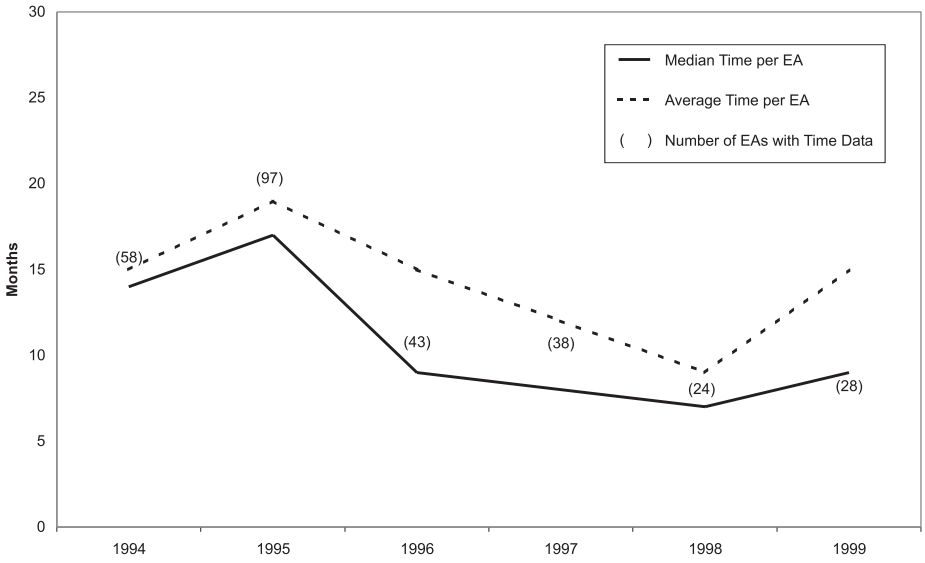
*Does not include adopted or cooperating agency EISs.

** Does not include 8 EISs for which costs were paid for by applicants.

EIS Time and Cost by Program*

- From 1994 through 1999, median EIS completion times were similar for all DOE programs except WAPA.
- Costs were typically highest for EISs associated with the Department's nuclear facilities (e.g., documents prepared by Defense Programs and Fissile Materials Disposition).

EA and EIS Metrics (continued from page 24)

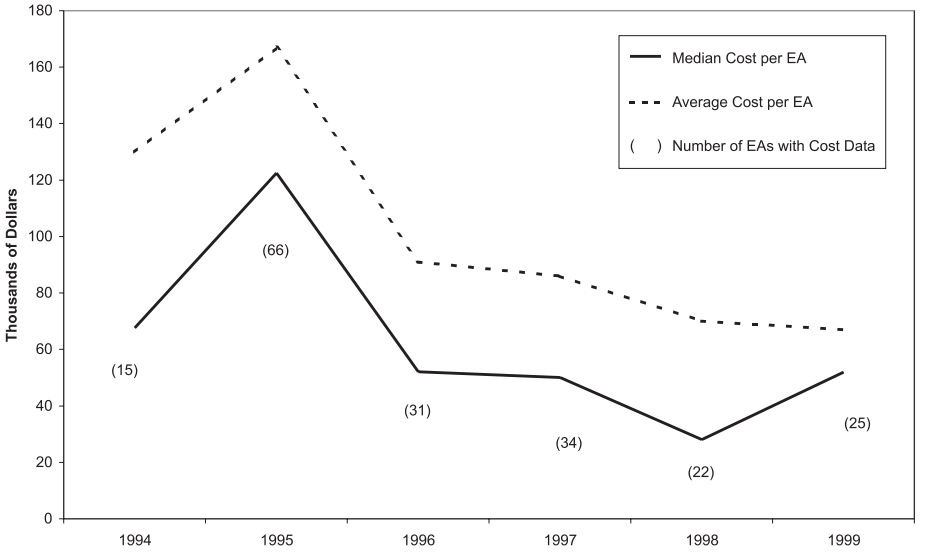


Median Time (Months)	Average Time (Months)	Min / Max (Months)	Total Number of EAs With Time Data
11	16	1 / 87	288

*Does not include adopted or cooperating agency EAs or 20 EAs for which time information is unavailable.

EA Completion Times*

- Completion times peaked for EAs completed in 1995.
- For 288 EAs completed during 1994 through 1999, the median completion time was 11 months and the average time 16 months; the minimum and maximum completion times were 1 and 87 months.



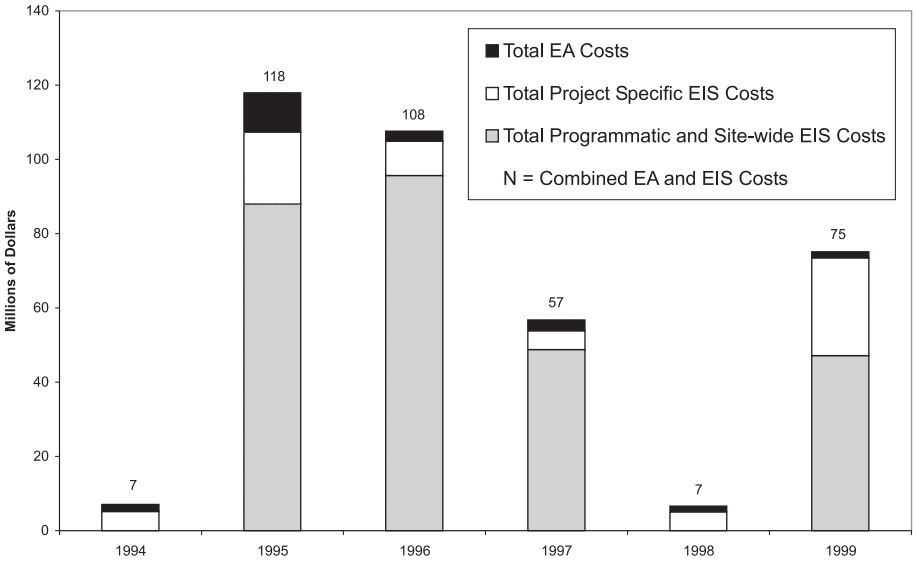
Median Cost ($)	Average Cost ($)	Min / Max Cost ($)	Total Number of EAs With Cost Data	Total Cost ($)
56,000	112,000	5,000 / 908,000	193	21,616,000

*Does not include adopted or cooperating agency EAs or 115 EAs for which cost data are unavailable.

EA Costs*

- Cost per EA peaked in 1995.
- Since 1995, the median cost per EA has decreased to between $30,000 and $50,000, and the average cost has decreased to between $70,000 and $90,000.

EA and EIS Metrics (continued from page 25)



*Does not include adopted or cooperating agency EAs or EISs, or those 8 EISs and 115 EAs for which cost information is unavailable or costs were paid for by applicants.

Total Cost of EAs and EISs*

- For 193 EAs and 57 EISs completed from 1994 to 1999, document costs totaled $372 million ($22 million for EAs and $350 million for EISs).
- Programmatic and site-wide EISs cost 77 percent of the total ($285 million).
- The average annual cost of NEPA documents completed during this period is $62 million.

Looking forward, we expect that the Department's annual total EIS preparation costs should decrease substantially because many relatively costly programmatic and sitewide EISs have been completed. Future project EISs will likely be less costly and should benefit by tiering from the many broader scope documents that have been completed in recent years.

Other EA and EIS Metrics

In addition to data on EA and EIS times and costs, the Office of NEPA Policy and Assistance tracks EIS information on "effectiveness," EPA ratings, comment periods and extensions, and supplement analyses.

In Lessons Learned Questionnaires, respondents are asked to rate the effectiveness of the NEPA process on a scale of 0 to 5, where 0 means "not effective at all" and 5 means "highly effective." During the period December 1994 to March 2000, more than 60 percent of questionnaire respondents rated the NEPA process as "effective" (rating of 3 or higher).

For Draft EISs issued from 1990 through 1999, EPA rated 67 percent of the Department's EISs as "EC-2" and 19 percent as "LO." The Department's ratings are similar to the ratings that other Federal agencies receive. (See *Lessons Learned Quarterly Report*, March 1997, page 7.)

Based on the information that the Office of NEPA Policy and Assistance has collected on comment periods, it appears generally that the shorter the initial comment period, the longer any extension that DOE grants.

From 1994 through April 2000, 72 draft EISs had an average original comment period of 58 days. Eighteen draft EISs (25 percent) were extended by an average extension of 30 days, bringing the average total comment period up to 65 days. The 26 programmatic and sitewide draft EISs had higher original comment periods (69 days) and higher average extension periods (32 days), bringing the total average comment period for this group of EISs to 82 days.

Supplement analyses (SAs) are being prepared in ever-increasing numbers on an annual basis, as might be expected in light of the many site-wide and programmatic EISs that DOE has issued in recent years. Based on the best available data, DOE has completed 85 SAs since 1985, 16 from 1985 through 1995, and 69 from 1996 through April 2000 [including 25 prepared by BPA for the Watershed Management Program EIS (DOE/EIS-0165)]. For all but two, DOE concluded that no further NEPA review was required. The exceptions are: in March 1995, DOE decided based on an SA that a supplement was needed for DOE/EIS-0147, *Continued Operation of the K-, L-, and P- Reactors at the Savannah River Site* [based on this SA, DOE completed an EIS for the Shutdown of the River Water System at the Savannah River Site (DOE-EIS-0268), April 1999]; and, in November 1998, DOE decided to supplement DOE/EIS-0082S, *Defense Waste Processing Facility at Savannah River Site* [based on the SA, DOE is preparing an EIS for Salt Disposition Alternatives, Supplemental, Savannah River Site, (DOE/EIS-0082S2)]. LL

Recent EIS-related Milestones (March 1 – May 31, 2000)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0317
Environmental Impact Statement for the Kangley-Echo Lake Transmission Line, King County, Washington
3/17/2000 (65 FR 16380; 3/28/2000)

Fossil Energy/National Energy Technology Laboratory
DOE/EIS-0318
Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Kentucky (Clark County)
4/10/2000 (65 FR 20142; 4/14/2000)

National Nuclear Security Administration/Defense Programs
DOE/EIS-0319
Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions, Los Alamos, New Mexico
4/26/2000 (65 FR 25472; 5/2/2000)

Western Area Power Administration
DOE/EIS-0305
Proposed Big Sandy Project, Arizona
4/06/2000 (65 FR 20811; 4/18/2000)

Draft EIS

Environmental Management/ Oak Ridge Operations Office
DOE/EIS-0287
Treating Transuranic/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, Tennessee
March 2000 (65 FR 11575; 03/03/2000)

Records of Decision

National Nuclear Security Administration/ Defense Programs
DOE/EIS-0293
Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
3/08/2000 (65 FR 14952; 3/20/2000)

Supplement Analyses

Bonneville Power Administration
DOE/EIS-0169-SA-03
Yakima Fisheries Project–Natural Spawning Channels, Increased On-site Housing, and Upgrades to the Prosser Hatchery, Washington
(Decision: No further NEPA review required) March 2000

Environmental Management/ Richland Operations Office
DOE/EIS-0244-SA-03
Environmental Effects of Project W-460 and Related Changes to the Plutonium Finishing Plant Plutonium Stabilization and Packaging System, 200 West Area, Hanford Site, Richland, Washington
(Decision: No further NEPA review required) March 2000

Science/Oak Ridge Operations Office
DOE/EIS-0247-SA-01[1]
Supplement Analysis for the Proposed Superconducting Linear Accelerator at the Spallation Neutron Source, Oak Ridge, Tennessee
(Decision: No further NEPA review required)
February 2000

Western Area Power Administration
DOE/EIS-0308-SA-02[1]
Southpoint Power Project, Kingman County, Arizona
(Decision: No further NEPA review required) January 2000

DOE/EIS-0182-SA-01
*Proposed Revisions to Western's Integrated Resource Planning Program (*Decision: Amended ROD, 3/28/2000 (65 FR 16389)) March 2000

[1] *Not previously reported in* Lessons Learned

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

September 1, 2000; Issue No. 24 For Third Quarter FY 2000

Emergency NEPA Procedures Invoked for Actions Taken after Los Alamos Fire

To avert further harm in the wake of the May 2000 Los Alamos wildfire, DOE is taking emergency actions with potentially significant impacts, without preparing an EIS. Instead, DOE is proceeding under "alternative arrangements" to comply with NEPA, as provided under 40 CFR 1506.11, a section of the Council on Environmental Quality (CEQ) NEPA regulations that deals with emergency circumstances. The specific alternative arrangements were established in consultation with CEQ, as discussed further below. DOE's post-fire emergency activities include constructing a 70-foot-high water retention structure in Pajarito Canyon to protect Los Alamos National Laboratory (LANL) nuclear facilities and the downstream communities from flooding due to summer rainstorms and possible contaminant transport.

A 70-foot-high retention structure, shown here under construction by the U.S. Army Corps of Engineers, is among the DOE actions taken in response to the Cerro Grande Fire at Los Alamos.

Agencies seldom have invoked the emergency provision of the CEQ regulations, only about 30 times in 22 years, in cases that demanded immediate action to respond to threats to life, national security, or an important resource. Based on DOE records, this is only the third time DOE has used these procedures. The other cases involved the Bonneville Power Administration's actions to save the endangered sockeye salmon on the Snake River and the threatened failure of the Par Pond Dam at the Savannah River Site, both in 1991.

After consulting with CEQ on the Los Alamos wildfire, DOE published a Notice of Emergency Action and is now preparing a Special Environmental Analysis to evaluate the environmental impacts of the completed and ongoing emergency actions. This analysis is a major component of DOE's NEPA compliance for the emergency actions extending through November 2000.

Emergency Actions Have Net Beneficial Impacts

The fire began on May 4 when high winds caused a prescribed burn within the Bandelier National Monument in New Mexico to spread out of control.

continued on page 4

NEPA staff positions open. Apply by September 8. See page 2.

Inside *LESSONS LEARNED*

Welcome to the 24th quarterly report on lessons learned in the NEPA process. Note that this issue includes a cumulative index covering the past six years of reports.

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by November 1, 2000. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

Fourth Quarter Questionnaires Due November 1, 2000

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2000 (July 1 through September 30, 2000) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov, or phone 202-586-1771.

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

Printed on recycled paper

EH Reorganization Confers New Name: Office of NEPA Policy and Compliance

The July 2000 reorganization of the Office of Environment, Safety and Health (EH) to better align EH missions and functions has affected the Office of NEPA Policy and Assistance only slightly: the new name is Office of NEPA Policy and Compliance. Stan Lichtman, previously Director, Waste Activities Division (position abolished), is now the Deputy Director of the Office. Three Unit Leaders remain with new names for their Units: Carolyn Osborne, Eastern Energy and Waste Management Unit; Eric Cohen, Western Energy and Waste Management Unit; and Jim Daniel, Science/ Nuclear Unit. LL

NEPA Staff Positions Open: Apply by September 8

DOE's Office of NEPA Policy and Compliance is seeking three Environmental Protection Specialists at the GS-13/14 levels. Each incumbent will serve as a NEPA specialist, primarily for projects in DOE's energy, waste management, nuclear, defense, and science programs. The duty station is Washington, D.C. Competition is nationwide, and applications must be received or postmarked by September 8, 2000. The vacancy announcement (PN-00-EH-092), which provides further position details and instructions for applying, may be accessed via the Internet at www.hr.doe.gov/pers/doejobs.htm. TDD users may call 301-903-0547 to obtain a copy. For further information, contact a DOE personnel representative at 301-903-1545. DOE is an Equal Opportunity Employer. LL

Three DOE Programs Earn NAEP Awards

NEPA Lessons Learned a Winner

DOE received three out of the seven awards announced by the National Association of Environmental Professionals (NAEP) at its June conference in Portland, Maine. NAEP has conducted its National Environmental Excellence Awards competition for the past four years to recognize projects and programs that serve as models of excellence and stand out as significant contributions in the environmental professions. The DOE awardees are:

NAEP President's National Environmental Excellence Awards

★ *DOE NEPA Lessons Learned Program*: Recognized for in-depth self examination of the NEPA Program, internal and external information sharing of NEPA lessons learned, measuring overall NEPA process effectiveness, and continuous improvement.

★ *DOE Environmental Management Research and Development Program Plan, Idaho National Engineering and Environmental Laboratory*: Recognized for planning long-term strategy and investment for new science and technology for cleanup of the national nuclear weapons complex.

National Environmental Excellence Award

★ *Upper Great Plains Regional Environmental Management System, Western Area Power Administration*: Recognized for its exemplary waste management and compliance record, customer service and stewardship, endangered species recovery and protection, and effective coordination among regulatory agencies, Native American Tribes, and environmental groups.

Conference Theme: "Overcoming Barriers to Environmental Improvement"

NAEP is a multidisciplinary, professional association with some 5,000 members, many of whom take an active interest in NEPA. (See the *Lessons Learned Quarterly Report* Cumulative Index, this issue, to find past articles on NAEP.) At every annual NAEP conference, NEPA is one of the main themes. In Portland, about 25 NEPA-related presentations were given on topics ranging from perspectives on the role of NEPA in the 21st century to project-specific case studies, including some from DOE's NEPA Community.

Yardena Mansoor and Hitesh Nigam accept the NEPA Lessons Learned Program Award from NAEP President Andrew McCusker (far left) and Award Chairman Jim Melton (far right) on behalf of the Office of NEPA Policy and Compliance.

The meeting began with a plenary session address by Anne Miller, Acting Director of the Environmental Protection Agency's (EPA) Office of Federal Activities. Linda Murphy, Director of Ecosystem Protection, EPA New England, delivered the keynote address. NEPA-related sessions included those on Native American issues, legal issues, and the integration of NEPA with international (i.e., ISO) standards.

At a session on NEPA case studies, Lance McCold, representing Oak Ridge National Laboratory, which assisted DOE in preparing the EIS for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS-0289), described how successive internal drafts resulted in a set of mitigation measures to which the project proponent, a private utility company, became clearly committed.

Next NAEP Conference in Arlington, Virginia, June 2001

NAEP has announced that its next conference will be held June 24 to 28, 2001, in Arlington, Virginia. NAEP is soliciting abstracts for papers and posters to be presented during the conference, which will include a large NEPA component. Abstracts are due to NAEP by October 16. Visit the NAEP Web site at www.naep.org for more information on the 2001 NAEP Conference, abstract requirements, and the award nomination form.

Emergency NEPA Procedures for LANL (continued from page 1)

DOE and other agencies immediately took action to contain and extinguish the fire and limit its damage – establishing clearings for fire lines, clearing access roads and improving existing roads for heavy transport equipment and fire trucks, cutting down trees to protect utilities and structures, setting small backfires to protect buildings and utilities, and dropping water and fire-retardant slurry from low-flying helicopters and airplanes. These actions taken during the fire had relatively minor environmental impacts that were primarily beneficial.

Post-fire runoff, shown here emerging from a culvert, is now black with soot.

Recovery Team Undertakes Broad Range of Post-Fire Actions

By the time the fire was brought under control two weeks later, it had burned almost 43,000 acres, including 7,650 acres on LANL. The fire's destruction of vegetation cover left the area vulnerable to soil erosion and flooding from summer rainstorms. LANL hydrologists estimated that runoff could be significantly greater than before the fire, potentially threatening the property and well-being of the 10,000 residents located downstream of the DOE lands in White Rock, the Pueblo of San Ildefonso, and the Pueblo of Cochiti. Soil erosion and flooding also could threaten to release hazardous and radioactive contaminants from 168 potential release sites and two nuclear facilities at LANL. It may take years to decades in some locations for enough vegetation to become established on hillsides and canyons to deter soil erosion and flooding.

Post-Fire Emergency Actions at LANL

- **Environmental Damage Assessment:** On-foot and aerial surveys; repairing and replacing air and surface water monitoring stations; contaminant monitoring
- **Potential Release Sites:** Stabilizing and protecting damaged or vulnerable sites; treating, removing, and disposing of contaminants; excavating canyon bottoms
- **Cultural Resources:** Assessing, protecting, and stabilizing damaged or vulnerable sites
- **Threatened and Endangered Species:** Assessing fire and post-flood impacts on threatened and endangered species and their habitats
- **Utilities and Infrastructure:** Protecting and repairing buildings, structures, roads, and utilities; decontaminating or demolishing contaminated buildings
- **Hazard Reduction Actions:** Stabilizing soils and reseeding; improving, replacing, and installing culverts; retaining or diverting stormwater runoff; relocating hazardous material and special nuclear material; removing dead and damaged trees
- **Other Recovery Actions:** Staging and storing equipment and building materials, installing temporary housing

Because July and August are peak months for rainstorms, the post-fire conditions justified taking further emergency actions without sufficient time to prepare an EIS. These emergency response actions have a net beneficial impact, although potential environmental impacts to specific receptors range from beneficial to adverse. The actions most likely to result in adverse impacts include removing potential contaminants, especially in canyon bottoms and floodplains. Although these actions would reduce the potential spread of contaminants, by removing additional vegetation they would also increase the potential for soil erosion. Flood control mechanisms, such as berms, dams, sediment traps, and catchment basins, alter local drainage patterns and also could cause adverse environmental impacts.

DOE Consults with CEQ, Commits to Public Involvement

In May and early June 2000, officials of DOE and the other Federal agencies represented on the Cerro Grande Fire Burned Area Emergency Rehabilitation Team consulted with CEQ regarding environmental review for the emergency actions. In a June 15 letter documenting

continued on next page

Emergency NEPA Procedures for LANL (continued from previous page)

these consultations, Henry Garson, NEPA Compliance Officer for the National Nuclear Security Administration's Office of Defense Programs, described DOE's plans and commitments for alternative NEPA compliance. DOE would issue a Notice of Emergency Action, provide a range of public involvement opportunities, monitor the effectiveness and environmental effects of emergency actions, make monitoring results public and consider any resulting comments, and modify actions during implementation to mitigate adverse effects. DOE also committed to prepare a Special Environmental Analysis, to be issued in September 2000, to evaluate the environmental impacts of the completed and ongoing emergency actions.

Newly installed concrete barriers protect the historic Pond Cabin from potential stormwater damage. The cabin, built in 1914, is listed on the New Mexico State Register of Historic Places.

These alternative arrangements for complying with NEPA proved satisfactory to CEQ, as stated in the June 15, 2000, response from Dinah Bear, General Counsel: "We commend DOE for its commitment to provide for continuing public involvement, including soliciting comment on the Notice of Emergency Action, the Special Environmental Analysis, and on monitoring results and prospective mitigation." CEQ requested a brief report summarizing the conduct of the alternative arrangements and identifying any lessons learned or recommendations that DOE thinks would be useful to consider in future emergency situations, which DOE agreed to provide when the alternative arrangements are concluded.

DOE Publishes Notice of Emergency Action Required under 10 CFR 1021.343

DOE then issued a Federal Register Notice (65 FR 38522; June 21, 2000) that listed past, current, and planned DOE emergency actions from the beginning of the fire through November 2000. The Notice also addressed the potential environmental impacts of these emergency actions and possible mitigation measures, and DOE's plans for continuing public involvement and preparation of a Special Environmental Analysis. DOE has held weekly public meetings (until recently broadcast on local radio) and uses a Web site, press releases, telephone information line, and informal consultations to provide continuing information to stakeholders. DOE and the other agencies taking emergency actions have consulted with the affected Pueblos, and have accommodated their requests to preserve locations of cultural value. The U.S. Fish and Wildlife Service, State Historic Preservation Officer, and Advisory Council on Historic Preservation also were consulted. In addition, DOE established a Public Advisory Group to focus on communications issues as they relate to potential runoff and flood mitigation activities.

Cerro Grande Fire Burned Area Emergency Rehabilitation Team Members

Federal

- Department of Energy
- Forest Service
- Natural Resources Conservation Service
- National Park Service
- Bureau of Indian Affairs

State and Local

- State of New Mexico
- County of Los Alamos
- University of California

Pueblos

- Santa Clara Pueblo
- San Ildefonso Pueblo

Information Sources

Additional information, including photos and the Rehabilitation Plan, is available on the Web site of the Cerro Grande Fire Burned Area Emergency Rehabilitation Team at www.baerteam.org/cerrogrande/. The Notice of Emergency Action is available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Announcements (and also at the LANL Web site, www.lanl.gov/worldview/ under Cerro Grande Fire). When issued, the Special Environmental Analysis will be available on the DOE NEPA Web under DOE NEPA Analyses.

For information on the role of the wildfire scenario accident analysis of the LANL Site-wide EIS in prompting mitigation actions, see *Lessons Learned Quarterly Report*, June 2000, page 1. LANL's *Wildfire 2000,* August 2000, provides a more detailed comparison of the EIS postulated accident with the actual fire and is available on the LANL Web site at

continued on page 6

Emergency NEPA Procedures for LANL (continued from page 5)

http://lib-www.lanl.gov/la-pubs/00393627.pdf. DOE issued an EA on the *Wildfire Hazard Reduction and Forest Health Improvement Program at LANL* (DOE/EA-1329) in August. For further information, contact Elizabeth Withers, NEPA Compliance Officer, Los Alamos Area Office, at ewithers@doeal.gov, or phone 505-667-8690.

Thank You, Elizabeth Withers

The Office of NEPA Policy and Compliance extends its appreciation to Elizabeth Withers, the Los Alamos Area Office NEPA Compliance Officer, for her hard work in coordinating NEPA compliance for emergency actions taken by DOE in response to the Cerro Grande Fire. Under difficult circumstances, Elizabeth kept affected parties informed of fast-breaking events, while managing the preparation of NEPA documents and coordinating the Department's efforts with other agencies, particularly on matters pertaining to endangered species and protection of cultural resources.

Water Retention Structure Challenged

The Army Corps of Engineers is constructing for DOE a 70-foot-high water retention structure in Pajarito Canyon to protect the residents of White Rock and LANL facilities, including Technical Area 18, which contains nuclear facilities. Runoff control will be needed for several years until the groundcover regenerates. The structure, to be completed in September, will not hold back water permanently like a conventional dam, but instead is designed with a free-flow outlet structure to completely release impounded floodwater at a controlled rate within 96 hours. Forest Guardians, an environmental organization based in Santa Fe, questions the need for the "dam" and has filed a Notice of Intent to sue the Corps of Engineers for alleged violations of Section 404 of the Clean Water Act.

So, You Think DOE Gets a Lot of Public Comments...

Massive Response to Forest Service Roadless Area Conservation Program

Encouraging public participation in Federal decision making that may affect the environment, as NEPA requires, can sometimes lead to a seemingly overwhelming number of letters, postcards, faxes, e-mail and telephone messages, public meeting transcripts, petitions, and resolutions. Each submittal may contain several distinct comments.

A typical high-profile DOE EIS may elicit hundreds or even a few thousand comments. In one of its largest public responses ever, DOE so far has tallied about 11,000 comments (from about 2,300 letters and other submittals) on the Draft EIS for the Yucca Mountain Geologic Repository (DOE/EIS-0250). DOE conducted 21 public hearings and established a public comment period of almost 200 days for this Draft EIS.

But this does not even come close to the U.S. Forest Service's ongoing experience in preparing an EIS for its Roadless Area Conservation Program and related proposed rule, which would apply to about 160 National Forests and Grasslands. (For information on the program, visit the Forest Service Web site at www.roadless.fs.fed.us/). Public participation activities for the Roadless Area Conservation Program included about 450 public scoping meetings and hearings on the Draft EIS.

In its scoping process, the Forest Service received more than 517,000 letters, cards, and other submittals, containing well over one million comments. Form letters and post card campaigns accounted for about 481,000 of the submitted items.

During a 60-day Draft EIS public comment period ending in July 2000, the Forest Service estimates that it received more than one million letters, cards, and other items, which include about 60,000 individually written letters – 6,000 of them from local, state, and Federal agencies. The Forest Service has assigned 95 full-time staff members to analyze these comments.

Based on the Roadless Area Conservation Program and similar experiences, the Forest Service, in consultation with the Council on Environmental Quality, is developing new training on methods for agencies to manage and meaningfully incorporate large volumes of public comments received in the NEPA process. The Office of NEPA Policy and Compliance intends to consult with the Forest Service to identify lessons learned for such cases. (For related articles on responding to public comments, see *Lessons Learned Quarterly Reports* for September 1996, page 4, and September 1997, page 12.)

Interim DOE Technical Standard on Evaluating Radiation Doses to Biota Available for Use

The Office of Environment, Safety and Health announces the availability of a new interim DOE technical standard, "A Graded Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota," for use in DOE compliance and risk assessment activities pending formal approval by the DOE Technical Standards Program. This voluntary consensus technical standard was developed through the Department's Biota Dose Assessment Committee.

As Assistant Secretary David Michaels stated in a July 19, 2000, distribution memorandum, the technical standard "provides a graded approach (including screening methods and methods for detailed analyses) and related guidance that DOE and DOE contractors may use for demonstrating compliance with requirements for protection of biota in DOE Order 5400.5, 'Radiation Protection of the Public and the Environment,' and for conducting ecological risk assessments of radiological impact at contaminated sites."

The interim standard and the "RAD-BCG Calculator" – an electronic spreadsheet that allows users to enter site-specific data to help determine whether radiation doses to biota exceed recommended limits – can be downloaded from the Biota Dose Assessment Committee's Web site at www.eh.doe.gov/oepa (click on "Focus Areas," select "Biota Dose Assessment Committee," then select "Technical Standard"). For further information, contact the Committee Chair, Stephen Domotor, Office of Environmental Policy and Guidance, at stephen.domotor@eh.doe.gov, or phone 202-586-0871.

Draft Guidelines for Environmental Review of Trade Agreements

Executive Order 13141, "Environmental Review of Trade Agreements" (64 FR 63167; November 18, 1999), directs responsible agencies to carefully assess and consider environmental impacts of trade agreements "through a process of ongoing assessment and evaluation, and, in certain instances, written environmental review." (See *Lessons Learned Quarterly Report*, December 1999, page 2.) A provision of the Executive Order designates the U.S. Trade Representative and the Chair of the Council on Environmental Quality (CEQ) to develop procedures for conducting environmental reviews (ERs) in consultation with appropriate foreign policy, environmental, and economic agencies.

Based on an "extensive interagency process" and input solicited from advisory committees and the public (65 FR 9757; February 22, 2000), draft implementing guidelines were recently published in the Federal Register (65 FR 42743; July 11, 2000). Key components of the draft guidelines are: criteria for conducting an ER, initiation of the ER process, scope and analysis, documentation, timing, and public participation. A public hearing was held on August 2 and 3, 2000, in Washington, D.C., and written public comments were due by August 25, 2000. The U.S. Trade Representative and CEQ plan to issue final guidelines this fall.

e-NEPA: Progress in Adding Missing EAs and EISs to NEPA Web

By: Denise Freeman, *Acting Webmaster, Office of NEPA Policy and Compliance*

The Office of NEPA Policy and Compliance appreciates the support of the DOE NEPA Community in providing missing e-files. We have made substantial progress, but our work is not yet complete. As of August 2000, the DOE NEPA Web full text searchable document collection includes:

- 26 of the 40 EISs issued between January 1, 1995, and December 31, 1997
  18 of the 20 EISs issued between January 1, 1998, and mid-August 2000.
- 124 of the 190 EAs issued between January 1, 1995, and December 31, 1997
  34 of the 64 EAs issued between January 1, 1998, and mid-August 2000.
- All Records of Decision and Notices of Intent issued since 1998.

The Office of NEPA Policy and Compliance continues to seek e-files for missing documents and will add them to the Web site as they arrive.

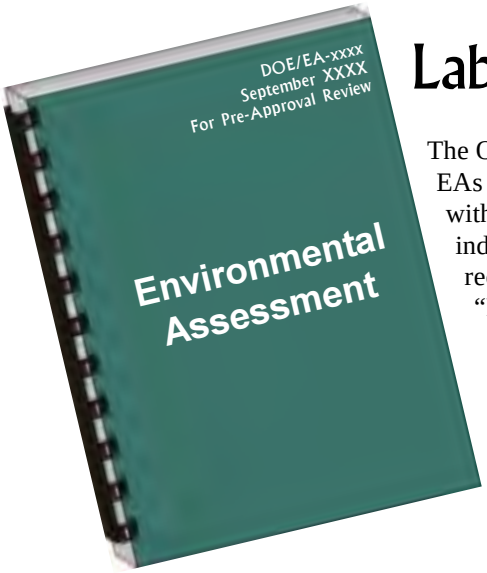
Affected Environment and No Action Alternative: Different Concepts, Different Time Frames

An incorrect premise sometimes takes root in the early stages of an EIS's development – that the environmental impacts of the no action alternative are equivalent to the description of the affected environment. These are different concepts, however, and serve different purposes.

The affected environment is the setting within which a proposed action would take place. It encompasses current conditions and, as relevant, past fluctuations and patterns in natural and human systems. The description of the affected environment in a NEPA document is a snapshot of *present* conditions of resources and geographic areas that potentially could be affected by a proposed action and its alternatives. It lays the foundation – an environmental baseline – for assessing potential impacts of a proposed action.

In contrast, the potential impacts of the no action alternative are estimated from a projection of current conditions into the *future*, under the influence of activities that would continue and those that would carry out decisions previously made. Although the no action alternative often is described as maintaining the "status quo," this does not mean that no action is a static condition. Rather, the impacts of this alternative form a different sort of baseline that allows decision makers and the public to compare future impacts under alternative scenarios. To allow meaningful comparisons, the time span used to assess the impacts of the no action alternative must be comparable to the time span used to analyze the impacts of the action alternatives.

For example, the affected environment's air quality discussion might describe the general climate, wind, temperature, rainfall, ambient concentrations of air pollutants at the site, and current site emissions and emission rates. Also, this discussion would, as appropriate, identify existing air quality permits and specify the attainment status for criteria pollutants. In contrast, impact assessment for the no action alternative would project future site emissions and emission rates without the proposed action. The impact assessment also would identify the impacts of such future emissions on compliance with applicable air quality regulations and permits, the attainment status for criteria pollutants, and human health and environment. LL



Label an EA for Pre-Approval Review

The Office of NEPA Policy and Compliance notes that on several occasions EAs were provided to States and Tribes (and others) for pre-approval review with no indicator of their status, and these EAs were therefore indistinguishable from approved EAs. To avoid such confusion, we recommend labeling an EA on its cover to indicate its status as being "For Pre-Approval Review." LL

Using Appropriate Number of Significant Digits

What's Wrong with "480 m^3 (16,951 ft^3)" of Radioactive Waste?

One editorial error we frequently find in reviewing draft NEPA documents is the reporting of quantities with more digits than are "significant" – that is, more digits than are meaningful in light of the precision of the underlying data.

If a material is weighed on a scale that is precise only within a kilogram, for example, it is not meaningful to report the weight in tenths of a kilogram. By extension, a quantity calculated from several measurements can be no more precise (in terms of the number of significant digits) than the measurement with the least number of significant digits.

Reporting more than the appropriate number of significant digits may mislead the reader to think that quantities are known more precisely than is the case, and may ultimately decrease a report's credibility. Further, displaying insignificant digits makes the meaningful differences between quantities, such as the features or impacts of alternatives, harder to discern. Environmental radiation-related dose and effect estimates, for example, are rarely valid to more than one or two significant digits.

This overview is intended to remind NEPA document preparers of the need to use good judgment in reporting numerical values. For a fuller treatment of significant digits – and the related topics of rounding, scientific measurement, precision versus accuracy, and range versus point values – refer to the *DOE Fundamentals Handbook: Mathematics* (Volume 1of 2, DOE-HDBK-1014/1-92, June 1992, on the EH Web site at tis.eh.doe.gov/techstds/standard/hdbk1014/h1014v1.pdf), or perform a Web search using the terms *significant digits* or *significant figures* to identify other useful sites. Another reference, the American Society for Testing and Materials *Standard for Use of the International System of Units (SI): The Modern Metric System* (IEEE/ASTM SI-10), is available for purchase at www.astm.org/DATABASE.CART/PAGES/IEEE.htm. LL

Here's How it Works — A Quick Review

Identifying Significant Digits

- A non-zero digit is significant.

  Example: 48 has 2 significant digits

- Zero is significant:

  when located between two non-zero digits.

  Example: 408 has 3 significant digits

  when after the decimal and no non-zero digits follow.

  Example: 408.0 has 4 significant digits

- Zero is not significant:

  when after the decimal, but followed by non-zero digits (i.e., when used only to locate the decimal point in a quantity less than 1).

  Example: 0.048 has 2 significant digits

  when to the right of non-zero digits but before the decimal (unless context indicates otherwise).

  Example:

  500 normally has 1 significant digit, signifying a quantity between 450 and 549 (unless context indicates otherwise)

  To indicate otherwise, such as that 500 has 3 significant digits, use

  — a decimal point (500.), or
  — powers of 10 (5.00×10^2)

Arithmetic with Significant Digits

- When adding and subtracting quantities with different numbers of significant digits:

  the result has as many significant digits after the decimal as the measurement with the fewest significant digits after the decimal.

  Example: 48.134 + 1.1 = 49.2 (not 49.234)
  48 + 1.1 = 49 (not 49.1)

- When multiplying and dividing quantities with different numbers of significant digits:

  the result has as many significant digits as the measurement with the fewest significant digits.

  Example: 480 x 35.3147 = 17,000*

  * In the subtitle of this article, 480 m^3 contains 2 significant digits. Converting to cubic feet (35.3147 cubic feet per cubic meter) does not increase the precision of the measure – so the converted value should be stated as 17,000 ft^3.

- An exact quantity does not affect the number of significant digits in arithmetic results.

  Example:

  5 EISs (exact count) x 0.236 kg/EIS = 1.18 kg (not 1.180 kg) (where 0.236 and 1.18 each have 3 significant digits)

DOE NEPA Guidance Updates from the Office of NEPA Policy and Compliance

Stakeholder Directory, 14th Edition

Status: Issued July 2000. Request copies from contact, or access on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Tools.

Contact: Katherine Nakata
katherine.nakata@eh.doe.gov
202-586-0801

Mini-guidance Compendium from *Lessons Learned Quarterly Reports*

Status: In preparation, distribution planned in October 2000. This document is a compilation of all mini-guidance articles published since LLQR started in December 1994 through the September 2000 issue.

Contact: Yardena Mansoor
yardena.mansoor@eh.doe.gov
202-586-9326

Accident Analysis under NEPA

Status: More than 200 comments were received from DOE's NEPA Community on the draft guidance (dated April 2000). Major comments focused on differences between nuclear safety analyses and accident analyses under NEPA, including the appropriate accident scenarios to be considered and how to consider impacts on involved workers. Some commenters expressed concerns that the guidance would impose new analytical requirements, such as the need to consider indirect impacts. The NEPA Office will consult with commenters in revising the guidance, with issuance planned for November 2000.

Contact: Eric Cohen
eric.cohen@eh.doe.gov
202-586-7684

Incorporating Environmental Justice Considerations into the DOE NEPA Process

Status: More than 100 comments were received from DOE's NEPA Community on the draft guidance (dated April 2000). Comments included requests to clarify the recommended assessment effort and how to apply the sliding scale approach, address transportation issues, and make the guidance more concise. The NEPA Office will consult with commenters in revising the guidance, and plans to provide a revised draft in December 2000 for comment by minority and low-income stakeholders who participated in early scoping of the guidance.

Contact: Carolyn Osborne
carolyn.osborne@eh.doe.gov
202-586-4596

Revisions to DOE Floodplain and Wetlands Regulations (10 CFR Part 1022)

Status: Draft revisions underway to public notification procedures and other sections of the regulations, in response to discussion at the June 2000 NCO meeting and informal NCO follow-up comments. The NEPA Office plans to provide a draft preamble and revised regulations to DOE's NEPA Community for comment in November 2000.

Contact Katherine Nakata
katherine.nakata@eh.doe.gov
202-586-0801

Revisions to DOE NEPA Regulations (10 CFR Part 1021)

Status: Revisions under consideration to categorical exclusion B3.6 concerning bench-scale and small-scale research and other sections of the regulations, in response to discussions at the June 2000 NCO meeting and informal NCO follow-up comments. The NEPA Office plans to provide a draft preamble and revised regulations to DOE's NEPA Community for comment in 2001.

Contact: Mary Greene
mary.greene@eh.doe.gov
202-586-9924

New on the NEPA Bookshelf

From time to time the Office of NEPA Policy and Compliance describes (without endorsement) new books that may be useful or interesting to the DOE NEPA Community. (See *Lessons Learned Quarterly Report*, December 1999, page 15; June 1999, page 10; and September 1998, page 5. Also, "Suggestions for the NEPA Practitioner's Bookshelf," August 1996, is available in the DOE NEPA Compliance Guide on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under "DOE NEPA Tools.")

Environmental Impact Statements: A Comprehensive Guide to Project and Strategic Planning

Charles H. Eccleston; May 2000
John Wiley & Sons, Inc.
605 Third Avenue
New York, NY 10158
Phone: 800-225-5945
ISBN 0-471-35868-1
346 pages; $69.95

In this new book on managing the EIS process, Charles H. Eccleston seeks to synthesize all relevant guidance and requirements that an EIS must satisfy, while advancing the perspective that the EIS process can be a framework for broader Federal planning. Mr. Eccleston, who chairs the Tools and Techniques NEPA Practice Committee of the National Association of Environmental Professionals, addresses "pre-scoping" tasks, the EIS planning process, EIS documentation requirements, and decision implementation (e.g., by integrating NEPA and ISO 14000). These topics and related tools, techniques, and approaches are presented within the context of the author's "Total Federal Planning" strategy, which applies principles from value engineering, total quality management, and systems engineering to the EIS process with the goal of improving Federal planning and decision making.

As in his previous book, *The NEPA Planning Process: A Comprehensive Guide with Emphasis on Efficiency* (*Lessons Learned Quarterly Report*, June 1999, page 10), Mr. Eccleston, a contractor employee at DOE's Hanford Site, draws upon the DOE NEPA program for some of the material in this book, including specific EISs, the DOE EIS Checklist, and the *Lessons Learned Quarterly Report*.

Book Review: "Founding Father" Challenges Practitioners to Fulfill NEPA's Potential

By: Clarence Hickey, *Office of Science NEPA Compliance Officer*

The National Environmental Policy Act: An Agenda for the Future
Lynton Keith Caldwell
Indiana University Press, 1999
Phone: 800-842-6796
Internet: www.indiana.edu/~iupress/
ISBN 0-253-33444-6
272 pages, $29.95

Professor Lynton Caldwell, often referred to as the "Father of NEPA," has compiled his observations into a new book "in the belief that [NEPA] offers a set of goals that could guide the nation toward an economically and environmentally tolerable, sustainable future." This volume discusses NEPA's historical background, EIS successes and challenges, domestic and international integration of environmental policy into decisions, NEPA and the global environment, and the implications of NEPA for the environmental future. (Dr. Caldwell compliments DOE on its EA Checklist and the 1994 EA Process Improvement Team.)

Dr. Caldwell concludes that NEPA's promise is not yet fulfilled, stating: "The goals declared in NEPA are as valid today as they were in 1969, perhaps more so." NEPA's purpose, he claims, "was never the writing of impact statements, but this action-forcing procedure has been a great inducement to ecological rationality in Federal actions, which traditionally *have* largely ignored environmental consequences." Even so, Dr. Caldwell claims that agencies have narrowed their application of the EIS over time, resulting in failure to meet the congressional intent of integrating environmental values into their missions. He argues for the intended connectedness of Sections 101 and 102 of NEPA: "That Section 102 and the EIS were intended to implement

continued on page 12

Book Review (continued from page 11)

Section 101 may be implicit in the logical construction of the statute and in its legislative history, but unfortunately it is neither sufficiently explicit in its text nor forceful enough in implementation of the Council on Environmental Quality (CEQ) regulations. In consequence, the Supreme Court and some agencies have asserted or assumed the separability of the sections, thus opening the way to narrowing the application of the EIS."

Dr. Caldwell discusses societal values and environmental ethics in the NEPA context. In his final chapter, "Future Directions: Beyond NEPA," he provides his recipe for achieving the Act's purposes anew and for building on the successes of NEPA. He writes, "NEPA principles must be asserted with a clarity and force sufficient to energize action toward achieving a sustainable quality of life on Earth. For this reason both a reaffirmation and a reinforcement of NEPA are necessary toward activating its declared intent."

Dr. Caldwell's thought-provoking book challenges some of the norms we take for granted in our NEPA work on behalf of the Federal government. It is interesting to read what the Father of NEPA has observed after 30 years of NEPA practice and what he envisions ahead. I recommend this book to DOE's NEPA professionals and environmental staff, our contractor helpers, and DOE's policy makers and managers as well.

For further information or to discuss this book, contact Mr. Hickey at clarence.hickey@science.doe.gov, or 301-903-2314.

Transitions

Exemplary Management Practice: New NCO Had to Demonstrate NEPA Knowledge

Joseph Rau is the NEPA Compliance Officer (NCO) for the Rocky Flats Field Office (RFFO), succeeding Reginald Tyler. Acting RFFO Manager Paul Golan's NCO designation memorandum is unique in describing the new NCO's qualifications: "Joe has been acting and gaining experience as NCO under Mr. Tyler's supervision since January 2000. Joe underwent a board review on May 17, 2000, and under direct questioning he successfully demonstrated a working knowledge of NEPA policies, procedures, regulations, and objectives that adequately prepares him to assume the duties of RFFO NCO. The board consisted of two former NEPA Compliance Officers, a Department of Energy lawyer regularly assigned to cover NEPA issues, and the Assistant Manager for Environment and Infrastructure." Mr. Rau may be contacted at joe.rau@rfets.gov, or phone 303-966-7410.

Hitesh Nigam Becomes Fissile Materials Disposition NCO

Hitesh Nigam, who served in DOE's Office of NEPA Policy and Compliance since 1991 and was a major contributor to the data collection and analysis portions of the *Lessons Learned Quarterly Reports*, has joined the Office of Fissile Materials Disposition as its NEPA Compliance Officer. The Office is under the Deputy Administrator for Defense Nuclear Nonproliferation, part of the new National Nuclear Security Administration. Mr. Nigam will be responsible for NEPA activities associated with storage and disposition of surplus fissile materials.

Hitesh wishes to thank all the people that he worked with during the last nine years, especially the Program and Field NEPA Ninjas and many contractors who provided NEPA-related assistance. We wish him well in his new position. He can be reached at hitesh.nigam@hq.doe.gov, or phone 202-586-0750.

DOE-Wide NEPA Contracts Updates

On June 12, 2000, DOE exercised the first option period of the DOE-wide NEPA contracts for document preparation services with SAIC and Tetra Tech, Inc., extending the contracts for one year through June 17, 2001. (A contract with Battelle Memorial Institute was awarded in March 1998, and a decision on exercising an option will be due in early 2001.) For questions or comments on the DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

The following tasks have been awarded recently under the DOE-wide contracts; for previously reported tasks, see "Contracting, NEPA" in the *Lessons Learned Quarterly Report* Cumulative Index in this issue.

The Three DOE-wide NEPA Contractor Teams:

Battelle Memorial Institute
Program Manager: Lucinda Low Swartz
swartzl@battelle.org
phone: 301-933-4668; fax: 301-933-6796

Science Applications International Corporation (SAIC)
Program Manager: Nicholas S. Dienes
dienesn@saic.com
phone: 505-842-7841; fax: 505-842-7898

Tetra Tech, Inc.
Program Manager: Thomas Magette
tom.magette@tetratech.com
phone: 703-931-9301; fax: 703-931-9222

Task Description	DOE Contact	Date Awarded	Contract Team
Community Involvement Support	Ted Taylor, LAAO 505-665-7203 ttaylor@doeal.gov	4/21/00	Tetra Tech, Inc.
High Level Waste EIS Support	Richard Kimmel, ID 208-526-5583 kimmelrj@id.doe.gov	4/27/00	Tetra Tech, Inc.
High Flux Beam Reactor Strategy Study	Mike Holland, CH/BHG 631-344-3552 mholland@bnl.gov	6/6/00	Tetra Tech, Inc.
Sacramento Area Voltage Support EIS	Loreen McMahon, WAPA 916-353-4460 mcmahon@wapa.gov	6/9/00	Tetra Tech, Inc.
Horizon Pipeline Project EA	Federal Energy Regulatory Commission	6/13/00	Tetra Tech, Inc.
Center for Applied Repository and Underground Science at WIPP EA	Harold Johnson, CAO 505-234-7349 johnsoh@wipp.carlsbad.nm.us	6/28/00	Battelle
Supplement Analysis for Waste Management PEIS	Robert Rothman, OH 937-865-3823 robert.rothman@ohio.doe.gov	7/10/00	Battelle
Paducah Gaseous Diffusion Plant Landfill EA	David Tidwell, OR 270-441-6807 tidwellwd@oro.doe.gov	8/4/00	Tetra Tech, Inc.

Training Opportunities

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

- **An Overview of Environmental Laws and Regulations for Managers**
  Washington, DC: September 8, 2000
  Fee: $350

  USDA Graduate School/
  DOE National Environmental Training Office (NETO)
  Phone: 803-725-0818
  E-mail: NETO@srs.gov
  Internet: www.em.doe.gov/neto/

- **Cumulative Effects Assessment**
  Olympia, WA: September 19 and 20, 2000
  Fee: None; sponsored by the Council on Environmental Quality
  E-mail: envimptr@aol.com

  Irving, TX: November 1 to 3, 2000
  Fee: $695
  E-mail: info@eiatraining.com

  Environmental Impact Training
  Dr. Larry Canter, University of Oklahoma
  Dr. Samuel Atkinson, University of North Texas
  Phone: 830-596-8804
  Internet: www.eiatraining.com

- **Historic Preservation Law**
  Los Angeles, CA: October 30 and 31, 2000
  Fee: $795

  ALI-ABA/National Trust for Historic Preservation
  Phone: 800-253-6397
  E-mail: phunt@ali-aba.org
  Internet: www.ali-aba.org

- **Implementation of NEPA on Federal Lands and Facilities**
  Durham, NC: October 30 – November 3, 2000
  Fee: $960

  Nicholas School of the Environment
  Duke University
  Phone: 919-613-8082
  E-mail: britt@duke.edu
  Internet: www.env.duke.edu/

- **The NEPA Toolbox: Positive Public Involvement**
  Denver, CO: December 4 and 5, 2000
  Fee: $595 by 11/15; then $650

  The NEPA Toolbox: Integrating NEPA and Section 106
  Denver, CO: December 6, 2000
  Fee: $395 by 11/15; then $425

  The NEPA Toolbox: Assessing Cumulative Impacts
  Denver, CO: December 7 and 8, 2000
  Fee: $595 by 11/15; then $650

  Environmental Training and Consulting International, Inc. (ETCI)
  Phone: 720-859-0380
  E-mail: info@envirotrain.com
  Internet: www.envirotrain.com

- **Reviewing NEPA Documents**
  Dayton, OH: September 12 to 14, 2000
  Las Vegas, NV: December 12 to 14, 2000
  Fee: $795

  Cultural and Natural Resource Management
  Denver, CO: September 19 to 20, 2000
  Fee: $595

  Writing for Technical Specialists
  Denver, CO: October 16 to18, 2000
  Fee: $795

  How to Manage the NEPA Process and Write Effective NEPA Documents
  Las Vegas, NV: October 24 to 27, 2000
  Fee: $995

  The Shipley Group
  Phone: 888-270-2157 or 801-298-7800
  E-mail: ben@shipleygroup.com
  Internet: www.shipleygroup.com

ALI-ABA Course Materials

The American Law Institute (ALI)-American Bar Association (ABA) offers videos, audio tapes, and course materials from its Environmental Law courses for sale on the Internet. For a catalog, visit the ALI-ABA Web site at www.ali-aba.org/aliaba/Envlaw.htm.

USDA Graduate School and NETO Form Partnership

The USDA Graduate School has entered into a partnership with DOE's National Environmental Training Office (NETO) to provide nationwide environmental training. Under this partnership, the Graduate School is offering seven courses in the Environmental Sciences curriculum area in FY 2000 and plans to expand to 13 courses next year. For further information, visit the NETO Web site at http://www.em.doe.gov/neto/, or contact David Hoel at david.hoel@srs.gov, or phone 803-725-0814.

DOE Litigation Updates

Appeals Court Affirms that EIS Is Not Required for Oak Ridge Metals Recycling under CERCLA

The U.S. Court of Appeals for the District of Columbia Circuit affirmed a 1999 district court ruling that DOE cannot be required to prepare an EIS for the recycling and sale of radioactively contaminated metals recovered from decontamination and decommissioning of three buildings at the East Tennessee Technology Park (formerly the K-25 Gaseous Diffusion Plant) on the Oak Ridge Reservation. (See *Lessons Learned Quarterly Report*, September 1999, page 11.)

Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) bars legal challenges to a removal or remediation action under CERCLA until the action is completed. The plaintiffs, the Oil, Chemical and Atomic Workers International Union, AFL-CIO, and others, had argued that the decision to recycle radioactive metal is an action subject to NEPA. The Appeals Court, however, affirmed that the recycling is part of a larger removal action under CERCLA and, therefore, the courts have no jurisdiction over the NEPA claim. *Oil, Chemical and Atomic Workers International Union v. Richardson*, No. 99-5295, U.S. District Court of Appeals for the District of Columbia Circuit; July 7, 2000 (appeal from the U.S. District Court for the District of Columbia, No. 97-1926; June 29, 1999).

[Notwithstanding this favorable court ruling, the Secretary has established a policy of not releasing scrap metals for recycling if they contain detectable radioactive contamination from DOE operations. See the Secretary's memorandum of July 13, 2000, Release of Surplus and Scrap Materials, available at: www.eh.doe.gov/oepa (select "DOE Directives Development Initiative for the Measurement and Release of Surplus Materials," then "Public Documents," then "DOE Memorandum").] LL

Other Agency NEPA Cases

Court Upholds Postal Service EA for Hovercraft Mail Delivery Test

To test the reliability of a less expensive means of mail delivery, the U.S. Postal Service proposed a two-year experimental project to deliver mail to eight remote Alaskan villages by hovercraft instead of fixed-wing aircraft. Although hovercraft can move over land, the Postal Service's proposal was to use them only on rivers. As part of its EA process, the Postal Service issued a notice of intent and conducted a scoping process that identified noise and potential effects on fish and wildlife, endangered species, subsistence activities, and commercial fishing as potential impacts of concern.

The Postal Service prepared a draft EA and circulated it for public comment in April 1997, and issued an EA and finding of no significant impact (FONSI) in July 1997. Nine Alaska Native communities and tribal councils sued, based on NEPA claims (and consistency with the Coastal Zone Management Act). The U.S. District Court for the District of Alaska issued a summary judgment in favor of the Postal Service, and the Ninth Circuit Court of Appeals affirmed the District Court's judgment.

NEPA Claims Address Impacts, Mitigation, and Alternatives

The plaintiffs challenged the validity of the Postal Service's EA on the grounds that it failed to adequately: (1) analyze environmental impacts, (2) specify mitigation, and (3) consider an acceptable range of alternatives, including the no action alternative.

Adequacy of Impact Analysis; Agency Must Consider – not Defer to – Expert Agency's Comments

The plaintiffs' first NEPA claim was that the EA's impact analysis did not support a FONSI. To succeed in their challenge, plaintiffs would have to demonstrate that the Postal Service failed to "articulate a rational connection between the facts found and the conclusions made."

continued on page 16

Other Agency NEPA Cases (continued from page 15)

The plaintiffs pointed to many instances in which the EA states that various impacts "could" or "may" result from the project. On this basis, the plaintiffs asserted that the EA implicitly admitted that insufficient data had been gathered on the likely impacts of the project. The court found this argument unpersuasive, however, because the EA, "considered as a whole," does not conclude that these were "substantial questions."

The plaintiffs also pointed to a Fish and Wildlife Service comment on the draft EA that the project might produce a long-term disturbance of roosting waterfowl along the Kuskokwim River, significantly affecting nesting and migration patterns. The Fish and Wildlife Service recommended further studies before issuing the EA. The Appeals Court found that the EA carefully analyzed this issue and concluded that a short-term disturbance of roosting is the probable impact of the project. The Fish and Wildlife Service itself had concluded in its comments that "a short term disturbance of roosting of birds would probably not be significant," and noted that comparison with control points outside the project area would accomplish the purpose that would be served by further studies. Thus the court found that the differences between the two agencies' positions were not great and that the Postal Service had met its obligation – not to defer to the Fish and Wildlife Service positions – but rather to consider and respond to its concerns.

Mitigation Measures Need Not Be Specific

Plaintiffs also claimed that the mitigation measures described in the EA were not specific or obligatory. The Appeals Court noted, however, that the requirement in the Council on Environmental Quality NEPA regulations to discuss mitigation (40 CFR 1502.16(h)) applies to an EIS, not an EA. In this case, the Postal Service EA concluded (with adequate support in the administrative record) that: "No mitigation for impacts on fish and wildlife is required for the two-year project due to the insignificance of all the impacts. However, the [Postal Service] has elected to implement a monitoring program on birds and fish in an attempt to gather additional information during the pilot [project]."

Evaluation of Alternatives, Including No Action

The Postal Service's NEPA regulations (39 CFR 775.8(a)(4)) require it to "study, develop, describe, and evaluate, at all decision points, reasonable alternatives to recommended actions which may have a significant effect on the environment." The plaintiffs contended that the EA did not adequately evaluate the no action alternative and failed to consider a reasonable range of alternatives.

The Postal Service EA equated no action with the status quo – that is, delivery of mail by fixed-wing aircraft. The plaintiffs argued that no meaningful consideration of the no action alternative was possible without baseline studies determining the environmental effects of mail delivery via fixed-wing aircraft. Given the project's objectives and the Postal Service's statutory obligation to deliver mail to these remote locations, however, the court found that the EA's characterization of the environmental effects of "no action" as "no change" was not arbitrary or capricious.

The Appeals Court also found that the EA considered a reasonable range of alternatives, given the objectives of the project. Noting that the Postal Service seeks to improve the reliability and efficiency of mail delivery service to remote Alaskan villages, the court stated that the agency was not required to consider alternatives such as trucks, boats, or fixed-wing aircraft that would not serve this purpose. The court noted that the Postal Service also considered suspending hovercraft operations during subsistence bird-hunting season. Because the Postal Service determined that the project's effects on waterfowl would be insignificant, the Postal Service rejected this more costly "seasonal use" option. The EA nevertheless stated that this option (or the option of stopping the project altogether) may be adopted if monitoring indicates that unexpected adverse environmental impacts occur.

Finding no substantial argument that the Postal Service's EA exceeded agency discretion or failed to comply with governing law, the Appeals Court upheld the District Court decision. *Akiak Native Community et al. v. United States Postal Service*, No. 98-35466, 2000 U.S. App. LEXIS 11618 (9th Cir. May 25, 2000). LL

EAs and EISs Completed (April 1 – June 30, 2000)

EAs

Bonneville Power Administration
DOE/EA-1326 (5/24/00)
Tucannon River Spring Chinook Captive Broodstock Program, Lyons Ferry, WA
Cost: $18,000
Time: 6 months

Grand Junction Project Office/ Environmental Management
DOE/EA-1338 (4/25/00)
Transfer of DOE Grand Junction Office to Non-DOE Ownership
Cost: $99,000
Time: 8 months

Office of Science
DOE/EA-1196 (4/18/00)
Implementation of the Natural and Accelerated Bioremediation Research Program and Selection of the Field Research Centers
Cost: $121,000
Time: 42 months

Richland Operations Office/ Environmental Management
DOE/EA-1319 (6/15/00)
Disposition of Surplus Hanford Site Uranium
Cost: $164,000
Time: 12 months

EISs

Bonneville Power Administration
DOE/EIS-0285 (65 FR 39146; 6/23/00)
(EPA Rating: EC-1)
Transmission System Vegetation Management Program for CA, ID, MT, OR, UT, WA, WY
Cost: (Cost report in preparation)
Time: 35 months

Fossil Energy/National Energy Technology Laboratory
DOE/EIS-0289 (65 FR 40629; 6/30/00)
(EPA Rating: EC-2)
JEA Circulating Fluidized Bed Combustor Project, Jacksonville, FL
Cost: $942,000
Time: 31 months

Oak Ridge Operations Office/ Environmental Management
DOE/EIS-0305 (65 FR 40629; 6/30/00)
(EPA Rating: EC-2)
Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, TN
Cost: $481,000
Time: 17 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

For the Record

The EIS numbers for the following documents were incorrectly reported in the June 2000 issue of *Lessons Learned.*

Notice of Intent

Western Area Power Administration
DOE/EIS-0315
Caithness Big Sandy Project, Wikieup, AZ
4/6/00 (65 FR 20811; 4/18/00)

Draft EIS

Oak Ridge Operations Office
DOE/EIS-0305
Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, TN
March 2000 (65 FR 11575; 3/3/00)

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 2000. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping and Public Participation

What Worked

- *Early stakeholder interactions.* The Operations Office had met frequently with stakeholders to discuss the proposed project before the NEPA process began. The public hearing on the draft EIS was well attended and substantive comments were received.
- *An established community involvement program.* The project proponent had a very well developed and effective community involvement program. The public appeared to be quite knowledgeable about the proponent and the proposed project. Consequently, comments from the public were few and tended to focus on very specific issues.
- *Comprehensive mailing list.* Some of the success of this project was due to the existence of a comprehensive mailing list.
- *Toll-free telephone number and community bulletin board.* Communications with the public were facilitated by a toll-free telephone contact and use of community bulletin boards.

What Didn't Work

- *Weather-related delays.* Hurricane Floyd caused the initial public hearing to be rescheduled. This led to some confusion of the public, but the situation could not be avoided.

Data Collection/Analysis

What Worked

- *Use of hypothetical scenarios.* Generic scenarios for future land uses and a hypothetical probable worst-case scenario were used to determine environmental impacts. This approach was necessary as this EA concerned transfer of a DOE property to non-DOE ownership, and DOE would have had no control over future uses of the property.

What Didn't Work

- *Non-standard methodologies.* Use of non-standard methodologies in evaluating certain impacts impeded development of scientific conclusions.
- *Insufficient contractor expertise.* The contractor preparing the NEPA document did not appear to be using staff with the appropriate background or an adequate number of staff.

Document Completion

What Worked

- *Teleconferences.* Weekly teleconferences among the several responsible DOE offices and sites helped to coordinate responses to public comments and maintain updates of project status.

What Didn't Work

- *Contract change orders.* The contract established for preparation of the NEPA document was fixed price. Multiple change orders had to be executed, which disrupted work flow.
- *Multiple NEPA Document Managers.* Three different NEPA Document Managers were assigned to this EIS over the course of its completion. This caused difficulties in keeping the document on schedule.
- *Unanticipated external consultations.* Initial contacts with organizations outside of DOE had identified no problems, whereas subsequent contacts resulted in the need for more extensive discussions and review, which produced some delay.

What Worked and Didn't Work (continued)

Teamwork

What Worked

- *Integration of NEPA and procurement processes.* Milestones established during the procurement process helped to move the NEPA document preparation forward.
- *Selection of a known contractor.* Selection of a contracting organization with whom we had worked previously on EIS preparation was an advantage with regard to communications and understanding.
- *Staff knowledge and experience.* Knowledgeable and experienced staff included a writer/editor whose work was well respected.
- *Direct channels of communication.* Direct channels of communication between the NEPA document preparers and the other team members were established early in the process, providing a pathway for directly addressing issues.

What Didn't Work

- *Coordination between multiple DOE sites.* This EA needed to be coordinated between two DOE sites, making communication of issues more difficult than those that are normally resolved within only one site.
- *Unclear distribution process.* There was a great deal of confusion about the distribution process for this EIS; it was unclear what role each office had in the distribution process and what steps were required. Guidance describing the NEPA draft document distribution process and the appropriate roles and responsibilities for draft document reviews is greatly needed.
- *Unavailability of experts.* The contractor did not make members of their team readily available during comment resolution meetings, inhibiting effective teamwork.
- *Distance between DOE and its contractors.* It was difficult to work with the contractors because of their great distance from the responsible DOE office. Resolution of DOE's comments via phone and e-mail resulted in some tense discussions. Face-to-face meetings would have been preferable, but there was insufficient budget for this.

Timing

- *NEPA compliance became the critical path.* The NEPA process began early enough to avoid being on the critical path; however, key design information necessary to perform the analysis of alternatives was not provided until much later, resulting in delays that put NEPA on the critical path.

Agency Planning and Decision Making

What Worked

- *Review of project plans.* The NEPA analysis facilitated thinking about alternative means for addressing various aspects of project work. In several instances, the review of plans was helpful because it confirmed the correct course of action was being pursued or indicated the need to alter the plans.
- *Identification of mitigative measures.* The NEPA process helped illuminate potential environmental problems associated with the proposed project and identified mitigative measures to avoid potential negative impacts.

What Didn't Work

- *A change in preferred siting.* A change in siting of the preferred alternative (not prompted by the NEPA review) impeded the completion of the EA and required notification of a new set of stakeholders in a different state.

Enhancement/Protection of the Environment

- *Protection of wetlands.* As a result of the NEPA review, a small wetland was identified and mitigation measures will be implemented.

What Worked and Didn't Work (continued)

- *Minimization of potential impacts.* The NEPA process helped to identify potential issues or opportunities for environmental improvements that were brought to the attention of the operators of the proposed facility. As a result, adjustments were made to reduce potential impacts of the project.
- *Protection of an endangered fish species.* The NEPA process facilitated a project to aid in the recovery of an endangered fish species.

Other

- *Post-Draft EIS regulatory changes.* During the NEPA process for this project, requirements for the Coastal Zone Management Act changed in the project area. The implementing agency wanted us to publish additional information in the Draft EIS addressing this, but our Draft EIS had already been issued. We eventually provided supplemental information to them that summarized key parts of the Draft EIS and this satisfied their requirement.

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 of 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decision making.

- For this quarter, in which questionnaire responses were received for 3 EAs and 2 EISs, 2 of the 7 respondents rated the NEPA process as "effective."
- One respondent who rated the process as "effective" stated that "The NEPA process served effectively to point out several opportunities for potential environmental enhancement. The process also served to confirm the value of approaches to environmental management that were incorporated into existing project plans."
- One respondent rated the process as "not effective at all" because of a belief that DOE had already decided to implement the proposal. This repondent also noted that the NEPA process helped to identify mitigation measures that will avoid potential impacts.

NEPA Document Cost and Completion Time Facts

Costs

EISs

- Cost data are available for two of the three EISs completed in the quarter ending June 30, 2000; the costs were $481,000 and $942,000.
- Cumulatively, for the 12 months that ended June 30, 2000, the median cost for the preparation of 7 EISs was $2.0 million; the average cost was $5.0 million.

EAs

- For this quarter, the median cost of four EAs was $110,000; the average was $101,000.
- Cumulatively, for the 12 months that ended June 30, 2000, the median cost for the preparation of 17 EAs was $95,000; the average cost was $94,000.

Completion Times

EISs

- For this quarter, the average and median completion times of three EISs were 28 and 31 months, respectively.
- Cumulatively, for the 12 months that ended June 30, 2000, the median completion time for the preparation of 8 EISs was 30 months; the average was 35 months.

EAs

- For this quarter, the median completion time of four EAs was 11 months; the average was 17 months.
- Cumulatively, for the 12 months that ended June 30, 2000, the median completion time for the preparation of 20 EAs was 11 months; the average was 14 months.

Recent EIS-related Milestones (June 1 – August 31, 2000)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0320
Stateline Wind Project, Walla Walla County, WA and Umatilla County, OR
5/25/00 (65 FR 35624; 6/5/00)

DOE/EIS-0321
Condon Wind Project, Gilliam County, OR
6/27/00 (65 FR 41450; 7/5/00)

Western Area Power Administration
DOE/EIS-0323
Sacramento Area Voltage Support Project
7/31/00 (65 FR 48496; 8/8/00)

Draft EIS

Nuclear Energy
DOE/EIS-0310
Programmatic EIS for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility
July 2000 (65 FR 46455; 07/28/00)

Records of Decision

Bonneville Power Administration
DOE/EIS-0285
Transmission System Vegetation Management Program
7/28/00 (65 FR 48490; 8/8/00)

Environmental Management
DOE/EIS-0218
Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel [fourth revision to original ROD (61 FR 25092, May 17, 1996)]
7/10/00 (65 FR 44767; 7/19/00)

Environmental Management/ Oak Ridge Operations Office
DOE/EIS-0305
Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, TN
8/3/00 (65 FR 48683; 8/9/00)

Environmental Management/Savannah River Operations Office
DOE/EIS-0279
Savannah River Site Spent Nuclear Fuel Management
7/24/00 (65 FR 48224; 8/7/00)

Notice of Emergency Action

National Nuclear Security Administration/ Defense Programs
Emergency Activities Conducted at Los Alamos National Laboratory, Los Alamos County, NM, in Response to Major Disaster Conditions Associated with the Cerro Grande Fire
6/16/00 (65 FR 38522; 6/21/00)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246-SA-10
Ladd Marsh Wildlife Management Area Additions, Siminonis and Wallender Properties, Union County, OR
(Decision: No further NEPA review required) July 2000

Watershed Management Program (DOE/EIS-0265)

DOE/EIS-0265-SA-32
Grande Ronde Model Watershed Program, Imnaha/Parks Ditch Water Conservation, Imnaha, OR
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-33
Lolo Creek Watershed Project, Clearwater County, ID
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-34
Eliminate Gravel Push-up Dams in Lower North Fork John Day River, Grant County, OR
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-35
Mitigate Effects of Runoff and Erosion on Salmonid Habitat in Pine Hollow Watershed, Sherman and Wasco Counties, OR
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-36
Yakima Basin Channels-Dixon Acquisition, Kittas County, WA
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-37
McCoy Creek/Cunha Ranches Restoration Project, LaGrande County, OR
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-38
McCoy Meadows Restoration Project, LaGrande County, OR
(Decision: No further NEPA review required) July 2000

DOE/EIS-0265-SA-39
Asotin Creek Channel, Floodplain, and Riparian Restoration Project, Asotin County, WA
(Decision: No further NEPA review required) August 2000

DOE/EIS-0265-SA-40
Tucannon River Watershed Fish Habitat Enhancement Project, Columbia County, WA
(Decision: No further NEPA review required) August 2000

DOE/EIS-0265-SA-41
Meadow Creek/Habberstadt Fish Habitat Enhancement Project, Union County, OR
(Decision: No further NEPA review required) August 2000

[Note: Readers interested in how the Bonneville Power Administration efficiently uses its programmatic EISs may refer to "The 'Pragmatic' EIS," *Lessons Learned Quarterly Report*, December 1997, page 4.]

NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

December 1, 2000; Issue No. 25 For Fourth Quarter FY 2000

CEQ Fosters Communication Among Federal NEPA Liaisons

The President's Council on Environmental Quality (CEQ) periodically sponsors meetings of senior NEPA representatives from Federal agencies to discuss emerging environmental policy issues and matters concerning NEPA implementation. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, is the NEPA Liaison for DOE Headquarters. On October 11, 2000, she joined 35 representatives from other agencies at the most recent CEQ Federal Agency NEPA Liaisons meeting, in Washington, D.C. [The NEPA Points of Contact link (ceq.eh.doe.gov/nepa/liaisons.cfm) on CEQ's NEPAnet lists the NEPA Liaisons.]

In this issue of *Lessons Learned*, we present several matters discussed at the recent CEQ NEPA Liaisons meeting that are of potential interest to the DOE NEPA Community.

- Do you know the EPA regional office staff assigned to review your NEPA documents? You should. The article on page 3 identifies such EPA reviewers.
- Do you list all cooperating agencies on the cover sheets of EISs? CEQ reminds you of the regulatory requirement to do so, and notes that this will aid EPA tracking. See page 4.
- Are you aware that amphibian population declines may indicate an overall worsening of environmental quality? And that NEPA reviews present an opportunity to address the problem? See page 4 for further information.

Horst Greczmiel, CEQ's Associate Director for NEPA Oversight, has invited Carol Borgstrom to discuss DOE's NEPA Lessons Learned Program at the next NEPA Liaisons meeting, scheduled for December 4, 2000.

DOE NEPA Order Revised, National Nuclear Security Administration Responsibilities Outlined

On October 26, 2000, the Deputy Secretary of Energy issued DOE O 451.1B, National Environmental Policy Act Compliance Program, to accommodate National Nuclear Security Administration (NNSA) NEPA responsibilities. The revised Order has an expanded section on applicability and a new section on NNSA procedures. With respect to an EIS for an NNSA activity, the NNSA Administrator will fulfill the responsibilities of a Secretarial Officer (including consulting with the NNSA General Counsel), and the Secretary or Deputy Secretary will approve an NNSA EIS. The Assistant Secretary for Environment, Safety and Health, after consulting with the Assistant General Counsel for Environment, will provide recommendations on EIS approval to the Secretary or Deputy Secretary. These NNSA NEPA procedures were developed jointly by the affected Offices and coordinated with NNSA's NEPA Compliance Officers.

The Office of NEPA Policy and Compliance is working with NNSA NEPA Compliance Officers on day-to-day implementation issues.

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Inside *LESSONS LEARNED*

Welcome to the 25th quarterly report on lessons learned in the NEPA process.

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report.* Draft articles for the next issue are requested by February 1, 2001. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone 202-586-9326.

First Quarter Questionnaires Due February 1, 2001

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2001 (October 1 through December 31, 2000) should be submitted by February 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or phone 202-586-1771.

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

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

LLQR Index

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

Printed on recycled paper

Annual Planning Summaries Due in January
Site-Wide EIS Evaluations Required

Members of the DOE NEPA Community are reminded to support the preparation of their organization's Annual NEPA Planning Summary by providing appropriate information to their NEPA Compliance Officers.

DOE Order 451.1B requires each Secretarial Officer and Head of a Field Organization to submit an Annual NEPA Planning Summary to the Assistant Secretary of Environment, Safety and Health (EH-1) by January 31 of each year. The Annual NEPA Planning Summary also must be made available to the public.

Annual planning for NEPA reviews promotes efficient resource management and reduces delays. The Summary is to include:

(1) The status of ongoing NEPA compliance activities

(2) Any EAs expected to be prepared in the next 12 months

(3) Any EISs expected to be prepared in the next 24 months

(4) The planned cost and schedule for completion of each NEPA review identified, and

(5) Every three years starting with 1995 (and therefore, in 2001), an evaluation of whether a site-wide EIS would facilitate future NEPA compliance efforts.

For further information, contact Jim Daniel at james.daniel@eh.doe.gov, phone 202-586-9760, or fax 202-586-7031. LL

Get to Know Your EPA EIS Reviewers

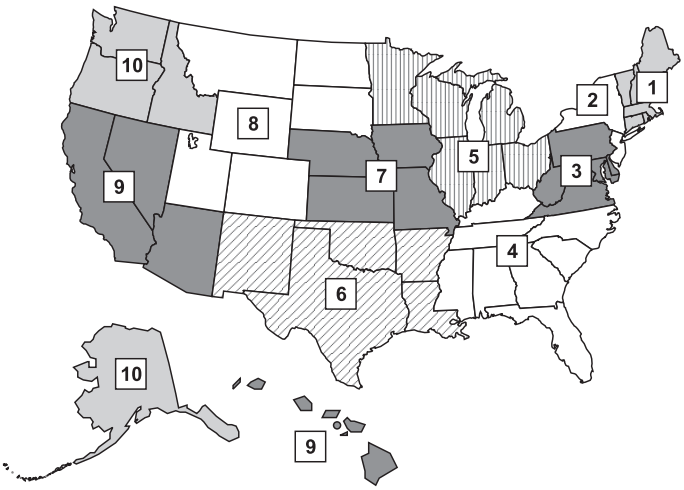
"Have lunch with your EPA reviewer."

Anne Miller, Acting Director, Office of Federal Activities, U.S. Environmental Protection Agency (EPA), didn't actually say that. But she did strongly encourage Federal agency field personnel to get to know the EPA NEPA document reviewers in their regions. Speaking at the Council on Environmental Quality's Federal Agency NEPA Liaisons meeting in October, Ms. Miller urged agency EIS preparers in the field to engage in dialogue about a draft EIS with the EPA regional EIS reviewers before EPA submits comments on the document. Other priorities may limit EPA staff's ability to get actively involved in every EIS process, she said, but "we like to discuss issues before they become big problems."

To facilitate early contact with EPA's EIS reviewers, here is information on reviewers in EPA regional offices that have specialists for energy or radiation issues. This supplements the list of EPA regional points of contact that we present in our *Directory of Potential Stakeholders for Department of Energy Actions under the National Environmental Policy Act* and to whom you send NEPA documents. (We will include both contacts and reviewers in future editions of the Directory.)

We thank Susan Absher, the EPA Headquarters NEPA/DOE point of contact, for her assistance with this article. Please get to know your EPA EIS reviewer. LL

EPA Regions



EPA Regional NEPA Counterparts

EPA Region	Regional Points of Contact	DOE Reviewer(s)
1	Elizabeth Higgins 617-918-1051	Tim Timmermann 617-918-1025
2	Robert Hargrove 212-637-3495	Grace Musumeci 212-637-3738
3	John Forren 215-814-2705	None specified – Region receives few DOE documents
4	Heinz Mueller 404-562-9611	None specified
5	Ken Westlake 312-886-2910	Mazin Enwiya 312-353-8414
6	Michael Jansky 214- 665-7451	None specified
7	Joe Cothern 913-551-7148	None specified
8	Cindy Cody 303-312-6228	Dana Allen (DOE) 303-312-6870 or Richard Graham (radiation) 303-312-7078
9	David Farrel 415-744-1584	David Tomsovic 415-744-1575
10	Richard Parkin 206-553-8574	Chris Gebhardt 206-553-0253

An EIS Must List Cooperating Agencies on its Cover Sheet

A Council on Environmental Quality (CEQ) memorandum of September 25, 2000, reminds Federal agencies to identify Federal and non-Federal cooperating agencies on the cover sheets of their EISs, as required by the CEQ NEPA regulations (40 CFR 1502.11). The Environmental Protection Agency's Office of Federal Activities, which maintains an EIS database for CEQ, relies on EIS cover sheets for accurate and complete information on cooperating agencies, which will now be included in the database. In an earlier July 28, 1999, memorandum, CEQ urged agencies preparing an EIS to actively solicit the participation of Tribal, state, and local governments as cooperating agencies (40 CFR 1508.5) (*Lessons Learned Quarterly Report*, September 1999, page 5).

To check the completeness of its own records, the Office of NEPA Policy and Compliance examined EISs that DOE issued beginning in 1995. (See table on next page.) DOE has issued 24 final EISs that involved cooperating agencies – 16 Federal agencies and their component organizations, eight Tribes, five counties, two states, and one city. Please send information on any additional cooperating agencies for EISs to Yardena Mansoor at yardena.mansoor@eh.doe.gov.

Amphibian Declines – NEPA Can Help Resolve Problems

Amphibian declines – decreases in populations and increases in physical deformities, both in the United States and worldwide – may signal an overall worsening of environmental quality. A recently issued guide, *Amphibian Declines: An Issue Overview*, discusses the phenomena of amphibian declines, potential causes, and conservation and other mitigation opportunities.

The guide discusses the geographic extent, severity, and consequences of amphibian declines. As it explains, amphibians are a diverse class of cold-blooded vertebrates that includes frogs, toads, salamanders, and caecilians. They inhabit both terrestrial and aquatic habitats. Factors implicated in amphibian declines and deformities include: climate change, habitat loss and fragmentation, introduced species, ultraviolet radiation, contaminants (especially biocides), acid precipitation, pathogens, and unsustainable commercial trade in amphibians.

In suggesting actions to help curb this problem, the guide identifies the NEPA process as an opportunity to analyze impacts on amphibian populations. Possible mitigation actions include habitat protection and enhancement, and regulation of toxic chemicals, invasive species, and ozone-depleting gases. The guide lists useful resources for further information, including organizations, publications, and Web sites.

The guide was issued jointly by the Federal Taskforce on Amphibian Declines and Deformities, Partners in Amphibian and Reptile Conservation, the Declining Amphibian Populations Task Force, and the Amphibian Conservation Alliance. After the Council on Environmental Quality recently recommended this publication to the Federal Agency NEPA Liaisons, the Office of NEPA Policy and Compliance distributed copies to DOE's NEPA Compliance Officers. The author, Jamie K. Reaser, formerly with the U.S. Department of State, now Assistant Director, International Policy and Programs, Department of the Interior, will speak to the Federal NEPA Liaisons at their December 4 meeting on considering amphibian issues during environmental impact analysis.

© Jamie K. Reaser

Abnormalities, such as the extra legs on this Pacific treefrog (Hyla regilla), *may be occurring more frequently.*

Visit www.frogweb.gov/tadd/ for more information. *Amphibian Declines: An Issue Overview* is available at this Web site (as a pdf) under Publications. Copies also may be ordered from the Government Printing Office at www.access.gpo.gov/su_docs/sale.html.

Cooperating Agencies in DOE EISs, 1995 – 2000

Environmental Impact Statement	Federal	Tribe	State	County	City	Cooperating Agencies
DOE/EIS-0150: Salt Lake City Area Integrated Projects Electric Power Marketing	✔					Interior (Fish and Wildlife Service, National Park Service, Bureau of Reclamation)
DOE/EIS-0161: Tritium Supply and Recycling	✔					Environmental Protection Agency
DOE/EIS-0169: Yakima Fisheries Project		✔	✔			Yakama Indian Nation; Washington
DOE/EIS-0189: Hanford Tank Waste Remediation System			✔			Washington
DOE/EIS-0197: Delivery of Canadian Entitlement (joint lead with Army Corps of Engineers)	✔					Department of State
DOE/EIS-0203: Programmatic Spent Nuclear Fuel Management and INEL…	✔					Navy
DOE/EIS-0213: Nez Perce Tribal Hatchery Program	✔	✔				Interior (Bureau of Indian Affairs); Nez Perce Tribe
DOE/EIS-0218: Foreign Research Reactor Spent Nuclear Fuel	✔					Department of State
DOE/EIS-0222: Hanford Comprehensive Land-Use Plan	✔	✔		✔	✔	Interior (Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service); Nez Perce Tribe, Confederated Tribes of Umatilla Indian Reservation; Benton, Franklin, Grant Counties; City of Richland
DOE/EIS-0225: Pantex Plant and Storage of Nuclear Weapon Components	✔					Army
DOE/EIS-0231: Navajo Transmission Project	✔	✔				Agriculture (Forest Service), Interior (Bureau of Land Management, Fish and Wildlife Service, Bureau of Indian Affairs, National Park Service); Navajo Nation, Hopi Tribe, Hualapai Tribe
DOE/EIS-0232: 2004 Power Marketing Program	✔					Interior (Bureau of Reclamation)
DOE/EIS-0236: Stockpile Stewardship and Management	✔					Environmental Protection Agency
DOE/EIS-0238: Continued Operation of Los Alamos National Laboratory Site-wide				✔		Los Alamos County
DOE/EIS-0240: Disposition of Surplus Highly Enriched Uranium	✔					Environmental Protection Agency
DOE/EIS-0241: Hood River Fisheries Project		✔	✔			Confederated Tribes of the Warm Springs Reservation; Oregon
DOE/EIS-0243: Nevada Test Site and Off-site Locations Site-wide	✔			✔		Air Force, Defense Nuclear Agency, Interior (Bureau of Land Management, Fish and Wildlife Service); Nye County
DOE/EIS-0265: BPA Watershed Management Program	✔					Interior (Bureau of Reclamation, Natural Resources Conservation Service)
DOE/EIS-0281: Sandia National Laboratories Site-Wide	✔					Air Force
DOE/EIS-0285: Transmission System Vegetation Management	✔					Agriculture (Forest Service), Interior (Bureau of Land Management)
DOE/EIS-0287: High-Level Waste and Facilities Disposition, Idaho			✔			Idaho
DOE/EIS-0288: Production of Tritium in a Commercial Light Water Reactor	✔					Tennessee Valley Authority
DOE/EIS-0293: Conveyance and Transfer of Certain Land Tracts at Los Alamos National Laboratory	✔	✔		✔		Agriculture (Forest Service), Interior (National Park Service, Bureau of Land Management, Bureau of Indian Affairs); San Ildefonso Pueblo; Los Alamos County
DOE/EIS-0297: Griffith Energy Project	✔					Interior (Bureau of Land Management)

Federal Agencies Adopt Unified Watershed Management Policy

A Unified Federal Policy on watershed management has been adopted by the Departments of Agriculture, Commerce (National Oceanic and Atmospheric Administration), Defense, Energy, and the Interior; the Environmental Protection Agency; the Tennessee Valley Authority; and the Army Corps of Engineers (65 FR 62565; October 18, 2000). Dr. David Michaels, Assistant Secretary of Environment, Safety and Health, signed the policy for DOE.

The policy is "intended to provide a framework to enhance watershed management for the protection of water quality and the health of aquatic ecosystems on Federal lands." As one of 111 action items in the President's 1998 *Clean Water Action Plan: Restoring and Protecting America's Waters*, the policy is part of the administration's initiative to enhance Federal progress toward achieving the goals of the Clean Water Act. Agencies will implement this policy as individual agency laws, missions, funding, and fiscal and budgeting authorities permit.

The policy has two goals: for Federal agencies to use a watershed approach to prevent and reduce pollution of surface and ground waters resulting from Federal land and resource management activities, and to accomplish this in a unified and cost-effective manner. To accomplish these goals, the signatory agencies will:

(1) Develop a science-based approach to watershed assessment for Federal lands. Watershed assessment information will become part of the basis of identifying management opportunities and priorities and for developing alternatives to protect or restore watersheds.

(2) Use a watershed management approach when protecting and restoring watersheds.

(3) Improve their compliance with water quality requirements under the Clean Water Act.

(4) Enhance collaboration in general: improve cooperation among Federal agencies and with States, Tribes, and local governments; expand opportunities for stakeholder participation and for dialogue with private landowners; and coordinate monitoring and share training, information, and technical expertise.

In responding to public comments concerning NEPA review for the policy, the preamble states that the policy is a broad statement that speaks to general concepts and principles, does not establish or alter existing agency programs, and is not defined to the point that it can be meaningfully analyzed. The agencies will fully comply with NEPA and other applicable laws at the appropriate time, such as when the policy is used to develop proposals for specific policies, programs, or projects.

The policy and related information, including the 1998 Clean Water Action Plan, are available at www.cleanwater.gov/. For more information on DOE's partnership in the Unified Federal Policy, contact Colleen Ostrowski, Office of Environmental Policy and Guidance, at colleen.ostrowski@eh.doe.gov or phone 202-586-4997.

Advisory Council on Historic Preservation To Issue Revised Regulations for Section 106

The Advisory Council on Historic Preservation on November 17, 2000, voted to adopt revised regulations governing Section 106 of the National Historic Preservation Act (16 USC 470f). The Council expects to publish the revised regulations and accompanying preamble in the *Federal Register* in early December, and the regulations would become effective 30 days later. Until then, the current Section 106 regulations, "Protection of Historic Properties" (36 CFR Part 800, effective June 17, 1999), remain in effect. (See *Lessons Learned Quarterly Report*, June 1999, page 3.)

The revised regulations result from a rulemaking process in which the Council republished its current regulations as a proposed rule for public comment (ending in August 2000). The Council states that, while the revised regulations incorporate changes responding to public comments, the core Section 106 review process is maintained, and the Council does not anticipate any serious problems in a transition from the current regulations to the newly revised regulations.

Facing litigation that might invalidate its 1999 rulemaking, the Council had proposed (65 FR 55928; September 15, 2000) to suspend its current regulations and adopt them as guidelines. Commentors overwhelmingly advised against suspension, however, and in response, the Council has withdrawn its proposal.

Check the Council Web site (www.achp.gov/news.html) in early December for more information.

An e-NEPA Reminder: Accurate Electronic Files Are Essential for Web Publication

By: Denise Freeman, Acting NEPA Webmaster, *Office of NEPA Policy and Compliance*

Electronic files of NEPA documents published on the DOE NEPA Web must be complete and accurate. For this reason, we ask a NEPA Document Manager or NEPA Compliance Officer who submits a file for Web publication to complete a DOE NEPA Document Certification and Transmittal Form (available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Tools). The signed certification form tells us that a quality control review of the electronic file has been performed and the file is a true copy of the approved NEPA document. (See *Lessons Learned Quarterly Report*, June 2000, page 11, for additional information concerning Web publication, including timing recommendations and electronic file submittal procedures.)

Unintentional Conversion of "μg" to "mg" in Web-published EIS Causes Public Concern

The importance of ensuring the accuracy of electronic files for Web publishing was highlighted recently when a reader questioned the beryllium exposure data presented in the Web-published version of the EIS for Continued Operation of the Lawrence Livermore National Laboratory (LLNL) and the Sandia National Laboratories (DOE/EIS-0157; August 1992). The reader, a former LLNL employee concerned about potential past exposure to beryllium, became alarmed because the beryllium exposure data in the on-line EIS indicated exposure to beryllium at far greater levels than the Bay Area Quality Management District Regulation's governing standard of 10^{-5} micrograms/cubic meter ($\mu g/m^3$).

Upon investigation, however, the Web-published version of the EIS was found to be wrong; when a paper copy of the EIS was scanned and saved electronically, some of the correct "microgram" units were converted into incorrect "milligram" units – that is, the scanner misread "μg" as "mg." A representative from DOE's Office of Environment, Safety and Health contacted the former worker and provided the correct information.

This EIS was among the first documents to be Web-published and technology has since improved, but this incident reminds us of the need to be sure that our NEPA documents are accurate – for both Web publishing and in general. The electronic files for the LLNL EIS are being corrected. In the interim, we have added notes to the Web files for this EIS alerting users to the incorrect characters.

Quality Control Measures

The need to publish information on-line promptly and resource limitations may make it difficult to perform the thorough proofreading necessary to ensure character-for-character correspondence between an electronic document and the paper copy. A good way to ensure 100% accuracy is to verify that the electronic file submitted for Web publication is identical to the file used to print the document, and then compare the electronic file to a printed copy.

Recommendations

- ✔ Follow EH's *Electronic Publishing Standards and Guidelines* (Version 6, February 2000), available at tis.eh.doe.gov/nepa under DOE NEPA Tools.
- ✔ Coordinate early with the DOE NEPA Webmaster on technical and timing requirements.
- ✔ Convert the document files into a Web-ready electronic format, such as portable document format (pdf) or hypertext markup language (html).
- ✔ Compare the electronic file version closely against an authentic paper copy. This is particularly important for graphics, documents translated from one word processing software program to another, and any scanned pages.
- ✔ Make sure the e-files are complete (e.g., not missing a volume).

When submitting an electronic file for Web publication, provide a completed DOE NEPA Document Certification and Transmittal Form to Denise Freeman, Office of NEPA Policy and Compliance. She may be contacted at denise.freeman@eh.doe.gov or phone 202-586-7879.

Use QCPTEEA to Reduce Abbreviations

The Draft EIS for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain (DOE/EIS-0250; July 1999) commendably uses only 15 abbreviations – a list short enough to be presented on the inside cover. Typically, however, DOE NEPA documents contain far too many abbreviations.

Abbreviations, as shortened forms of longer and often complex terms, names, and phrases, can help both writer and reader. Reader-friendliness suffers, however, when a reader must deal with many unfamiliar abbreviations – and even those that are commonly understood within DOE may be unfamiliar to general readers. Using few abbreviations helps make documents more comprehensible to decision makers and the public.

Recommendations

- ✔ Consider whether an abbreviation is appropriate, weighing whether it is better to be concise or more complete and explicit.
- ✔ In DOE NEPA documents, it is usually appropriate to abbreviate NEPA terms (NEPA, EIS), the subject site or facility name (LANL for Los Alamos National Laboratory, WIPP for Waste Isolation Pilot Plant), or an important component of the proposed action (HLW for high-level waste).
- ✔ Do not abbreviate a term or phrase that will appear infrequently; such an abbreviation is unnecessary and the reader will forget its meaning.
- ✔ If an abbreviation is useful (for example, because a long name or phrase is prevalent throughout the document), define it the first time it appears in each chapter.
- ✔ A shortened phrase or word can be used in place of an abbreviation. After introducing a phrase like Quality Control Process to Eliminate Excessive Abbreviations, instead of QCPTEEA, use "abbreviation elimination process," or even "Process."

Additional guidance is available at many Web sites. See the Plain Language Action Network at www.plainlanguage.gov/library/abbreviation.htm, for example, or the Good Grammar, Good Style™ Archive at www.protrainco.com/info/grammar-archives.htm (under the Articles menu, select "How to Get Rid of Acronyms"). LL

NEPA Mini-guidance Collection Available

The Office of NEPA Policy and Compliance has issued a collection of mini-guidance articles compiled from the *Lessons Learned Quarterly Report* from December 1994 to September 2000. These articles, developed by the NEPA Office in consultation with the Office of General Counsel and others, contain procedural interpretations and recommendations on a variety of NEPA-related topics. A draft version of this collection was distributed at the May 2000 NEPA Compliance Officers Meeting.

"Mini-guidance Articles from *Lessons Learned Quarterly Reports*" will be mailed to members of the DOE NEPA Community and will be available in electronic format on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Tools. Paper copies will be available upon request from the Office of NEPA Policy and Compliance. For more information, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov. LL

Reminder: Use the *Glossary of Terms*

In reviewing recent DOE EISs, the Office of NEPA Policy and Compliance has noticed that some glossaries have "reinvented the wheel." They contain newly composed – and sometimes rather peculiar – definitions of technical and regulatory terms that DOE commonly uses in its NEPA documents.

Technical and regulatory terms used in NEPA documents should be defined to aid readers' understanding, of course. To foster efficiency and consistency in the preparation of DOE NEPA documents, the DOE NEPA Office prepared a *Glossary of Terms Used in DOE NEPA Documents* (Office of Environment, Safety and Health, September 1998). It provides authoritative definitions for a glossary or related explanatory material, such as text-box explanations of technical concepts. Document preparers sometimes may need to thoughtfully modify the definitions in the glossary to adequately describe how a term is used in a particular document. Wholesale reinvention of definitions is unwarranted and wasteful, however.

The *Glossary* is available on the DOE NEPA Web (tis.eh.doe.gov/nepa/) under DOE NEPA Tools or in booklet form from the Office of NEPA Policy and Compliance. Please address requests and suggestions for additions or further improvements to Denise Freeman at denise.freeman@eh.doe.gov.

NAEP Award Nominations Are Due March 15

The deadline for submitting nominations for the National Association of Environmental Professionals (NAEP) Environmental Excellence Awards is March 15, 2001. For the past four years, this organization has recognized projects and programs that serve as models of excellence in environmental professional practice. Awards are given in a range of categories. Both government and private organizations are eligible to nominate their projects. In June 2000, DOE received three Environmental Excellence Awards, including one for its NEPA Lessons Learned Program (*Lessons Learned Quarterly Report*, September 2000, page 3).

NAEP is a nonprofit professional association with about 5,000 members, many of whom are NEPA practitioners. The association publishes a peer-reviewed journal, *Environmental Practice*, and sponsors an annual conference that typically includes a substantial NEPA component. (See the cumulative index in *Lessons Learned Quarterly Report*, September 2000, for previous NAEP articles.)

The 2001 NAEP conference, "Environmental Policy and Process: New Directions or Staying on Course?" will be held June 24 to 28 in Arlington, Virginia. For the award nomination form, more information on the 2001 conference, and additional information about NAEP, visit the NAEP Web site at www.naep.org.

NEPA Order Revised (continued from page 1)

The revised DOE NEPA Order is available on the DOE Directives Home Page (peak.lanl.gov:1776/htmls/directives.html) under DOE Current Directives, and on the DOE NEPA Web, tis.eh.doe.gov/nepa/, under DOE NEPA Tools.

For more information on NNSA NEPA activities, contact a NNSA NEPA Compliance Officer:

Defense Programs

Henry Garson
henry.garson@ns.doe.gov
301-903-0470

Jay Rose
james.rose@ns.doe.gov
202-586-5484

Materials Disposition

Hitesh Nigam
hitesh.nigam@hq.doe.gov
202-586-0750

Nonproliferation and National Security

Richard Speidel
richard.speidel@hq.doe.gov
202-586-5009

For general matters relating to the DOE NEPA Order, contact Yardena Mansoor, Office of NEPA Policy and Compliance, at yardena.mansoor@eh.doe.gov or phone 202-586-9326.

NEPA Contracts: Measuring Performance Quality – *Or, What Have You Done for Me Lately?*

By: Dawn Knepper, *Contracting Officer, Albuquerque Operations Office*

Services can be ambiguous to define – and even more difficult to measure. How do you know if you are getting the quality of service you think your project requires? How can your answer help others who need similar services? These questions are not as daunting as they may seem. There is a simple answer.

Service quality is best measured by customer satisfaction. When you issue a task under the DOE-wide NEPA contracts, you know if you are happy with the work you receive. As NEPA Document Manager, you know if the resulting NEPA document meets the program needs or not. You certainly know if the contractor performance has made your work easier, faster, and better. When reduced to these terms, measuring service quality is suddenly easier, isn't it?

But it isn't enough for you to know if you are pleased with the quality of the NEPA work provided. You have to tell other NEPA Document Managers and the performing contractor what you think. Keeping knowledge like this to yourself is robbing other document managers of important information and inhibits the contractors in improving their performance. Sharing what you know not only is easy – it is essential.

Sharing what you know not only is easy – it is essential.

The DOE-wide NEPA contracts require NEPA Document Managers to rate contractor performance using the DOE NEPA Contractor Performance Evaluation Form. This evaluation also is required by the DOE NEPA Order and by the procurement regulations at FAR 42.15. You can fulfill all three of these requirements by filling out one simple form. Detailed procedures and the evaluation form are in Section 7 of DOE's *National Environmental Policy Act Contracting Reform Guidance* (December 1996), available in the DOE NEPA Compliance Guide and on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Tools. Check the blocks, add a sentence or two where you see fit, and you have met three requirements in one swell foop (oops, fell swoop). It takes only a few minutes.

Do you like the work you have been getting from the DOE-wide NEPA contractors? Do you hate the work you have been getting? You can help other NEPA Document Managers by documenting your opinion. Past performance information should be considered in assigning new task orders. Also, the contractors may use these forms to support their bids for future work from DOE and other agencies. [1]

We can measure how well you like using the DOE-wide NEPA contracts by knowing that 17 offices have issued 65 tasks for more than $40 million, in an average time of only 24 days. We hear new users exclaim how easy the contract is to use and how happy they are with the process. But to best help us plan the next acquisition for DOE-wide NEPA contracts, we also need to demonstrate the quality of performance under the contracts. ***We need you*** to protect this useful vehicle by completing your performance evaluation.

For additional information, contact Dawn Knepper at dknepper@doeal.gov or phone 505-845-6215, or Yardena Mansoor at yardena.mansoor@doe.eh.gov or phone 202-586-9326. Also see Lessons Learned Quarterly Reports, *March 1996, page 7, and June 1996, page 5.* LL

[1] *Completed evaluations are source selection information and will be released only to government personnel and the contractor whose performance is being evaluated, per FAR 42.1503. Past performance information is shared with other government agencies when requested to support future award decisions for a period of three years after completion of contract performance.*

DOE-Wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide contracts. For previously reported tasks, see "Contracting, NEPA" in the *Lessons Learned Quarterly Report* Cumulative Index in the September 2000 issue. For questions or comments on the DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or phone 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
EA for Restoration of Energy Technology Engineering Center Site	Donna Sutherland 510-637-1563 donna.sutherland@oak.doe.gov	8/31/00	Battelle
EA for Facilities Revitalization Project at Oak Ridge National Laboratory	Mark Belvin 865-576-7321 belvinwm@ornl.gov	9/26/00	Tetra Tech, Inc.
EA for US Enrichment Corp. Centrifuge, East Tennessee Technology Park	Phil Stumbo 865-576-1828 stumbopi@oro.doe.gov	9/28/00	Tetra Tech, Inc.
EA for Alternative Energy Generation Facility at Nevada Test Site	Kevin Thornton 702-295-1541 thornton@nv.doe.gov	10/16/00	Battelle
EIS for Proposed Relocation of LANL TA-18 Missions	Jay Rose 202-586-5484 james.rose@ns.doe.gov	12/1/00	SAIC

Transitions

Mary Greene Leaves NEPA Office

Mary Greene, who served in DOE's Office of NEPA Policy and Compliance since 1994, has taken a position as Chief of the Hazardous Waste Disposal Section at the Drug Enforcement Administration (Department of Justice) in Arlington, Virginia. She will manage the program that ensures that hazardous wastes from illegal drug operations are cleaned up in compliance with all applicable requirements.

While at DOE, Ms. Greene worked with the Environmental Management Program on its EISs for the Rocky Flats and Oak Ridge sites and with Defense Programs on its Site-wide EIS for Sandia National Laboratories. She also provided leadership for the Office of Environment's April 2000 guidance on "Clean Air Act Conformity Requirements and the National Environmental Policy Act Process."

Mary wishes to thank all the people that she has worked with during the last six years, especially the Program and Field NEPA advocates and the many contractors who provided NEPA-related assistance. She can be reached at 202-353-9644. The Office of NEPA Policy and Compliance thanks Mary for her excellent contributions to the Department's NEPA compliance program and wishes her well in her new position.

Welcome to Carl Sykes

The Office of NEPA Policy and Compliance welcomes Carl Sykes to its ranks. He joins us from the Los Alamos Area Office, where he worked with the NEPA Compliance Officer and later as the DOE Facility Representative at the Los Alamos Neutron Science Center. Previously, he worked for nine years at the Rocky Flats Field Office, where he contributed to the development and review of several NEPA documents involving nuclear projects at the site, among other assignments.

Carl Sykes joins the Science/Nuclear Unit of the NEPA Office. He can be reached at carl.sykes@eh.doe.gov or phone 202-586-9924.

Darlene Low: New NCO at Southwestern Power

Darlene Low now serves as the NEPA Compliance Officer for the Southwestern Power Administration, replacing Gary Bridges. Ms. Low has been with Southwestern since 1989. In addition to serving as NCO and as Special Assistant for Environment, Safety, and Health, she is also responsible for Southwestern's occupational safety and health programs. Prior to Southwestern, she worked for the Alaska Power Administration, the Veterans Administration, and the U.S. Fish and Wildlife Service. She can be reached at low@swpa.gov or phone 918-595-6750.

DOE Litigation Update

DOE Sued on Paducah Experimental Cleanup Technology – Injunction Denied on CERCLA Grounds; Related Lawsuit Partially Settled

In September 2000, the Regional Association of Concerned Environmentalists (RACE) and two individuals sued DOE in the U.S. District Court for the Western District of Kentucky. The complaint alleged that DOE violated NEPA by failing to prepare an EA or an EIS for the implementation of the Permeable Treatment Zone project at the Paducah Gaseous Diffusion Plant. RACE is an environmental organization whose members live in and around Paducah.

The proposed project, part of DOE's Innovative Technology Remedial Demonstration Program at Paducah, is an experimental technology intended to treat contaminated groundwater and help prevent migration by injecting a permeable "wall" of treatment material into the ground at depths up to 120 feet. Contaminated groundwater flows through and reacts with, or is absorbed by, the treatment material.

Arguing that the experimental technology has never been used on radioactively contaminated groundwater, nor at these depths, the plaintiffs claim that potential problems could occur with the use of the technology that could cause further contamination of the groundwater or discharge into the Ohio River or aquifers.

The plaintiffs' NEPA claim asserts that this proposal has never been subject to a hard look at the impacts of the action or at reasonable alternatives. They sought an injunction to prevent DOE from implementing its proposal before completion of an EA or EIS. On October 24, 2000, the judge denied the plaintiffs' request for injunction, on the grounds that Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) bars legal challenges to a removal action under CERCLA until the action is completed.

In a lawsuit filed earlier by the same plaintiffs (*Lessons Learned Quarterly Report*, June 2000, page 18) regarding DOE's proposed Vortec demonstration project at Paducah, the judge issued an order on November 22, 2000, that settles one of the plaintiffs' claims. In the settlement, DOE agrees not to conduct thermal waste treatment at the Vortec facility for at least one year, and correspondingly to issue a revised Finding of No Significant Impact for the Vortec project. Further, DOE would provide at least 30 days notice to the plaintiffs and further NEPA review, including a public comment opportunity, for any subsequent proposal to use Vortec for thermal treatment. Litigation will continue on the remaining issue in the lawsuit, that is, whether DOE must prepare a site-wide EIS for the Paducah site. LL

Training Opportunities

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

- **Environmental Laws and Regulations**
  Las Vegas, NV: December 13, 2000
  Fee: $545

  An Overview of Environmental Laws and Regulations for Citizens Advisory Boards
  Albuquerque, NM: January 30, 2001
  Fee: $335

  An Overview of Environmental Laws and Regulations for Managers
  Oklahoma City, OK: February 1, 2001
  Las Vegas, NV: February 13, 2001
  Fee: $335

  Communicating with the Public
  Paducah, KY: February 27, 2001
  Fee: $TBD

  USDA Graduate School/
  DOE National Environmental Training Office (NETO)
  Phone: 803-725-0818
  E-mail: NETO@srs.gov
  Internet: www.em.doe.gov/neto/

- **Advanced Topics in Environmental Impact Assessment**
  Dallas, TX: February 21 to 23, 2001
  Fee: $695

  Environmental Impact Training
  Dr. Larry Canter, University of Oklahoma
  Phone: 830-596-8804
  E-mail: info@eiatraining.com
  Internet: www.eiatraining.com

- **Environmental Law**
  Washington, DC: February 7 to 9, 2001
  Fee: $795

  ALI-ABA/National Trust for Historic Preservation
  Phone: 800-253-6397
  E-mail: phunt@ali-aba.org
  Internet: www.ali-aba.org

- **Making the NEPA Process More Efficient: Scoping and Public Participation**
  Durham, NC: January 10 to 12, 2001
  Fee: $640

  Socioeconomic Impact Analysis Under NEPA
  Durham, NC: February 6 to 8, 2001
  Fee: $640

  Nicholas School of the Environment
  Duke University
  Phone: 919-613-8082
  E-mail: britt@duke.edu
  Internet: www.env.duke.edu/

- **Clear Writing for NEPA Specialists**
  Boise, ID: December 5 to 7, 2000
  Anchorage, AK: March 6 to 8, 2001
  Fee: $795

  How to Manage the NEPA Process and Write Effective NEPA Documents
  Annapolis, MD: January 9 to 12, 2001
  Fee: $995

  How to Manage the Environmental Impact Analysis Process
  Orlando, FL: February 6 to 9, 2001
  Fee: $995

  Overview of the NEPA Process
  Phoenix, AZ: February 27, 2001
  Fee: $195

  Reviewing NEPA Documents
  Phoenix, AZ: February 28 to March 2, 2001
  Fee: $795

  The Shipley Group
  Phone: 888-270-2157 or 801-298-7800
  E-mail: ben@shipleygroup.com
  Internet: www.shipleygroup.com

- **Risk Analysis for Chemicals and Radionuclides: A Review of the State-of-the-Art**
  Kiawah Island, SC: March 5 to 9, 2001
  Fee: $1,295 (government employees)
  $1,195 (through January 31, 2001)

  Risk Assessment Corporation
  Phone: 312-372-1255
  E-mail: capsltd@mcs.com
  Internet: www.racteam.com

EAs and EISs Completed (July 1 – September 30, 2000)

EAs

Albuquerque Operations Office/Defense Programs – National Nuclear Security Administration
DOE/EA-1247 (3/9/00)[1]
Electrical Power Systems Upgrade Project at Los Alamos National Laboratory, NM
Cost: $250,000
Time: 26 months

Bonneville Power Administration
DOE/EA-1328 (65 FR 51817; 8/15/00)
Tanner Electric Transmission Line Project, North Bend, WA
Cost: $70,000
Time: 9 months

Los Alamos Area Office/Defense Programs – National Nuclear Security Administration
DOE/EA-1329 (8/10/00)
Wildfire Prevention Projects, Los Alamos National Laboratory, Los Alamos, NM
Cost: $150,000
Time: 9 months

National Energy Technology Laboratory/Fossil Energy
DOE/EA-1331 (7/31/00)
Remediation of Subsurface and Groundwater Contamination at the Rock Springs In Situ Oil Shale Retort Site, Sweetwater, WY
Cost: $44,000
Time: 7 months

Oak Ridge Operations Office/Environmental Management
DOE/EA-1324 (7/10/00)
Sale of Zinc Bromide for Reuse, Oak Ridge National Laboratory, Oak Ridge, TN
Cost: $40,000
Time: 9 months

EISs

Bonneville Power Administration
DOE/EIS-0285 (65 FR 39146; 6/23/00)[2]
(EPA Rating: EC-1)
Transmission System Vegetation Management Program for CA, ID, MT, OR, UT, WA, WY
Cost: $317,000
Time: 35 months

Nuclear Energy, Science and Technology
DOE/EIS-0306 (65 FR 47988; 8/4/00)
(EPA Rating: EC-2)
Treatment and Management of Sodium-Bonded Spent Nuclear Fuel, Idaho National Engineering and Environmental Laboratory, ID, and the Savannah River Site, SC
Cost: $2,600,000
Time: 18 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

[1] *Not previously reported in* Lessons Learned.
[2] *Cost not previously reported.*

NEPA Document Costs and Completion Times

Costs

EISs

- The costs of the two EISs reported in this quarter were $317,000 (completed last quarter) and $2,600,000.
- Cumulatively, for the 12 months that ended in September 30, 2000, the median cost for the preparation of 8 EISs was $1.8 million; the average cost was $3.8 million.

EAs

- For this quarter, the median cost of four EAs was $57,000; the average cost was $76,000.
- Cumulatively, for the 12 months that ended September 30, 2000, the median cost for the preparation of 20 EAs was $70,000; the average cost was $98,000.

Completion Times

EISs

- The completion time for the EIS completed this quarter was 18 months.
- Cumulatively, for the 12 months that ended September 30, 2000, the median completion time for the preparation of 8 EISs was 29 months; the average was 27 months.

EAs

- For this quarter, the median completion time of four EAs was 9 months; the average was 8 months.
- Cumulatively, for the 12 months that ended September 30, 2000, the median completion time for the preparation of 20 EAs was 9 months; the average was 14 months.

Recent EIS-related Milestones

(September 1 – November 30, 2000)

Notice of Intent

Western Area Power Administration
DOE/EIS-0322
Proposed Sundance Energy Project, Coolidge, AZ
8/22/00 (65 FR 53289; 9/1/00)

Draft EIS

Environmental Management
DOE/EIS-0303
Savannah River Site, High-Level Waste Tank Closure, Aiken, SC
November 2000 (65 FR 70568; 11/24/00)

Record of Decision

Nuclear Energy, Science and Technology
DOE/EIS-0306
Treatment and Management of Sodium-Bonded Spent Nuclear Fuel
9/11/00 (65 FR 56565; 9/19/00)

Special Environmental Analysis

National Nuclear Security Administration / Defense Programs
SEA-003
Special Environmental Analysis for Emergency Actions Taken in Response to the Cerro Grande Fire at Los Alamos National Laboratory, Los Alamos, NM
September 2000 (65 FR 60925; 10/13/00)

Supplement Analyses

Bonneville Power Administration
Wildlife Mitigation Program (DOE/EIS-0246)
DOE/EIS-0246/SA-11
Shoshone-Bannock Mitigation Acquisition (Rudeen Ranch Property)
(Decision: No further NEPA review required)
August 2000[1]

Nez-Perce Tribal Hatchery Program (DOE/EIS-0213)
DOE/EIS-0213-SA-01
Nez Perce Tribal Hatchery Project – Modifications to Original Proposal
(Decision: No further NEPA review required)
June 2000[1]

[1] *Not previously reported in* Lessons Learned.

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 2000. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping and Public Participation

What Worked

- *Early scoping*. Early scoping helped shape a downsized program and helped program managers recognize that environmental impacts needed to be fully explored to have an effective program.
- *Individual discussions with interested parties.* One-on-one discussions with affected landowners and government agency representatives helped DOE develop the alternatives.
- *Inviting public comments via the Internet.* E-mail and Web site options facilitated commenting on the EIS and made it easier to analyze comments.
- *Active use of public input.* Public comments were used to help define the program, plan site-specific projects, and devise mitigation measures.

What Didn't Work

- *Lack of interest.* The public did not participate to any significant degree in the process, in spite of letters sent out, newspaper and radio ads, and public meetings.

Data Collection/Analysis

What Didn't Work

- *Lack of specific technical skills.* It was difficult to find staff or contractors capable of analyzing herbicide impacts.

Document Completion

What Worked

- *Congressional commitments.* Commitments to Congress kept schedules from lengthening and gave a push to get the EIS completed.

What Didn't Work

- *Late internal review comments.* Reviewers who provided significant comments during the final review caused problems in completing the document by the scheduled date.
- *Unexpected reductions in funding.* The expected budget for the program was reduced by half, forcing the scope and schedule of the EA to be revisited several times.
- *Determining the preferred alternative.* There were delays in determining a preferred alternative and having it approved by the Secretary.

Teamwork

What Worked

- *A stable Advisory and Review Team.* A project Advisory and Review Team with representatives from General Counsel; Environment, Safety and Health; and program and field offices had stable membership, which was a big plus.
- *A NEPA Document Manager from the project.* The Document Manager was directly involved in the program and had control of project and EA contractor funds.
- *Meetings in person.* Meeting in person, rather than communicating only by e-mail and telephone, facilitated comment resolution.
- *Providing enough time.* Giving contractors and others on the project team sufficient time to complete their work facilitated teamwork.

What Worked and Didn't Work (continued)

Agency Planning and Decision Making

What Worked

- *Scoping the program.* The NEPA process greatly assisted managers in the overall scoping and site selection for the program.
- *Identifying the best alternative.* The EA process was used to identify the best overall alternative, which was selected as the proposed action alternative.

What Didn't Work

- *Decision making based on fear.* The decision on the alternative selected in this EA process was based on local politics and fear.

Enhancement/Protection of the Environment

- *EA as a planning tool.* The environment will be protected as a result of the planning facilitated by the EA and by the bounding of research and operational conditions described in the EA.

Guidance Needs Identified

- There is a need for guidance concerning the Administrative Record for EAs.
- Guidance on the contents of distribution letters might have prevented the frustration of writing several versions.

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 of 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decision making.

- For this quarter, in which there were four EAs and one EIS, one of four respondents rated the NEPA process as "effective."
- One respondent who rated the process as "1" explained that "the NEPA process didn't necessarily facilitate informed and sound decision making, but it did add credence to the decision."
- A respondent who rated the process as "4" explained that public input during the NEPA process helped refine the alternatives and added mitigation measures.

EIS Cohort Update

The Office of NEPA Policy and Compliance examines trends in NEPA document costs and completion times by tracking sets of EISs ("cohorts"). In the June 1997 issue of *Lessons Learned Quarterly Report*, we began tracking cost and completion time data for a set of 23 EISs started after July 1, 1994 ("Cohort 94"). We reported the results for Cohort 94 in the June 1999 issue: the median completion time of Cohort 94 was 21 months overall, 22 months for programmatic and site-wide EISs, and 19 months for project-specific documents.

Also in the June 1997 issue, we began tracking "Cohort 97" – a set of 21 EISs started between April 1, 1997, and March 31, 1999. (DOE started 26 EISs within this time frame, but five EISs have been cancelled or withdrawn.) As of November 2000, 12 EISs in Cohort 97 have been completed. Table 1 provides a snapshot of the status of Cohort 97 EISs for each cognizant DOE program office, and Table 2 summarizes cost and time data for the completed EISs.

The median completion time of the 12 Cohort 97 EISs completed to date is 18 months, including 33 months for programmatic and site-wide documents, and 18 months for project-specific documents. Based on the results so far, the median completion time for all Cohort 97 EISs will be between 21 and 31 months. We will continue to track this cohort and report on it from time to time.

Table 1. EIS Cohort by Program Office (EISs Started between 4/1/97 and 3/31/99)

Program	Number in Cohort	Programmatic/ Site-wide	Project-specific	Number Completed through 12/1/00 (Completion Times)
Total	21	3	18	12
Bonneville Power Administration	1	1	0	1 (35 months)
Defense Programs/NNSA	5	2	3	3 (13, 18, and 29 months)
Environmental Management	6	0	6	2 (14 and 17 months)
Fossil Energy	4	0	4	1 (31 months)
Fissile Materials Disposition/NNSA	1	0	1	1 (29 months)
Nuclear Energy, Science and Technology	1	0	1	1 (18 months)
Office of Science	1	0	1	1 (21 months)
Western Area Power Administration	2	0	2	2 (12 and 14 months)

Table 2. EIS Cohort Cost and Time Results for Completed Documents*

EIS Type	Number Completed	Completion Times (months)			Costs ($M)		
		Median	Average	Range	Median	Average	Range
Total	12 (of 21)	18	21	12 to 36	2.1	3.7	0.3 to 12.2
Programmatic or Site-wide	2 (of 3)	33	33	29 to 36	5.2	5.2	0.3 to 10.1
Project-specific	10 (of 18)	18	19	12 to 31	2.1	3.3	0.5 to 12.2

** These data should be interpreted cautiously because the costs and completion times for the entire cohort may differ substantially from the data shown here. For example, the median completion time for the entire cohort will be between 21 and 31 months.*