

# LESSONS LEARNED

March 1, 2010; Issue No. 62


First Quarter FY 2010

## CEQ Celebrates NEPA at 40 . . . and So Do We!

The Council on Environmental Quality (CEQ) marked the 40<sup>th</sup> anniversary of the National Environmental Policy Act (NEPA), and of CEQ itself, with a celebratory symposium and reception in Washington, DC, on February 18, 2010. CEQ Chair Nancy Sutley welcomed past CEQ Chairs and General Counsels and current NEPA practitioners from Federal agencies. She invited all to reflect on NEPA's record of accomplishments and to take stock of where NEPA is today and our plans for its future.

Underscoring President Obama's proclamation that NEPA remains a vital tool in protecting our environment and revitalizing our economy, and adding that a strong economy and a healthy environment go hand in hand, Ms. Sutley emphasized that NEPA gives us the flexibility to address environmental priorities as they evolve. Our challenge, she stated, is to do so. She characterized

NEPA as a visionary, transformative, and integrating statute, passed with overwhelming bipartisan support, that has withstood the test of time. In going forward, however, we need to affirm NEPA's importance and consider what we can do to improve its implementation, she said.

In this issue of *LLQR* are a reprint of President Obama's NEPA Proclamation, highlights from the CEQ Symposium discussions on NEPA's legacy and its significance to 21<sup>st</sup> century issues, and descriptions of four CEQ initiatives to modernize and reinvigorate NEPA implementation. Also, reflecting DOE's observance of 40 years of NEPA, this issue highlights the benefits that DOE's NEPA practitioners have found in the NEPA process and includes the first of a year-long series of contributed essays on NEPA. 



## DOE Launches Categorical Exclusion Database

DOE has taken another major step to increase transparency and openness in its implementation of NEPA by creating a comprehensive database of its categorical exclusion (CX) determinations. The searchable, user-friendly database, and a complete set of the "raw" data from the database, are available on the DOE NEPA Website ([www.gc.energy.gov/nepa](http://www.gc.energy.gov/nepa)) and have been registered with [Data.gov](http://Data.gov).

*Data.gov* is a priority Open Government Initiative of the Obama Administration intended to increase public access to important government information. The CX database is the first and so far the only NEPA-specific tool registered with *Data.gov*. The database currently includes more than 700 DOE CX determinations.

*This sets a new standard of transparency for the Federal government's implementation of NEPA, and shines a light on an important part of our decisionmaking process.*

– Scott Blake Harris, DOE General Counsel

The new database may be searched by state; CX applied; date range; DOE Program, Field, or Site Office; keyword; and whether the CX determination is for a project related to the [American Recovery and Reinvestment Act \(Recovery Act\)](#). Links to CX determination documents are provided. A raw data table (Excel file) containing

(continued on page 18)

## Inside **LESSONS LEARNED**

Welcome to the 62<sup>nd</sup> quarterly report on lessons learned in the NEPA process. In this issue, we start a year-long observance of the 40<sup>th</sup> anniversary of the National Environmental Policy Act. The occasion calls for celebration of NEPA's successes as well as reflection on opportunities for improvement. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

### Celebrating 40 Years with NEPA

CEQ Issues Draft NEPA Guidance.....	3
CEQ NEPA Symposium.....	5
Presidential Proclamation.....	7
Reflections: Professor Mandelker.....	8
NEPA Process Benefits DOE.....	10
CEQ Cites DOE Examples on Climate Change, NEPA.....	13
Recovery Act: No Substantial Delay from NEPA.....	14
DOE NEPA Planning Summaries.....	15
Third Idaho High-Level Waste ROD Issued.....	16
DOT CAFE Standards Final EIS Issued.....	17
DOE CX Rulemaking Planned.....	19
DOE Senior Sustainability Official Named.....	20
EPA To Discontinue EIS Comment Summaries.....	20
Cooperating Agencies Contribute to DOE EISs.....	20
Programmatic Agreement on Historic Preservation Review...21	
GAO: NEPA and Recovery Act Implementation.....	22
Transitions.....	23
April 22 Is Earth Day 40.....	24
Training Opportunities.....	26
EAs and EISs Completed This Quarter.....	28
Cost and Time Facts.....	29
Recent EIS Milestones.....	29
Questionnaire Results.....	32

*Carol Borgstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 3, 2010. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) or 202-586-9326.

### Quarterly Questionnaires Due May 3, 2010

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2010 (January 1 through March 31, 2010) should be submitted by May 3, 2010, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [www.gc.energy.gov/nepa](http://www.gc.energy.gov/nepa) under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov) or 202-586-1771.

### LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Website at [www.gc.energy.gov/nepa](http://www.gc.energy.gov/nepa). Also on the website is a cumulative index.

Printed on recycled paper



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



## Mark Your Calendars: Upcoming Conferences



### National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) will hold its 2010 conference on April 27–30 in Atlanta, Georgia. The theme this year is *Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment*. Topics to be covered include energy and renewable energy issues, environmental policy, public involvement, and sustainability. The preliminary schedule and event registration are now available at [www.naep.org](http://www.naep.org).



### State of Environmental Justice in America

DOE, the National Small Town Alliance, the Howard University School of Law, the U.S. Environmental Protection Agency, and the U.S. Department of Agriculture are co-sponsoring this conference on the State of Environmental Justice in America. The event will be held in Washington, DC, on May 12–14. Contact Melinda Downing, Environmental Justice Program Manager, at [melinda.downing@hq.doe.gov](mailto:melinda.downing@hq.doe.gov) or John Rosenthal, Conference Coordinator, at [ejinamerica@hotmail.com](mailto:ejinamerica@hotmail.com) for further details.

# Celebrating 40 Years with NEPA!

## CEQ Issues Three Draft NEPA Guidance Documents for Public Comment and Launches New NEPA.gov



At its celebration of NEPA's 40<sup>th</sup> anniversary on February 18, 2010, the Council on Environmental Quality (CEQ) announced the availability of draft NEPA guidance on three topics: considering greenhouse gas (GHG) emissions and climate change; mitigation and monitoring; and establishing and applying categorical exclusions (CXs). CEQ also announced the re-launching of [NEPA.gov](http://NEPA.gov), on which the draft guidance is available. "I'm proud to announce these four actions to modernize and reinvigorate NEPA," said CEQ Chair Nancy Sutley, when describing the three draft NEPA guidance products and the redesigned website at CEQ's 40<sup>th</sup> anniversary of NEPA symposium.

In the draft guidance documents, CEQ states its intention to issue final guidance expeditiously after considering public comments, and that CEQ does not intend for the guidance to become effective until after issuance in final form. On February 23, 2010, CEQ published notices of availability of the draft guidance documents in the *Federal Register*. Information about each draft guidance document and their public comment periods are described below.

### Consideration of the Effects of Climate Change and Greenhouse Gas Emissions

"Climate change is among the most critical environmental issues today, and agencies would be foolish not to consider the potential effects of their greenhouse gas emissions," said Ms. Sutley. She indicated that the draft guidance responds to informal requests from Federal agencies and a formal petition from nongovernmental organizations under the Administrative Procedure Act. The draft guidance explains how Federal agencies should analyze the environmental impacts of GHG emissions and climate change when they describe the environmental impacts of a proposed action under NEPA, she said. She noted, however, that the draft guidance does not address climate change impacts of land management activities, and that CEQ requests public comment on this issue before deciding whether to recommend any particular protocols.

The draft guidance advises Federal agencies to consider opportunities to reduce GHG emissions caused by Federal actions and adapt their actions to climate change impacts. Agencies should consider (1) the GHG emissions effects of a proposed action and alternative actions, and (2) the relationship of climate change effects to a proposed action

and alternatives. The draft guidance defines GHGs in accordance with Executive Order 13514 (*Federal Leadership in Environmental, Energy, and Economic Performance*) to include: carbon dioxide (CO<sub>2</sub>), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

### When To Analyze GHG Emissions

Throughout the draft guidance, CEQ emphasizes applying "the rule of reason" in addressing GHG emissions, to ensure that analyses are "commensurate with the importance of the GHG emissions of the proposed action, avoiding useless bulk and boilerplate documentation, so that the NEPA document may concentrate on important issues."<sup>1</sup> Consistent with this principle, the draft guidance advises Federal agencies "to consider, in scoping their NEPA analyses, whether the analysis of direct and indirect GHG emissions from their proposed actions may provide meaningful information to decision makers and the public."

To that end, the draft guidance proposes a presumptive threshold of 25,000 metric tons per year or more of direct CO<sub>2</sub>-equivalent GHG emissions as "an indicator that a quantitative and qualitative assessment may be meaningful to decision makers and the public." The draft guidance clarifies that the 25,000 metric tons per year threshold is not an indicator of significant effects, but rather is a "minimum level of GHG emissions that may warrant some description." The draft guidance also indicates that direct emissions less than this level sometimes may warrant agency consideration (e.g., for "long-term" actions).

The draft guidance addresses a concern that GHG emissions, no matter how small, arguably may have significant impacts, making CX determinations and findings of no significant impact (FONSI) problematic. The draft guidance, however, indicates that CXs and FONSI may be appropriate. For example, the draft guidance states, "In many cases, the GHG emissions of the proposed action may be so small as to be a negligible consideration. Agency NEPA procedures may identify actions for which GHG emissions and other environmental effects are neither individually or cumulatively significant. 40 CFR 1507.3. Many agency NEPA analyses to date have found that GHG emissions from an individual agency action have small potential effects."

(continued on next page)

<sup>1</sup> DOE guidance (Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Second Edition, December 2004) uses the term "sliding-scale principle" in describing this concept.

# Celebrating 40 Years with NEPA!

## CEQ Draft Guidance

(continued from previous page)

### How To Evaluate GHG Emissions

The draft guidance proposes that agencies should focus their analysis on quantifying the annual and cumulative GHG emissions of a proposed action, and on differences in emissions among alternatives. The draft guidance notes that “The estimated level of GHG emissions can serve as a reasonable proxy for assessing climate change impacts . . . .”

More specifically, the draft guidance states that, in the analysis of direct effects, agencies should: “(1) quantify cumulative emissions over the life of the project; (2) discuss measures to reduce GHG emissions, including consideration of reasonable alternatives; and (3) qualitatively discuss the link between such GHG emissions and climate change.” For the latter purpose, the guidance suggests that agencies consider incorporating by reference reports of the U.S. Global Change Research Program ([www.globalchange.gov](http://www.globalchange.gov)).

Some agencies have expressed a concern about the inability to attribute specific global climate change impacts to specific emission sources. The draft guidance addresses this concern, stating: “. . . it is currently not useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions . . . .”

While providing agencies discretion regarding methodology for quantifying GHG emissions, the draft guidance recommends that agencies consider using certain technical documents, among them:

- For large direct emission sources – the Environmental Protection Agency’s Final Rule on Mandatory Reporting of Greenhouse Gases (74 FR 56259; October 30, 2009) ([www.epa.gov/climatechange](http://www.epa.gov/climatechange))
- For “Scope 1” emissions from Federal facilities – GHG emissions accounting and reporting guidance that will be issued under Executive Order 13514 ([www.ofee.gov](http://www.ofee.gov)), and
- For terrestrial carbon sequestration and other projects – the Department of Energy’s 1605(b) Program: *Technical Guidelines, Voluntary Reporting of Greenhouse Gases* ([www.eia.doe.gov/oiaf/1605](http://www.eia.doe.gov/oiaf/1605)).

### Effects of Climate Change on Proposed Actions

The draft guidance notes that climate change can affect the environment of a proposed action in a variety of ways, such as by affecting the integrity of a development or structure by exposing it to a greater risk of flood, storm surge, or higher temperature. Accordingly, the draft

guidance states that “[c]limate change effects should be considered in the analysis of projects that are designed for long-term utility and located in areas that are considered vulnerable to specific effects of climate change (such as increasing sea level or ecological change) within the project’s timeframe.”

### Programmatic Analyses

The draft guidance suggests that it could be useful to consider GHG emissions in aggregate, as part of a programmatic analysis. Such aggregate analyses may be useful in considering compliance with the requirements for Federal agencies to implement sustainable practices and achieve GHG reduction targets under Executive Order 13514.

The public comment period for this guidance ends May 24, 2010 (75 FR 8046). Questions about this draft guidance may be addressed to Eric Cohen, Office of NEPA Policy and Compliance, at [eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov).

### Mitigation and Monitoring

Emphasizing the importance of considering mitigation – measures to avoid, minimize, rectify, reduce, or compensate for adverse environmental impacts – throughout the NEPA process, the draft guidance focuses on ensuring that mitigation commitments are carried out and are effective, particularly where mitigation is essential to render the impacts of proposed actions insignificant (i.e., mitigated FONSI). The draft guidance proposes to amend the 1981 CEQ guidance *Questions and Answers about the NEPA Regulations* (“40 Questions,” available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>) to acknowledge the use of enforceable mitigation measures to support a FONSI.

To ensure that mitigation commitments are implemented, the draft guidance states that “agencies should create internal processes to ensure that mitigation actions . . . are documented and . . . appropriate implementation plans are created . . . .” Specific recommendations include “. . . conditions in financial agreements, grants, permits or other approvals, and conditioning funding on implementing the mitigation.” The draft guidance also states that agencies should identify the duration of the agency action and the associated mitigation measures.

Noting each Federal agency has a “continuing duty to gather and evaluate new information relevant to the environmental impact of its actions,” the draft guidance also addresses monitoring. Monitoring is intended not only to ensure that mitigation measures are in fact

(continued on page 12)

# Celebrating 40 Years with NEPA!

## CEQ's Anniversary Symposium Addresses NEPA's Contributions, Future Potential



Speakers at the Council on Environmental Quality's (CEQ's) NEPA Symposium on February 18, 2010, discussed NEPA's contributions over its 40-year history and its potential for the future. Their primary focus was the public involvement aspect of the NEPA process, particularly the transparency that it fosters and its strong relationship to President Obama's openness initiative. NEPA's effect on Federal agency culture and its replication around the world were also emphasized. Looking ahead, Symposium speakers underscored the transformative nature of NEPA and how it can be used to address new environmental issues such as climate change.

### NEPA's Legacy

Dinah Bear, CEQ General Counsel from 1983–1993 and 1995–2008, posed a series of questions to a panel of NEPA experts.

***Has NEPA really helped fulfill that very important goal of the survival of human beings or has it gotten bogged down in the process?*** NEPA was prescient and remarkable for its time, as its authors foresaw “sustainability” and embraced public engagement, said Lee Paddock, Associate Dean and Professorial Lecturer, The George Washington University Law School. Although NEPA drives real change and better environmental outcomes, that effect is not always visible to the public as it often occurs during early internal planning, causing some to think NEPA is overrated and underperforming, he said. NEPA drives many applicants to make beneficial changes before proposing a project to a Federal agency, he explained. He advocated engaging the public earlier and more interactively so that it can see NEPA's influence. Information is an important tool for change and central to NEPA's elegance, he emphasized. He noted the wide-ranging influence of NEPA beyond Federal boundaries – NEPA copycats have popped up everywhere, the sincerest form of flattery, he said.

***How can NEPA change agency culture?*** Gene Cleckley, former Director, Southern Resource Center, Federal Highway Administration, emphasized the importance of engaging the highest levels of management, at both headquarters and field offices, and recommended putting environmental goals into managers' performance plans. To institutionalize environmental consciousness, an agency should strive to combine the many reviews performed for a project (e.g., siting, design, state permitting process) with the NEPA review, he said. NEPA can only work if an agency makes a conscious decision to make it work, he noted, and to make it more than a paper exercise.

***How has NEPA affected tribes and tribal governments?*** Elizabeth Homer, Homer Law and member of the Osage Nation of Oklahoma, said that NEPA has been transformative in Indian Country because the worst enemy of Indian Country is ignorance. She pointed to the strong movement to institute “TEPAs,” Tribal Environmental Policy Acts. Federal decisionmakers are ignorant of how their decisions affect tribes and reservation lands, Ms. Homer said. She advocated that Federal agencies incorporate a tribal impact analysis into the NEPA process – build us in, she said. What remains is precious and we had better know what we are doing – “ignorance is not an excuse,” she said.

***What has been the effect of NEPA litigation on NEPA's development?*** Robert Dreher, Principal Deputy Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, said that NEPA is the statute that has been most shaped by common law. Other laws, in contrast to NEPA's broad general mandate, are very prescriptive in nature, he said. The early challenges related to “how to do it,” he said, and courts have defined procedures that make sense. NEPA is a self-implementing statute, intended by design to bring environmental values into every agency, he said. Critics overstate the burden of NEPA litigation, Mr. Dreher commented, as his calculations indicate that only 0.2% of actions that generate environmental assessments (EAs) and environmental impact statements (EISs) are subjected to judiciary reviews, resulting in relatively few injunctions. We can pay that price, he said. One of the great strengths of our country is that we view access to the courts to redress citizen grievances as an essential birthright – it is hard to imagine how NEPA could work effectively if agencies were not held accountable, he said.

***What is the major benefit of the NEPA process to the environmental community?*** Sharon Buccino, Director, Land and Wildlife Program, Natural Resources Defense Council, explained that it is as a mechanism for giving the affected public a voice in Federal decisionmaking. She added that NEPA is the tool to bring impact information – from analysis and modeling – into the front end of a planning process, so that the information can shape decisionmaking. Cost effective mechanisms can be implemented early to avoid expensive consequences at the back end of a project, she explained. Ms. Buccino said that reading NEPA inspires her. It is a tool to shape a better future, and I am proud to be a part of that, she said.

(continued on next page)

# Celebrating 40 Years with NEPA!

## CEQ NEPA Symposium *(continued from previous page)*

### NEPA's Significance to 21<sup>st</sup> Century Issues

Gary Guzy, Deputy Chair and General Counsel, CEQ, led a panel discussion addressing the future of NEPA and whether it is still a relevant tool that can help solve the challenges we face.

***With the thousands of projects going forward under the American Recovery and Reinvestment Act, how do we approach significant infrastructure challenges while being respectful of significant environmental concerns?***

John Porcari, Deputy Secretary, U.S. Department of Transportation, said that no projects have been held up by NEPA; in fact, the NEPA process has helped states and his agency prioritize projects. He said that the Nation should think long and hard on what we want to get out of the NEPA process, what kind of outcomes we want to drive. NEPA is about finding a better way to live in productive harmony, Mr. Porcari said. He emphasized mitigation as one of the important tools of NEPA, as it presents an outstanding opportunity to do something right.

***Does NEPA do an adequate job of bringing communities into agency decisionmaking?***

Sheila Foster, Associate Dean, Fordham University School of Law, said it is important to focus on the “who” of NEPA, “who is affected.” For communities less connected to the political process, Ms. Foster emphasized, NEPA and its state counterparts provide the broadest and deepest opportunities to have a voice in the decisionmaking process. However, she noted, the process is set up for reaction, and opportunities for public involvement may not come early enough. Think about how we can make communities partners, she advised, so that they can have a proactive, rather than reactive, role. A bright spot of NEPA practice is the broad interpretation of impacts, including socioeconomic and gentrification issues, she said, and added that it will be important in the future to look at the impact of greenhouse gas emissions and the ability of vulnerable communities to adapt.

***How can the NEPA process be most effective in using the information it develops?***


Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, referred to ideas from President Obama: first, his firm belief, with Supreme Court Justice Brandeis, that “sunlight is the best disinfectant”; second, that information disclosure can provide people with information they can readily find and use; and third, “[k]nowledge is widely dispersed in society and public officials benefit from having access to that dispersed


knowledge” (January 21, 2009, Memoranda on the Freedom of Information Act, and on Transparency and Open Government). Mr. Sunstein said that if we merge President Obama’s ideas on transparency with the vision that NEPA offers, we could move in two bold directions – to embed environmental considerations into decisions before they are made and to give continuing attention to environmental impacts as developments progress.

***Can NEPA be a meaningful contributor in addressing the greenhouse gas issue?***

Michael Gerrard, Professor and Director, Center for Climate Change Law, Columbia Law School, said that for quite some time Federal courts have said that climate change is an appropriate subject for analysis under NEPA. The CEQ draft guidance issued for comment (related article, page 3) is a very important step in aiding Federal agencies in this regard, he said. He referred to two other recent steps by the Administration to guide Federal agency consideration of greenhouse gas issues – the Environmental Protection Agency’s greenhouse gas reporting rule that took effect December 29, 2009, and guidance from the Securities and Exchange Commission, issued February 8, 2010. It is helpful that the three guidance products use the same thresholds of study and methods of analysis, he added.

***What is the promise of NEPA for the future?***

Kenneth S. Weiner, former Deputy Executive Director and Counsel at CEQ, said that NEPA will continue to serve three vital functions – a safety net, an umbrella, and accountability – and could also follow one of three paths. There need not be an existing environmental law or regulation for an agency to consider a new environmental issue, he explained, as NEPA supplements the authority of an agency in this regard, providing a “safety net.” NEPA will continue to bring considerations of different aspects of the environment together in one place, he said, providing a comprehensive look, an “umbrella.” And in so doing, he added, agencies will be accountable under NEPA to see that all actions, particularly mitigation actions, fit together. Mr. Weiner ended by considering the future of NEPA. Although one path could be to do what we do a little better (procedural improvements) and another could be to combine procedure and substance much better (e.g., to provide a new foundation for the green economy), the third path, for NEPA to be transformative to meet our environmental challenges, to go from assessment to action, would require reinvigoration, including active management and incentives, he explained. 

 A video of the [Symposium](#) may be viewed via the “Photos and Video” section of [whitehouse.gov](#), among the selections for February 18, 2010.

**40TH ANNIVERSARY OF THE  
NATIONAL ENVIRONMENTAL POLICY ACT, 2010  
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA  
A PROCLAMATION**

Forty years ago, the National Environmental Policy Act (NEPA) was signed into law with overwhelming bipartisan support, ushering in a new era of environmental awareness and citizen participation in government. NEPA elevated the role of environmental considerations in proposed Federal agency actions, and it remains the cornerstone of our Nation's modern environmental protections. On this anniversary, we celebrate this milestone in our Nation's rich history of conservation, and we renew our commitment to preserve our environment for the next generation.

NEPA was enacted to "prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." It established concrete objectives for Federal agencies to enforce these principles, while emphasizing public involvement to give all Americans a role in protecting our environment. It also created the Council on Environmental Quality to lead our Government's conservation efforts and serve as the President's environmental advisor.

America's economic health and prosperity are inexorably linked to the productive and sustainable use of our environment. That is why NEPA remains a vital tool for my Administration as we work to protect our Nation's environment and revitalize our economy. The American Recovery and Reinvestment Act of 2009 reaffirmed NEPA's role in protecting public health, safety, and environmental quality, and in ensuring transparency, accountability, and public involvement in our Government.

Today, my Administration will recognize NEPA's enactment by recommitting to environmental quality through open, accountable, and responsible decision making that involves the American public. Our Nation's long-term prosperity depends upon our faithful stewardship of the air we breathe, the water we drink, and the land we sow. With smart, sustainable policies like those established under NEPA, we can meet our responsibility to future generations of Americans, so they may hope to enjoy the beauty and utility of a clean, healthy planet.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 1, 2010, as the 40th Anniversary of the National Environmental Policy Act. I call upon all executive branch agencies to promote public involvement and transparency in their implementation of the National Environmental Policy Act. I also encourage every American to learn more about the National Environmental Policy Act and how we can all contribute to protecting and enhancing our environment.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

BARACK OBAMA



# Celebrating 40 Years with NEPA!

To mark the 40<sup>th</sup> anniversary of NEPA, the Office of NEPA Policy and Compliance is inviting distinguished NEPA practitioners to share their thoughts on the occasion. The first in this series is Professor Daniel Mandelker, author of NEPA Law and Litigation (which many of us consult frequently) and Environmental Protection: Law and Policy. Professor Mandelker led a panel discussion on NEPA litigation at DOE's 1995 conference commemorating the 25<sup>th</sup> anniversary of NEPA.

## NEPA Changed Landscape of Environmental Responsibility

By: Daniel R. Mandelker, Stamper Professor of Law, Washington University in St. Louis

NEPA at 40 is a celebration. The Magna Carta of our environmental laws, NEPA enacts a mandate to consider environmental consequences. This mandate must be fully satisfied for any project or action carried out by a federal agency or that has a federal presence. As the statute says, federal agencies must comply with NEPA "to the fullest extent possible." NEPA changed the landscape of environmental responsibility.

How does NEPA look after 40 years? What has it accomplished? What challenges remain?

### Standing To Sue in Federal Court

Before NEPA, federal decisions with environmental impacts went unchallenged. This critically important legal problem arose because individuals and interests affected by the environmental consequences of government decisions were not parties to those decisions. If a federal agency approved a new dam, for example, that decision was internal, and organizations and individuals concerned about its environmental impacts could not go to a federal court to challenge it. Highways were another example. A state highway agency might plan a highway through a thriving residential neighborhood, but residents of the neighborhood could not sue in court to challenge this decision.

NEPA changed all that. A landmark Supreme Court decision came first and held that environmental injury could be the basis for getting standing to sue in federal court. Then, because NEPA creates a duty to consider environmental consequences, individuals and groups concerned about the environmental consequences of government actions were allowed to go to court to get these actions reviewed. Litigation has become a hallmark of NEPA implementation. The courts are open to complaints about lack of NEPA compliance, and NEPA case law provides a template for agency

responsibilities. There can be argument over the details of doctrine and recent trends in court decisions, but the essential point is that the courts are there to make NEPA workable.

### Consideration of Alternatives

One of NEPA's major contributions is the requirement that decisionmakers must consider alternatives. A law enacted the year before NEPA required the consideration of alternatives for transportation projects, but otherwise there was no requirement that a proponent of a project had to consider alternatives to its proposed action. That limitation could be environmentally damaging. An agency could pick a site for a dam or a highway, for example, and not consider alternative locations where environmental impacts would be less severe.

NEPA mandates a duty to consider alternatives to agency proposals and to evaluate their environmental consequences. There is no requirement to select a less damaging alternative, but the mandate to consider alternatives requires a review of ways of doing a project that are not as environmentally damaging as the preferred alternative.

There are three stages in this analysis. An agency must first describe the purpose and need for its action. It cannot describe that purpose and need so narrowly that the consideration of reasonable alternatives is prevented. Next, an agency must select the alternatives it decides to consider in detail. It may not eliminate alternatives that reasonably are another way of carrying out the purpose and need or modifying the project. A no-action alternative, which means the project should not be carried out at all, must always be included. Finally, an agency must adequately consider the reasonable alternatives it identified. If an agency's analysis of alternatives is inadequate, court review can require reconsideration.



Professor Daniel Mandelker  
(photo: Washington University/  
Mary Butkus)

(continued on next page)



## Environmental Responsibility

(continued from previous page)

### Cumulative and Indirect Impacts

Another important contribution of NEPA is the requirement in the Council on Environmental Quality NEPA regulations that agencies must consider the cumulative and indirect impacts of their actions. Like the alternatives requirement, the cumulative impact requirement did not exist previously. If a developer wished to build a new housing project in an agricultural area, for example, she was not required to consider the environmental impact of that project along with other similar projects in the area. That is no longer an option under NEPA. If an agency takes an action, such as the granting of a permit to drill natural gas on federal lands, it must consider the environmental impact of any similar projects in the area along with the environmental impacts of its natural gas drilling permit.

This is a powerful requirement that can help agencies overcome the limitations of viewing each decision in isolation, without considering other factors that affect the environment. By requiring the consideration of similar and geographically-related actions, NEPA expands the geographical framework in which agencies must conduct an environmental analysis. The environmental consequences for the larger area can then be taken into account.

An indirect impact is an impact caused by the action under review that occurs “later in time or farther removed in distance” but is still “reasonably foreseeable.” An example of an indirect impact is the growth induced by a new highway, which must be reviewed if the highway receives federal funding. The highway may well induce future growth in the area, and this future growth is an indirect impact the agency must consider in its environmental review.


### Is NEPA Working?

NEPA promised a comprehensive environmental review of actions and projects that come under its statutory mandate, but is it working? Detailing NEPA’s requirements has been left to the Council on Environmental Quality and to the federal agencies in their NEPA regulations or guidelines. They have created a three-part framework for NEPA compliance that may need revision. An agency may establish a categorical exclusion, with a public review process and in accordance with its NEPA regulations or guidelines, for a class of actions that it determines

will not have an individually or cumulatively significant environmental impact. Agency actions that fit within the category can then be excluded from additional NEPA review. If an action is not categorically excluded, an agency may prepare an environmental impact statement to analyze potentially significant impacts, or it may prepare an environmental assessment to determine whether any impacts are significant. Based on the environmental assessment, the agency may issue a FONSI (finding of no significant impact) or, if impacts are significant, prepare an environmental impact statement for the action.

These options for reviewing environmental impacts under NEPA overlap and can cause confusion. Determining that some classes of actions clearly do not have potentially significant impacts and are categorically excluded from further review helps focus federal agency resources and attention on actions with potentially significant impacts. The choice between preparing an environmental assessment or an environmental impact statement is not always clear, however. Agencies prepare about ten times more environmental assessments than impact statements. As a result, when an environmental assessment is detailed, a court may wonder, as the Fifth Circuit did in a recent case, whether an environmental impact statement was necessary. Additional guidance could be helpful to clarify the difference in purpose, and therefore in content, between these two options for complying with NEPA requirements to consider environmental impacts of actions.

### Conclusion

NEPA has provided a much-needed mandate to make environmental review an essential part of agency decisionmaking. Its requirements that agencies consider the direct, cumulative, and indirect environmental impacts of their proposed actions and alternatives have fundamentally changed agency decisions. The next generation of change must look closely at NEPA and decide what is needed to make good on its environmental promise: “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation . . . .” 

# Celebrating 40 Years with NEPA!

## DOE NEPA Practitioners See Benefit in NEPA Process

By: Jon Hale, Office of NEPA Policy and Compliance

NEPA has a long history of assisting DOE project planning and decisionmaking. This conclusion is drawn from my review of more than 500 Lessons Learned Questionnaire responses submitted by DOE staff involved in the NEPA process.



The [Questionnaire](#) asks a series of questions about the usefulness and effectiveness of the NEPA process. Respondents provide feedback as to whether the NEPA review contributed to decisionmaking, whether it protected or enhanced the environment, and how the respondent would rate the effectiveness on a scale of 0–5 (with 5 being the most effective) and why.

Since 1996, 70 percent of those respondents who filled in this portion of the Questionnaire rated the effectiveness of the NEPA process as 3 or better. The most cited reason for a positive rating was that respondents believed the NEPA process facilitated internal and external stakeholder input to the planning and decisionmaking process, and that this input improved the outcome. Perceived benefits to DOE and the environment included:

- Identification and selection of alternatives that are more cost effective and efficient for DOE to implement
- Reduced environmental impacts either through avoidance or mitigation
- “Education” of internal and external stakeholders about DOE’s constraints and why some actions are feasible and some are not, and
- Delivery of projects that have a higher degree of external stakeholder acceptance.

### Common Themes in Questionnaire Responses

Following is a summary of my observations and conclusions, based on common themes that were repeated in the Questionnaires, by different respondents and on different projects:

- Public participation in the NEPA process often helps gather information that improves projects and provides public education that facilitates the planning process.
- Joint planning among DOE Offices often results in high effectiveness ratings (4–5).
- The NEPA process organizes information from multiple sources for project planners and management, which was viewed as helpful.

- Early NEPA initiation and integration throughout the planning process with feedback loops between NEPA staff and project design staff improves projects.
- Low ratings (0–2) are mostly given when respondents believe decisions were essentially already made; but even in these cases, respondents often acknowledge that environmental effects are reduced or avoided due to site-specific design elements identified through the NEPA process. Respondents also acknowledge in some of these cases that the NEPA process drove the completion of the planning and decisionmaking process. Many respondents believed the NEPA process provided a structured decisionmaking framework that was helpful.
- Low ratings are also given when submitters believe the NEPA process is inconsequential, such as when the project is small, the decision is obvious, or other requirements are driving the outcome, such as congressional or judicial mandates.

### Responses Add Insight into Staff Views of DOE Implementation of NEPA

The following are Questionnaire excerpts (emphasis added):


- “Although the NEPA process didn’t really help in identifying alternatives for the project siting (this was done prior to NEPA process), ***the NEPA process did facilitate management making a decision that the project could be performed with no significant impacts (this was definitely not known before the EA was prepared).***”
- “The NEPA process was beneficial in that it pulled together all of the environmental information in one place for evaluation and public consumption, but it did not result in the identification of any potential issues that led to changes to the proposed project.”
- “Because the project planning started so far in advance of the document preparation, the process had limited input into the project. ***Earlier determination that an EA is needed would help the process contribute to project planning.***”
- “The process allowed us to work closely with the Forest Service as a 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!***”

(continued on next page)

# Celebrating 40 Years with NEPA!

## Many See Benefit in NEPA Process *(continued from previous page)*

- “This process brought focus to several cross-cutting issues (e.g., utilities and waste management) and influenced alternatives considered in addressing known issues, actions that should be pursued, and proposals that should be dropped or postponed pending further information. These resulted because this EIS was tied into the planning processes for this site, and was focused on the utility of the document for those who implement the NEPA process at the site.”
- **“The NEPA process definitely assisted in determining a project alternative that was less costly and had fewer environmental impacts than alternatives initially considered.”**
- “The process was helpful to facilitate a discussion on the project among project managers, engineers, other internal staff, and the public. Through this communication process, NEPA contributed to informed and sound decisionmaking.”
- “While some of our engineering team will always see NEPA as just another requirement, **most of the engineers and staff see NEPA as an effective tool to GET THE PROJECT BUILT.** That’s what they care about . . . getting it built on time and within budget.”
- “This NEPA process supported decisionmaking by disclosing more comprehensive environmental analysis to the public than would happen in a typical 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 expedited project approval by the host State and by the Corps of Engineers.**”
- “NEPA forced better definition of the scope.”
- “The NEPA process allowed DOE and the stakeholders to assess the consequences of conducting the proposed action, and public reaction to implementing the proposed action. This made the NEPA process very useful.”
- **“Important issues and considerations would have been overlooked if NEPA was not done.”**
- “It focused the resolution for the environmental impacts into a framework for decisionmaking that was defensible to outside entities and observers.”
- “Discussions held early [during the] DOE scoping process led to a sound and complete scope of work and resulted in a definite cost savings.”
- **“NEPA helped the decisionmaker focus on the relevant factors needed to make a quality decision.”**
- “The NEPA process was not a major project determinant – environmental issues were minor. However, successful completion of the EA did provide confidence that environmental and human health issues had been fully identified and addressed.”
- “The NEPA document preparation process forced the project folks to define their project and define problems that they hadn’t yet identified – some of which were percolating already but benefited from the nudge they received from the [NEPA] scoping of this project. The NEPA process forced the project folks to get their act together – they started by viewing the process as a irritation and a box to check, but **I think by the time that it was finished they had begun to recognize the real benefit and utility of the process.**”
- “The process went smoothly, was undertaken well in advance of initiation of construction, and environmental affects were avoided.”
- **“The NEPA review . . . caused the project sponsor to do . . . better definition/planning of the project scope.”**
- “I think this NEPA process, by forcing together several separately funded but related projects, helped coordinate planning and was useful in painting the bigger picture of how the projects fit together.”

In closing, this review showed that DOE staff have a long history of getting tangible benefits out of the NEPA process: benefits for DOE, the environment, and the public. Judging from the Questionnaire responses, it’s expected this will continue well into the future. Contact Jon Hale at 202-287-5923 or [jon.hale@hq.doe.gov](mailto:jon.hale@hq.doe.gov), if you have questions. 

### Thoughts from the CEQ NEPA Symposium

NEPA brings out environmental issues that otherwise would not have a forum for being heard.

– William Reilly, former EPA Administrator and Senior CEQ Staff

# Celebrating 40 Years with NEPA!

## CEQ Draft Guidance (continued from page 4)

carried out, but also that they are effective in achieving the expected outcomes. To that end, the draft guidance states the importance of engaging the public in the mitigation process, including making mitigation and monitoring reports and related documents available to the public. Further, mitigation commitments in FONSI and records of decision must be clear and made publicly available. With respect to effectiveness, the guidance cautions that a failure of mitigation could trigger a need for supplementary action per 40 CFR 1502.9(c) (regarding supplemental EISs); in cases with a mitigated FONSI, agencies may need to prepare an EIS and avoid actions that would have an adverse impact on the environment or limit the choice of reasonable alternatives, per 40 CFR 1506.1(a), pending completion of the EIS.

The public comment period for this guidance ends May 24, 2010 (75 FR 8046). Questions about this draft guidance may be addressed to Jim Daniel, NEPA Office, at [james.daniel@hq.doe.gov](mailto:james.daniel@hq.doe.gov).

### Establishing and Applying CXs


Many Federal actions do not have significant effects on the environment, the draft CEQ guidance on CXs states, and CXs are the most frequently employed method of complying with NEPA. Although CEQ has previously issued draft guidance on establishing, applying and revising CXs for public comment ([LLQR, September 2009, page 10](#), and [June 2008, page 7](#)), the new draft provides additional clarifications. The draft guidance describes steps that an agency should take to substantiate its determination that a proposed CX describes a category of actions that does not individually or cumulatively have a significant

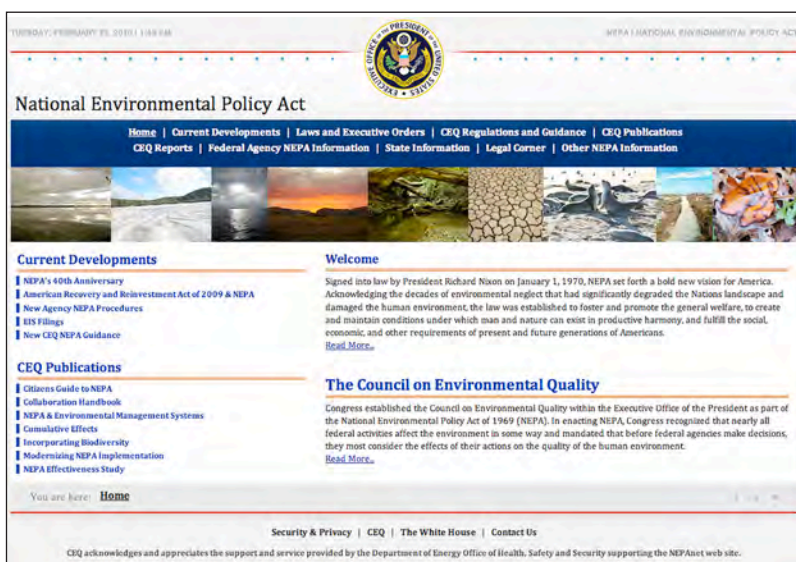
effect on the human environment, i.e., gather information, evaluate it, and make a finding that explains the agency's determination. Information sources that an agency may use, discussed in the guidance, are an evaluation of the impacts of completed or ongoing agency actions, including demonstration actions; professional staff and expert opinions, and scientific analysis; and benchmarking public and private entities' experiences.

The draft guidance emphasizes that a Federal agency should develop and maintain the capacity to monitor implementation of new CXs to ensure that predictions that there will not be significant impacts are borne out in practice. The guidance also discusses when documentation of the use of a CX may be warranted, and points to DOE's recent initiative to post its CX determinations online as an example of how agencies can effectively increase transparency in their decisionmaking when using CXs.

The public comment period for this guidance ends April 9, 2010 (75 FR 8045). Questions about this draft guidance may be addressed to Carolyn Osborne, NEPA Office, at [carolyn.osborne@hq.doe.gov](mailto:carolyn.osborne@hq.doe.gov).

### NEPA.gov

CEQ has redesigned [NEPA.gov](#) and is providing a wide range of information about NEPA through this portal. CEQ plans to continue to upgrade this site to include more about the status of reviews of agency NEPA guidance, Recovery Act NEPA reporting, and real-time NEPA review status. The website states that these upgrades are designed to improve public participation and the quality of Federal agency administration of NEPA. 



# CEQ Cites DOE Examples in Response to Inquiry on Climate Change and NEPA



NEPA reviews can be accomplished in a timely manner without slowing economic recovery, affirmed Council on Environmental Quality (CEQ) Chair Nancy Sutley in a December 29, 2009, letter to two Senators. The Senators had raised concerns regarding the length of NEPA reviews, particularly if CEQ issues guidance requiring consideration of climate change impacts in NEPA documents. Ms. Sutley noted recent successful application of NEPA to Recovery Act projects and that “CEQ sees no basis for excluding greenhouse gas emissions” from consideration in NEPA analyses.

In their October 2009 letter to Ms. Sutley seeking information about CEQ’s plans to advise Federal agencies “on whether or how to incorporate greenhouse gas emissions and climate change impacts into” NEPA analyses, Senators James M. Inhofe and John Barrasso, Ranking Member and Member of the Committee on Environment and Public Works, expressed concern about the consequences of CEQ acceding to a February 2008 petition filed by the International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club. The petition requested that CEQ amend its regulations to clarify that climate change analyses be included in environmental review documents and develop guidance on how to do so ([LLQR, June 2008, page 11](#)). The Senators said that NEPA is “not an appropriate tool to set global climate change policy” and that “requiring analysis of climate change impacts as part of the NEPA process . . . will slow . . . economic recovery while providing no meaningful environmental benefits.”

In response, Ms. Sutley agreed with the Senator’s statement that NEPA is “a bedrock environmental statute,” and assured the Senators that “NEPA cannot be used to regulate greenhouse gas emissions.” Ms. Sutley stated that CEQ was considering responding to the 2008 petition by issuing guidance to Federal agencies on climate change and the NEPA process, and that any such guidance would first be proposed in draft form and made available for public comment. [Note: On February 18, 2010, CEQ issued *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* for a 90-day public comment period (related article, page 3)].

Ms. Sutley went on to state that “the NEPA process should not result in unjustified delay, but [she] believe[s] strongly that adequate environmental reviews and public participation can be accomplished in a timely manner.” She noted that the 2007 report cited by the Senators

identified “improved agency management of NEPA processes as one of many opportunities to reduce overall project delivery time,”

and cited the most recent Department of Transportation (DOT) report to CEQ under Section 1609 of the ARRA, which stated that more than 14,650 NEPA reviews were completed for such projects, including more than 160 EISs, more than 450 EAs, and approximately 14,000 decisions based on categorical exclusions. Ms. Sutley concluded that DOT’s reports “do not indicate that NEPA has hindered DOT’s obligation of more than \$29 billion in ARRA funds or the economic and environmental benefits of these projects.”


---

***CEQ believes that it is appropriate and necessary to consider the impact of significant Federal actions on greenhouse gas emissions and the potential for climate change to affect Federal activities evaluated through NEPA.***

**– Nancy Sutley, Chair  
Council on Environmental Quality**

---

## DOE EISs Address Greenhouse Gases

In response to a specific request from the Senators for a list of draft or final NEPA documents that have incorporated greenhouse gas emissions or climate change impacts into the analyses, Ms. Sutley referred specifically to DOE’s December 2007 *Lessons Learned Quarterly Report*, which described the analysis of this issue in DOE NEPA documents over the past 20 years ([LLQR, December 2007, page 1](#)). In addition, Ms. Sutley provided a partial list of EISs addressing climate change. Of the 13 EISs in the list, five were DOE documents, including: *Final EIS for FutureGen Project* (DOE/EIS-0394, November 2007), *Supplement to the Draft EIS for the Gilberton Coal-to-Clean Fuels and Power Project* (DOE/EIS-0357D-S1, December 2006), *Final EIS for the Gilberton Coal-to-Clean Fuels and Power Project* (DOE/EIS-0357, October 2007), *Final EIS for the Orlando Gasification Project* (DOE/EIS-0383, January 2007), and the *Mesaba Energy Project Final EIS* (DOE/EIS-0382, November 2009). 

### Thoughts from the CEQ NEPA Symposium

NEPA has been so widely replicated in the world because it is considered a hallmark of democracy.

– Robert Smythe, Former Senior Staff Member, CEQ



# Many Recovery Act NEPA Reviews Completed, No Substantial Delays, CEQ Reports

“Once again, the progress reported to [the Council on Environmental Quality (CEQ)] indicates that NEPA analyses are informing decisions for expenditure of [Recovery Act] funds in a timely and environmentally sound manner,” wrote Nancy Sutley, in a February 1, 2010, letter to Congress transmitting CEQ’s fourth report on the NEPA status of projects and activities (projects) receiving Recovery Act funds. “No departments or agencies have reported instances of substantial delays related to NEPA reviews.”

The report to Congress summarizes the NEPA status of more than 161,000 projects. Through December 31, 2009, Federal agencies completed more than 154,000 categorical exclusion (CX) determinations and 6,300 EAs related to Recovery Act projects, and more than 710 projects had been analyzed in EISs. Agencies concluded that NEPA is not applicable to about 4,140 other Recovery Act projects. Together, these projects involve obligations of more than \$187 billion in Recovery Act funds. In addition, CEQ reported that more than 5,600 NEPA reviews are underway, including 4,270 CX determinations, 1,275 EAs, and 85 EISs.

---

***Federal agencies “continue to demonstrate that we can contribute to our nation’s economic health while respecting the health of our environment.”***

***– Nancy Sutley, Chair  
Council on Environmental Quality***

---

## DOE Advances NEPA Recovery Act Progress

DOE completed more than 2,700 NEPA reviews for Recovery Act projects during the quarter ending December 31. As with the previous quarter, most of these NEPA reviews resulted in CX determinations for actions proposed for funding under DOE’s Energy Efficiency and Conservation Block Grant Program ([LLQR, December 2009, page 3](#)). As of December 31, DOE had completed NEPA reviews supporting the obligation of more than \$23.2 billion under the Recovery Act, an increase of more than \$5.8 billion from the previous quarter.

Future NEPA reviews will include many additional CX determinations. DOE also may initiate 100 or more EAs and more than a dozen EISs over the coming year to support Recovery Act projects. These are accounted for in Annual NEPA Planning Summaries submitted by each DOE office at the end of January 2010 (related article, page 15).

## Benefits of NEPA Process

The latest report to Congress included for the first time examples of benefits from the NEPA process for Recovery Act projects. Thirteen agencies provided examples highlighting cost and energy savings, better protection of resources (e.g., wetland protection, protection of threatened or endangered species, historic preservation), and public participation and community agreements, said Horst Greczmiel, Deputy Director for NEPA Oversight at CEQ, at a meeting on Section 1609(c) reporting in February.

DOE provided 13 examples of benefits covering CX determinations, EAs, and EISs. DOE used the NEPA process to develop plans to better protect workers and the public from potential radiological exposure, identify alternatives to avoid project delay, improve waste management planning, protect historic resources and threatened or endangered species, explain to the public how a proposal would reduce greenhouse gas emissions, and achieve other benefits.

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through March 31, 2010. Federal agency reports are due to CEQ by April 15, 2010, and CEQ will submit the next report to Congress in May.

The CEQ reports to Congress are available at [NEPA.gov](#). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924.

## Thoughts from the CEQ NEPA Symposium

NEPA documents often focus on *where* to build a plant, not *whether*. More upfront planning is needed . . . when you go to buy a drill, what you really want is a hole.

*– Michael Gerrard, Columbia Law School*

# Planning Summaries Show Large Increase in NEPA Activity

The DOE NEPA workload is projected to increase dramatically, according to the 2010 Annual Planning Summaries (APSs) prepared by DOE Program and Field Offices, mostly due to Recovery Act projects. While DOE completed more than 4,000 categorical exclusion (CX) determinations for Recovery Act projects during 2009, the workload is shifting to EAs and EISs in 2010. The total number of ongoing and projected (over the next 12 months) EAs (259) estimated in the 2010 APSs is more than double the total number in the 2009 APSs (124), and more than three times the number of EAs (79) identified in the 2008 APSs. The number of ongoing and projected (over the next 24 months) EISs estimated in the 2010 APSs is 95, compared to 71 in 2009 and 60 in 2008. See figure below.

While many Offices predict little or no increase from last year, two Offices – Golden Field Office and the National Energy Technology Laboratory (NETL) – anticipate significant increases in EA and EIS workload primarily as a result of Recovery Act related projects.

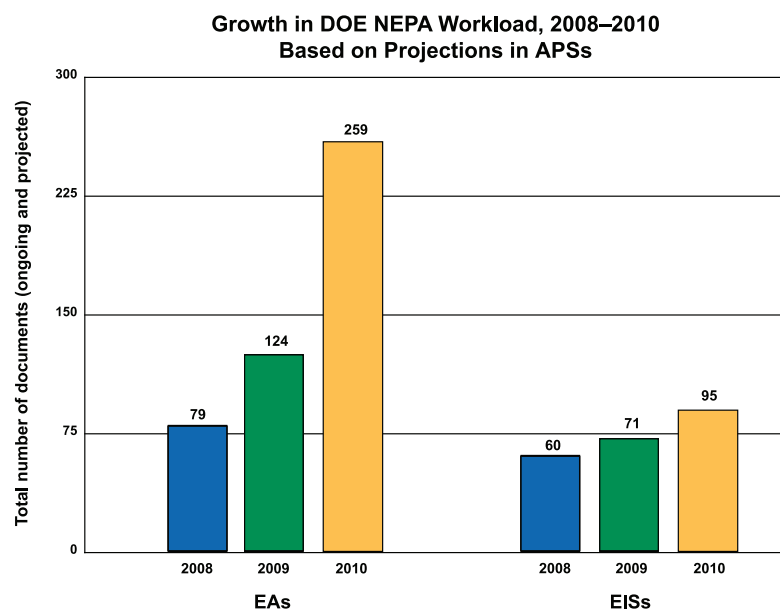
Golden Field Office estimates that its total number of EAs this year will be about 100, up from just 6 in 2009! The actual number depends on ongoing efforts to define projects in response to solicitations by the Office of Energy Efficiency and Renewable Energy (EERE). Golden expects to prepare EAs for proposals related to many types of renewable energy projects, including geothermal heat pump systems, biofuels, hydropower, wind energy, and solar energy.

The planning basis for NETL has increased from 5 EAs in 2009 to 49 in 2010, and from 5 EISs to 19 during that period. Potential EAs would address proposals in the areas of industrial carbon capture and sequestration and clean

coal (Office of Fossil Energy), smart grid demonstrations (Office of Electricity Delivery and Energy Reliability), and combined heat and power and a variety of renewable energy projects (EERE). The estimate includes 17 EAs in preparation by NETL for EERE's advanced battery manufacturing solicitation and two EAs (one ongoing; one completed in February 2010) for proposals under EERE's State Energy Program. EISs include ongoing and potential reviews of clean coal projects and possible EISs for industrial carbon capture and sequestration. As with Golden Field Office's estimates, the actual number of EAs and EISs initiated in 2010 will depend on project definition during the application review process.

Early involvement by senior management in the NEPA planning process is a key component of a successful NEPA compliance program. That's why each Secretarial Officer and Head of Field Organization is required, pursuant to DOE Order 451.1B, *NEPA Compliance Program*, Section 5.a.(7), to submit an APS by January 31 of each year and make it publicly available. In his December 10, 2009, reminder memorandum, Scott Blake Harris, DOE General Counsel, stressed that Offices with responsibility for funding provided by the Recovery Act fully describe their plans in the APSs for all related EAs and EISs. He further emphasized that completion of these EAs and EISs will be one of DOE's highest NEPA compliance priorities throughout 2010.

This year's increases in the number of EAs and EISs will likely require increases in NEPA staffing and contractor resources. The Office of NEPA Policy and Compliance will continue to assist the Program and Field Office NEPA Compliance Officers in managing this workload as efficiently as possible. LL



# Third Idaho High-Level Waste ROD Issued; Phased Decision Strategy Completed

With the issuance of an amended Record of Decision (ROD) in December 2009, DOE completed a three-phase decision strategy for high-level radioactive waste and associated facilities at the Idaho National Laboratory (INL), and met a major milestone of a 1995 agreement resolving litigation with the State of Idaho (Idaho Settlement Agreement). “This achievement shows that an EIS can have a long shelf life, providing the flexibility to effectively support agency decisions when they are ripe,” said Eric Cohen, Office of NEPA Policy and Compliance.

In the amended ROD, DOE announced the selection of hot isostatic pressing as the technology to treat the 4,400 cubic meters of high-level radioactive waste calcine at INL’s Idaho Nuclear Technology and Engineering Center (INTEC). Calcine is a dry granular powder waste form that is stored at INTEC in six stainless steel bin sets. The bin sets were designed to be secure for at least 500 years.

## Hot Isostatic Pressing Selected

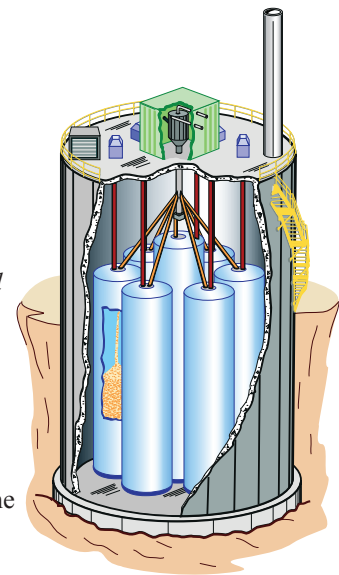
The ROD states that DOE selected hot isostatic pressing because this technology is anticipated to treat the calcine cost-effectively and produce a volume-reduced monolithic waste form suitable for transport outside of Idaho, with completion of treatment by a target date of December 31, 2035, in accordance with the Idaho Settlement Agreement. (The Settlement Agreement required that a ROD be issued no later than December 31, 2009, establishing a plan and date for completion of the treatment of all calcine waste located at INL.)

The ROD also states that DOE considered the Administration’s intent to terminate funding for the Yucca Mountain program while evaluating nuclear waste disposal alternatives, and indicates that the ultimate disposition of the calcine may be affected by the recommendations of a Blue Ribbon Commission charged with evaluating alternatives for managing and ultimately disposing of spent nuclear fuel and high-level waste.<sup>1</sup> In view of uncertainty regarding waste disposal, the decision provides flexibility by incorporating an option intended to ensure that wastes will be ready to leave Idaho by 2035 and that includes potential use of treatment additives to produce a glass-ceramic waste form. The ROD notes that the hot isostatic treatment process also provides the technical capability to further treat liquid sodium-bearing waste, which will be treated using a different technology, steam reforming, as announced in the first ROD.

## One EIS Supports Multiple Decisions

DOE issued the *Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement* in October 2002 (DOE/EIS-0287), with the State of Idaho as a cooperating agency. DOE consulted with the State on all of the decisions under the EIS, and the RODs reflect the State’s concurrence and comments on the decisions. The EIS analyzed two sets of alternatives: (1) processing alternatives for liquid sodium-bearing waste and other liquid waste stored in below grade tanks, and for the high-level waste calcine stored in the bin sets at INTEC (for each waste processing alternative the EIS analyzed multiple implementing options and treatment technologies); and (2) facility disposition alternatives for the high-level waste management facilities.

Subsequently, several studies and reviews were conducted before DOE issued RODs under the EIS. In June 2005, DOE issued its *Supplement Analysis for the Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement* (DOE/EIS-0287-SA-01). The supplement analysis (SA) reviewed proposed waste treatment technologies and updated site characterization data and risk calculations. Based on the SA, DOE determined that the EIS analyses did not require supplementation. On August 3, 2005 (70 FR 44598), DOE issued a notice of preferred treatment technology for sodium-bearing waste, reflecting DOE’s evaluation of treatment technology studies conducted after the 2002 EIS was issued. The notice remedied a concern expressed by some members of the public that the preferred alternative identified in the EIS regarding sodium-bearing waste treatment technology was too broad to adequately inform the public of DOE’s plans. On August 11, 2005, after examining this issue, DOE’s Inspector General concluded that the Idaho EIS process complied with NEPA (*LLQR*, September 2005, page 12).



Bin sets are a series of reinforced concrete vaults containing 3 to 12 stainless steel storage bins. A typical bin set is represented here.

(continued on next page)

<sup>1</sup> On January 29, 2010, the President requested that the Secretary of Energy establish a Blue Ribbon Commission on America’s Nuclear Future (Commission) and appoint its members. In a press release on January 29, 2010, DOE announced the formation of the Commission, charged with conducting a comprehensive review of the back end of the nuclear fuel cycle and making recommendations on alternatives for storing, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. As requested by the President, the Commission’s interim report is due within 18 months and a final report within 24 months.



# DOT Issues Final EIS on CAFE Standards



The Department of Transportation's National Highway Traffic Safety Administration (NHTSA), with the Environmental Protection Agency (EPA) as a cooperating agency, issued the Final EIS on *Corporate Average Fuel Economy Standard (CAFE), Passenger and Light Trucks, Model Years 2012–2016*, on February 22, 2010.

The Final EIS analyzes the potential environmental impacts of new CAFE standards required by the Energy Independence and Security Act of 2007. NHTSA's proposed action is part of a joint proposed rulemaking with EPA: NHTSA proposed CAFE standards under the Energy Policy and Conservation Act, as amended, and EPA proposed greenhouse gas (GHG) emission standards under the Clean Air Act.

## Comprehensive GHG Emissions Analysis

The Final EIS is notable for its extensive analysis of GHG emissions and associated impacts on the human environment. For example, the analysis applies a climate model to analyze four direct and indirect effects of climate

change under alternative GHG emission scenarios, including changes in: (1) carbon dioxide concentrations; (2) global mean surface temperature; (3) regional temperature and precipitation; and (4) sea level. Further, the Final EIS contains detailed discussions of potential climate change-related impacts on a wide range of environmental resource areas, globally and in the United States.

This Final EIS responds to comments received on the Draft EIS (September 2009) and adds new information, including further discussions of potential mitigation policies to reduce GHGs from the light duty vehicle sector (e.g., mass transit improvements, higher gas taxes, or other driving-associated fees, and lower speed limits).

The Final EIS and NHTSA's Notice of Proposed Rulemaking (*LLQR*, December 2007, page 24) are available at: [www.nhtsa.dot.gov/portal/fueleconomy.jsp](http://www.nhtsa.dot.gov/portal/fueleconomy.jsp). Additional information is available on the website above or from NHTSA's Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Programs, at 202-366-0846. **LL**

## Idaho ROD *(continued from previous page)*

In the first ROD (70 FR 75165; December 19, 2005), DOE decided to treat the liquid sodium-bearing waste using a technology known as steam reforming to allow disposal at the Waste Isolation Pilot Plant in New Mexico or a geologic repository for spent nuclear fuel and high-level waste. DOE also decided to conduct performance-based closure of existing facilities directly related to the high-level waste program at INTEC, excluding the tank farm facilities and bin sets, once their missions are complete. Further, DOE announced a phased decision strategy, with future RODs planned in 2006 and 2009.

In the second ROD (71 FR 68811; November 28, 2006), DOE decided to conduct performance-based closure of the tank farm facilities. This decision followed the Secretary's Determination, in consultation with the Nuclear Regulatory Commission, that residual waste at the tank farm facilities would not be high-level waste because the residuals would meet the criteria in Section 3116(a) of the National Defense Authorization Act for Fiscal Year 2004. **LL**

### A Note on ROD Effective Dates

A DOE ROD must be published in the *Federal Register*, but DOE may implement the decision before *Federal Register* publication if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media). (10 CFR 1021.315(d)) This enables a ROD to be effective (or issued) and action taken before *Federal Register* publication, which may take three or more days from the date of signature.

In the case of the third Idaho ROD, the Assistant Secretary for Environmental Management signed the ROD on December 23, 2009, but, because of the holidays, the ROD was not immediately submitted to the *Federal Register*. To ensure that the ROD was issued by December 31, 2009, per the Settlement Agreement, DOE made the signed ROD publicly available by posting it on the INL website and the DOE NEPA Website on December 27. The ROD was docketed for publication in the *Federal Register* on December 31 (at which time it was available for public inspection), and published in the *Federal Register* on January 4, 2010 (75 FR 137). [A correction affecting only the heading of the ROD as published on January 4 was published on January 12, 2010 (75 FR 1615).]

# CX Database (continued from page 1)

information about all CX determinations within the database is also available on the DOE NEPA CX Determinations webpage.

CXs are categories of actions that DOE has determined, by regulation, do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS normally is required under NEPA. The new database contains CX determinations required to be posted under the recently established DOE [policy](#) to document and post online all CX determinations involving classes of actions listed in Appendix B to Subpart D of the DOE NEPA regulations ([10 CFR Part 1021](#)). The database also includes some CX determinations for which documentation and posting are optional, i.e., determinations involving classes of actions listed in Appendix A or made before the policy's effective date of November 2, 2009 ([LLQR, December 2009, page 1](#)).

DOE Program and Field Offices post CX determinations on their own websites and in different formats. Although the DOE NEPA Website provides a link to all 53 of these websites, people wanting to review DOE CX determinations collectively may find the process of searching all these websites to be cumbersome. The CX database provides a central location to access information on all of the determinations. This tool opens a window to a part of DOE's environmental review process and supports a core mission to foster transparency.

## Open Government and *Data.gov*

The Office of Management and Budget issued its Open Government Directive to executive departments and agencies on December 8, 2009. The Directive outlined specific actions for agencies, including publication of information on the *Data.gov* website.

A primary goal of *Data.gov* is to improve access to and creative use of Federal data. Further, *Data.gov* is committed to creating an unprecedented level of openness, to help promote efficiency and effectiveness in Government.

The *Data.gov* website includes searchable data catalogs providing access to data in three ways: through the raw

### The CX Database:

- 741 CX determinations from 22 offices
- 585 of those are related to Recovery Act projects


### The most frequently invoked CXs are:

- A9 – Information gathering/data analysis/document preparation/dissemination (232)
- A1 – Routine administrative/financial/personnel actions (119)
- B3.6 – Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects (119)
- B5.1 – Actions to conserve energy (107)

data catalog, the tool catalog, and the geodata catalog. DOE's CX database is listed in the tools catalog, and the raw dataset will be listed in the raw data catalog.

## Future Challenges

The Office of NEPA Policy and Compliance will update the CX database approximately monthly to capture new CX determinations and improve usability. The CX database also serves as a pilot for future DOE databases for other NEPA documents. The NEPA Office is exploring how to create similar user-friendly databases for EAs and EISs.

For more information about the CX database or to provide suggestions about further CX database enhancements, contact Jeffrey Dorman, NEPA Office, at [jeffrey.dorman@hq.doe.gov](mailto:jeffrey.dorman@hq.doe.gov) or 202-586-3181. 

## Thoughts from the CEQ NEPA Symposium

Today civility is strained. NEPA reminds us of the opportunity for shared dialog and it is a way for people to find shared values. Environment is the common ground in a world of battlegrounds. NEPA is the problem solver, but sometimes a tough sell.

– Kathleen McGinty, former Chair, CEQ

CEQ has the potential to be almost anything the President and his principal staff want it to be. It has an almost unlimited potential.

– Russell Train, first Chair, CEQ

# DOE Plans Categorical Exclusion Rulemaking

DOE is undertaking a major review of its existing categorical exclusions (CXs) as part of a proposal to revise and add to those CXs listed in the DOE NEPA regulations (10 CFR Part 1021, Subpart D, Appendices A and B). DOE's existing CXs do not fully account for the Department's current priorities or advances in technology.

Since 1996 when DOE last updated its existing CXs, "the range of actions in which DOE is involved has expanded," the Department explained in a December 21, 2009, Request for Information (RFI) that publicly announced DOE's intent to update its CXs (related notice at 74 FR 68729; December 29, 2009). "For example, in recent years, DOE has become more involved in funding actions proposed by applicants, including actions that enhance the environment and/or energy efficiency through grant and loan programs pursuant to the Recovery Act and the Energy Policy Act of 2005. While DOE has successfully applied its existing CXs to many of these proposed actions, it seeks to establish new CXs more directly tailored to them. Another change since 1996 is the general growth of new technologies in the private and public sectors that did not exist when DOE last established CXs."

---

***The purposes of CXs include reducing excessive paperwork and delay (40 CFR 1500.4 and 1500.5).***

---

Moreover, DOE's experience reviewing proposed projects over the past almost 14 years provides valuable information to better understand the potential impacts associated with the various types of actions that DOE undertakes. This information may suggest ways to improve DOE's existing CXs to help achieve the goal of focusing environmental reviews on the areas with the greatest potential for significant impact. (See article on Council on Environmental Quality (CEQ) draft guidance on Establishing and Applying Categorical Exclusions, page 3.)

CEQ defines a CX as a category of actions that a Federal agency has determined, under its NEPA procedures, do "not individually or cumulatively have a significant effect


on the human environment . . . and for which, therefore, neither an environmental assessment nor an environmental impact statement is required" (40 CFR 1508.4).

## Development of Proposed CXs Underway

The Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment are coordinating an effort to identify candidate new or modified classes of actions. To establish a CX, an agency must gather and evaluate information that substantiates a determination that the covered actions normally would not have significant environmental effects, states the CEQ draft guidance. The Office of the General Counsel solicited suggestions from Program and Field Offices, with their network of NEPA Compliance Officers, in a memorandum of December 7, 2009. The 28 responses included many useful suggestions on CXs for facility operations, safety and health, general research, power resources, renewable energy projects, and waste management.

The RFI that DOE issued in December invited the public to help identify activities that should be considered for new or revised CXs. DOE received 11 responses to the RFI, most of which addressed activities associated with energy efficiency and renewable energy. To identify additional candidates for new or expanded CXs, staff of the NEPA Office surveyed the large archive of DOE EAs that led to a finding of no significant impact, considered the CXs established by approximately 50 Federal agencies, and reviewed existing DOE CXs for limits on scope that may not be directly related to the significance of the environmental impacts of an action.

## Next Steps

The NEPA Office is working with NEPA Compliance Officers to develop wording for proposed new and modified CXs and to identify supporting information. DOE intends to prepare a notice of proposed rulemaking and issue it for public comment. DOE will consider comments received, then issue a final rule. The RFI and responses are posted in the DOE CX rulemaking docket at [Regulations.gov](http://www.Regulations.gov) (Docket ID: DOE-HQ-2010-0002). The notice of proposed rulemaking and public comments also will be posted in this docket. 



## Thoughts from the CEQ NEPA Symposium

NEPA is not a paper tiger. When its working well, NEPA will have effects even though it does not dictate the outcome.

— Cass Sunstein, Office of Management and Budget

## Deputy Secretary Poneman Named DOE Senior Sustainability Official

The Secretary has named Deputy Secretary of Energy Daniel B. Poneman as the Department's Senior Sustainability Official under Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*. This Executive Order directs agencies to establish greenhouse gas reduction goals and report on attainment progress, undertake energy analyses for Federal facilities, and implement a Strategic Sustainability Performance Plan (*LLQR*, December 2009, page 9).

Deputy Secretary Poneman will be supported by Ingrid Kolb, Director, Office of Management, in meeting DOE's responsibilities under the Executive Order. DOE's Office of Energy Efficiency and Renewable Energy will continue to support the Council of Environmental Quality, the Office of the Federal Environmental Executive, and the Office of Management and Budget in the execution of the Executive Order through DOE's Federal Energy Management Program, which will provide technical and analytical support. ■■

## Cooperating Agencies Contribute to Most DOE EISs

About three-quarters of the EISs listed in DOE's 2009 Cooperating Agency Report to the Council on Environmental Quality (CEQ) – 31 out of 41 – were or are being prepared with cooperating agencies. The report, submitted to CEQ on December 11, 2009, covers EISs for which DOE issued a notice of intent on or after October 1, 2005, and that were completed during fiscal year 2009 or were still ongoing as of September 30, 2009. Thirteen of the 15 EISs started in fiscal year 2009 (and therefore included in the report for the first time) are being prepared with cooperating agencies.

None of the 31 EAs that DOE completed as the lead agency during fiscal year 2009 (and therefore counted in the report) were prepared with cooperating agencies. This statistic is highly variable from year to year, depending on the extent to which the proposals evaluated in the EAs involve other agencies and the extent that consulting or commenting suffices to address their concerns. This does not reflect a change in DOE policy from past years.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating

## EPA To Discontinue EIS Comment Summaries in *Federal Register*

In accordance with Section 309(a) of the Clean Air Act, the Environmental Protection Agency (EPA) is required to make public its comments on EISs issued by other Federal agencies. Historically, EPA has met this mandate by publishing in the *Federal Register* a weekly notice of availability of EPA comments, which includes a brief summary of EPA's comment letters.

For more than 2 years, EPA has been posting its EIS comment letters at [www.epa.gov/compliance/nepa/eisdata.html](http://www.epa.gov/compliance/nepa/eisdata.html). EPA has concluded that posting entire EIS comment letters on the website satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, EPA has announced that after March 31, 2010, it will discontinue the publication of a notice of availability of EPA comments in the *Federal Register*. However, EPA will continue to publish, usually on Fridays, a weekly notice of availability of EISs filed during the previous week. ■■

agency status or for terminating an established cooperating agency relationship before completion of a NEPA review. The reasons most frequently cited by NEPA Document Managers for DOE EISs without cooperating agencies are that no candidates were identified with special expertise or jurisdiction by law (40 CFR 1501.6) and that the agencies invited as potential cooperating agencies preferred other ways to participate in the NEPA process.

The annual reporting requirement is part of CEQ's ongoing efforts to encourage Federal agencies to involve other Federal, state, tribal, and local governmental organizations as cooperating agencies in NEPA reviews, promote early involvement of cooperating agencies, and track such involvement. The CEQ memoranda relating to cooperating agencies may be found in the *DOE NEPA Compliance Guide*, Volume 1, Section 4-13, on the DOE NEPA Website, at [www.gc.energy.gov/nepa](http://www.gc.energy.gov/nepa) under Guidance. For further information, contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) or 202-586-9326. ■■



### Thoughts from the CEQ NEPA Symposium

When people complain about the NEPA process, ask them – What is it that you do not want to know? What is it that you do not want the public to know? How much time and money are you willing to spend in Federal court defending that view?

– Robert Smythe, Former Senior Staff Member, CEQ

# Programmatic Agreement Streamlines Historic Preservation Reviews of Recovery Act Projects

DOE has taken innovative steps in coordination with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers to make the Section 106 process under the National Historic Preservation Act more efficient while ensuring protection of the Nation's historic properties. The organizations worked together to develop a Prototype Programmatic Agreement<sup>1</sup> (programmatic agreement) to help facilitate Section 106 reviews for projects to be funded under three Office of Energy Efficiency and Renewable Energy (EERE) financial assistance programs – Energy Efficiency and Conservation Block Grant (EECBG), State Energy Program (SEP), and Weatherization Assistance Program (WAP). On February 5, 2010, ACHP released the programmatic agreement for use by DOE and its recipients in these three programs.

The programmatic agreement was written in response to the “unprecedented levels of funding” – more than \$11 billion combined for the three programs – made available through the Recovery Act. This created “a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds” to create new jobs and improve local and state economies, the programmatic agreement states.

---

*DOE, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects.*

*– Prototype Programmatic Agreement  
February 5, 2010*

---



*Improving insulation normally would be exempt from Section 106 review under the programmatic agreement. (photo: SMS)*

## Categorical Approach Used

Normally, Section 106 requires the Federal agency to consider potential effects on historic properties for each of its undertakings and provide the ACHP an opportunity to comment. Once the State Energy Office, DOE, and the State Historic Preservation Officer (SHPO) sign the programmatic agreement, the protocol described therein serves to meet DOE's Section 106 responsibilities. The terms of the programmatic agreement will be applicable to other DOE-funded EECBG, SEP, and WAP recipients in each state (such as counties, municipalities, and other local governments) through the terms of the grant agreements. The primary responsibilities of DOE and ACHP would include participating in dispute resolution and providing technical guidance. Also, DOE retains responsibility for government-to-government consultation with Indian tribes, unless a tribe agrees to delegation of this responsibility to the state's energy office.

A key feature of the programmatic agreement is a “categorical approach to streamline reviews and reduce the heavy burden placed on SHPOs,” wrote Claire Broido Johnson, Acting Program Manager in EERE's Office of Weatherization and Intergovernmental Program, in a Program Notice on February 11, 2010.

*(continued on next page)*

---

<sup>1</sup> ACHP's regulations (36 CFR 800.14(b)(4)) allow the ACHP to designate an agreement document as a Prototype Programmatic Agreement, which the agency may then develop and execute with the appropriate SHPO/THPO without the need for ACHP participation or signature.

# Historic Preservation Reviews

(continued from previous page)

The programmatic agreement identifies routine activities with limited potential to affect historic properties that are exempt from Section 106 review. Examples include many energy efficiency activities such as caulking and weather-stripping, installing solar hot water systems (provided structures are not visible from a public right-of-way), reroofing, and installing more energy efficient appliances. Further, the programmatic agreement identifies standard mitigation measures, such as recording and salvaging significant architectural features, to address potential adverse effects on historic properties.

The type of activities exempted under the programmatic agreement from Section 106 review also commonly qualify for categorical exclusion determinations under DOE's NEPA regulations (10 CFR Part 1021). For projects requiring either an EA or EIS, nothing in the agreement prevents DOE and its grant recipients from utilizing procedures in ACHP regulations (36 CFR Part 800) to coordinate and conduct historic preservation reviews in conjunction with NEPA reviews.


## Agreement Builds Upon 2009 EERE Memorandum

DOE initiated changes to historic review processes last summer. Catherine Zoi, EERE Assistant Secretary, in an August 28, 2009, memorandum to SHPOs and Tribal Historic Preservation Officers (THPOs), authorized applicants in the three programs to consult with SHPOs to initiate the Section 106 review process. Assistant Secretary Zoi's 2009 memorandum allowed applicants to gather information and identify and evaluate historic

properties, and work with consulting parties to assess effects. However, DOE retained its responsibility to initiate government-to-government consultation with Federally-recognized Indian tribes, and further, to document its findings and determinations to finalize Section 106 reviews.

The programmatic agreement builds upon the 2009 memorandum. The programmatic agreement delineates in more detail the roles and responsibilities of involved parties. In addition, the programmatic agreement recognizes and incorporates certain pre-existing interagency state agreements. For example, if a State agency and SHPO had already negotiated an agreement prior to February 5, 2010 (and it was executed no later than February 19, 2010) the programmatic agreement provides that the interagency agreement may be used to meet Section 106 requirements in lieu of the programmatic agreement.<sup>2</sup> Similarly, a grant recipient that already has an executed Section 106 Agreement for Community Development Block Grants with the SHPO does not need a separate Section 106 review if certain conditions are met.<sup>3</sup> States and SHPOs should execute the programmatic agreement as soon as possible and send it to DOE for execution.

## More Information

The Prototype Programmatic Agreement and related documents are available on EERE's website at [http://apps1.eere.energy.gov/wip/historic\\_preservation.cfm](http://apps1.eere.energy.gov/wip/historic_preservation.cfm). For further information, contact Derek Passarelli, Chief Counsel for DOE's Golden Field Office, at [historicpreservation@go.doe.gov](mailto:historicpreservation@go.doe.gov). 

<sup>2</sup> See Section III of the programmatic agreement entitled "State Interagency Agreements."


<sup>3</sup> See Section V(A) of the programmatic agreement regarding "Review Procedures for Non-Exempt Undertakings."

# GAO: Historic Preservation, NEPA Among Factors Affecting Recovery Act Implementation

The Government Accountability Office's (GAO's) latest report on Recovery Act implementation identifies Federal requirements cited by agency officials as slowing the pace of funding. The three most often cited are Davis-Bacon wage rate requirements, Buy American requirements, and compliance with the National Historic Preservation Act.

"Officials from 3 federal agencies – Commerce, Energy, and Housing and Urban Development – stated that NEPA had affected project timing; another 8 federal agencies stated that NEPA may affect project timing," notes GAO. "Officials from 3 states also said that NEPA affected project timing." Two of these states provided examples involving DOE. "For example, California officials said that the State Energy Commission must submit some of its Recovery Act projects to Energy for NEPA review because

they are not covered by Energy's existing categorical exclusions. State officials said that such reviews can take up to 6 or more weeks. Both California and Mississippi officials told us that activities that are categorically excluded under NEPA (e.g., road repaving or energy-efficient upgrades to existing buildings) still require clearance before the state can award funds. Staff must spend time filling out forms and supplying information to Energy on projects that may qualify for a categorical exclusion," reported GAO.

The full report, *RECOVERY ACT: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors* (GAO-10-383, February 2010), is available on the GAO's website at [www.gao.gov](http://www.gao.gov). 

# Transitions: NEPA Compliance Officers



## Welcome!

### Advanced Research Projects Agency – Energy: Matthew Dunne

The Advanced Research Projects Agency – Energy (ARPA-E) has designated its Acting Chief Counsel, Matthew Dunne, as NCO. Mr. Dunne formerly worked for King & Spalding in Washington, DC, where he focused on intellectual property litigation and international arbitration. He also advised his clients on Federal laws and regulations that impact their business, including imports, exports, and investments. Mr. Dunne can be reached at [matthew.dunne@hq.doe.gov](mailto:matthew.dunne@hq.doe.gov) or 202-287-6079.

### Civilian Radioactive Waste Management: Kathryn Knapp

Kathryn Knapp has 24 years of regulatory experience, including NEPA compliance. She supported the DOE Yucca Mountain Project with oversight, development, review, and management of key NEPA documents for the high-level radioactive waste repository and Nevada rail line. Among Ms. Knapp's responsibilities as an NCO will be certain Office of Energy Efficiency and Renewable Energy projects for which the Office of Civilian Radioactive Waste Management is providing support (*LLQR*, September 2009, page 1). Ms. Knapp can be reached at [kathryn\\_knapp@ymp.gov](mailto:kathryn_knapp@ymp.gov) or 702-794-1467.

### National Energy Technology Laboratory: Four New NCOs

*To manage significantly increased responsibilities under the Recovery Act, the National Energy Technology Laboratory (NETL) has designated four additional NCOs.*

**Pierina Fayish** has been active in NETL's NEPA program since 2004. She has been a Project Manager and the NEPA Document Manager for projects under the Clean Coal Power Initiative and Regional Carbon Sequestration Partnerships, and now is responsible for numerous EAs in preparation for projects under the Recovery Act. Ms. Fayish can be reached at [pierina.fayish@netl.doe.gov](mailto:pierina.fayish@netl.doe.gov) or 412-386-5428.

**Richard Hargis** has served in NETL since it was established in 1999, and in its predecessor energy technology laboratories starting in 1987. He has been a NEPA Document Manager for projects under the original Clean Coal Technology Program and more recently the Clean Coal Power Initiative. Mr. Hargis can be reached at [hargis@netl.doe.gov](mailto:hargis@netl.doe.gov) or 412-386-6065.

**Mark McKoy** joined the Federal environment, safety, and health workforce at NETL in 2001, after nearly 10 years of site support services in environmental compliance and natural gas research and development. He has been a NEPA Document Manager since 2001 and currently also serves as a Senior Management Regulatory and Technical Advisor. Mr. McKoy can be reached at [mmckoy@netl.doe.gov](mailto:mmckoy@netl.doe.gov) or 304-285-4426.

**Cliff Whyte** was the Principal Engineer of an environmental engineering firm and an assistant director with the West Virginia Department of Environmental Protection, before joining NETL's NEPA program in 2009. His expertise includes water quality and waste management issues. Mr. Whyte can be reached at [cliff.whyte@netl.doe.gov](mailto:cliff.whyte@netl.doe.gov) or 304-285-2098.

## Redeployed!

### NCOs Assist Golden Field Office

Due to increased NEPA workload arising from Recovery Act projects administered through the Office of Energy Efficiency and Renewable Energy (EERE), the Golden Field Office is receiving extra support from other NCOs for several months. **David Boron** (EERE), **Gary Hartman** (Oak Ridge Office), **Jane Summerson** (Civilian Radioactive Waste Management), and **Pete Yerace** (Environmental Management Consolidated Business Center) will help Golden NCOs **Steve Blazek** and **Kristen Kerwin** in making NEPA-related determinations and reviewing documents. (See *LLQR*, September 2009, page 1.)

(continued on next page)



# Transitions: NCOs

(continued from previous page)

## Welcome Back!

At the Grand Junction Office, **Tracy Plessinger** now serves as NCO for **Legacy Management** (a Headquarters Program Office). From 2000–2004, she was the NCO for the Grand Junction Office when it reported to the Office of Environmental Management through the Idaho Operations Office. Legacy Management's former NCO, **Rich Bush**, now leads long-term stewardship initiatives for Uranium Mill Tailings Radiation Control Act sites.

**Idaho Operations Office: Jack Depperschmidt** returns to the NCO role after a detail as Acting Director for the Office's National Security/Science and Technology Division.

**National Energy Technology Laboratory: Jesse Garcia**, formerly NCO in NETL's Tulsa Office, is now NCO in NETL's Morgantown Office.

## Farewell!

**Jody Barringer**, formerly an NCO for EERE, has taken a position with the Office of Management and Budget, where she has responsibility for oversight of the Environmental Protection Agency Superfund, Brownfields, and Recovery Act programs.

**William Bierbower**, formerly the NCO for ARPA-E, has returned to the National Aeronautics and Space Administration, Marshall Space Flight Center, in Huntsville, Alabama, where he serves as Chief Counsel.

On behalf of the DOE NEPA Community, we offer **Roy Spears**, formerly an NCO for NETL, best wishes on his retirement. 

---

## Irene Atney, Environmental Counsel

Irene Atney, Environmental Counsel at the Brookhaven Site Office for 19 years, died on February 6 after a long illness. Irene was a key member of Brookhaven's NEPA compliance program, where she handled a wide range of environmental and general law matters. Her colleagues report that she took ownership of any NEPA document that crossed her desk, and strove to streamline the NEPA process, make EAs more concise, and ensure that documents were of excellent quality. Irene worked on the proposal that resulted in DOE categorical exclusion B3.10 (involving particle accelerators) and contributed to the NEPA Contracting Quality Improvement Team. Irene's friends and colleagues will miss her generosity, intellectual curiosity, sense of humor, and energy.

---

## April 22 Is Earth Day 40

Planning is now well underway for a week of Earth Day celebration at DOE Headquarters. On April 22, 2010, DOE will celebrate the 40<sup>th</sup> anniversary of the founding of Earth Day. The DOE Headquarters Earth Day celebration will take place at the Forrestal Building on April 19–23 and at DOE's Germantown facility on April 26–30.

DOE's Office of Environmental Policy and Assistance, within the Office of Health, Safety and Security, is leading the DOE-Headquarters' Earth Day celebration planning effort. For more information, contact Ms. Beverly Whitehead, Office of Environmental Policy and Assistance, at [beverly.whitehead@hq.doe.gov](mailto:beverly.whitehead@hq.doe.gov).

The NEPA Office is joining in, and will report on the event in the June issue of *LLQR*. We would be happy to include your celebration in our report. Send a description and photos of your Office's Earth Day activities to Carrie Moeller ([carrie.moeller@hq.doe.gov](mailto:carrie.moeller@hq.doe.gov)).






# Transitions: NEPA Policy and Compliance

*The Office of NEPA Policy and Compliance is pleased to welcome three Environmental Protection Specialists to its staff.*

**Connie Chen** brings DOE 5 years experience as an environmental consultant in California, where she helped prepare environmental documentation pursuant to the California Environmental Quality Act (CEQA) and NEPA. She has worked on a range of projects, including residential and commercial development, transportation and public utilities infrastructure, natural resource restoration, and alternative energy. She also has experience in air quality and transportation impact analyses, focusing on project-level air quality modeling, including greenhouse gas emissions and mitigation compliance under CEQA regulations. Connie has an educational background in public environmental management and economics. She joins the Eastern Energy and Waste Management Unit and can be reached at [connie.chen@hq.doe.gov](mailto:connie.chen@hq.doe.gov) or 202-586-0733.

**Jon Hale** brings over 23 years experience in planning, applied biology, and project lifecycle management. As a NEPA specialist since 1998, both as a Federal employee and as a contractor, he led numerous NEPA reviews involving transportation, water supply development, and natural resource management. Jon worked with endangered sea turtles to minimize the effects from explosive removal of offshore oil and gas platforms. He was involved in the radiological cleanup of the Johnston Island atmospheric nuclear testing site and, as a member of the Base Closure Team for Midway Island Naval Air Facility, helped plan and implement a 5-year, \$84 million, environmental cleanup and transfer of the Naval base, including removal of underground fuel tanks, demolition of buildings, remediation of contaminated soil, and closure of three landfills. Jon works in the Science/Nuclear Unit, and can be reached at [jon.hale@hq.doe.gov](mailto:jon.hale@hq.doe.gov) or 202-287-5923.

**Michael Wach** has over 24 years of professional experience related to environmental law and science. He joins DOE after 2 years at BIO (Biotechnology Industry Organization), where he served as Managing Director for Science and Regulatory Affairs for agricultural biotechnology, and 4 years at the Department of Agriculture, where he advised agency staff on NEPA issues associated with the regulation of biotech crops. In addition to a doctorate in Molecular Plant Pathology and Biochemistry, with 20 years of experience in agricultural science, he also has a law degree with a specialty in environmental law. His earlier work, with the public-interest law firm in Eugene, Oregon, that initiated the first lawsuits to protect the Northern Spotted Owl, provided him with experience in NEPA and other environmental laws as well as the Freedom of Information Act. His focus was on issues of forest and wildlife management, endangered species, water and air pollution, pesticides, and public lands management. Mike joins the Western Energy and Waste Management Unit and can be reached at [michael.wach@hq.doe.gov](mailto:michael.wach@hq.doe.gov) or 202-586-6043. 



*Jon Hale (left), Mike Wach, and Connie Chen recently joined the DOE NEPA Office and bring diverse expertise and experience.*

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- American Law Institute and American Bar Association  
800-253-6397  
[www.ali-aba.org](http://www.ali-aba.org)  
**Environmental Litigation**  
Boulder, CO: June 16-18  
\$1,299 (\$999 webcast)  
(course reference code CR045)
- International Association for Public Participation  
703-837-1197  
[iap2training@theperspectivesgroup.com](mailto:iap2training@theperspectivesgroup.com)  
[www.iap2.org](http://www.iap2.org)  
**Communications for Effective Public Participation**  
St. Paul, MN: March 17  
Kansas City, KS: April 7  
Washington, DC: May 5  
Columbus, OH: June 23  
San Diego, CA: July 14  
\$360  
**Techniques for Effective Public Participation**  
St. Paul, MN: March 18-19  
Kansas City, KS: April 8-9  
Washington, DC: May 6-7  
Columbus, OH: June 24-25  
San Diego, CA: July 15-16  
\$720  
**Emotion, Outrage, and Public Participation**  
Tucson, AZ: March 18-19  
Washington, DC: April 8-9  
\$700  
**Planning for Effective Public Participation**  
Kansas City, KS: April 5-6  
Washington, DC: May 3-4  
Columbus, OH: June 21-22  
San Diego, CA: July 12-13  
\$720
- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.env.duke.edu/del/continuing/courses.html](http://www.env.duke.edu/del/continuing/courses.html)  
**Implementation of NEPA**  
Durham, NC: March 15-19  
\$1,250
- The Law of NEPA**  
Durham, NC: June 2-4  
\$925  
**Certificate in the National Environmental Policy Act**  
Requires successful completion of one core and three elective Duke University NEPA short courses. Co-sponsored by the Council on Environmental Quality.  
Fee: Included in course registration.
- Northwest Environmental Training Center  
206-762-1976  
[info@nwetc.org](mailto:info@nwetc.org)  
[www.nwetc.org](http://www.nwetc.org)  
**NEPA: Writing the Perfect EA/FONSI or EIS**  
Phoenix, AZ: March 30-31  
Houston, TX: April 21-22  
Atlanta, GA: April 26-27  
\$495 (\$395 for Federal employees)
- The Shipley Group  
888-270-2157 or 801-298-7800  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)  
**Clear Writing for NEPA Specialists**  
San Antonio, TX: March 9-11  
\$985 (GSA contract: \$895)  
**Collaboration in the NEPA Process**  
Salt Lake City, UT: April 8-9  
\$745 (GSA contract: \$655)  
**Applying the NEPA Process and Writing Effective NEPA Documents**  
Nashville, TN: April 13-16  
\$1,185 (GSA contract: \$1,095)  
**NEPA Climate Change Analysis and Documentation and NEPA Cumulative Effects Analysis and Documentation**  
Salt Lake City, UT: May 4-7  
Baltimore, MD: July 13-16  
\$1,145 (GSA contract: \$1,055) until 3/23/10  
**NEPA Climate Change Analysis and Documentation and Clear Writing for NEPA Specialists**  
Milwaukee, WI: May 10-14  
\$1,345 (GSA contract: \$1,255) until 4/26/10

(continued on next page)

# Training Opportunities

(continued from previous page)

**Overview of the NEPA Process  
and Overview of the Endangered  
Species Act and Overview of the  
National Historic Preservation  
Act/Section 106**

Denver, CO: June 2-4  
\$945 (GSA contract: \$855) until 4/21/10

**Applying the NEPA Process and Writing  
Effective NEPA Documents and NEPA  
Cumulative Effects Analysis  
and Documentation**

Portland, OR: June 7-11  
\$1,345 (GSA contract \$1,255)  
until 4/26/10

**Applying the NEPA Process  
and Reviewing NEPA Documents**

Albuquerque, NM: June 21-25  
\$1,345 (GSA contract: \$1,255)  
until 5/10/10

**Managing NEPA Projects and Teams  
and Reviewing NEPA Documents**

St. Louis, MO: July 19-23  
\$1,345 (GSA contract: \$1,255) until 6/7/10

**NEPA Certificate Program**

Requires successful completion of four core  
and three elective courses and a capstone  
course offered by The Shipley Group.

\$5,450  
Contact: Natural Resources and  
Environmental Policy Program,  
Utah State University; 435-797-0922;  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu);  
[www.cnr.usu.edu/htm/students/  
grad-degrees/nepa/](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa/)

- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/training](http://www.swca.com/training)

**The Cultural Side of NEPA: Addressing  
Cultural Resources in NEPA Analysis**

Austin, TX: April 26-27  
\$695

- US Institute for Environmental Conflict Resolution  
520-901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)

**Interest-Based Negotiation  
of Environmental Issues**

Lakewood, CO: April 21-22  
\$500

**Collaboration Skills**

Lakewood, CO: June 15-17  
\$750

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Training & Consulting  
International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- International Institute for Indigenous  
Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- ICF International  
916-737-3000  
[www.jonesandstokes.com](http://www.jonesandstokes.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeps@mchsi.com](mailto:jleeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)

# EAs and EISs Completed October 1 to December 31, 2009

## EAs

### Brookhaven Site Office/Office of Science

[DOE/EA-1663](#) (12/4/09)

*Environmental Assessment for BP Solar Array Project, Brookhaven National Laboratory, Upton, New York*

Cost: \$65,000

Time: 9 months

### Office of the Chief Financial Officer

[DOE/EA-1676](#) (12/2/09)

*Environmental Assessment for Department of Energy Loan Guarantee for U.S. Geothermal's Neal Hot Springs Geothermal Facility in Vale, Oregon*

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

Time: 6 months

[DOE/EA-1678](#) (11/25/09)

*Environmental Assessment for Department of Energy Loan to Nissan North America, Inc., for Advanced Technology Electric Vehicle Manufacturing Project in Smyrna, Tennessee*

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

Time: 5 months

### Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1440-S-2](#) (11/10/09)

*Final Supplement-II to Final Site-wide Environmental Assessment: National Renewable Energy Laboratory South Table Mountain Complex, Golden, Colorado*

Cost: \$257,000

Time: 21 months

[DOE/EA-1661](#) (12/17/09)

*Wind Energy Project, Mount Wachusett Community College, Gardner, Massachusetts*

Cost: \$68,000

Time: 42 months

[DOE/EA-1680](#) (9/11/09)\*

*AltaRock/NCPA Engineered Geothermal Enhancement System Demonstration Project, Lake County, California*

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

Time: 10 months

[Bureau of Land Management was the lead Federal agency and issued its EA 3/6/09. Golden Field Office adopted this EA and signed a FONSI on 9/11/09; the FONSI was made publicly available on 12/30/09.]

## EISs

### Bonneville Power Administration

[DOE/EIS-0384](#) (74 FR 62305, 11/27/09)

(EPA Rating: EC-2)

*Chief Joseph Hatchery Program, Okanogan County, Washington*

Cost: \$320,000

Time: 51 months

### Office of Fossil Energy/

### National Energy Technology Laboratory

[DOE/EIS-0382](#) (74 FR 60260, 11/20/09)

(EPA Rating: EO-2)

*Mesaba Energy Project, Itasca and St. Louis Counties, Minnesota*

Cost: \$1,400,000

Time: 49 months

[Co-lead: State of Minnesota, Department of Commerce]

#### ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

##### Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

##### Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

\*Not previously reported in LLQR.

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 3 EAs for which cost data were applicable was \$68,000; the average cost was \$130,000.
- Cumulatively, for the 12 months that ended December 31, 2009, the median cost for the preparation of 20 EAs for which cost data were applicable was \$55,000; the average was \$82,000.
- For this quarter, the median completion time of 6 EAs was 9.5 months; the average was 15.5 months.
- Cumulatively, for the 12 months that ended December 31, 2009, the median completion time for 34 EAs was 8 months; the average was 15 months.

## EIS Cost and Completion Times

- For this quarter, the costs for the completion of 2 EISs were \$320,000 and \$1.4 million.
- Cumulatively, for the 12 months that ended December 31, 2009, the costs for the preparation of 2 EISs for which cost data were applicable were \$320,000 and \$1.4 million.
- For this quarter, the completion times for 2 EISs were 49 and 51 months.
- Cumulatively, for the 12 months that ended December 31, 2009, the median completion time for 3 EISs was 49 months; the average was 50 months.

## Recent EIS-Related Milestones (December 1, 2009 to February 28, 2010)

### Notices of Intent

#### Western Area Power Administration

DOE/EIS-0438

*Interconnection of the Proposed Hermosa West Wind Farm Project*, Albany County, Wyoming  
January 2010 ([75 FR 2138](#), 1/14/10)

DOE/EIS-0440

*Construction and Operation of the Quartzsite Solar Energy Project*, La Paz County, Arizona  
January 2010 ([75 FR 2133](#), 1/14/10)

### Notice of Extension of Public Comment Period

#### National Nuclear Security Administration

DOE/EIS-0387

*Draft Site-Wide Environmental Impact Statement for the Y-12 National Security Complex*, Oak Ridge, Tennessee  
December 2009 ([74 FR 68599](#), 12/28/09)  
[EPA notice of amendment, [75 FR 2540](#), 1/15/10]

### Notice of Modifications to Preferred Alternatives

#### Office of Environmental Management/ Richland Operations Office

DOE/EIS-0391

*Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site*, Richland, Washington  
December 2009 ([74 FR 67189](#), 12/18/09)  
[Notice of public hearings, [75 FR 1048](#), 1/8/10; notice of additional public hearings, [75 FR 3902](#), 1/25/10]

### Draft EISs

#### Office of Environmental Management

DOE/EIS-0423

*Draft Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement*, Colorado, Idaho, Missouri, Nevada, South Carolina, Texas, Washington  
January 2010 ([75 FR 4812](#), 1/29/10)

#### Western Area Power Administration

DOE/EIS-0415

*Deer Creek Station Energy Facility Project*, Brookings County, South Dakota  
February 2010 ([75 FR 6027](#), 2/5/10)

(continued on next page)

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

## Draft EISs (continued from previous page)

DOE/EIS-0418

*Draft Environmental Impact Statement for the South Dakota Prairie Winds Project, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota*  
[Co-lead: U.S. Department of Agriculture]  
January 2010 ([75 FR 2540](#), 1/15/10)

## Final EISs

### Office of Environmental Management

DOE/EIS-0226

*Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, Erie and Cattaraugus Counties, New York*  
January 2010 ([75 FR 4812](#), 1/29/10)

### Western Area Power Administration

DOE/EIS-0398

*Delta-Mendota Canal California Aqueduct Intertie (DCI) Project, California*  
February 2010 ([75 FR 6027](#), 2/5/10)  
[DOE adopted an EA and FEIS from the Department of the Interior's Bureau of Reclamation]

DOE/EIS-0443

*Project Financing for Southwest Intertie Project-South, Clark, Lincoln, Nye, and White Pine Counties, Nevada*  
February 2010 ([75 FR 7479](#), 2/19/10)  
[DOE adopted an EA and FEIS from the Department of the Interior's Bureau of Land Management]

## Record of Decision

### Bonneville Power Administration

DOE/EIS-0183

*Electrical Interconnection of the Lower Snake River Wind Energy Project, Washington*  
February 2010 ([75 FR 6020](#), 2/5/10)

## Amended Record of Decision

### Office of Environmental Management

DOE/EIS-0287

*Idaho High-Level Waste and Facilities Disposition, Idaho Falls, Idaho*  
January 2010 ([75 FR 137](#), 1/4/10)  
[Correction to amended record of decision, [75 FR 1615](#), 1/12/10]

## Supplement Analyses

### Bonneville Power Administration

#### Transmission System Vegetation Management Program

(DOE/EIS-0285)

[DOE/EIS-0285/SA-408\\*](#)

*Vegetation Management along the Olympia-Shelton Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
November 2009

[DOE/EIS-0285/SA-409\\*](#)

*Vegetation Management and Access Road Maintenance Activities along the Chehalis-Covington Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
November 2009

[DOE/EIS-0285/SA-410](#)

*Vegetation Management along the Shelton-Fairmount Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
December 2009

[DOE/EIS-0285/SA-411\\*](#)

*Vegetation Management along the Raver-Echo Lake Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
November 2009

[DOE/EIS-0285/SA-412](#)

*Vegetation Management along the Ross-Lexington Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
December 2009

[DOE/EIS-0285/SA-414](#)

*Vegetation Management along the Custer-Intalco No. 1 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
January 2010

[DOE/EIS-0285/SA-415](#)

*Vegetation Management along the Custer-Intalco No. 2 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
January 2010

[DOE/EIS-0285/SA-416](#)

*Vegetation Management along the Raver-Covington No. 1 and No. 2 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
January 2010

(continued on next page)

\*Not previously reported in LLQR

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

### [DOE/EIS-0285/SA-417](#)

*Vegetation Management along the Custer-Ingledow No. 1 and No. 2 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
January 2010

### [DOE/EIS-0285/SA-418](#)

*Vegetation Management along the Raver-Paul No. 1 and Paul-Allston No. 2 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
February 2010

### [DOE/EIS-0285/SA-419](#)

*Vegetation Management along the Paul-Satsop No. 1 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
January 2010

### [DOE/EIS-0285/SA-420](#)

*Vegetation Management along the McNary-Ross No. 1 Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
January 2010

### Thoughts from the CEQ NEPA Symposium

Sunshine rarely falls on the hundreds of millions of dollars of effort that goes into the preparation of EISs. Too many are prepared with a very 1970's technology – the 3-ring binder. Too many end up in a filing cabinet and no one has any idea what is there. Hopefully, [NEPA.gov](#) will put all EISs in one spot online.

– *Michael Gerrard, Columbia Law School*

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Didn't Work

- *Group reorganization.* The re-configuration of the DOE communications group negatively impacted NEPA public involvement and tribal relations.

## Data Collection/Analysis

### What Worked

- *Planning methodology.* A master planning process analyzed many alternatives before the NEPA process began. DOE was then able to prepare the Draft EIS very quickly and inexpensively by updating and adopting the master plan data.
- *Information consolidation.* The EA process pulled together all of the environmental information in one place for evaluation and public review.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Frequent meetings.* The team held EA progress meetings biweekly, then weekly, to resolve issues quickly.

### Factors that Inhibited Timely Completion of Documents

- *Review process.* The EA focused too heavily on a tangential permitting process that did not add value to the impact analysis.
- *Late entry of cooperating agency.* A Federal cooperating agency became involved after the Draft EIS was issued. It then took 2.5 years to determine that the EIS and other processes were adequate to support their decision.
- *Involvement of multiple groups.* A high level of integration and coordination among EA preparation team members was required, which impacted the completion of the EA.

- *Resource availability.* The cooperating agency was unable to fund or assign help to this EIS, although it recognized its role and responsibility.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Resource experts.* The integration of resource experts from the internal team helped to facilitate effective preparation of the EA.
- *Applicant involvement.* The main EA author was a project manager from the applicant who was knowledgeable and responsive and made the process run smoothly.
- *Good communication and adherence to schedule.* Frequent communication among the DOE team and adherence to deadlines helped to facilitate teamwork and EA preparation.
- *Applicant participation.* The applicant prepared the Draft EA and managed the Draft EA contractors.
- *Contractor experience.* The contractors preparing this EIS were very experienced. Their knowledge of the project area and regulatory agencies allowed for cohesive teamwork.

## Process

### Successful Aspects of the Public Participation Process

- *Early issue identification.* The prompt identification of issues and timely resolutions enhanced overall understanding of the project's environmental impacts and resulted in the public's view that the EA process was beneficial.
- *Informative public meeting.* A public meeting held prior to issuance of the Draft EA facilitated a better understanding of the NEPA process and its purpose.

*(continued on next page)*



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

### Usefulness

#### Agency Planning and Decisionmaking: What Worked

- *Consideration of environmental consequences.* The NEPA process influenced the applicant's decisionmaking as opposed to the Federal decisionmaking process. The NEPA process motivated the applicant to fully consider the environmental consequences of its proposals.
- *Early identification of issues.* The NEPA process helped to uncover and address potential seismic issues associated with the project early on, and adequately addressed this concern in the EA, which informed DOE decisionmaking.
- *Analysis approach.* The NEPA process made DOE aware of the environmental infrastructure already in place at the applicant's facility.

#### Agency Planning and Decisionmaking: What Didn't Work

- *Untimely issuance of Records of Decision (RODs).* The cooperating agency's ROD will be issued well after the DOE ROD, as its headquarters has to review all the process, work and products independently.

### Enhancement/Protection of the Environment

- *Control measures employed.* The EA process ensured that all practicable environmental control measures were considered and employed where possible.
- *Pre-existing environmental framework.* The manufacturer maintained a similar facility prior to project commencement. The operations of this facility provided the framework for a high level of awareness of environmental issues and concerns within the site and local community.
- *Protection of endangered species.* The EIS process resulted in enhancement of the environment in that the hatchery production of salmon that are listed under the Endangered Species Act will occur, resulting in tribal utilization of the salmon for ceremonial and subsistence purposes. It may also result in an economic benefit.

### Other Issues

#### Guidance Needs Identified

- *Formal communication protocol.* The lack of a formal way to communicate about the cooperating agency status of the other involved Federal agency led to long delays in the issuance of the final EIS.

### Effectiveness of the NEPA Process

For the purposes of this section, "effective" means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decisionmaking.

For the past quarter, in which 4 questionnaire responses were received for EAs and EISs, 2 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the applicant's decision to proceed with the project was heavily dependent upon the outcome of the EA, therefore making the NEPA process vital to the success of the project.
- A respondent who rated the process as "3" stated that the NEPA process was effective in providing assurance to the decisionmakers that the project was not a potential source of seismic activity, a main concern of DOE.
- A respondent who rated the process as "2" stated that the NEPA process found no "negative" environmental impacts and did not influence DOE decisionmaking.
- A respondent who rated the process as "2" stated that the NEPA process tweaked design and siting minimally. Most environmental effects were discovered by the master planning process that came before the EIS. NEPA did help agencies and the public learn about the project so it garnered more broad-based support.

# LESSONS LEARNED

June 1, 2010; Issue No. 63

Second Quarter FY 2010

## NAEP Conference Looks to NEPA's Future

By: Brian Costner and Connie Chen, Office of NEPA Policy and Compliance



"It is time to reclaim NEPA," said Lucinda Low Swartz, environmental consultant and former Deputy General Counsel at the Council on Environmental Quality (CEQ), at this year's conference of the National Association of Environmental Professionals (NAEP). She challenged NEPA practitioners to start by simplifying NEPA analysis and documentation.

Throughout the Conference, *Tracking Changes: 40 Years of Implementing NEPA and Improving the Environment*, held April 28–30 in Atlanta, Georgia, about 250 participants discussed ways to reinvigorate NEPA.

"NEPA began a brand new chapter in the way America treats the public," said Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, in his keynote address. In 1970, NEPA established openness and public involvement as basic components in Federal decisions, he said, and the Obama Administration's Open Government Initiative places an even stronger focus on Government transparency and accountability in the NEPA process.

### Guidance To Reaffirm Purposes of NEPA

Mr. Greczmiel described CEQ's three current draft guidance initiatives as "opportunities to reaffirm the purposes of NEPA" (*LLQR*, March 2010, page 3). The guidance on establishing categorical exclusions, he said, would improve transparency in how Federal agencies substantiate new categorical exclusions and how they use them. The guidance on mitigation and monitoring would recommend monitoring programs and public access to monitoring reports to help ensure that mitigation measures that agencies commit to are, in fact, implemented and effective, Mr. Greczmiel said. He called the lack of monitoring the "great gap in NEPA."

Climate change is one of "a suite of issues we have to deal with" in NEPA reviews, he said. The guidance on when and how Federal agencies should consider greenhouse gas emissions and climate change for their proposed actions would help the public and decisionmakers understand

(continued on page 10)

## Celebrating 40 Years with NEPA and Earth Day!

*"At the risk of sounding like Pollyanna, I believe that the elegant little statute known as NEPA has changed the United States and, indeed, the world."*

– Anne Norton Miller

To mark the 40<sup>th</sup> anniversary of NEPA, the Office of NEPA Policy and Compliance is inviting distinguished NEPA practitioners to share their thoughts on the occasion. In this issue, Anne Norton Miller, former Director of the Office of Federal Activities at the U.S. Environmental Protection Agency, shares her perspective on NEPA's origins, legacy, and future (page 6).

In April, DOE also celebrated the 40<sup>th</sup> anniversary of Earth Day. At DOE Headquarters, exhibits showcased DOE green energy activities. The NEPA Office exhibit highlighted 40 years of NEPA at DOE and its benefits to the Department. In addition, DOE Field Offices celebrated by hosting their own events, including recycling drives and outdoor native vegetation planting. (Learn more, page 8.)

## Inside *LESSONS LEARNED*

Welcome to the 63<sup>rd</sup> quarterly report on lessons learned in the NEPA process. In this issue, we continue our observance of the 40<sup>th</sup> anniversary of NEPA. This is a time to address the need to reinvigorate NEPA implementation for the next 40 years. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

DOE NEPA Website Pursues Continuous Improvement.....	3
Experience in Posting CX Determinations.....	4
NEPA Then and Now: Anne Norton Miller .....	6
DOE Celebrates Earth Day 40 .....	8
NAEP NEPA Excellence Award .....	11
BPA Honors NEPA Accomplishments.....	12
Jointly Issued FR Notices .....	12
DOE General Counsel's "Green Sock" Awards .....	13
DOE CX Rulemaking Update .....	13
Recovery Act NEPA Reviews Remain Timely.....	14
NEPA Contracting Updates .....	14
CEQ Reiterates Emergency Guidance.....	15
DOE Comments on Draft CEQ NEPA Guidance .....	15
DOE's Strategic Sustainability Performance Plan .....	16
Transitions .....	17
In Memoriam: Bill Cohen .....	17
Litigation Updates.....	18
Training Opportunities .....	22
EAs and EISs Completed This Quarter.....	24
Cost and Time Facts.....	25
Recent EIS-Related Milestones.....	26
DOE NEPA Brochure Reprinted .....	27
Questionnaire Results .....	28

*Carol Borgstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 2, 2010. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due August 2, 2010

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2010 (April 1 through June 30, 2010) should be submitted by August 2, 2010, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. Beginning with this issue, DOE will provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

Printed on recycled paper



This icon indicates that LLQR online ([nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned) provides a link to a referenced webpage whose URL is too long to be useful when printed.



## Mark Your Calendars: Upcoming Conferences



### GreenGov Symposium: October 5–7

The Office of the Federal Environmental Executive will hold the 2010 GreenGov Symposium at George Washington University in Washington, DC, October 5–7. Additional events hosted by DOE will be scheduled around the Symposium. For more information, contact Beverly R. Whitehead, Office of Environmental Policy and Assistance, at [beverly.whitehead@hq.doe.gov](mailto:beverly.whitehead@hq.doe.gov).



### Climate Change Symposium: November 15–16

The International Association for Impact Assessment will hold a symposium in Washington, DC, November 15–16 emphasizing practical examples and guidance for infrastructure likely to be affected by climate change. Participants will also explore the application of strategic environmental and cumulative effects assessment. Visit [www.iaia.org/conferences](http://www.iaia.org/conferences) for further details.



## DOE NEPA Website Pursues Continuous Improvement

By: Denise Freeman, Webmaster, Office of NEPA Policy and Compliance

The look and content of the DOE NEPA Website has recently been improved, and further changes are anticipated as we continue a systematic review. Several improvements were made in response to suggestions from the DOE NEPA Community, and we welcome further suggestions. Our objective is to make the website more intuitive and user-friendly, both for the DOE NEPA Community and for the public.

One change that may not be immediately noticeable is that the DOE NEPA Website has a new address (URL): [nepa.energy.gov](http://nepa.energy.gov). (NOTE: <http://> and [www.](http://www) are not needed.) Although the old URL will continue to work, the new address should be used when citing the NEPA website in DOE NEPA documents and notices.

Other changes include reorganization of the NEPA News on the homepage; the Contact Us page; and the pages containing Final Environmental Impact Statements (EISs) and Environmental Assessments (EAs), which are now sorted by year of document issuance. In addition, the Lessons Learned page has a new look, with thumbnail picture links to the most recent editions of the *Lessons Learned Quarterly Report* ([nepa.energy.gov/lessons\\_learned.htm](http://nepa.energy.gov/lessons_learned.htm)). In response to a suggestion from Mark Lusk, NEPA Compliance Officer, National Energy Technology Laboratory, the DOE NEPA Document Certification and Transmittal Form can now be completed online.


### EISs Moved from Secure Server

We recently moved five EISs from the secure server to the public server of the NEPA website at the request of the Savannah River Operations Office (text box). Although these are relatively old EISs, they are sometimes referenced in newer NEPA reviews; making them electronically available online will make them more readily available to the public. Consistent with the President's emphasis on transparency in Government, the NEPA Office encourages other Program and Field Offices

The Savannah River Operations Office has determined that, consistent with Department of Justice guidance on the Freedom of Information Act (FOIA),<sup>1</sup> five EISs that were previously on the secure server of the DOE NEPA Website could be made available on the public server because they already were in the public domain (they were available online on another website):

- DOE/EIS-0062; Waste Management Operations: Double-Shell Tanks for Defense High-Level Radioactive Waste Storage at the Savannah River Plant, Aiken, South Carolina (Supplement to ERDA-1537, September 1977) (April 1980)
- DOE/EIS-0120; Waste Management Activities for Groundwater Protection at the Savannah River Plant, Aiken, South Carolina (December 1987)
- DOE/EIS-0220; Interim Management of Nuclear Materials (October 1995)
- DOE/EIS-0271; Construction and Operation of a Tritium Extraction Facility at the Savannah River Site (March 1999)
- DOE/EIS-0279; Savannah River Site Spent Nuclear Fuel Management (March 2000)

to review their EISs on the secure server to see if they can be made publicly available online.

The NEPA website is a valuable online resource for the NEPA Community and the public. We need your feedback on how to improve the usability of the site. In particular, we welcome suggestions on ways to improve the DOE NEPA Document and Guidance pages. We are evaluating how to create a searchable database for EAs and EISs. We are also considering creating a Facebook page for the NEPA website. Submit your comments, ideas, suggestions, and recommendations to Denise Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov). 

<sup>1</sup> March 19, 2009, Memorandum from the Attorney General on FOIA (LLQR, June 2009, page 25).

# DOE Gains Experience in Posting CX Determinations

By: Jeffrey Dorman, Office of NEPA Policy and Compliance

The number of DOE categorical exclusion (CX) determinations posted online continues to grow. Approximately 2,400 CX determinations have been posted since November 2, 2009, the effective date of DOE's policy to document and post online determinations based on the CXs listed in Appendix B to Subpart D of DOE's NEPA regulations (10 CFR Part 1021). (See [LLQR, December 2009, page 1.](#)) The CX determinations may be accessed through [nepa.energy.gov](http://nepa.energy.gov) as described below.

DOE's experience in implementing the policy has been instructive. Among the lessons learned, use of electronic forms has proven to be a highly effective way to streamline the process of producing CX determinations and posting them online. Use of electronic forms also promotes consistency among DOE offices and, compared to manual scanning of paper CX determinations, facilitates compliance with requirements<sup>1</sup> to make Federal electronic information available to people with disabilities.

Many NEPA Compliance Officers (NCOs) now use electronic forms. "Use of an electronic CX determination form provides several benefits to the Office of Energy Efficiency and Renewable Energy [EERE], including

streamlining the concurrence, web-posting, and record keeping processes, and providing the flexibility to revise CX determinations when appropriate," said John Jediny, EERE. (Note: Mr. Jediny created an electronic form that is available on the CX page of the DOE NEPA Website.)

## CX Database Upgraded

In view of the large number of determinations being posted on individual Program and Field Office websites, a centralized database was needed to ensure the transparency and openness envisioned under the CX policy. Accordingly, the NEPA Office launched the CX Database on the DOE NEPA Website, and registered the Database with [Data.gov](http://Data.gov) ([LLQR, March 2010, page 1](#)). The CX Database contains searchable information about all of the CX determinations that have been posted, and links to the determinations. The NEPA Office updates the Database at least monthly.

Based on our experience in managing the Database, we identified a need for an upgrade. DOE Program and Field Offices post CX determinations to their individual websites. Before the upgrade, the CX Database linked

*(continued on next page)*

The screenshot shows the search interface for the DOE CX Database. At the top, it displays the DOE logo and the title 'U. S. Department of Energy (DOE) Categorical Exclusion (CX) Determinations Under the National Environmental Policy Act (NEPA)'. On the right, it shows statistics: 'Total number of entries: 2072', 'Date of last update: 05/04/2010', and 'Number of new entries: 723'. The search filters are organized into several sections: 'States / Territories' with a list of states and 'Other' checked; 'CXs Applied' with a list of categories, where '85.1 Actions to conserve energy' is selected; 'Determination Date' with a date range from 1/1/2009 to 5/10/2010; 'Program / Field or Site Office' with a list of offices; 'Tribal / Native Alaskan Area' and 'Recovery Act (ARRA)' with 'Include in search filter' options for 'Yes' and 'No'; and 'Text Search' with a search input field and a 'Clear Search Criteria' button. A 'Search CX Database' button and a 'Display search results in new browser window' checkbox are also present.

CX Database search page.

<sup>1</sup> Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998.

# Posting CX Determinations

(continued from previous page)

search results to an individual CX determination file on the Program or Field Office website. With this approach, whenever files were moved to a new location, such as when a website was redesigned, the link from the CX Database to the CX determination stopped working, potentially frustrating users. Each link had to be reset, a time-consuming exercise that requires continuous monitoring. In addition, in a few cases, Field Offices removed CX determinations from their websites shortly after posting them, resulting in broken links from the CX Database.

To solve this problem, electronic copies of CX determinations are now stored on the CX Database server so that the files will remain available to the public indefinitely. Individual Program and Field Office websites and CX determination postings remain available through links from the DOE NEPA Website.

## Implementation Guidance Revised – CX Determinations Online at Least 3 Years

Several NCOs have asked the NEPA Office to clarify how long CX determinations should remain online. Some NCOs interpreted the guidance to allow removal of CX determinations from their websites after 2 weeks if there has been no expression of public interest.

To clarify the intent of the CX policy, the NEPA Office, in consultation with the Assistant General Counsel for Environment, has revised the Implementation Guidance, first issued October 16, 2009. The response to Question 12 of the revised *Implementation Guidance for the DOE Policy on Documentation and Online Posting of Categorical Exclusion Determinations: NEPA Process Transparency and Openness* now states, “Consistent with electronic records management procedures and policies, CX determinations should remain online as long as the action may be of interest, and for at least 3 years. If circumstances (e.g., site closure or reorganization) require disestablishment of the host Office’s website, please notify the NEPA Office so that the determinations can be posted on the DOE NEPA Website or archived, as appropriate.”

In updating the CX Database, NEPA Office staff has observed that some offices post scanned copies of original CX determinations that were hand signed and dated. In some cases, offices have published unsigned and undated versions, with notation that a signed version is on file.

## The CX Database (as of May 27, 2010):

- 2,403 CX determinations from 38 DOE offices
- 1,570 of those are related to Recovery Act projects

The most frequently invoked CXs are:


- B5.1 – Actions to conserve energy (1,229)
- A9 – Information gathering/data analysis/document preparation/dissemination (1,090)
- A11 – Technical advice and assistance to organizations (576)
- B3.6 – Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects (494)
- B2.5 – Safety and environmental improvements of a facility, replacement/upgrade of facility components (297)

*Note: The total number of CX determinations is less than the number of CXs invoked because some determinations invoked more than one CX.*

The effective date and NCO name should be provided on all CX determinations.

## What the Data Show So Far

Recent data on CX determinations (text box) should be interpreted cautiously because the data appear to be highly skewed by American Recovery and Reinvestment Act (Recovery Act) implementation. Approximately two-thirds of the CX determinations in the Database are for Recovery Act projects, and more than half of the determinations in the Database were based on CX B5.1 – Actions to conserve energy, which is frequently used for EERE Recovery Act projects. Although DOE has no prior historic data regarding its CX determinations, recent experience is unlikely to be representative of the past in terms of the rate of CX determinations and the distribution of the CXs being applied.

For more information about the CX Database, contact Jeffrey Dorman at [jeffrey.dorman@hq.doe.gov](mailto:jeffrey.dorman@hq.doe.gov) or 202-586-3181. 



# Celebrating 40 Years with NEPA!

*This is the second article in a series marking the 40<sup>th</sup> anniversary of NEPA. Anne Norton Miller, former Director of the Office of Federal Activities, U.S. Environmental Protection Agency (the agency's NEPA office), is recognized as a strong advocate for early stakeholder involvement as a way to streamline the NEPA process and achieve better decisions. We wish to express our appreciation for her four decades of leadership, and especially her contributions to the DOE NEPA Community meetings. (See LLQR, March 2008, page 17.)*

## NEPA Then and Now – A Personal Reflection

By: Anne Norton Miller

**2010:** In April I attended the annual meeting of the International Association for Impact Assessment (IAIA) in Geneva, Switzerland. The meeting focused on the role of impact assessment in transitioning to a green economy. IAIA is the leading global network on best practices in impact assessment for informed decisionmaking on policies, programs, plans, and projects. It is a nonprofit association for environmental professionals and impact assessment practitioners, with about 1,600 members representing more than 120 countries.

The IAIA meeting was attended by about 600 energetic and engaged individuals, sharing their expertise and experiences, learning from others how to better perform their tasks and improve decisionmaking around the globe. These folks – experienced practitioners and students alike – are interested in building and maintaining vibrant economies while protecting and strengthening their human and natural resource bases. Some are more interested in health impacts, others in social impacts, but at the end of the day they are all committed to using environmental impact assessment to assure that the decisions we make today will take into account any potential adverse impacts. They understand that informed decisions will, in the end, be wiser decisions.

**1970:** This was a time when rivers could burn, and also a time when someone who fell into a river could die NOT from drowning but from oil inhalation (I was working in Cleveland when the Cuyahoga burst into flames). Not a pretty picture. The National Environmental Policy Act had just been passed, and in January 1970 it was signed into law. April 1970 saw the first Earth Day, and in December the U.S. Environmental Protection Agency was created. And the changes just kept coming – including my agency's (Federal Water Quality Administration) assumption into the newly created EPA.

NEPA ensured that federal decisionmakers, who routinely considered economic factors and technical feasibility in their decisions, would now also consider the environmental consequences of their decisions. NEPA also opened the decisionmaking process to the public. Now the decisionmakers would understand the impacts, and the public would also understand the impacts and know that the decisionmakers did, too. The surprising thing is that NEPA makes only one reference to the public: it says that



*Ms. Miller began her career as a bench microbiologist at the Federal Water Pollution Control Administration (circa 1970).*

a “detailed statement” – an environmental impact statement (EIS) – must be made available to the public. The Council on Environmental Quality and the courts have interpreted that requirement broadly, and the opening-up of the federal decisionmaking process to the public has become one of the most important aspects of NEPA.

Having moved to New York City in 1971 as a charter employee of EPA, I reviewed my first EIS, which was for the Sports Complex in the Hackensack Meadowlands. I was not trained in environmental impact assessment; we picked it up – indeed we created it – as we went along. As in the story of the three bears, environmental documents in those days tended to be TOO short or TOO long; rarely were they just right. But we learned as we went along, and colleges and universities began training students in the field. Direct impacts, indirect impacts, the (still) dreaded cumulative impacts analysis; biodiversity; endangered species; socioeconomic impacts and environmental justice; strategic assessments; sustainability; climate change – the issues that need to be addressed continued to multiply and the danger of creating encyclopedias rather than on-point, comprehensible analyses increased as well.

**Over the decades:** Our Nation's population has continued to increase, and the attendant development is not proportional – i.e., development occurs at an even greater pace than the population increases. The woes of suburban sprawl are widely proclaimed, and this pressure is particularly evident in the congestion of our transportation networks.

*(continued on next page)*

# Celebrating 40 Years with NEPA!

## NEPA Then and Now (continued from previous page)

Increasing population also places considerable stress on our natural resources. Water wars continue, with conflicts among the drinking water needs of metropolitan areas, the irrigation needs of agriculture, the need for hydropower generation, the need for navigation, and last (unfortunately last but not in my opinion least) the needs of the numerous species other than *Homo sapiens* that depend on stream flows for their existence.

The effects on human quality of life, the loss of habitat, the creation of additional threatened and endangered species, the increase in greenhouse gases and their potential impact on climate, and the ever-escalating controversies over additional development are extremely difficult to balance. And the same situation exists in every country around the globe – the Americas, Asia, Europe, Africa. Even Antarctica is threatened by climate change and by the ever-increasing number of visitors each year. Over 100 countries have followed in the footsteps of the United States and created environmental impact assessment legislation that requires analysis and a role for citizens in decisionmaking.

---

***We have not done as good a job as we might have in convincing people that what we do IS valuable; we were too busy doing it.***

– Anne Norton Miller

---

**2010: NEPA at 40.** As I reflect, I have mixed feelings, and it's truly a case of good news/bad news. The bad news is that the issues are becoming increasingly complex, both technically and politically. There is tremendous opposition to environmental review: "it takes too long, it's too expensive, it doesn't add anything." This may be linked to the occasional misperception on the part of some agencies – and their contractors – that quantity equals quality. While NEPA itself has not been altered, there have been other legislative moves to limit agency compliance on a statute-by-statute basis. The federal budget is not robust, and it does take a certain level of resources to do a good environmental review. And it's hard to sell a negative – what would our environment be like now if we hadn't had NEPA? Remember that oily burning river?

The good news is that overall we do have better environmental conditions than we did 40 years ago, even though we can do better, and we must address such problems as climate change. Development has continued, and generally federal projects have eliminated, minimized, or otherwise mitigated the adverse impacts that would have occurred without an environmental review. And this process has been used as a model by more than 100 countries and a number of funding institutions, such as the World Bank, improving an unknown but huge number of projects, plans, programs and policies world-wide. Many countries now



*Since her 2008 retirement, which concluded nearly 40 years at EPA, Ms. Miller has been traveling around the world (visiting New Zealand, above) and enjoying the environment.*

routinely consider environmental impacts and involve their citizens in the decisionmaking process. NEPA has had a HUGE spin-off effect!

We must continue to focus on improving the process and its results. We need to start our environmental impact assessments at the planning stage, where we still have real alternatives. We need to keep an open mind, and not jump to conclusions on how best to address a problem without considering other alternatives. We need to honestly and openly consult with all stakeholders. It's not just a matter of building trust, although that is important. We need to understand that we can actually learn from stakeholders – including but not limited to community members, developers, business men and women, farmers, environmentalists, academics, and representatives of federal, state, tribal, and local governments. And we need to streamline the process, emphasizing early involvement and concurrent reviews where there are multiple requirements.

I believe that focused implementation of NEPA and all those comparable statutes around the world are vital as we work to solve the complex issues that threaten human health, public welfare, and the environment. This was brought home to me most recently by the IAIA meeting I attended in April. NEPA has forced us to consider environmental consequences, and it has led to the involvement of citizens in government decisionmaking, both here at home and within many countries where that would not otherwise have occurred. **LL**

---

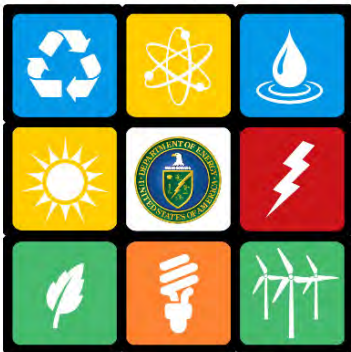
***And, after all, NEPA is ONLY 40. That's pretty young, to my way of thinking.***

– Anne Norton Miller




# DOE Celebrates Earth Day 40

## U.S. DEPARTMENT OF ENERGY EARTH DAY 40



**EARTH DAY, EVERY DAY!**  
REDUCING DOE'S CARBON FOOTPRINT

The Office of NEPA Policy and Compliance celebrated Earth Day during the week of April 19–23, 2010, with other DOE Headquarters Offices, promoting the theme “**Earth Day, Every Day! Reducing DOE’s Carbon Footprint.**” Exhibits showcased the goals of Executive Order 13514, *Leadership in Environmental, Energy, and Economic Performance*. (See related article, page 16.) With over 30 exhibitors and a peak crowd size of approximately 1,500 people, over 100 pounds of batteries were collected, and about 100 people toured the rooftop solar panels. As Earth Day coincided with Take Our Daughters and Sons to Work Day, there were family-friendly festivities in DOE’s Earth Day Village, including hands-on demonstrations of green products, services, and technologies, and crafts and face painting. Events also included tree planting on the DOE grounds and a Smithsonian garden walk. Over 130 t-shirts were purchased with the DOE Earth Day 40 logo (left).

The NEPA poster (below) was displayed during Earth Week by NEPA Office staff and at the NAEP Conference. DOE Field Offices also observed Earth Day (examples, opposite page). 

# Celebrating 40 Years of NEPA At the Department of Energy

## DOE NEPA Milestones

### 1970-1979

- 1970 NEPA Signed into Law; Established the Council on Environmental Quality (CEQ)
- 1977 Department of Energy (DOE) Established  
First DOE EIS (Bryan Mound Salt Dome EIS)
- 1979 DOE Adopts CEQ NEPA Regulations (10 CFR Part 1021)  
First Site-wide EIS (Mound Facility EIS)

### 1980-1989

- 1980 First DOE NEPA Guidelines (supplemental procedures)
- 1981 First DOE NEPA Compliance Guide
- 1988 First DOE-wide NEPA Meeting
- 1989 Clean Coal Technology Demonstration Program EIS (addressed greenhouse gas emissions, global climate change)

### 1990-1999

- 1990 DOE NEPA Compliance Officers Established
- 1992 “Thank God for NEPA” – Former Energy Secretary Watkins to Congress
- 1993 DOE NEPA Website Established  
Recommendations for the Preparation of EAs and EISs (“Green Book”)
- 1994 DOE NEPA Document Managers Established  
First Issue of *Lessons Learned Quarterly Report*  
First DOE NEPA Stakeholders Directory
- 1995 DOE NEPA Program Wins CEQ/National Association of Environmental Professionals (NAEP) Federal Environmental Quality Award  
Tritium Supply and Recycle Programmatic EIS (led to 3 tiered project-specific EISs)
- 1997 First DOE-wide NEPA Task Order Contracts  
Waste Management Programmatic EIS

### 2000-2010

- 2000 DOE’s NEPA “Lessons Learned” Program Wins NAEP Environmental Excellence Award
- 2002 Accident Analysis Guidance
- 2005 Updated DOE NEPA Compliance Guide on DOE NEPA Website  
DOE, NEPA and You: A Guide to Public Participation
- 2006 DOE Wins NAEP Special Achievement Award for “NEPA 35: Spotlight on Environmental Excellence” Conference  
EIS Distribution Guidance
- 2007 50<sup>th</sup> Issue of *Lessons Learned Quarterly Report*
- 2009 DOE Posts Categorical Exclusion (CX) Determinations Online
- 2010 CX Database Identified as “High Value” Set in Data.gov

Forty years ago, the National Environmental Policy Act (NEPA) was signed into law with overwhelming bipartisan support, ushering in a new era of environmental awareness and citizen participation in government. NEPA elevated the role of environmental considerations in proposed Federal agency actions, and it remains the cornerstone of our Nation’s modern environmental protections. . . .

President Barack Obama  
Proclamation on the 40<sup>th</sup> Anniversary  
of the National Environmental Policy Act, 2010

## Benefits of NEPA Process Noted by DOE Practitioners

### COOPERATION/COORDINATION

The process allowed us to work closely with a cooperating agency and the public to develop alternatives that responded more to the needs of all parties involved. I continue to be sold on the value of the NEPA process!

### ALTERNATIVES

The NEPA process definitely assisted in developing a project alternative that was less costly and had fewer environmental impacts than alternatives initially considered.

### OVERALL PROCESS

The NEPA process forced the project staff to define problems that they hadn’t yet identified. Important issues and considerations would have been overlooked if NEPA was not done.

### DECISIONMAKING

NEPA helped the decisionmaker focus on the relevant factors needed to make a quality decision.

FOR MORE DETAILED INFORMATION – PAST, PRESENT AND FUTURE – VISIT [NEPA.ENERGY.GOV](http://NEPA.ENERGY.GOV)

# Earth Day 40



Bonneville Power Administration (BPA) celebrated Earth Day's 40<sup>th</sup> anniversary all month long with the theme, "Do your part." Employees helped plant native vegetation to shade Beaver Creek, in Troutdale, Oregon, improving habitat for migrating salmon.



BPA's E-recycling Event in Longview, Washington, encouraged everyone to recycle old home electronics, including cell phones, computers, calculators, video game equipment, and hair dryers.



Western Area Power Administration (Sierra Nevada Region) packaged fluorescent light bulbs dropped off by staff for recycling.



Employees of the Waste Isolation Pilot Plant, Carlsbad, New Mexico, were given aluminum water bottles to encourage use of reusable drink containers.



Legacy Management (LM) employees at the Mound Facility, Miamisburg, Ohio, handed out energy-related bookmarks.



At the Grand Junction Office, LM employees demonstrated how to be safe around downed electric power lines.



this global issue and the potential impacts of a project's emissions, he said. Addressing such issues, Mr. Greczmiel said, demonstrates how "NEPA adapts; it doesn't have to be re-made."

## "Foster Excellent Action," Not Paperwork

Many discussions at the NAEP Conference demonstrated a tension between the purposes of NEPA to improve decisionmaking and results, and the too common experience that NEPA's objectives get lost among mounds of paperwork. CEQ recognized this potential conflict when it established the NEPA regulations: "NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action" (40 CFR 1500.1(c)).

Lynton Caldwell's 1979 article, "Is NEPA Inherently Self-Defeating?" included a criticism that environmental impact statements (EISs) and environmental assessments (EAs) "were and still are sometimes encyclopedic, rambling, difficult to understand, and full of extraneous background data" (*LLQR*, September 2006, page 1). David Key, NEPA Coordinator, National Marine Fisheries Service, Southeast Region, said that 30 years later, this issue is "still a big problem, especially the part concerning large, unfocused EISs. . . . The truly important information gets lost in a sea of minutia."

## Reinvigorate and Reclaim NEPA

What is the truly important information? The information that is important to the public and the decisionmaker, said several participants. "Count what counts," emphasized Lamar Smith, Team Leader, Environment Technical Service Team, Federal Highway Administration (FHWA).

"Strive to prepare documents that look and read like summaries," recommended Ms. Swartz, "leaving detailed information and technical analyses to technical reports." "Resist the temptation to pad a NEPA document with appendices," she continued. Include only material that was prepared for the NEPA document and that is "essential for understanding the NEPA document itself," she said.

During the 10 Conference sessions on NEPA implementation, panelists and audience members discussed a wide range of other suggestions for improving the NEPA process and documentation. Suggestions encouraged early participation, clearly defining the proposal, and using scoping to focus on what's important, among other topics.

Several participants addressed document preparation and the value of clear writing, good organization, and informative graphics to make NEPA documents more useful to the public and decisionmakers. Ms. Swartz reminded participants that the courts have found some NEPA documents to be inadequate because, for example,

information was so scattered throughout the document as to make it incomprehensible.

## Is NEPA an Umbrella?

"Some of NEPA's strongest supporters are often planners and decisionmakers who become champions after their first brush with the statute and the process," said Ray Clark, Senior Partner at The Clark Group and former Associate Director for NEPA Oversight at CEQ.

NEPA is not an umbrella to hold up and cover other environmental statutes, said Mr. Greczmiel. "It's an upside down umbrella to contain all those statutes, to bring it all together," he said. Mr. Greczmiel and others agreed that the fundamental components of the NEPA process mirror good planning and project management. If you set NEPA aside and look at other requirements, "By and large," Mr. Greczmiel said, "you would come up with the need for something pretty close to a NEPA process."

Jomar Maldonado, Environmental Officer at the Federal Emergency Management Agency (FEMA), agreed. Section 316 of the Stafford Act exempts some FEMA actions from NEPA. "When we don't have that NEPA umbrella, we still have to comply with the Endangered Species Act, the National Historic Preservation Act, and other laws," he said. He explained that good planning still requires FEMA to identify a purpose and need, scope of work, and alternatives. "The process looks very much like NEPA," he said.

## Meeting Recovery Act Challenges

NEPA compliance for projects funded by the American Recovery and Reinvestment Act (Recovery Act) was the focus of one Conference session. Most participants had been involved in NEPA reviews related to the Recovery Act and indicated they thought the process was going well, though with room for improvement.

Ron Bass, Senior Regulatory Specialist, ICF International, moderated the panel and asked whether the tens of thousands of categorical exclusion determinations made for Recovery Act projects should raise any red flags. Panelists Mr. Smith, FHWA, and Brian Costner, DOE NEPA Office, described the types of projects their respective agencies are funding through the Recovery Act. Mr. Smith identified projects such as improvements to existing bridges and roads. Mr. Costner said that most of the funds obligated by DOE thus far are for projects such as weatherization, improvements to existing buildings, and research and development projects. For both agencies, such projects have been the subject of categorical exclusion determinations for many years, the panelists said. (See related article, page 14.)

# Baltimore Harbor Project Receives NAEP NEPA Excellence Award



Public participation, interagency cooperation, and integrated planning were critical elements in providing a solution for future placement of dredged materials in Maryland's Baltimore Harbor, explained Kaitlin McCormick, Environmental Scientist with EA Engineering, Science and Technology, in describing the project that received NAEP's 2010 NEPA Excellence Award. The winning project was the Development and Implementation of Masonville Dredged Material Containment Facility, Masonville Cove Environmental Education Center, and Associated Mitigation Plan at Masonville Cove.

"The Masonville Dredged Material Containment Facility addresses the long-term need for adequate placement of Baltimore Harbor's dredged materials, providing over 15.4 million cubic yards of capacity," wrote NAEP in describing the winning project. "Comprehensive planning by five committees enabled the project to successfully utilize existing NEPA reviews, coordinate compatible objectives, review likely alternatives, and select an effective and efficient operation for Baltimore Harbor commerce, which provides annual tax revenues of over \$270 million and wages of \$2.4 billion per year."

The Maryland Port Administration (MPA) and the U.S. Army Corps of Engineers (Corps) both have responsibilities for various operations in Baltimore Harbor. Regular channel maintenance to ensure safe passage through the harbor and other dredging projects are projected to generate about 1.5 million cubic yards of dredged material annually, Ms. McCormick said. Because of contaminants associated with past activities in and around the harbor, dredged sediment must be placed in a confined facility. MPA and the Corps began work almost a decade ago to meet long-term needs for dredged material in anticipation of closure of an existing dredged material placement facility.

Ms. McCormick described how, in 2003, the Harbor Team (comprised of local citizens groups, Federal and state agencies, local industry, and non-profit groups) screened hundreds of potential options for managing dredged materials. The team's recommendations fed into two tiered EISs prepared by the Corps and identification of a preferred alternative at Masonville Cove. The alternative ultimately selected included the innovative reuse of




*In 2007, the Maryland Port Administration began construction of the containment dikes for the Masonville Dredged Material Containment Facility. (photo: Kaitlin McCormick)*


dredged material from a separate project to help construct the proposed Masonville Dredged Material Containment Facility. Analysis in the EIS addressed several complex issues, including potential impacts on essential fish habitat, listed species, cultural resources, and air quality. MPA completed the initial construction of the facility in 2009 and will have placement capacity available in 2010.

## Mitigation Provides Environmental Benefits

Public involvement throughout the planning process, including the EISs, helped identify several mitigation options. Federal and state resource agencies and the community adjacent to the proposed project identified opportunities for ecological enhancement, education, and recreation in Masonville Cove. The Cove is designated by the City of Baltimore as a Habitat Protection Area, because it is an historic waterfowl staging and concentration area. Mitigation plans would improve aquatic habitat, which the EIS found could have secondary positive effects on water quality. Other mitigation commitments include remediation of 25 derelict vessels and capping of sediments to reduce toxics burden in the area, and establishing an environmental education center and system of trails.

For additional information, contact Ms. McCormick at [kmccormick@eaest.com](mailto:kmccormick@eaest.com) or 410-771-4950. 

## Abstracts for 2011 NAEP Conference Due September 30

The 2011 NAEP conference, planned for April 26–29 in Denver, will explore the theme of *Seventh Generation Thinking from the Past – Planning for the Future*. NAEP will also present its National Environmental Excellence Awards. The NAEP website ([www.naep.org](http://www.naep.org)) provides further information, including instructions for submitting abstracts and award nominations, which are due September 30, 2010. 

# BPA Honors NEPA Accomplishments

In an awards ceremony on the theme of “Going the Extra Mile,” the Bonneville Power Administration (BPA) recently recognized two of its staff for outstanding effort and achievement. In the March 18 ceremony at BPA’s Portland, Oregon, headquarters, Administrator Steve Wright presented Administrator’s Excellence Awards to Kathy Pierce, BPA’s long-serving NEPA Compliance Officer, and Sheron Jones, Administrative Specialist.

Nominated by her peers, Kathy Pierce received the *Meritorious Service Award*, BPA’s highest award, for her impressive NEPA achievements during 28 years in BPA’s environmental organizations. She was recognized for providing extraordinary contributions to BPA’s mission – through “unusual initiative, regional and national innovation, and outstanding customer service; exemplary management skills and devotion to duty; and dramatic cost-savings for BPA and the region.”

- In the mid-1990s, Ms. Pierce helped conceive the Business Plan EIS (DOE/EIS-0183) and guided its development. This EIS allows BPA the flexibility to conduct daily transactions without separately analyzing each decision, and has served as a model for expediting projects and saving money while meeting the spirit and letter of environmental laws. The Business Plan EIS was upheld in the Ninth Circuit Court, and its approach was endorsed by the Council on Environmental Quality. (See [LLQR, December 1997, page 16.](#))
- Ms. Pierce also captained a team that conceptualized and completed the Fish and Wildlife Implementation Plan EIS (DOE/EIS-0312), which accomplished for BPA’s Fish and Wildlife Program what the Business Plan EIS did for the power marketing program. And more recently, in developing the 2007–2009 Fish and Wildlife Tiered Record of Decision, she encouraged staff to develop ideas that led to even higher levels of NEPA efficiency. (See [LLQR, June 2001, page 6.](#))



BPA Administrator Steve Wright awarded Kathy Pierce, NEPA Compliance Officer, with BPA’s highest award, the Meritorious Service Award, on March 18.

Sheron Jones received the *Unsung Hero* award in recognition of her administrative support at BPA’s Washington, DC, office. “Sheron’s people skills and know-how are essential to BPA’s ability to work effectively with DOE, Federal offices, and Congressional staff. BPA’s environmental staff see Sheron as an irreplaceable member of their team,” said Ms. Pierce.

Greg Delwiche, Vice President, Environment, Fish and Wildlife, BPA, reflected on the recognition of significant environmental contributions with these awards. “They are a testimonial to environmental stewardship having truly become part of the agency’s mainstream culture and not merely BPA-Environment’s job. It is gratifying and fulfilling that through our organizational role as the ‘agency’s environmental conscience,’ BPA is taking ownership of environmental values,” he said. **LL**

## Federal Register Notices Issued Jointly Must Include All Agencies’ Signatures

Recently a NEPA lesson was learned the hard way, when a required signature was omitted on a document submitted for publication in the *Federal Register*. When DOE initially submitted a notice of intent to prepare an EIS jointly with another agency, the Office of the Federal Register, National Archives and Records Administration, returned the notice because no official representing the joint lead agency had signed. (Note: This requirement is not applicable for cooperating agencies, only “co-lead”

agencies.) By the time a properly signed original was delivered and the notice was published, only a few days remained before a public scoping meeting was to take place. Fortunately, the agencies had fully publicized the scoping meeting in the local media and were willing to conduct a subsequent meeting if the delayed *Federal Register* notice led an interested person to request such a meeting. No one requested an additional scoping meeting. **LL**

# DOE General Counsel Presents “Green Sock” Awards



DOE General Counsel Scott Blake Harris awarded “green socks” to several staff in a ceremony on May 19, 2010, to acknowledge creativity or unusual effort in the public interest. Recipients included Eric Cohen, Brian Costner, Jeffrey Dorman, and Denise Freeman from the Office of NEPA Policy and Compliance, and Rick Ahern and Felix Amerasinghe from the Office of the Assistant General Counsel for Environment.

Eric Cohen and Denise Freeman were recognized for their work in implementing the Deputy Secretary’s policy to post DOE categorical exclusion (CX) determinations online (*LLQR*, December 2009, page 1). They developed web-related portions of the Implementation Guidance and created links from the DOE NEPA Website to access CX determinations on more than 50 Program and Field Office websites.

Jeffrey Dorman was recognized for his efforts in launching and managing the Department’s online database for CX determinations, which was listed as a “featured tool”

and recognized as a “high value dataset” on *Data.gov*. Mr. Dorman developed creative solutions to technical problems, enabling timely development of the CX Database.

Rick Ahern and Brian Costner were recognized for their extraordinary work under extreme deadlines to complete a NEPA analysis of a time-sensitive project. They prepared a draft EA for a wind farm just 2 weeks after first receiving information about the project from the state. They finalized the EA and facilitated the issuance of a finding of no significant impact 2 weeks later.

Felix Amerasinghe earned his award for his creativity in developing “NEPA Templates” for the Energy Efficiency and Conservation Block Grant Program and the State Energy Program. These templates have streamlined NEPA review, enabling the Department to comply with its NEPA obligations by categorically excluding entire subgrant programs.

## DOE Categorical Exclusion Rulemaking Update

DOE is in the process of reviewing and updating its list of categorical exclusions (CXs) (10 CFR Part 1021, Subpart D) because the Department’s existing CXs do not fully account for DOE’s current priorities or advances in technology (*LLQR*, March 2010, page 19). As part of this effort, the Office of NEPA Policy and Compliance is working with DOE NEPA Compliance Officers to develop proposed new and modified CXs and to identify supporting information. To date, the Department is considering proposing about nine new CXs and modifying more than 40 of its existing CXs.

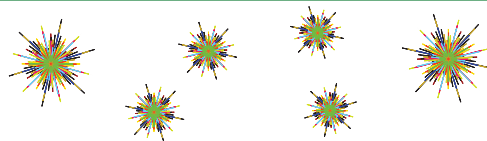
DOE will publish a notice of proposed rulemaking in the *Federal Register* and will consider comments received, before preparing a final rule. The Request for Information that announced DOE’s intent to update its CXs (74 FR 68720; December 29, 2009) and responses are posted in the DOE CX rulemaking docket at *Regulations.gov* (Docket ID: DOE-HQ-2010-0002). The notice of proposed rulemaking and public comments also will be posted in this docket.

### What Does NEPA Mean to You?

#### Share Your Inspiration with Readers of *LLQR*

In this 40<sup>th</sup> anniversary year of NEPA, *LLQR* is featuring a series of articles by NEPA practitioners; the second in this series is on page 6. We would like to include brief essays contributed by our readers on subjects

connected to NEPA. Please send your drafts (no more than 300 words) to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) by August 2 for consideration in the September issue.





# Recovery Act NEPA Reviews Remain Timely

Federal agencies continue to report timely progress toward completing NEPA reviews for American Recovery and Reinvestment Act (Recovery Act) projects and activities (projects), said Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), during a May meeting with agency NEPA contacts. CEQ submitted the fifth quarterly report on the NEPA status of projects receiving Recovery Act funds to Congress on May 3, 2010.

Congress reviews each report, he explained, with some Members particularly interested in NEPA reviews that remain pending for two or more quarters and, thus, may indicate delay. Mr. Greczmiel pointed, for context, to the many activities that may be encompassed within the NEPA review process such as project definition and consultations among Federal agencies.

---

*There is a difference between delay and time well spent.*

*– Horst Greczmiel, CEQ*

---

The May report summarizes the NEPA status of more than 183,700 Recovery Act projects. Cumulatively through March 31, 2010, Federal agencies completed more than 165,000 categorical exclusion (CX) determinations and 7,300 EAs. More than 800 projects had been analyzed in

EISs. Agencies concluded that NEPA is not applicable to about 4,200 other Recovery Act projects. Together, these projects involve obligations of more than \$216 billion funded under Division A of the Recovery Act. In addition, CEQ reported that more than 2,750 NEPA reviews are underway, including 1,600 CX determinations, 1,120 EAs, and 45 EISs.

As of March 31, DOE had completed nearly 5,575 NEPA reviews supporting the obligation of more than \$26.6 billion for projects receiving Recovery Act funding, an increase of more than \$3.3 billion since December 31, 2009 (*LLQR*, March 2010, page 14). DOE completed more than 800 of these NEPA reviews during the first quarter of 2010.

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through June 30, 2010. Federal agency reports are due to CEQ by July 15, 2010, and CEQ will submit the next report to Congress in August.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924.

## NEPA Contracting Updates

Aneesah Vaughn, Contract Specialist for the DOE-wide NEPA Contracts, participated in the recent NAEP Conference (related article, page 1), and shares her impressions: “The Conference helped me to clarify the laws and policies of the NEPA environment. I found it interesting to learn about the Government’s roles and responsibilities when putting together an EA or EIS. It also helped me understand what to look for when dealing with a new requirement for NEPA documentation. Going through the EIS process in its entirety gave me a better understanding about the Performance Work Statements and Statements of Work that I receive from DOE’s Program Offices. I would recommend that all Contract Specialists who deal with the NEPA environment attend this Conference at least once.”

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under the contracts, contact Ms. Vaughn at [aneesah.vaughn@nnsa.doe.gov](mailto:aneesah.vaughn@nnsa.doe.gov) or 202-586-1815. Information and resources for potential users of these contracts, such as the DOE-wide Contracts’ Statement of Work and a listing of Contractor Program Managers, are available on the DOE NEPA Website, [nepa.energy.gov](http://nepa.energy.gov), under NEPA Contracting.

Description	DOE Contact	Date Awarded	Contract Team
EA for Transfer of Two Land Tracts Located within Kirtland Air Force Base	Joseph (Jeff) Robbins 505-845-4426 <a href="mailto:jfrobbs@doeal.gov">jfrobbs@doeal.gov</a>	2/17/2010	Los Alamos Technical Associates, Inc.
Supplement Analysis: Los Alamos National Laboratory Site-wide EIS	Abigail Cuthbertson 202-586-2391 <a href="mailto:abigail.cuthbertson@nnsa.doe.gov">abigail.cuthbertson@nnsa.doe.gov</a>	4/21/2010	SAIC



## CEQ Reiterates Emergency Guidance

The Council on Environmental Quality (CEQ) recently reiterated its 2005 guidance for NEPA compliance for emergency response actions. The May 12, 2010, memorandum from Nancy Sutley, Chair of CEQ, clarifies that the previous CEQ guidance, which followed Hurricane Katrina, remains applicable to current situations, such as the ongoing Federal response to the oil spill in the Gulf of Mexico. Two attachments to the memorandum are essentially the same as those provided in 2005, except as noted below.

“As agencies develop their response to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established” in the CEQ regulations and agency implementing procedures, Ms. Sutley stated. The CEQ regulations provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental impacts, requiring an EIS. Alternative arrangements are limited to the actions necessary to control the immediate impacts of the emergency and are developed, based on specific facts and circumstances, during consultation with CEQ, she continued, adding that “the long-term disaster response and the recovery actions that remain would be subject to the regular NEPA process.”

One attachment to the memorandum, “Emergency Actions under the National Environmental Policy Act,” outlines a step-by-step process for determining the appropriate path forward for the NEPA environmental review of all

actions proposed in response to an emergency situation. A notable change from the earlier guidance is in the reordering of steps, with the first step placing the emphasis on not delaying immediate actions “necessary to secure lives and safety of citizens or to protect valuable resources.” Agencies are to consult with CEQ as soon as feasible when taking action. The next steps are to determine if NEPA is triggered, and if so, the appropriate level of NEPA review.

Alternative arrangements (40 CFR 1506.11) do not apply to actions if the environmental impacts are not expected to be significant. If a categorical exclusion cannot be applied to such an action and NEPA review is required, a second attachment provides guidance on “Preparing Focused, Concise and Timely Environmental Assessments.” This attachment gives new emphasis to an agency’s consideration of alternatives, stating that “the agency must use its discretion to ensure the number of reasonable alternatives is reasoned and not arbitrary or capricious.” With regard to EAs, Ms. Sutley stated that “Agencies must continue their efforts to notify and inform affected public, state, regional, Federal and tribal representatives of the Federal agency activities and proposed actions.”

For the recent CEQ guidance, go to [nepa.energy.gov](http://nepa.energy.gov), click on Guidance, then New Guidance Tools. For a discussion of the 2005 guidance and CEQ guidance that followed September 11, 2001, see [LLQR, December 2005, page 30](#), and [December 2001, page 6](#), respectively. For information on DOE’s use of alternative arrangements, see [LLQR, March 2006, page 1](#); [June 2004, page 8](#); [September 2001, page 4](#); and [September 2000, page 1](#).

## DOE Comments on CEQ Draft NEPA Guidance

In February, CEQ distributed for public review draft NEPA guidance on three topics: establishing and applying categorical exclusions (CXs); considering greenhouse gas (GHG) emissions and climate change; and mitigation and monitoring. The draft guidance documents are available on the CEQ website at [NEPA.gov](http://NEPA.gov), and are described in detail in [LLQR, March 2010, page 3](#).

With the assistance of the DOE NEPA Community and the Office of the Assistant General Counsel for Environment, the NEPA Office provided comments on these guidance documents to CEQ on April 9 (CXs) and May 21 (GHG/climate change and mitigation/monitoring).

DOE recommended that CEQ’s CX guidance acknowledge experience with EAs and findings of no significant impact as an appropriate basis for establishing a new CX, not just EAs for actions with post-implementation monitoring. In addition, DOE suggested that CEQ clarify the status of its

existing 1983 guidance on CXs and also expectations regarding public involvement before applying a CX and monitoring of impacts after a CX determination.

In its comments on CEQ’s draft guidance on GHG emissions and climate change, DOE requested that CEQ clarify that the “direct” emissions to be accounted for as a “reference point” (indicating when discussion of GHG emissions is warranted) correspond to “scope 1” emissions as defined in Executive Order 13514, and should not include “scope 2” emissions. (See related article on page 16.) DOE also requested that CEQ clarify that, while references and analytical tools discussed in the guidance are recommended, other references and tools also may be used. In its comments on CEQ’s draft guidance on mitigation and monitoring, DOE described its procedures for the preparation of mitigation action plans and annual monitoring reports.



# DOE's Strategic Sustainability Performance Plan

By: Steven Woodbury, Office of Environmental Policy and Assistance,  
Office of Health, Safety and Security

DOE will submit its initial multi-year Strategic Sustainability Performance Plan (SSPP) to the Office of Management and Budget (OMB) for approval on June 2, 2010. The SSPP will affect how the Department plans, budgets, and manages its facilities and activities in the coming years.

## What Is the SSPP?

DOE is required to develop and implement an SSPP to achieve the sustainability goals established in Executive Order (E.O.) 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (October 2009). (See *LLQR*, December 2009, page 9.)

The major new requirement in E.O. 13514 is for Federal agencies to establish targets for reducing their greenhouse gas (GHG) emissions and to inventory and report these emissions annually. DOE has established a target of reducing scope 1 and scope 2 GHG emissions by 28 percent by 2020 from its 2008 baseline.<sup>1</sup> We are also establishing a target to reduce scope 3 GHG emissions by 10 percent by 2020 from its 2008 baseline.<sup>2</sup>

Additional goals include:

- Improving water use efficiency and management
- Preventing pollution and eliminating waste
- Advancing regional and local integrated planning
- Implementing high-performance sustainable Federal building design, construction, operation and management, maintenance, and deconstruction, and
- Advancing sustainable acquisition

Each year DOE will evaluate past performance, identify opportunities for improvement, and update its SSPP.

## How Was the SSPP Developed?


The Department developed its SSPP through a variety of committees and work groups representing program and support offices, headquarters and field staff. The Deputy Secretary, as DOE's designated Senior Sustainability Officer, oversaw this process, and will submit the plan to the Council on Environmental Quality (CEQ) and OMB. Following review by CEQ and OMB,

the Director of OMB is responsible for approving the SSPP, as well as each annual update of the SSPP.

## How Does This Relate to NEPA?

E.O. 13514 includes only one reference to NEPA. As part of the goal to "advance regional and local integrated planning" (Section 2(f)), Federal agencies are to identify and analyze the impacts from energy usage and alternative energy sources in all EISs and EAs for proposals for new or expanded Federal facilities. To ensure compliance with Section 2(f), the SSPP states that DOE will update Departmental policy and guidance in this regard by a target date of 2012.

But more broadly, NEPA analyses increasingly can be expected to serve as an important planning tool as the Department looks for ways to meet its GHG reduction goals and other sustainability goals. Site-wide EISs appear particularly well-suited for this purpose because their scope typically includes a comprehensive look at the reasonably foreseeable activities at a site under alternative site management strategies, such as under reduced and expanded use scenarios. Site-wide EISs also could enable a collective look at strategies for reducing scope 3 emissions, such as transportation improvements that reduce GHG emissions from employee commuting, and purchasing strategies that reduce the carbon footprint of vendors.

For more information on E.O. 13514 and the SSPP, contact Steven Woodbury ([steven.woodbury@hq.doe.gov](mailto:steven.woodbury@hq.doe.gov), 202-586-4371). 

---

***In order to create a clean energy economy that will increase our Nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, the Federal Government must lead by example.***

***– President Obama in E.O. 13514,  
October 5, 2009***

---

<sup>1</sup> Scope 1 emissions are direct emissions from sources that DOE owns or controls; scope 2 emissions are those associated with purchased electricity, heat, or steam.

<sup>2</sup> Scope 3 emissions are indirect emissions from sources that DOE does not own or control, such as those associated with employee travel, employee commuting, waste treatment, and production and transportation of goods we buy.

# Transitions




## Golden Field Office – New NCOs

**Robin Sweeney** has been designated as one of the NEPA Compliance Officers (NCOs) for the Golden Field Office, where she is Division Director for the Environmental Stewardship and NEPA Branches. Dr. Sweeney has worked on a wide range of NEPA documents, both at Headquarters and at various Field Offices since joining DOE in 1990. She previously was an NCO for the Yucca Mountain Site Characterization Office, and most recently she was the Construction Manager at the Yucca Mountain Office. She looks forward to rejoining DOE's NEPA Community. Due to the increased Energy Efficiency and Renewable Energy NEPA workload from the Recovery Act, there are now four NCOs at the Golden Field Office and four additional NCOs from other Field Offices supporting this effort at Golden. Steve Blazek, the NEPA Branch Chief, continues to be the Senior NCO at the Golden Field Office. Lori Plummer and Kristin Kerwin are the other Golden NCOs. Dr. Sweeney can be contacted at [robin.sweeney@go.doe.gov](mailto:robin.sweeney@go.doe.gov) or 720-356-1562.

**Lori Plummer**, formerly Deputy NCO for the Nevada Site Office, is now an NCO at the Golden Field Office, where she is also the Environmental Stewardship Branch Chief. She can be reached at [lori.plummer@go.doe.gov](mailto:lori.plummer@go.doe.gov) or 720-356-1568.

## Nevada Site Office

**Kathryn Knapp**, formerly an NCO for the Office of Civilian Radioactive Waste Management, has taken a position with the National Nuclear Security Administration's Nevada Site Office, where one of her duties will be to assist that Office's NCO, Linda Cohn. Ms. Knapp can be reached at [knappk@nv.doe.gov](mailto:knappk@nv.doe.gov) or 702-295-5795. 

---

## In Memoriam: Bill Cohen (1939–2010)

We remember a great friend of NEPA, William (Bill) Cohen, who died on April 18, 2010. Mr. Cohen's long legal career was marked by his service as Chief of the General Litigation Section, Environment and Natural Resources Division of the U.S. Department of Justice (DOJ). In that capacity for 14 years, he litigated and conducted Alternative Dispute Resolution in cases involving natural resources, energy, water, environmental justice, and Federal land planning issues. He received numerous awards for his service, including the Natural Resources Council of America's 2000 National Environmental Quality Award.



After retiring from the Department of Justice in 2000, Mr. Cohen joined the faculty of the Washington College of Law, American University, where he taught environmental and natural resources law and assisted in the organization and implementation of the environmental law summer program. Mr. Cohen was a distinguished lecturer on environmental law and litigation at several universities, including the Nicholas School of the Environment, Duke University, which has established a scholarship fund in his name to support the tuition of students seeking to take a NEPA course or pursuing a Certificate in NEPA education. (See [Bill Cohen Memorial Scholarship](#) for information on donating or applying.)



*The Office of NEPA Policy and Compliance remembers Bill Cohen's participation as a panelist at the 1995 conference commemorating the 25<sup>th</sup> anniversary of NEPA, hosted by DOE in partnership with CEQ. Mr. Cohen spoke about his experiences at DOJ, including with litigation involving categorical exclusions and programmatic EISs.*

---



# Litigation Updates

## Other Agency NEPA Litigation

### Court Ruling Considers Presentation of Information and Significance of Private Interests in BLM EIS

In litigation involving a land exchange approved by the Bureau of Land Management (BLM), the U.S. Court of Appeals for the Ninth Circuit both affirmed and reversed portions of an earlier opinion by the U.S. District Court for the Central District of California. The NEPA issues involved the thoroughness of impact analysis and the extent to which the agency considered private interests in formulating its statement of purpose and need for agency action.

The National Parks Conservation Association and two individuals challenged BLM's approval of a developer's request to exchange certain private lands for several parcels of surrounding BLM-owned land to develop a landfill on a property near Joshua Tree National Park in southern California. The suit alleged violations of NEPA as well as the Federal Land Policy and Management Act. The district court held for the plaintiffs on some of the issues, and both sides appealed.


#### Form Matters

In considering the adequacy of two parts of the impact analysis, the appeals court found that the extensive analysis of potential impacts on bighorn sheep was adequate, but agreed with the district court that the EIS insufficiently addressed the potential for eutrophication.<sup>1</sup> The court noted that "in determining whether an EIS fosters informed decisionmaking and public participation, we consider not only its content, but also its form." The court found the discussion of eutrophication in the EIS to be "neither full nor fair" because readers had to "cull through entirely unrelated sections of the EIS and then put the pieces together." It concluded that such a *"patchwork" treatment did not constitute a "reasonably thorough" discussion of the issue.*

#### Agency or Private Purpose and Need?

The appeals court also considered the extent to which an agency statement of purpose and need may consider private objectives. Only one of the four goals outlined in the purpose and need statement, meeting long-term landfill demand, was a valid BLM purpose, the court found. The other three – those of the private developer – served as the defining characteristics of the proposed project.

In acknowledging findings from other appeals courts that an agency must acknowledge private parties' goals in formulating a statement of purpose and need, the court held that "[r]equiring agencies to consider private objectives, however, is a far cry from mandating that those private interests define the scope of the proposed project." Instead, agencies must "look hard at the factors relevant to the definition of purpose," including Congressional directives. In particular, the court discussed a case involving a statement of purpose and need in a U.S. Army Corps of Engineers EIS that included private goals and noted the different regulatory frameworks guiding the Corps and BLM. While Corps regulations explicitly emphasize the primacy of private interests, the Department of the Interior's NEPA guidelines call for the purpose and need statement to "describe the BLM purpose and need, not an applicant's . . ." Therefore, the court sought to determine whether the EIS "properly states the BLM's purpose and need, against the background of a private need, in a manner broad enough to allow consideration of a reasonable range of alternatives."

The appeals court concluded that "[s]uch a narrowly drawn statement necessarily and unreasonably constrains the possible range of alternatives," so that all six of the alternatives BLM considered in detail, except for the No Action alternative, would result in some type of landfill development and require some portion of the land exchange under analysis to occur. Although BLM identified several other alternatives to meet long-term landfill demand, the EIS did not consider these in any detail because none met the private objectives. Therefore, the court found that "BLM adopted the private developer's interests as its own to craft a purpose and need statement so narrowly drawn as to foreordain approval of the land exchange. **As a result of this unreasonably narrow purpose and need statement, the BLM necessarily considered an unreasonably narrow range of alternatives.**" (*National Parks Conservation Association v. Bureau of Land Management*; Case No.: 56814; November 10, 2009) 



<sup>1</sup> The opinion defines eutrophication as "the introduction of nutrients into the desert environment."



## Groups Challenge Minerals Management Service Categorical Exclusions for Gulf Oil and Gas Exploration

Three lawsuits<sup>1</sup> were filed recently against the U.S. Department of the Interior's Minerals Management Service (MMS) claiming NEPA violations with regard to oil and gas exploration in the Gulf of Mexico. The suits were filed in response to the April 20, 2010, Deepwater Horizon oil spill. For projects in the Gulf of Mexico, MMS normally prepares an EA or EIS for lease sale decisions and applies a categorical exclusion (CX) for approvals of exploration and development and production plans.

The Center for Biological Diversity filed a request for an injunction against MMS, seeking to have MMS withdraw its CX policy that excludes outer continental shelf (OCS) drilling operations, and to have the court set aside all CX determinations for OCS drilling operations issued by MMS subsequent to the Deepwater Horizon oil spill. The plaintiff alleges that the adoption of a CX listed in the MMS Departmental Manual for the approval of exploration and development and production plans, and the issuance of CXs subsequent to the spill, violates NEPA as well as MMS's own NEPA regulations (43 CFR 46.10). (*Center for Biological Diversity v. MMS*; Case No.: 10-816; May 18, 2010 (D. DC))

A separate suit filed by the Defenders of Wildlife includes three claims: (1) MMS violated NEPA in its failure to apply its own regulations and to explain its apparent decision that extraordinary circumstances do not exist, (2) the adoption of CXs in its Manual is in violation of NEPA and its own regulations, and (3) "new circumstances or information relevant to environmental concerns" resulting from the spill require that MMS prepare a supplemental EIS. The plaintiff requests, among other things, that the court vacate provisions of the Manual providing CXs for exploration and development and productions plans, set aside the 27 CX determinations issued since April 20, 2010, and enjoin MMS from authorizing further CX determinations for oil drilling operations in the Gulf of Mexico. The plaintiff also asks the court to vacate and remand the Gulf of Mexico OCS Shelf Oil and Gas Lease Sales: 2007–2012 EIS and to enjoin all future lease sales authorized by the EIS until MMS prepares a supplemental EIS. (*Defenders of Wildlife v. MMS*; Case No.: 10-254; May 17, 2010 (S.D. Alabama))



In a third suit, filed by the Gulf Restoration Network and the Sierra Club, the plaintiffs claim, among other things, that MMS's Notice to Lessees (NTL) in Federal waters of the Gulf, NTL-2008-G04, was issued in violation of NEPA. They allege that MMS's reliance on this NTL, which they say effectively waived MMS's blowout scenario and worst case spill requirements, is an action that may significantly affect the quality of the environment and that MMS should have prepared NEPA documentation or analysis with respect to the NTL. The plaintiffs request that the court enjoin the use of the NTL until MMS prepares adequate NEPA documentation. (*Gulf Restoration Network v. DOI*; Case No.: 10-01497; May 18, 2010 (D. Eastern Louisiana))



LLQR will continue to report on developments in these cases. **LL**

## Other Litigation in Brief

Three recent legal decisions involving NEPA issues are summarized below, listed by lead plaintiff.<sup>1</sup> In these brief reports, LLQR summarizes outcomes using the court's language, as appropriate; the computer icon links to the full opinion. We encourage readers to examine the entire opinion for cases of interest.

- In *Nine Mile Canyon Coalition*, the parties reached a settlement and BLM agreed to several conditions, including not applying further categorical exclusions (CXs) until it completes an EA or EIS on gas development in the project area.
- In *Russell Country Sportsmen*, the district court found that the draft EIS was inadequate in its consideration of alternatives.
- In *Not 1 More Acre!*, the district court ordered that the record of decision (ROD) be vacated, finding that the EIS did not include specific information regarding future land use and, therefore, could not consider all reasonable alternatives or adequately examine impacts.


(continued on next page)

<sup>1</sup> Many cases have multiple plaintiffs and defendants, which may change during litigation. In LLQR, cases are referred to by the lead plaintiff and first defendant agency as identified in the opinion. For example, the defendant in cases involving the USDA Forest Service may be identified as USDA or USDA Forest Service in LLQR; in the broader literature, these cases may be known by the name of the Secretary of Agriculture or the Chief of the Forest Service at the time the legal document was issued.




## Litigation Updates *(continued from previous page)*

### Nine Mile Canyon Coalition v. Bureau of Land Management

- **Agency Action:** BLM issued a series of permits between April and June of 2008 authorizing the creation and operation of numerous gas wells within the West Tavaputs area of Utah's Nine Mile Canyon Region.
  - **NEPA Issue:** The Nine Mile Canyon Coalition filed a complaint against BLM concerning its use of statutory CXs established in Section 390 of the Energy Policy Act of 2005 (EPAct) to expedite gas well development. It argued that BLM's use of these CXs violated NEPA because Federal agencies are obligated to consider whether there are extraordinary circumstances related to the proposal before making a CX determination. The plaintiff claimed that truck traffic and other activities associated with gas well development would significantly degrade air quality and historic properties, constituting an extraordinary circumstance. The plaintiffs and BLM entered into a settlement agreement, which states that BLM must:
    - Not invoke any further CXs under EPAct Section 390 in the West Tavaputs area until an EA or EIS has been completed for the development area,
    - Issue a new Instruction Memorandum modifying the BLM's NEPA Handbook and stating that **future EPAct CXs will not be invoked without a determination that there are no extraordinary circumstances**, and
    - Not use EPAct Section 390 CXs when approving applications for permits to drill in Utah unless there is a prior NEPA analysis.
  - **Other Issues:** The Nine Mile Canyon Coalition argued that BLM was in violation of the National Historic Preservation Act because of the potential impact of development activity on historic rock art. The settlement agreement requires that, within 6 months of issuing the ROD for the West Tavaputs Plateau EIS, BLM will initiate a study focusing on how to address existing and potential future impacts of dust and chemicals to rock art and other historic properties within the Nine Mile Canyon Region.
-  • U.S. District Court for the District of Utah. Case No.: 08-586; March 26, 2010.

### Russell Country Sportsmen v. Forest Service

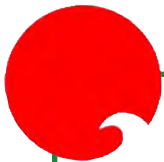
- **Agency Action:** The U.S. Forest Service, after preparing an EIS and issuing a ROD, approved a 2007 Travel Management Plan for the Lewis and Clark National Forest.
  - **NEPA Issue:** The alternatives presented in the final EIS, including the one selected in the ROD, contained significant changes that "fell outside the range of alternatives" described in the draft EIS. The public was not afforded the opportunity to comment on major portions of the final EIS and ROD because the draft EIS was not supplemented. The decision reduced the total mileage open for motorized travel by nearly 30 percent beyond the most restrictive alternative in the draft EIS, closed several trails not specified for closure in the draft EIS, reduced the snowmobile season short of any draft EIS alternative, and scrapped a 300-foot-off-road-travel rule for a much more restrictive "vehicle plus trailer length" area. The court found that the Forest Service violated NEPA in that its **"DEIS is inadequate in its consideration of alternatives."**
  - **Other Issues:** The court found that the Forest Service's attempt to enhance or create wilderness character by adopting the 2007 Travel Management Plan exceeded its authority under the Montana Wilderness Study Act.
-  • U.S. District Court for the District of Montana. Case No.: 00064; March 10, 2010.

*(continued on next page)*



## Not 1 More Acre! v. Department of the Army

- **Agency Action:** The Department of the Army issued a ROD in 2007 to increase the use of the Pinon Canyon Maneuver Site in Colorado. The proposed expansion would accommodate the Army's need to conduct combat training and provide related facilities for an increased troop population stationed at a nearby base. The Army made its decision after consideration of the issues addressed in the EIS.
- **NEPA Issues:** In describing the training operations anticipated for the site, the EIS did not provide details on their frequency, duration, and intensity. The plaintiffs argued that the EIS should have considered different training intensities at the site, and the failure to provide sufficient detail about the expected level of use limited the range of alternatives considered. The EIS also stated that the continuation of existing land management programs would be adequate, but because training operations could be conducted essentially constantly, the court held that such intensive use would not permit meaningful mitigation of the resulting environmental impacts. Furthermore, the court noted that the EIS did not take into account related EISs and analyses that addressed mitigation by quantifying the level of training operations that would be consistent with sustainability. The court found that, **"Because the EIS does not adequately assess the impact on the environment of the increase in the intensity and duration of training operations necessary to meet the Army's stated purposes for its action, the Army's reliance on it makes the ROD an arbitrary and capricious action, an abuse of discretion and a decision not in accordance with NEPA."** Therefore, the court vacated the ROD that authorized the proposed action described in the EIS.
- U.S. District Court for the District of Colorado. Case No.: 08-00828; September 8, 2009.



## CX Litigation on the Rise

At the recent NAEP Conference, Lucinda Low Swartz, environmental consultant and former Deputy General Counsel at CEQ, provided her annual review of NEPA litigation. She highlighted five cases in 2009 related to the application of categorical exclusions (CXs) and noted that last year was the first time there have been this many cases regarding CXs. "Federal courts are not shy about reviewing CXs," she concluded.

The five cases identified by Ms. Swartz are:

- *Brady Campaign to Prevent Gun Violence v. Salazar* (D. DC 2009) – The court issued a preliminary injunction for the application of a CX to a final National Park Service rule allowing persons to possess concealed weapons in national parks.
- *Delaware Audubon Society v. Secretary of the Department of the Interior* (D. Del. 2009) – The court found that the agency violated NEPA by approving an action without preparation of an EA or EIS.
- *People of California v. U.S. Department of Agriculture* (9<sup>th</sup> Cir. 2009) – The court invalidated

the U.S. Forest Service's (USFS) application of a CX for its 2005 State Petitions Rule for roadless areas, disagreeing that the rule fell within the CX and finding the explanation regarding the absence of extraordinary circumstances to be insufficient.

- *Wild Fish Conservancy v. Kempthorne* (E.D. Wash. 2009) – The court found that a CX was appropriately applied for the operation of a fish hatchery.
- *Alliance of the Wild Rockies v. Tidwell* (D. Mont. 2009) – The court found that USFS had properly applied a CX for a sanitation harvest of primarily diseased, dead, or dying fir trees for the purpose of trying to save the rest of the forest from a beetle infestation.

Ms. Swartz's annual summary of NEPA litigation is available on her website at [www.lucindalowschwartz.com](http://www.lucindalowschwartz.com) under NEPA Information and Resources. She can be reached at [lls@lucindalowschwartz.com](mailto:lls@lucindalowschwartz.com) or 301-933-4668. See related article regarding recent challenges to CX determinations issued by the Minerals Management Service, page 19.

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- Environmental Protection Agency  
Office of Federal Activities  
202-564-7164  
[mccaffrey.sandra@epa.gov](mailto:mccaffrey.sandra@epa.gov)  
[www.netionline.com](http://www.netionline.com)

**NEPA Cross-Cutting Training (FED 108)**  
Lakewood, CO: June 8-9  
No Fee

- American Law Institute  
and American Bar Association  
800-253-6397  
[www.ali-aba.org](http://www.ali-aba.org)

**Environmental Litigation**  
Boulder, CO: June 16-18  
\$1,299 (\$999 webcast)  
(course reference code CR045)

- ICF International  
916-332-6870  
[kbogdan@icfi.com](mailto:kbogdan@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)

**NEPA: A Step-by-Step Approach**  
Riverside, CA: June 10-11  
\$329

- International Association for Public Participation  
1-800-644-4273  
[training@iap2.org](mailto:training@iap2.org)  
[www.iap2.org](http://www.iap2.org)

**Planning for Effective Public Participation**  
Irvine, CA: July 12-13  
Kansas City, MO: August 2-3  
Chicago, IL: September 13-14  
San Antonio, TX: September 20-21  
Santa Fe, NM: October 4-5  
\$700

**Communications for Effective Public Participation**  
Irvine, CA: July 14  
Kansas City, MO: August 4  
Chicago, IL: September 15  
San Antonio, TX: September 22  
Santa Fe, NM: October 6  
\$350

**Techniques for Effective Public Participation**  
Irvine, CA: July 15-16  
Kansas City, MO: August 5-6  
Chicago, IL: September 16-17  
San Antonio, TX: September 23-24  
Santa Fe, NM: October 7-8  
\$700

- Nicholas School of the Environment  
and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del](http://www.nicholas.duke.edu/del)

**Implementation of NEPA**  
Durham, NC: July 26-30  
\$1,250

**Tribal Consultation and Accounting  
for Cumulative Effects in the NEPA Process**  
Durham, NC: September 13-17  
\$1,665

**Scoping, Public Involvement  
and Environmental Justice  
and Socioeconomic Impact Analysis  
under NEPA**  
Durham, NC: December 6-10  
\$1,665

**Certificate in the National Environmental  
Policy Act**

Requires successful completion of one core  
and three elective NEPA short courses.  
Co-sponsored by the Council on Environmental  
Quality.  
Fee: Included in course registration.

- Northwest Environmental Training Center  
206-762-1976  
[info@nwetc.org](mailto:info@nwetc.org)  
[www.nwetc.org](http://www.nwetc.org)

**NEPA: Writing the Perfect EA/FONSI or EIS**  
Portland, OR: June 16-17  
St. Paul, MN: July 15-16  
St. Louis, MO: July 19-20  
\$495 (\$395 for Federal employees)

(continued on next page)

# Training Opportunities

(continued from previous page)

## **Preparing, Reviewing, Challenging, and Defending Documents Prepared under NEPA and CEQA**

Pasadena, CA: October 26-27  
\$495 (\$395 for Federal employees)

- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)

## **Applying the NEPA Process and Writing Effective NEPA Documents and NEPA Cumulative Effects Analysis and Documentation**

Portland, OR: June 7-11  
\$1,385 (GSA contract: \$1,295)

## **Applying the NEPA Process and Reviewing NEPA Documents**

Albuquerque, NM: June 21-25  
\$1,345 (GSA contract: \$1,255)

## **NEPA Cumulative Effect Analysis and Documentation and NEPA Climate Change Analysis and Documentation**

Baltimore, MD: July 13-16  
\$1,195 (GSA contract: \$1,095)

## **Managing NEPA Projects and Teams and Reviewing NEPA Documents**

St. Louis, MO: July 19-23  
\$1,345 (GSA contract: \$1,255) until 6/7/10

## **Applying the NEPA Process: Emphasis on Native American Issues**

Olympia, WA: August 11-13  
\$945 (GSA contract: \$855) until 6/30/10

## **Applying the NEPA Process and Writing Effective NEPA Documents**

New Orleans, LA: August 17-20  
\$1,145 (GSA contract: \$1,055) until 7/7/10

## **Clear Writing for NEPA Specialists**

Salt Lake City, UT: August 25-27  
Nashville, TN: September 7-9  
\$945 (GSA contract: \$895) until 7/14/10 and 8/10/10

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

Las Vegas, NV: September 14-16  
\$945 (GSA contract: \$855) until 8/3/10

## **NEPA Certificate Program**

Requires successful completion of eight courses offered by The Shipley Group.

\$5,450

Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/html/students/grad-degrees/nepa/](http://www.cnr.usu.edu/html/students/grad-degrees/nepa/)

- US Institute for Environmental Conflict Resolution  
(520) 901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training](http://www.ecr.gov/training)

## **Collaborative Capabilities**

Lakewood, CO: June 15-17  
\$750

## **Advanced Multi-Party Negotiation of Environmental Disputes**

Lakewood, CO: September 14-16  
\$750

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- ICF International  
916-737-3000  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeeps@mchsi.com](mailto:jleeeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)



# EAs and EISs Completed January 1 to March 31, 2010

## EAs<sup>1</sup>

### **Carlsbad Field Office/**

#### **Office of Environmental Management**

[DOE/EA-1755\\*](#) (1/27/10)

*Reconstruction of the South Access Road (CR 802) in Support of the Department of Energy, Waste Isolation Pilot Plant (WIPP) in Eddy County, New Mexico*

[DOE adopted EA on 1/27/10](#); therefore cost and time data are not applicable. [Bureau of Land Management, the lead agency, issued a finding of no significant impact on 12/8/09. DOE, Carlsbad Field Office, was a cooperating agency.]

### **Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1748](#) (3/9/10)

*Energy Conservation Program: Energy Conservation Standards for Small Electric Motors*

Cost: \$35,000

Time: 4 months

[DOE/EA-1774](#) (3/22/10)

*Energy Conservation Program: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters*

Cost: \$35,000

Time: 3 months

### **National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1708\\*](#) (3/30/10)

*Financial Assistance to Dow Kokam MI, LLC to Manufacture Advanced Lithium Polymer Batteries for Hybrid and Electric Vehicles at Midland, Michigan*

Cost: \$29,000

Time: 4 months

[DOE/EA-1710\\*](#) (3/30/10)

*Financial Assistance to EnerDel, Inc. for Its Expansion of Battery Manufacturing Capabilities at Indianapolis, Noblesville, and Greenfield, Indiana*

Cost: \$45,000

Time: 4 months

[DOE/EA-1711\\*](#) (3/16/10)

*Saft America, Inc. Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Jacksonville, Florida*

Cost: \$29,000

Time: 4 months

[DOE/EA-1712\\*](#) (3/10/10)

*Exide Technologies Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Bristol, Tennessee, and Columbus, Georgia*

Cost: \$45,000

Time: 4 months

[DOE/EA-1714\\*](#) (3/25/10)

*Toda America, Incorporated, Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Battle Creek, Michigan*

Cost: \$37,000

Time: 4 months

[DOE/EA-1717\\*](#) (3/25/10)

*BASF Catalysts, LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Elyria, Ohio*

Cost: \$37,000

Time: 4 months

[DOE/EA-1721\\*](#) (3/16/2010)

*Johnson Controls, Inc. and ENTEK Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Holland, Michigan; Lebanon, Oregon; and Milwaukee, Wisconsin*

Cost: \$52,000

Time: 4 months

[DOE/EA-1725\\*](#) (3/30/10)

*SBE, Inc. Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Power Ring Manufacturing Scale-up, Barre, Vermont*

Cost: \$44,000

Time: 4 months

[DOE/EA-1737\\*](#) (2/12/10)

*Financial Assistance to Pennsylvania for Frey Farm Landfill Wind Energy Project, Manor Township, Lancaster County, Pennsylvania*

Cost: \$40,000

Time: 2 months

### **Oak Ridge Operations Office/Office of Science**

[DOE/EA-1651](#) (1/13/10)

*U-233 Material Downblending and Disposition Project at the Oak Ridge National Laboratory, Oak Ridge, Tennessee*

Cost: \$75,000

Time: 12 months

(continued on next page)

\* Recovery Act project

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

# EAs and EISs Completed January 1 to March 31, 2010 (continued from previous page)

**Office of River Protection/  
Office of Environmental Management**  
DOE/EA-1682\* (2/3/10)  
*Upgrades and Life Extension of the 242-A  
Evaporator, Hanford Site, Richland, Washington,  
Conducted Under the American Recovery and  
Reinvestment Act of 2009*  
Cost: \$42,000  
Time: 12 months

## EISs

**Office of Environmental Management**  
DOE/EIS-0226\* (75 FR 4812, 1/29/10)  
(EPA Rating: EC-1)  
*Decommissioning and/or Long-Term Stewardship  
at the West Valley Demonstration Project  
and Western New York Nuclear Service Center,  
West Valley, New York*  
Cost: \$31 million<sup>1</sup>  
Time: 82 months<sup>1</sup>  
[Co-lead: New York State Energy Research and  
Development Authority]

<sup>1</sup> Data reflect work since the March 2003 Notice of Intent to prepare a Revised Draft EIS. For more information on this EIS see LLQR, March 2009, page 19.

**Western Area Power Administration**  
DOE/EIS-0398 (75 FR 6027, 2/5/10)  
(EPA Rating: EC-2)  
*Delta-Mendota Canal/California Aqueduct Intertie,  
Central Valley Project, California*  
EIS was adopted; therefore cost and time data are not applicable. [Bureau of Reclamation was the lead agency; WAPA was a cooperating agency.]  
DOE/EIS-0443 (75 FR 7479, 2/19/10)  
(EPA Rating: EC-2)  
*Project Financing for Southwest Intertie Project-South, Clark, Lincoln, Nye, and White Pine Counties, Nevada*  
EIS was adopted; therefore cost and time data are not applicable. [Bureau of Land Management was the lead agency.]

### ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

#### Environmental Impact of the Action

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

#### Adequacy of the EIS

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

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

## NEPA Document Cost and Time Facts

### EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 13 EAs for which cost data were applicable was \$40,000; the average cost was \$42,000.
- Cumulatively, for the 12 months that ended March 31, 2010, the median cost for the preparation of 29 EAs for which cost data were applicable was \$45,000; the average cost was \$60,000.
- For this quarter, the median completion time of 13 EAs was 4 months; the average was 5 months.
- Cumulatively, for the 12 months that ended March 31, 2010, the median completion time for 36 EAs was 6 months; the average was 10 months.

\* Recovery Act project

### EIS Cost and Completion Times

- For this quarter, the cost for the completion of 1 EIS was \$31 million.
- Cumulatively, for the 12 months that ended March 31, 2010, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1.4 million; the average cost was \$10.9 million.
- For this quarter, the completion time for 1 EIS was 82 months.
- Cumulatively, for the 12 months that ended March 31, 2010, the median completion time for 4 EISs was 50 months; the average was 58 months.

# Recent EIS-Related Milestones (March 1 to May 31, 2010)

## Notices of Intent

### Office of Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0431\*

*Hydrogen Energy International Integrated Gasification Combined Cycle and Carbon Capture and Sequestration Project*, Kern County, California  
April 2010 ([75 FR 17397](#), 4/6/10)

### Western Area Power Administration

DOE/EIS-0439

*Rice Valley Solar Energy Project*,  
*Riverside County, California*  
March 2010 ([75 FR 15427](#), 3/29/10) [Co-lead:  
Bureau of Land Management]

DOE/EIS-0442

*Forest Service Reauthorization of Transmission Lines on Forest Service Lands in Colorado, Utah and Nebraska for Routine Maintenance Practices including Changes in Vegetation Management*  
[Co-lead: U.S. Forest Service]  
April 2010 ([75 FR 17913](#), 4/8/10)

## Draft EIS

### Bonneville Power Administration

DOE/EIS-0419

*Whistling Ridge Energy Project*, Skamania County,  
Washington  
May 2010 ([75 FR 30022](#), 5/28/10)

## Notice of Extension of Public Comment Period

### Office of Environmental Management/ Richland Operations Office

DOE/EIS-0391

*Tank Closure and Waste Management for the Hanford Site*, Richland, Washington  
March 2010 ([75 FR 13268](#), 3/19/10)  
[Amended Notice, [75 FR 14595](#), 3/26/10, extending comment period to 5/3/10.]

## Final EISs

### Office of Fossil Energy/ National Energy Technology Laboratory

DOE/EIS-0409

*Kemper County Integrated Gasification Combined-Cycle (IGCC) Project*, Kemper County, Mississippi  
May 2010 ([75 FR 28612](#), 5/21/10)

### Western Area Power Administration

DOE/EIS-0415

*Deer Creek Station Energy Facility Project*,  
Brookings County, South Dakota  
May 2010 ([75 FR 30022](#), 5/28/10)

## Records of Decision

### Bonneville Power Administration

DOE/EIS-0183

*Electrical Interconnection of the Juniper Canyon I Wind Project*, Klickitat County, Washington  
May 2010 ([75 FR 27550](#), 5/17/10)

DOE/EIS-0384

*Chief Joseph Hatchery Program*, Okanogan County,  
Washington  
March 2010 ([75 FR 15430](#), 3/29/10)

### Office of Environmental Management

DOE/EIS-0226\*

*Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*,  
West Valley, New York  
April 2010 ([75 FR 20582](#), 4/20/10)

## Supplement Analyses

### Bonneville Power Administration

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

DOE/EIS-0285/SA-424

*Vegetation Management along the Dworshak-Taft No.1, 230-kV Transmission Line Corridor Right-of-Way*, Montana  
(Decision: No further NEPA review required)  
March 2010

DOE/EIS-0285/SA-425

*Vegetation Management along the Four Lakes Tap No.1, 115-kV Transmission Line Corridor Right-of-Way*, Washington  
(Decision: No further NEPA review required)  
March 2010

DOE/EIS-0285/SA-426

*Vegetation Management along the Ostrander-Pearl No.1 Transmission Line Corridor*, Oregon  
(Decision: No further NEPA review required)  
March 2010

\* Recovery Act project

(continued on next page)

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

### [DOE/EIS-0285/SA-427](#)

*Vegetation Management along the Addy-Cusick No. 1, 230-kV Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
March 2010

### [DOE/EIS-0285/SA-428](#)

*Vegetation Management for a Portion of the Midway-Rocky Ford No. 1 and Midway-Potholes No. 1, 230-kV Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
April 2010

### [DOE/EIS-0285/SA-429](#)

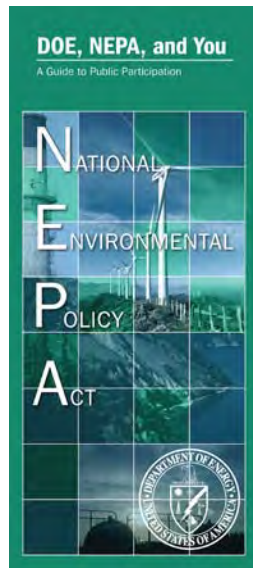
*Vegetation Management along the Bell-Boundary No. 1, 230-kV Transmission Line Corridor, Washington*  
(Decision: No further NEPA review required)  
April 2010

### [DOE/EIS-0285/SA-430](#)

*Vegetation Management along the Lancaster-Noxon No. 1, 230-kV Transmission Line Corridor Right-of-Way, Idaho and Montana*  
(Decision: No further NEPA review required)  
May 2010

### [DOE/EIS-0285/SA-431](#)

*Vegetation Management along the Lancaster-Noxon No. 1, 230-kV Transmission Line Corridor Right-of-Way, Montana*  
(Decision: No further NEPA review required)  
May 2010



## *DOE, NEPA, and You Reprinted*

In response to requests from NEPA Compliance Officers, the Office of NEPA Policy and Compliance has recently reprinted the brochure, “DOE, NEPA, and You – A Guide to Public Participation.” This NEPA brochure is a resource that provides the public with an overview of the DOE NEPA process, focusing on the public’s role in DOE’s preparation of an EIS.

The NEPA brochure can be used as a handout at DOE NEPA public participation meetings, such as public scoping meetings and public hearings. The brochure is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov), under Guidance, then New Guidance Tools. Requests for paper copies of the brochure can be submitted to Denise Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov) or to [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov).

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Data Collection/Analysis

### What Worked

- *Use of model.* One innovative approach involved utilizing a landscape evolution model to evaluate potential erosion impacts. The model was calibrated with geological surface maps representing conditions from approximately 17,000 years ago to model forward to current topography.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Team diligence.* The willingness of EIS team members to work round-the-clock to meet internal deadlines and weekly monitoring of interim schedule activities enabled timely completion of documents.
- *Core team process.* Utilization of a core team process to generate consensus and momentum, as well as use of a Responsible Opposing View by the joint lead agency, moved the document forward without full agreement among agencies.
- *Rolling production and review.* Participating agencies were willing to produce and review parts of the preliminary draft EIS on a rolling production schedule to eliminate one lengthy full-EIS production and review cycle. Face-to-face cooperating agency concurrence review meetings at headquarters also were effective.
- *Engaged document manager.* The document manager was present to walk final concurrence packages through headquarters and resolve questions and issues immediately.
- *Issue resolution.* Effective DOE site leadership and multiagency meetings helped to resolve issues.

### Factors that Inhibited Timely Completion of Documents

- *Internal disagreements.* Timely completion was slowed by aggressive scheduling and complicated by disagreements among participating agencies on technical and analytical approaches for the EIS.
- *Responding to comments.* Late receipt of comments on the internal advanced drafts from participating agencies, an extended public comment period, and responding to the high volume of public comments received made it difficult to complete the document on time.
- *Closed discussions.* Many discussions within the core team were not reported to the larger group.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Effective response planning.* The early and regular communication with headquarters ensured the availability of reviewers and resources to obtain concurrence on planned approaches for analyses and the support of senior staff.
- *Productive teamwork.* Early discussion of issues facilitated timely and productive teamwork.
- *Accountability.* Having an engaged, committed, and accountable project manager, who also asked for contractor accountability, resulted in effective teamwork.
- *Agency agreements.* Having an effectively written Memorandum of Understanding with partnering agencies directly enhanced teamwork.
- *Utilization of expertise.* Personnel with historic site expertise to work on the EIS gave a sense of confidence to the team.

*(continued on next page)*

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

### Factors that Inhibited Effective Teamwork

- *Lack of communication.* The hesitancy to bring all of the DOE team in on discussions of the comments inhibited good communication and led to misunderstanding of the exact nature of the comments.

## Process

### Successful Aspects of the Public Participation Process

- *Multiple public hearings.* Holding public hearings in multiple locations across the state and communicating with stakeholders was successful.
- *Recordings.* Having an audio recording along with a court reporter to verify accuracy of the text during proofing was valuable.
- *Involvement.* The Citizen's Advisory Board assisted the public's participation in the NEPA process.

### Unsuccessful Aspects of the Public Participation Process

- *Extended comment period.* Extending the public comment period from 6 to 9 months did not improve the quality of comments received.
- *Unfamiliarity with the NEPA process.* Stakeholders were unfamiliar with the NEPA process, and seemed to confuse it with the requirements of the CERCLA process. Additionally, people seemed to think of it as a voting process – whichever alternative got the most votes would be the one selected.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Project completion.* The EIS was used to determine a decommissioning path to completion of DOE responsibilities.

### Enhancement/Protection of the Environment

- *Mitigation measures identified.* Mitigation measures were identified during the NEPA process to provide environmental protection during construction activities.

## Other Issues

### Guidance Needs Identified

- *Standard concurrence process.* Establish a process for moving both headquarters-generated and field-generated EISs, Notices of Availability, Records of Decision, and distribution letters through the headquarters' concurrence process that is understood and agreed to by all involved parties.
- *Writing on legal issues.* NEPA document preparers would benefit from guidance on writing about regulatory requirements.

## Effectiveness of the NEPA Process

For the purposes of this section, "effective" means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decisionmaking.

For the past quarter, in which 1 questionnaire response was received for an EA and 2 responses were received for EISs, 3 out of 3 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the NEPA process allowed DOE, the public, and other agencies to get the information they all needed in a timely manner.
- A respondent who rated the process as "4" stated that use of a core team process within the context of the NEPA process enabled the involved agencies to reach consensus on how to best address technical issues that were impeding completion of the NEPA analysis. This process led to development of a possible approach to achieve the proposed action that had not previously been envisioned or considered. That alternative was identified as the preferred alternative and ultimately selected in the Record of Decision.
- A respondent who rated the process as "3" stated that, as a result of the NEPA process, reconstruction will take place in an existing road corridor to minimize potential impacts.

# LESSONS LEARNED

## DOE Uses e-NEPA To Enhance Public Participation

The Department of Energy (DOE) is continuing its efforts to foster transparency and facilitate public participation in the NEPA process through the effective use of the Internet. DOE now publishes on its NEPA website all draft environmental assessments (EAs) for which the Department seeks public comments and electronically notifies interested parties who have asked to be informed of EA comment opportunities. These measures implement a new DOE policy established by Deputy Secretary Daniel B. Poneman in a July 16, 2010, [memorandum](#), which became effective immediately.



“A primary purpose of NEPA is to inform the public about the environmental implications of Federal agency decisions before they are made,” noted Deputy Secretary Poneman in establishing the new policy. In his memorandum, Mr. Poneman encouraged DOE Offices to continue to make draft EAs available for public comment whenever possible. “When the Department seeks public comment on draft EAs, online publication and electronic



notification will make the opportunity to comment more effective,” he advised.

“**This new policy is the right thing to do,**” said DOE General Counsel Scott Blake Harris. “It increases transparency and enhances opportunities for public input. The policy builds on several notable steps that DOE recently has taken to enhance public awareness of, and participation in, DOE’s NEPA process, such as posting categorical exclusions online and creating a centralized database of categorical exclusion determinations.” (See [LLQR, December 2009, page 1](#), and [March 2010, page 1](#).)

*(continued on page 8)*



## Lessons from Oil Spill Review Apply Broadly

The Council on Environmental Quality (CEQ) recently issued its report on the NEPA process related to drilling of the Macondo well, which was the source of the April 20, 2010, accident and subsequent oil spill in the Gulf of Mexico. The report contains useful reminders to all NEPA practitioners of the importance of transparency and accountability in the NEPA process. It also encourages Federal agencies to participate in each other’s NEPA reviews.

“Every agency in the executive branch of the Federal Government has a responsibility to apply NEPA when making decisions that could impact our environment,”

said Nancy Sutley, CEQ Chair, in a [news release](#) announcing the report. “The recommendations in this report are targeted to ensure robust environmental reviews for future oil and gas exploration and development.”

CEQ makes seven recommendations divided among four topic areas: Tiering and Site-Specific Analysis; Transparency, Public Accountability, and Sound Decisionmaking; Categorical Exclusions; and Changed Circumstances. (See text box, page 7.) The recommendations “call for efficient preparation and utilization of broad programmatic reviews, fully integrated with site-specific assessments and mitigation approaches.”

*(continued on page 6)*

## Inside **LESSONS LEARNED**

Welcome to the 64<sup>th</sup> quarterly report on lessons learned in the NEPA process. In this issue, we feature reflections on the 40<sup>th</sup> Anniversary of NEPA from the DOE NEPA Community. We also continue to report on activities to enhance transparency in the NEPA process, including a new DOE policy and recent recommendations from CEQ. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

Reflections on NEPA at 40 .....	3
CX Determination: NEPA Review or Exemption? .....	9
2010 <i>Stakeholders Directory</i> Issued.....	10
DOE NEPA Order Updated.....	10
Recovery Act NEPA Reviews Keep Pace.....	11
Multiple Dates and Addresses in <i>Federal Register</i> Notices....	11
President Establishes Nation's First Ocean Policy.....	12
Transitions .....	13
Litigation Updates.....	14
CEQ Updates Its FOIA Regulations .....	15
Training Opportunities .....	16
DOE Environmental Attorneys' Training .....	17
EAs and EISs Completed .....	18
Cost and Time Facts.....	20
Recent EIS-Related Milestones.....	20
Questionnaire Results .....	22
EPA Reference for Energy Efficiency Planning and Analysis ...	25

  
Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2010. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due November 1, 2010


Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2010 (July 1 through September 30, 2010) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. DOE provides paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

Printed on recycled paper



 This icon indicates that LLQR online ([nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned) provides a link to a referenced webpage whose URL is too long to be useful when printed.

## Mark Your Calendars: Upcoming Conferences



### NAEP 2011 Conference

*Seventh Generation Thinking: Learning from the Past – Planning for the Future* is the theme of the National Association of Environmental Professionals (NAEP) 2011 conference, to be held April 26–29 in Denver. Abstracts for presentations and nominations for National Environmental Excellence Awards to recognize outstanding achievements in NEPA excellence are due September 30. Instructions for submitting abstracts and award nominations can be found at [www.naep.org](http://www.naep.org).



### GreenGov Symposium

The Council on Environmental Quality will hold the 2010 GreenGov Symposium in Washington, DC, October 5–7, focusing on the performance goals set by Executive Order 13514. (See *LLQR, December 2009, page 9*, and *June 2010, page 16*.) Symposium topics include clean energy, getting to zero waste, greening the supply chain, and sustainable communities. See [www.gwu.edu/greengov](http://www.gwu.edu/greengov).



### Climate Change and Impact Assessment Symposium

The International Association for Impact Assessment will host its Climate Change and Impact Assessment Symposium in Washington, DC, November 15–16. The symposium will emphasize practical examples and guidance regarding infrastructure likely to be affected by climate change, and application of strategic environmental and cumulative effects assessment. See [www.iaia.org/iaia-climate-symposium-dc](http://www.iaia.org/iaia-climate-symposium-dc).



## Reflections on NEPA at 40 – from the DOE NEPA Community

***Dr. Raj Sharma is a “survivor” – the only current NEPA Compliance Officer who has served continuously since the position was established in 1990.***

The last 40 years since the enactment of NEPA have provided excellent experience in balancing programmatic needs and environmental values. Program managers and decisionmakers are increasingly much more attuned to critical examination of alternative courses of action and the consequences of their decisions. Because of the nature of its programs, DOE has prepared and continues to prepare the most technologically complex NEPA documents. However, no matter how simple or complex the technology, it is the consumption of resources and physical and/or chemical alteration of the environment that has positive or negative consequences. Therefore, the focus in NEPA documents should be on physical disturbances, consumptive use of resources, effluents, emissions, and generation of waste rather than on detailed, elaborate description of the technology or facilities.

In the next 10 years, before we celebrate the half-century mark of NEPA, I hope we can learn how to describe the complex technological aspects and facilities in simple language and in detail sufficient to explain the potential for environmental impacts. With this approach, we will come closer to meeting the requirement of the Council on Environmental Quality regulations at 40 CFR 1502.7 – EIS page limits of 150 pages (normally) to less than 300 pages (unusual scope or complexity). Such focused and simple NEPA documents will enhance public comprehension of DOE programs and generate more meaningful discussion of relevant issues.

*Raj Sharma, Ph.D.  
Office of Nuclear Energy*

***Ted Wyka took on his first NEPA project as Document Manager for the National Nuclear Security Administration’s Complex Transformation Supplemental Programmatic EIS, which he completed on schedule in 24 months.***

NEPA is a management process that, if done right, leads to better and more informed decisions. It should not be seen as a hurdle to get over, but as critical input to the decisionmaking process. This effort requires senior management involvement from the onset. It also requires line management involvement in the development and subsequent analysis of alternatives. Given the public nature of this work, this is a process where corners cannot be cut. These efforts can be completed on schedule and within budget if done right the first time.

On a personal note, given my inexperience when called to serve as Document Manager for the Complex Transformation Supplemental Programmatic EIS, I relied greatly on advice and assistance from the NEPA Office. They will help you succeed if you work with them closely during all phases of the project. The questions asked and comments provided by the NEPA Office prepared me and the document well for the intensive public review of this document and for the 37 public meetings.

*Ted Wyka  
Director, Office of Security Operations and Performance Assurance  
National Nuclear Security Administration*

***Matt Urie has worked on wide-ranging NEPA issues for the National Nuclear Security Administration, and previously in the DOE Office of the General Counsel. He has been practicing environmental law as a Government attorney since 1987.***

The EAs and EISs prepared during the last 40 years pursuant to NEPA have provided Federal decisionmakers and project managers with valuable short-term and long-term information upon which to base important decisions. In addition, the preparation of these documents has motivated Federal decisionmakers and members of the public to interact in a way that ensures all interested parties have a stake in the outcome of the decisionmaking process. The NEPA process provides another window into the workings of the Federal government and the way in which our tax dollars are spent, and an opportunity for interested members of the public to directly interact with Executive agency decisionmakers at a national and local level.

*Matt Urie  
National Nuclear Security Administration*

## Reflections on NEPA at 40 – from the DOE NEPA Community

*As an Attorney-Advisor in the Office of the Assistant General Counsel for Environment, Dean Monroe has supported many NEPA reviews.*

Although it is known by the name “National Environmental Policy Act of 1969,” it was actually signed into law in 1970. Other than that, however, everything else about it seems to be fairly simple or as someone here once said “common sense,” right down to the citation, 42 U.S.C. 4321 *et seq.* I think it’s no coincidence that roughly 75 percent of the countries of the world have a NEPA statute; at one international conference I attended, they all did. All of them have a need to protect their environmental heritage and to ensure public support for public actions (or “major Federal actions”) that affect human health and the environment.

For us at DOE, it has become the way that we make decisions in a manner that will be acceptable to the public – “running things up the flagpole” if you will. It has also become a method of achieving sufficient consensus internally to face public resistance (if any). Mostly it does as the sponsors intended – allows the public to know the potential environmental impacts of what their government proposes to do before they do it and that seems to be a good thing.

There are challenges, to ensure that our stated “purpose and need” reflects a valid “purpose and need,” to show that cumulative impacts are, in fact, cumulative, and to make sure that the format of the documents is sufficiently clear to allow the public to make comparisons among alternatives. Still, it is a helpful exercise to make decisions in a way that appears most publicly acceptable.

*Dean Monroe  
Office of the Assistant General Counsel for Environment*

*Reflecting the interdisciplinary approach required for preparing an EIS (40 CFR 1502.6), the NEPA Office staff is an interdisciplinary team with diverse educational qualifications and professional experiences. Jeff Dorman and Connie Chen are some of the “younger than NEPA” staff members; Yardena Mansoor recalls studying NEPA when it was news.*

I saw only seven of NEPA’s first 40 years as a professional, but I expect to see most of its next 40. What has concerned me most so far, and what I expect will change most in the future, is how we prepare and distribute NEPA documents to the public. Videos embedded in text, public hearings available via webcast, things we can’t even imagine today will find their way into our NEPA process. Some NEPA practitioners will resist these changes because they are not required by NEPA or will be perceived as making the NEPA process longer and more expensive. However, history shows they will happen anyway, and the process will be better for it.

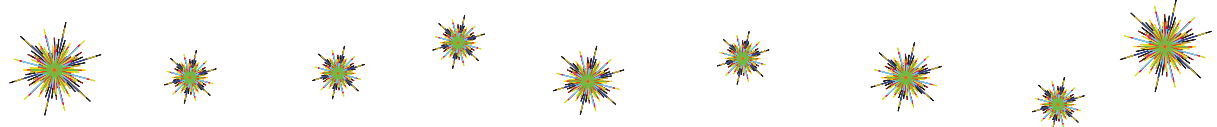
The first DOE EIS, 500 pages of black and white, was completed in January 1977. Six years and 89 EISs later, blue lettering and outlines drawn over reddish-brown monochromatic aerial photos marked the first use of color figures in a DOE EIS. They seem crude by today’s standards, but these figures were literally years ahead of their time. Color figures next appeared in the mid-1980s, and only a couple more times by the early 1990s, before becoming more common in the late 1990s and 2000s.

The transition to color happened without being required by NEPA, and despite the time and expense of color, because color improves the documents and the public expects us to use it. The advances of the next 40 years will be similar, and we should embrace them. They are inevitable.

*Jeff Dorman  
Office of NEPA Policy and Compliance*



## Reflections on NEPA at 40 – from the DOE NEPA Community



**M**y environmental planning experience began with the California Environmental Quality Act (CEQA) process and documentation. My exposure to NEPA had been working on joint NEPA and CEQA documents for projects in California with Federal involvement, for example, Caltrans projects or renewable energy projects on Bureau of Land Management land. My introduction to the NEPA process by itself is the current DOE categorical exclusion rulemaking effort.

A key difference between CEQA and NEPA is the provision of categorical exclusions. Under CEQA, public agencies can request “categorical exemption” additions, modifications, or deletions from the Governor’s Office of Planning and Research. Only 30 classes of projects are exempted under CEQA. Initially, in reviewing DOE’s list of categorical exclusions, I was surprised by the range and number of actions that could be categorically excluded.

As a participant in the development of the rulemaking, I am witnessing the extensive coordination and discussion among the DOE Program and Field Offices, and the NEPA Office and the Office of the Assistant General Counsel for Environment, as well as solicitation of input from outside interested parties. The effort agencies make to support conclusions that certain actions can be categorically excluded based on past experience, institutional knowledge, and review of literature and other agencies’ environmental documents highlighted for me the main difference between CEQA “exemptions” and NEPA categorical exclusions.



*Connie Chen*  
*Office of NEPA Policy and Compliance*

**W**hen I took a team-taught interdisciplinary course in environmental policy, in my junior year of college while on the path to a degree in economics and math, I had no idea that NEPA would play such a major role in my professional future. The statute, which one professor called “the full employment act for environmental scientists,” was only 3 years old. The ink had barely dried on the Calvert Cliffs litigation decision – that regulatory compliance is not equivalent to the environmental impact analysis required in an EIS.

One of the lecturers led us in exploring a locally-based case study, the defeat of a proposal to build a nuclear power plant using a nearby lake for cooling water intake and discharge. Examining the perspectives of environmentalists, university scientists, utility representatives, state officials, and local residents, she concluded that the controversy reflected “not so much substantive disagreement as concern with the mode of presentation of scientific data, the appropriate behavior of scientists with respect to public issues, and the effect of publicity on the scientific dimensions of the problem.” This class raised my consciousness about the need to consider not just the accuracy, adequacy, and relevance of technical information, but issues of presentation, communication, advocacy, and consensus building. These lessons still resonate for me in my daily work at DOE.



*Yardena Mansoor*  
*Office of NEPA Policy and Compliance*

# Oil Spill Review (continued from page 1)

The Department of the Interior (DOI), which has responsibility for permitting offshore drilling activities, has begun implementing the recommendations among other changes it is making in response to the oil spill.

CEQ intends the recommendations to promote “robust and transparent implementation” of NEPA and to help ensure that analysis provides decisionmakers and the public with a complete picture of the potential environmental consequences of a proposed action. “CEQ firmly believes that this complete picture is needed to adequately inform agency decisions,” the report states.

---

***NEPA was designed to impart transparency and accountability in Federal decisionmaking. These basic principles inform the review and reforms articulated in this report.***

***– Council on Environmental Quality  
August 16, 2010, Report***

---

## Transparent Tiering

DOI’s decision process for oil and gas leasing begins with programmatic NEPA reviews, such as for a regional leasing program, and then moves toward site-specific reviews, such as for a particular drilling permit. CEQ affirmed that this tiered approach is appropriate and helps the agency focus on the issues that are ripe for decision.

It is important that the programmatic analyses and decision documents “remain readily available to the public for as long as they are relied upon in subsequent decisions,” CEQ wrote. Moreover, decisionmakers should be “made aware of the relevant portions of the previous NEPA environmental analysis to inform their subsequent decisions.”

CEQ noted that DOI is reexamining its NEPA implementation to ensure that tiering does not “limit site-specific environmental analysis that may be appropriate in certain circumstances, despite the availability of major, prior environmental reviews and studies.” This issue can arise, for example, when new information becomes available or circumstances change after completion of the programmatic NEPA analysis. In addition, as “decisionmaking proceeds to examine a narrower geographic scope, tiered analysis calls for the assessment of environmental impacts to be more specific to the particular activity, geography, and impacts presented by the proposal at hand.” CEQ also addressed mitigation in the context of tiered NEPA analysis, emphasizing the need to consistently reference and carry through mitigation commitments into subsequent documents and decisions.

## Sound Decisionmaking

To foster transparency, public accountability, and sound decisionmaking, CEQ explained that clearly documented reasoning needs to be accessible to decisionmakers and the public. CEQ recommended providing “well-documented connections between the facts found in prior decisions and the conclusions drawn in subsequent decisionmaking.”

CEQ also underscored that through NEPA analysis “an agency must foresee those consequences which have a low probability of occurrence but could be potentially catastrophic based on credible scientific support.” This is not to be a “worst case analysis” based on conjecture, but should be grounded in scientific opinion. CEQ added that whether potential impacts are “highly uncertain or involve unique or unknown risks” is a factor in evaluating potential significance when determining whether to prepare an environmental impact statement (EIS) (40 CFR 1508.27(b)(5)).

---

***It is essential to ensure that information from one level of review is effectively carried forward to – and reflected in – subsequent reviews, that the agencies independently test assumptions, and that there is appropriate evaluation of site-specific environmental impacts***

***– Council on Environmental Quality  
August 16, 2010, Report***

---

## Updated Categorical Exclusions

DOI recognizes the need to reexamine its categorical exclusions (CXs) in light of changes over time, CEQ wrote. Deepwater drilling has expanded substantially since DOI established its CXs in the 1980s. The report noted that establishment of a CX requires a “reasoned decision based on all the relevant factors and information” as to whether the category of actions would have individually or cumulatively significant effects on the environment. “This may require a cumulative impact analysis,” CEQ wrote.

CEQ also addressed the need for transparency in applying CXs. In addition to documenting a CX determination “where a record is necessary for agency, public, or judicial review,” CEQ wrote, “The agency must be prepared to furnish a documented explanation for why the action does not fall within any of its identified extraordinary circumstances.” DOI has a CX review process for this purpose, which the agency is emphasizing as part of its current reforms.

*(continued on next page)*

# Oil Spill Review (continued from previous page)

## CEQ Recommendations to DOI's Bureau of Ocean Energy Management, Regulation and Enforcement:

### Tiering and Site-Specific Analysis

- Perform careful and comprehensive NEPA review of individual deepwater exploration, operation, development, production, and decommissioning activities, including site-specific information where appropriate.
- Track and take into account all mitigation commitments made in NEPA and decision documents that are relied upon in determining the significance of environmental impacts, from the initial Programmatic EIS through site-specific NEPA analyses and decisions.

### Transparency, Public Accountability, and Sound Decisionmaking

- Ensure that NEPA analyses fully inform and align with substantive decisions at all relevant decision points; that subsequent analyses accurately reflect and carry forward relevant underlying data; and that those analyses will be fully available to the public.
- Ensure that NEPA documents provide decisionmakers with a robust analysis of reasonably foreseeable impacts, including an analysis of reasonably foreseeable impacts associated with low probability catastrophic spills for oil and gas activities on the Outer Continental Shelf.

### Categorical Exclusions

- Review the use of categorical exclusions for Outer Continental Shelf oil and gas exploration and development in light of the increasing levels of complexity and risk – and the consequent potential environmental impacts – associated with deepwater drilling. Determine whether to revise these categorical exclusions.
- Continue to seek amendments to the Outer Continental Shelf Lands Act to eliminate the 30-day decisional timeframe for approval of submitted Exploration Plans.

### Changed Circumstances

- Consider supplementing existing NEPA practices, procedures, and analyses to reflect changed assumptions and environmental conditions, due to circumstances surrounding the BP Oil Spill.

Source: CEQ's Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development (August 16, 2010)

## Supplementing Analyses

CEQ encouraged DOI to consider “supplementing existing NEPA practices, procedures, and analyses to reflect changed assumptions and environmental conditions” due to circumstances surrounding the oil spill. CEQ emphasized the need to update analyses, such as through preparation of a supplemental EIS, to account for new information.


## Federal Agency Involvement

CEQ concluded its report with a recommendation to all Federal agencies. “Ultimately, the goals under NEPA will not be achieved without the full participation of other Federal agencies. . . . Because NEPA mandates an open and inclusive process, relevant information that might otherwise be overlooked by an action agency is brought to the table and an invaluable opportunity to exchange and address contrasting points of view is realized. Better project decisions and better environmental decisions are made as a result,” CEQ wrote.

“The Administration encourages Federal agencies to review their NEPA programs to ensure that they

have the resources and institutional support needed to maintain a strong involvement in Federal action agency decisionmaking and that those Federal agencies ensure that NEPA resources are available to fulfill this effort.”

CEQ's *Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development* (August 16, 2010) is available on CEQ's website.

Recommendations in the report reflect discussions with DOI staff; an internal review of NEPA practices and procedures by the Bureau of Ocean Energy Management, Regulation and Enforcement (one of three bureaus that replaced the Minerals Management Service); and actions DOI intends to take as part of its ongoing reorganization. CEQ also solicited (75 FR 29996; May 28, 2010) and considered public comments, which are available at [www.whitehouse.gov/administration/eop/ceq/initiatives/nea/comments](http://www.whitehouse.gov/administration/eop/ceq/initiatives/nea/comments). 



# e-NEPA Enhances Public Participation (continued from page 1)

DOE's longstanding policy is, whenever possible, to provide opportunities for interested parties to review EAs before DOE approval (concurrent with state/tribal review under 10 CFR 1021.301).<sup>1</sup> This is consistent with Council on Environmental Quality NEPA regulations, which require agencies to involve the public, to the extent practicable, in the preparation of EAs (40 CFR 1501.4(b)).

The new policy requires that, when an Office makes a draft EA available for public review, in addition to its usual manner of doing so, the Office shall ensure that the draft EA is posted on the DOE NEPA Website ([nepa.energy.gov](http://nepa.energy.gov)) before the start of the public review period. In turn, the Office of NEPA Policy and Compliance has established an electronic notification system to provide timely notice of draft EA review opportunities. Through the DOE NEPA Website, interested parties can subscribe to receive email notification when a draft EA is posted. Interested parties also may subscribe to another email list to receive email notices of *NEPA Updates*, which include NEPA public participation opportunities, general NEPA news, notices, and recently posted NEPA documents. The NEPA Office notified all of the nongovernmental organizations and state NEPA points of contact listed in the *Directory of Potential Stakeholders for DOE Actions under NEPA* (July 2010) of the availability of this system (related article, page 10).


## Procedures Facilitate Implementation

The new policy supplements the notification procedures of DOE Program and Field Offices, which are responsible for preparing EAs. Many DOE Offices post draft EAs on their websites; some, such as the Bonneville Power

Administration, use several means to notify interested parties of EA review opportunities. Given a range of procedures among Offices, the new policy provides Offices with flexibility in ways to post their draft EAs on the DOE NEPA Website. When an Office makes a draft EA available for public review, the Office may either (1) post the draft EA (with review instructions) on its own website and inform the DOE NEPA Webmaster that the EA is available for central posting or (2) provide an electronic file of the draft EA (with review instructions) to the DOE NEPA Webmaster for posting on the DOE NEPA Website.

"Review instructions are simply the basic information people need to comment on a draft EA: when are comments due? how do I submit comments? who can I contact for further information?" said Denise Freeman, DOE NEPA Webmaster. To promote consistency and avoid potential for EA process delays, Ms. Freeman circulated a review instructions template to NEPA Compliance Officers for their optional use. Review instructions are posted with the draft EA and provided to subscribers by email.

"Depending on the number of subscribers and level of interest, we are considering other ways to notify people of draft EA comment opportunities and other *NEPA Updates*, such as through the use of 'RSS feeds' (Really Simple Syndication feeds) and social media sites. As always, we welcome feedback on ways to make the website more useful," Ms. Freeman said. "We are especially interested in comments and suggestions for making effective use of social media sites throughout the NEPA process."

Comments and questions may be addressed to Ms. Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov). 

---

<sup>1</sup> DOE NEPA regulations require that DOE shall provide the host state and host tribe with an opportunity to review and comment on any DOE EA prior to DOE's approval. At DOE's discretion, this state/tribal review period shall be from 14 to 30 days; however, DOE may proceed to approve or take other appropriate action on an EA before the end of the review period if all host states and tribes waive their review opportunity or provide a response before the end of the review period (10 CFR 1021.301(d)).

# Is a Categorical Exclusion Determination a NEPA Review or a NEPA Exemption?

Recently categorical exclusions (CXs) have been frequently mentioned in the media, especially in connection with the Minerals Management Service approval of certain deepwater drilling permits. (See related article, page 1.) Often the application of a CX is characterized incorrectly as an “exemption” or “waiver” from NEPA review.

The Council on Environmental Quality (CEQ) defines a CX as a category of actions that a Federal agency has determined, under its NEPA procedures, do “not individually or cumulatively have a significant effect on the human environment . . . and for which, therefore, neither an environmental assessment nor an environmental impact statement is required” (40 CFR 1508.4).


CEQ NEPA regulations also state that agencies shall reduce excessive paperwork and delay in the NEPA process by, among other things, using CXs and findings of no significant impact (FONSI) to determine that actions are “. . . exempt from the requirement to prepare an environmental impact statement . . .” (40 CFR 1500.4(p and q) and 1500.5(k and l)). Incorrect interpretation of these provisions may contribute to a mischaracterization of a CX as an exemption from NEPA. An exemption from the requirement to prepare an EIS is not an exemption from all NEPA review. An EA and FONSI clearly involve substantive environmental review; a CX also involves environmental review, though to a lesser degree.

A CX must be established through rulemaking or another public process outlined in an agency’s NEPA procedures. An agency considers certain actions as a “class” to determine whether their environmental impacts have potential to be significant and identifies any appropriate limitations on the scope of such actions to ensure insignificant impacts. The agency must present sufficient data and analysis to support its conclusion that the class of actions is one that normally would not result in significant environmental impact.

Once a CX is established by an agency, that agency may apply it to an individual proposal. Under its regulations, DOE must determine that the proposal fits within the class of actions, there are no extraordinary circumstances that may affect the significance of the environmental effects of the proposal, and the proposal is not connected to other actions with the potential for significant impact (10 CFR 1021.410(b)). A CX determination may involve a quick

confirmation of relevant aspects of the proposed action or may require data collection to determine whether there are any extraordinary circumstances.

The CX determination process is a powerful tool for efficiency, as recognized by CEQ in its draft guidance on establishing and applying CXs ([February 18, 2010](#); [LLQR, March 2010, page 3](#)). CXs “allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive [EAs or EISs]. . . . Categorical exclusions are the most frequently employed method of complying with NEPA . . . .”

A CX determination thus is not an exemption or waiver from NEPA compliance, but rather an efficient approach to performing environmental review under NEPA. 



## Next Steps in DOE’s NEPA CX Rulemaking

DOE is now reviewing its existing CXs to revise and add to those CXs listed in the DOE NEPA regulations (10 CFR Part 1021, Subpart D, Appendices A and B) to more fully account for the Department’s current activities and advances in technology since DOE last revised its CXs in 1996 ([LLQR, March 2010, page 19](#)).

DOE intends to issue a notice of proposed rulemaking for public comment in the fall of 2010. The notice will be published in the *Federal Register* and made available through the DOE NEPA Website ([nepa.energy.gov](#)), the DOE NEPA email notification system, and the DOE CX rulemaking docket at [Regulations.gov](#) (Docket ID: DOE-HQ-2010-0002). DOE will consider comments received during preparation of a final rule.

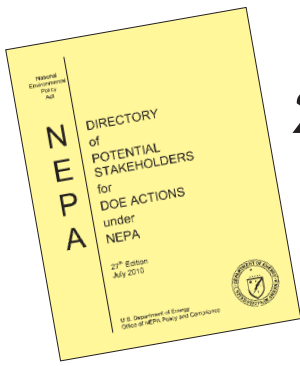
## DOE CX Database Update (as of August 24, 2010)

- 3,420 CX determinations from 45 DOE offices
- 2,131 of those are related to Recovery Act projects

The most frequently invoked CXs are:

- B5.1 – Actions to conserve energy (1,772)
- A9 – Information gathering/data analysis/document preparation/dissemination (1,479)

The CX Database is available at [cxnepa.energy.gov](#).



## 2010 Stakeholders Directory Issued: Use It!

The 27<sup>th</sup> Edition of the *Directory of Potential Stakeholders for DOE Actions under NEPA* (July 2010)

has been posted on the DOE NEPA Website under Guidance

([nepa.energy.gov/documents/StakeholdersDirectory.pdf](http://nepa.energy.gov/documents/StakeholdersDirectory.pdf)). Updated annually,


the *Directory* is intended to supplement Program and Field Office distribution and notification lists for NEPA documents of national interest or broad geographic scope. This responds to a provision of the Council on Environmental Quality NEPA regulations (40 CFR 1506.6(b)(2)) that states: “In the case of an action with effects of national concern notice shall include publication in the *Federal Register* and notice by mail to national organizations reasonably expected to be interested in the matter . . . . Agencies shall maintain a list of such organizations.”

The 2010 *Directory* identifies more than 250 potential NEPA document reviewers in Federal agencies, states, and national and regional nongovernmental organizations. DOE Offices are encouraged to be inclusive in providing potentially interested parties with opportunities to review DOE NEPA documents, consistent with the Presidential memorandum on *Transparency and Open Government* (January 21, 2009). To further this aim, for each listed nongovernmental organization with regional, state, or

local chapters, the *Directory* provides a webpage link to such additional contacts. For convenience, appendices list DOE contacts who may be involved in certain aspects of NEPA document coordination and distribution – NEPA Compliance Officers, public affairs directors, and points of contact for tribal issues – and public reading rooms where DOE Program and Field Offices typically make NEPA documents available for review.

### More and More Stakeholders Look Online for Documents

Updating the *Directory* includes asking stakeholders their preferences for receiving NEPA documents as paper copies, compact disks, or notification of the document’s web address. A trend identified in past years continues: a growing number of contacts prefer not to receive a full paper copy. Approximately 40 percent of the *Directory’s* contacts request only notification of the web address for a posted EA or EIS, and 30 percent prefer to receive only a compact disk. To meet these preferences, and to realize savings in printing, packaging, and mailing, NEPA Document Managers should plan ahead for the timely notification and posting of NEPA documents online.

For additional information, contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) or 202-586-9326. 


## DOE NEPA Order Updated

The Deputy Secretary of Energy issued DOE Order 451.1B, Change 2, *National Environmental Policy Act Compliance Program* (June 25, 2010), to incorporate DOE’s recent policy on making certain categorical exclusion determinations publicly accessible and to reflect DOE organizational changes. The DOE NEPA Order assigns internal responsibilities for compliance with the Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508) and DOE’s NEPA implementing procedures (10 CFR Part 1021).

The Deputy Secretary’s *Memorandum for Heads of Departmental Elements on NEPA Process Transparency and Openness* (October 2, 2009) established a policy requiring categorical exclusion determinations based on Appendix B to Subpart D of the DOE NEPA regulations to be documented and made publicly available online. The changed Order incorporates this policy among the

responsibilities of NEPA Compliance Officers, stating that “Categorical exclusion determinations . . . shall be documented and made available to the public by posting online, generally within two weeks of the determination unless additional time is needed in order to review and protect classified information, ‘confidential business information,’ . . . or other information that DOE would not disclose pursuant to the Freedom of Information Act . . . .”

The other changes reflect the transfer of NEPA responsibilities from the former Assistant Secretary for Environment, Safety and Health to the General Counsel (DOE Notice 451.1 (October 6, 2006)).

DOE O 451.1B, Change 2, is now posted at [directives.doe.gov](http://directives.doe.gov) and on the DOE NEPA Website under Requirements. An administrative change to the Order is in preparation to reflect the Deputy Secretary’s recent policy regarding posting draft EAs online for public comment (related article, page 1). 





# Recovery Act NEPA Reviews Keep Pace

Federal agencies completed more than 11,000 NEPA reviews for the American Recovery and Reinvestment Act (ARRA or Recovery Act) projects during the quarter ending June 30, 2010, according to the latest report prepared by the Council on Environmental Quality (CEQ). More than 1,700 (about 15 percent) of these were completed by DOE. CEQ submitted the sixth quarterly report on the NEPA status of projects receiving Recovery Act funds to Congress on August 2, 2010.

The August report summarizes the NEPA status of more than 215,000 Recovery Act projects. Cumulatively through June 30, 2010, Federal agencies completed more than 174,600 categorical exclusion (CX) determinations and 9,000 EAs, and analyzed more than 790 projects in EISs. Agencies concluded that NEPA is not applicable to about 4,200 other Recovery Act projects. Together, these projects involve obligations of approximately \$243 billion funded under Division A of the Recovery Act. In addition, CEQ reported that more than 1,600 NEPA reviews are underway, including approximately 800 CX determinations, 750 EAs, and 35 EISs.


**Overall, the departments and agencies continue to report the timely completion of NEPA reviews that inform decisions on projects and activities receiving ARRA funds and position the agencies to implement those projects and activities in an environmentally sound manner.**

– Council on Environmental Quality  
August 2, 2010, Report to Congress

As of June 30, DOE had completed nearly 7,300 NEPA reviews supporting the obligation of more than \$29.5 billion for projects receiving Recovery Act funding, an increase of almost \$2.9 billion since March 31, 2010 (*LLQR*, June 2010, page 14).

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through September 30, 2010. Federal agency reports are due to CEQ by October 15, 2010, and CEQ will submit the next report to Congress in November.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924. 

“Agencies continue to meet the challenges of administering programs and projects that were dramatically expanded by ARRA funding by providing tools (e.g., checklists, templates) and additional guidance to help program and project managers deliver projects and activities while meeting their environmental requirements,” CEQ wrote. “Examples of agencies implementing NEPA efficiencies include the continued development of programmatic analyses to meet NEPA compliance requirements for multiple projects and activities, resulting in the expeditious completion of subsequent specific projects and activities.”

## An Insider’s Tip: How To Handle Multiple Dates and Addresses in *Federal Register* Notices




An often overlooked instruction in the *Federal Register Document Drafting Handbook* is that when a *Federal Register* notice announces more than four dates and addresses, such as for scoping meetings or public hearings, such information should be presented under the SUPPLEMENTARY INFORMATION heading, under an appropriate subheading such as “Meetings” or “Public Participation,” instead of under the DATES and ADDRESSES headings at the beginning of the notice. When using this approach, insert a statement in the DATES and ADDRESSES sections to direct the reader to the information – for example, “See ‘Meetings’ in the SUPPLEMENTARY INFORMATION section for meeting dates.”

**The carrot: Improve clarity** – Within the SUPPLEMENTARY INFORMATION section, dates and locations can be combined in a logical presentation along with any additional information specific to each meeting, while in the preliminary headings, the content of the DATES and ADDRESSES sections is prescribed to be distinct and may not be combined.



**The stick: Avoid delay** – If a notice with more than four dates and addresses in the preliminary headings is submitted for *Federal Register* publication, it may be sent back for revision, which would then require a new signature of the issuing official.



For questions or guidance, contact DOE’s *Federal Register* Liaisons Clara Barley ([clara.barley@hq.doe.gov](mailto:clara.barley@hq.doe.gov) or 202-586-8705) or Diana Dean ([diana.dean@hq.doe.gov](mailto:diana.dean@hq.doe.gov) or 202-586-7440). 

# President Establishes Nation's First Ocean Policy

For the first time, the United States has a National Ocean Policy for the stewardship of the ocean, coasts, and the Great Lakes. President Obama signed an Executive Order (E.O.) on July 19, 2010, establishing the policy and creating a [National Ocean Council](#) to oversee its implementation. The 25-member council is co-chaired by the White House Office of Science and Technology Policy and the Council on Environmental Quality (CEQ) and includes representatives from 15 Federal agencies (including DOE) and the White House.

The Policy requires regional goals and plans to be developed that may be relevant to DOE NEPA reviews, such as for those involving off-shore energy research and development (e.g., wind, wave/tide, thermal gradient), power transmission, or other scientific exploration.

---

**President Obama recognized that our uses of the ocean are expanding at a rate that challenges our ability to manage significant and often competing demands.**

– Nancy Sutley, Chair  
Council on Environmental Quality  
[July 19, 2010, Press Release](#)

E.O. 13547, [Stewardship of the Ocean, Our Coasts, and the Great Lakes](#), adopts the recommendations of an Interagency Ocean Policy Task Force, which was established in June 2009 by President Obama. These recommendations provide a roadmap for implementing the E.O. and are presented in the [Final Recommendations of the Interagency Ocean Policy Task Force](#), issued concurrently.

The Task Force, composed of 24 senior-level Federal officials, was led by the Chair of CEQ. DOE was represented by David Sandalow, Assistant Secretary for Policy and International Affairs. The Task Force stated in its final report that the Nation must “set a new course for improved stewardship of the ocean, our coasts, and the Great Lakes. This must include a comprehensive, integrated, transparent, science-based, and ecosystem-based planning process to achieve the sustainable use of the ocean, our coasts and the Great Lakes.”


The Task Force called for consistent, sustained senior-level attention to ocean-related issues from all Federal agencies whose activities depend on or may affect coastal or marine areas. The Task Force recommended an implementation strategy based on comprehensive, integrated, ecosystem-based coastal and marine spatial (CMS) planning and management.



*Energy planning needs to balance diverse uses of the ocean and coastal areas. (photo: Final Recommendations of the Interagency Ocean Policy Task Force)*

The country will be divided into nine regional planning areas, based on ecological conditions: Northeast, Mid-Atlantic, South Atlantic, Great Lakes, Caribbean, Gulf of Mexico, West Coast, Pacific Islands, and Alaska/Arctic. Each region will have a planning body consisting of Federal, state, and tribal representatives to develop regional goals, objectives, and ultimately regional CMS Plans. The regional planning bodies will submit their Plans to the National Ocean Council for national consistency certification. CMS Plans are to be completed by 2015.

The CMS planning framework includes developing and analyzing alternatives and impacts, releasing a draft plan with supporting environmental impact analysis for public comment, and preparing a final plan for 30 days public notice before implementation. CMS Plans will cover all manner of coastal and marine issues and activities, including cultural, recreation, science, aquaculture, commercial fishing, transportation, energy development, and national security. Once a CMS Plan is adopted, appropriate adjustments would be made through monitoring and adaptive management.

Each regional plan will have a lead Federal agency; other agencies, including DOE, may be asked for assistance. The Task Force encouraged agencies to provide support when requested. 

## Ocean and Great Lakes Facts<sup>1</sup>

- The United States has over 95,000 miles of coastline and the largest Exclusive Economic Zone in the world.
- The Great Lakes are the largest freshwater system on Earth, with 10,000 miles of shoreline and some 95 percent of the Nation's fresh surface water.
- Nearly half of the Nation's population lives in coastal counties.

<sup>1</sup> Interagency Ocean Policy Task Force.

# Transitions



## NEPA Compliance Officers

### Legacy Management: Tracy Ribeiro

**Tracy Ribeiro** was designated NEPA Compliance Officer (NCO) for the Office of Legacy Management (LM) when she recently assumed the duties as the LM Environmental Program Manager. Ms. Ribeiro has been working with DOE since 2007 as a Legacy Site Manager. Previously, she worked with the Naval Nuclear Propulsion Program, private consultants, and an environmental/research facility for 18 years. She has certifications as an Environmental Auditor and as a Professional Geologist (North Carolina and Virginia). Ms. Ribeiro can be reached at [tracy.ribeiro@lm.doe.gov](mailto:tracy.ribeiro@lm.doe.gov) or 970-248-6621.

*Rich Bush, a former NCO, has been designated as the alternate NCO. Tracy Plessinger (the previous NCO) is still with LM, but concentrating on other topic areas.*

### West Valley Demonstration Project: Martin Krentz

**Martin Krentz** is now the NCO for the West Valley Demonstration Project (WVDP). Mr. Krentz had served WVDP as an environmental consultant for 2 years before joining DOE in April 2010 as a Physical Scientist on WVDP's Regulatory Strategy and Environmental Compliance Team. He has over 20 years of experience in the environmental compliance field and is both a Certified Hazardous Materials Manager Master Level and a Qualified Environmental Professional. Mr. Krentz can be reached at [martin.krentz@wv.doe.gov](mailto:martin.krentz@wv.doe.gov) or 716-942-4007.

*The previous NCO, Cathy Bohan, now serves as a project manager for the WVDP. She can be reached at [catherine.m.bohan@wv.doe.gov](mailto:catherine.m.bohan@wv.doe.gov) or 716-942-4159.*

## Former Office of Civilian Radioactive Waste Management NCOs Take New Headquarters Positions

The Office of Civilian Radioactive Waste Management will be disbanded on September 30, 2010. **Narendra Mathur** now serves as an engineer with the new Office of Standard Contract Management (within the Office of the General Counsel). **Jane Summerson** is now a National Nuclear Security Administration employee and serves as an NCO for the Office of Energy Efficiency and Renewable Energy and can be reached at [jane.summerson@ee.doe.gov](mailto:jane.summerson@ee.doe.gov) or 202-287-6188.

## Council on Environmental Quality

**Ellen Athas** is the Council on Environmental Quality's (CEQ's) new Senior Counsel, replacing Ted Boling, who has taken a position in the Department of the Interior. Ms. Athas served as CEQ's Deputy General Counsel and Associate Director for Oceans, Coasts and Environmental Policy during the Clinton Administration, and has held legal positions in the Department of Justice, the Federal Aviation Administration, and the Ocean Conservancy.

**Katie Scharf**, formerly Special Assistant to DOE's General Counsel Scott Blake Harris, now serves as CEQ's Deputy General Counsel. 



# Litigation Updates

## DOE NEPA Litigation

### Appeals Court Affirms that Plaintiffs Lack Standing To Sue

The U.S. Court of Appeals for the Ninth Circuit affirmed a decision by the U.S. District Court for the District of Hawaii granting the Government's motion for summary judgment, on the ground that the plaintiffs lacked standing to allege that DOE and the National Science Foundation violated NEPA by providing support for construction and operation of the Large Hadron Collider.

In 2008, two private citizens sued DOE, Fermilab, the National Science Foundation, and the European Organization for Nuclear Research (CERN), alleging that they violated NEPA by preparing the Large Hadron Collider for operation without NEPA review (*LLQR*, June 2008, page 20). The Large Hadron Collider, a physics research facility operated by CERN and located on the French-Swiss border, accelerates proton particles to nearly the speed of light and collides them at the center of four large detectors designed to observe those collisions.

The appeals court found that the plaintiffs failed to establish any of the three requirements for "standing." Specifically, the plaintiffs did not demonstrate (1) an "injury in fact," (2) "a causal connection between the injury and the conduct complained of" that is not attributable to "the independent action of some third party not before the court," and (3) a likelihood that a favorable decision will redress injury. Regarding the requirement to demonstrate "injury in fact," the appeals court noted that the plaintiffs have only alleged "potential adverse consequences" and stated that "speculative fear of future harm does not constitute an injury in fact sufficient to confer standing."

The appeals court also determined that the plaintiffs failed to satisfy the causality and redressability prongs of standing (requirements 2 and 3, above). The appeals court found that because the U.S. Government "enjoys only observer status on the CERN council, and has no control over CERN or its operations. . . . the alleged injury, destruction of the earth, is in no way attributable to the U.S. government's failure to draft an environmental impact statement." (*Sancho v. DOE*, Case No.: 08-17389; August 24, 2010, memorandum at [www.ca9.uscourts.gov/memoranda](http://www.ca9.uscourts.gov/memoranda))

## Other Agency NEPA Litigation

### Supreme Court Addresses Injunction Standard for NEPA Case

*The Supreme Court found that the U.S. Court of Appeals for the Ninth Circuit "abused its discretion" in enjoining the planting of Roundup Ready Alfalfa while the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) completes an EIS. The Court relied on its 2008 decision (Winter v. Natural Resources Defense Council) regarding the proper standard when a court determines whether to issue an injunction. We encourage the interested reader to examine the entire opinion.*

After preparing an EA and issuing a finding of no significant impact, APHIS approved the deregulation of a strain of alfalfa ("Roundup Ready Alfalfa") that is genetically engineered to be resistant to glyphosate, a weed killer originally patented and marketed by Monsanto as "Roundup." Monsanto had petitioned APHIS to deregulate the strain of alfalfa because it "does not present a plant pest risk." Geertson Seed Farms, a conventional alfalfa seed farm, and environmental groups concerned with food safety sued, alleging that APHIS should have prepared an EIS before its deregulation decision.

The U.S. District Court for the Northern District of California agreed and vacated (i.e., voided) the agency's decision deregulating Roundup Ready Alfalfa; enjoined (i.e., prohibited) APHIS from deregulating Roundup Ready Alfalfa, in whole or in part, before completing the required EIS; and entered a nationwide injunction prohibiting almost all future planting of Roundup Ready Alfalfa (with limited exceptions for those farmers that had already planted the crop or purchased the seed on the basis of APHIS's deregulation decision).

APHIS and Monsanto appealed. The Ninth Circuit Court upheld the District Court's injunction. Monsanto then appealed the appeals court's ruling to the Supreme Court.

*(continued on next page)*



## Four-Part Injunction Test Applies to NEPA Cases

The Supreme Court summarized Monsanto’s argument “that the lower courts in this case proceeded on the erroneous assumption that an injunction is generally the appropriate remedy for a NEPA violation.” In particular, Monsanto noted that the District Court relied on precedent established prior to the Supreme Court’s 2008 opinion in *Winter v. Natural Resources Defense Council* that “an injunction delaying the contemplated government project is proper ‘until the NEPA violation is cured.’” (For more on *Winter*, see [Supreme Court Case No.: 07-1239; LLQR, December 2008, p. 35.](#))



The Supreme Court found the lower court’s presumption “that an injunction is the proper remedy for a NEPA violation except in unusual circumstances” was the reverse of the proper analysis. Instead, the Court reiterated its finding in *Winter* that the determination whether to grant an injunction for a NEPA violation must rely on the traditional four-part test for an injunction. This requires a finding that a plaintiff has established: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”

The Supreme Court found that “none of the four factors supports the District Court’s order.” Because the Supreme Court left in place the lower court’s rejection of APHIS’s approval of crop deregulation until the EIS is completed, APHIS must either fully or partly approve deregulation of the Roundup Ready Alfalfa seed before planting can resume. APHIS is currently reviewing comments received on its [draft EIS](#). (*Monsanto Co. v. Geertson Seed Farms*, [Case No.: 09-475](#); June 21, 2010)



## CEQ Updates Its FOIA Regulations

The Council on Environmental Quality (CEQ) has updated its regulations for disclosing information under the Freedom of Information Act (FOIA). The changes “reflect the principles” in President Obama’s call for open government, CEQ states in its final rule, and “reaffirm its commitment to providing the fullest possible disclosure of records to the public” (75 FR 48585; August 11, 2010). CEQ established a [Proactive Disclosure Reading Room](#) “to advance NEPA’s goals of transparency and public accountability in decision-making.” The rule states that CEQ will use the reading room and associated websites (particularly [NEPA.gov](#)) “to make environmental documents more accessible to the public.”



CEQ prepared an EA for its rulemaking because CEQ has not established any categorical exclusions. This concise EA was published in its entirety in CEQ’s Notice of Proposed Rulemaking (74 FR 58576; November 13, 2009), where it took a single page of the *Federal Register* notice. No comments were received on the EA. Because these regulations “pertain solely to procedures regarding the dissemination of information and will have not only a minimal impact on CEQ resources,

including paper consumption, but will conserve resources and improve the FOIA process,” CEQ found that the regulations will have no significant impact on the human environment and, therefore, an EIS is not required.

CEQ’s existing FOIA regulations were promulgated in 1977; the new regulations become effective on September 10, 2010. More information is available at [www.whitehouse.gov/administration/eop/ceq/foia](http://www.whitehouse.gov/administration/eop/ceq/foia).



### New “Proactive Disclosure Reading Room”

Responding to the Attorney General’s March 19, 2009, [memorandum on FOIA](#), which instructed agencies to “readily and systematically post information online in advance of any public request,” CEQ established, as part of its “FOIA Requester Service Center,” a Proactive Disclosure Reading Room. The Reading Room webpage provides documents frequently requested under FOIA, the legislative history of NEPA, and CEQ historical documents, among other environmental information.



# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del](http://www.nicholas.duke.edu/del)
  - Tribal Consultation and Accounting for Cumulative Effects in the NEPA Process**  
Durham, NC: September 13-17  
\$1,665
  - Implementation of NEPA**  
Durham, NC: November 1-5  
\$1,250
  - Scoping, Public Involvement and Environmental Justice and Socioeconomic Impact Analysis under NEPA**  
Durham, NC: December 6-10  
\$1,665
  - Certificate in the National Environmental Policy Act**  
Requires successful completion of one core and three elective NEPA short courses.  
Co-sponsored by the Council on Environmental Quality.  
Fee: Included in course registration.
- Northwest Environmental Training Center  
425-270-3274  
[info@nwetc.org](mailto:info@nwetc.org)  
[www.nwetc.org](http://www.nwetc.org)
  - NEPA: Writing the Perfect EA, FONSI or EIS**  
Omaha, NE: October 18-19  
Billings, MT: October 21-22  
\$495 (\$395 for Federal employees)
  - Preparing, Reviewing, Challenging, and Defending Documents Prepared under NEPA and CEQA**  
Pasadena, CA: October 26-27  
\$495 (\$395 for Federal employees)
- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)
  - Core Principles: Telling the NEPA Story, Keeping Documents Brief, and Meeting Legal Requirements**  
Las Vegas, NV: September 14-16  
\$985 (GSA contract: \$895)
- NEPA Climate Change Analysis and Documentation**  
Niceville, FL: September 22-23  
\$785 (GSA contract: \$695)
- NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**  
Phoenix, AZ: October 5-8  
\$1,185 (GSA contract: \$1,095)
- Applying the NEPA Process and Writing Effective NEPA Documents**  
Salt Lake City, UT: October 19-22  
\$1,145 (GSA contract: \$1,055)  
Virginia Beach, VA: November 30 – December 3  
\$1,145 (GSA contract: \$1,055) until 10/13/10
- Overview of NEPA Process and Managing NEPA Projects and Teams**  
Seattle, WA: October 26-29  
\$1,145 (GSA contract: \$1,055) until 9/21/10
- Managing NEPA Projects and Teams and Reviewing NEPA Documents**  
St. Louis, MO: November 1-5  
\$1,345 (GSA contract: \$1,255) until 9/28/10
- Overview of the NEPA Process**  
Las Vegas, NV: November 3  
\$345 (GSA contract: \$255) until 9/21/10
- Applying the NEPA Process and Advanced Environmental Cross-Cutter**  
Jacksonville, FL: November 16-19  
\$1,145 (GSA contract: \$1,055) until 9/28/10
- Applying the NEPA Process and Writing Effective NEPA Documents and NEPA Cumulative Effects Analysis and Documentation**  
San Francisco, CA: December 6-10  
\$1,345 (GSA contract: \$1,255) until 10/20/10
- NEPA Certificate Program**  
Requires successful completion of eight courses offered by The Shipley Group.  
\$5,450  
Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/htm/students/grad-degrees/nepa](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa)

(continued on next page)

## Training Opportunities

(continued from previous page)

- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/training](http://www.swca.com/training)  
  
**Comprehensive NEPA**  
San Diego, CA: October 20-22  
\$795
- USDA Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[http://graduateschool.edu/course\\_details.php?cid=ENV54435E](http://graduateschool.edu/course_details.php?cid=ENV54435E)  
  
**NEPA: Policy, Procedure, Science, and Art**  
Washington, DC: Tuesdays, September 21 – November 23  
\$375
- US Institute for Environmental Conflict Resolution  
(520) 901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)  
  
**Advanced Multi-Party Negotiation of Environmental Disputes**  
Lakewood, CO: September 14-16  
\$750  
  
**Introduction to Managing Environmental Conflict\***  
Washington, DC: September 22-23  
\$500  
  
**Negotiating Environmental Issues\***  
Washington, DC: October 26-27  
\$500

\* Co-sponsored by the DOE Office of Conflict Prevention and Resolution.


## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeeps@mchsi.com](mailto:jleeeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
703-934-3603 or 800-532-4783  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)

## DOE Environmental Attorneys' Training To Focus on Conflict Resolution and Other Current Issues

The annual environmental attorneys' training will be held this year on October 19–20 at DOE Headquarters in Washington, DC, with audio and video links to be announced. This training, traditionally held for Departmental and contractor environmental attorneys (for whom Continuing Legal Education credits may be available), is also open to NEPA practitioners, program staff, and contractors involved in environmental issues. The agenda will include current NEPA developments,

Native American issues (including environmental conflict resolution), natural resource damages, appropriations related to cleanup activities, energy parks, the Recovery Act, and other environmental issues.

For more information, and to register, contact Steven Miller, Office of the Assistant General Counsel for Environment, at [steven.miller@hq.doe.gov](mailto:steven.miller@hq.doe.gov) or 202-586-2925. 

# EAs and EISs Completed April 1 to June 30, 2010

## EAs<sup>1</sup>

### **Argonne Site Office/ Office of Environmental Management**

[DOE/EA-1670\\*](#) (4/9/10)

*Decontamination and Demolition of Building 310 at Argonne National Laboratory, Argonne, Illinois*

Cost: \$15,000

Time: 13 months

### **Golden Field Office/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1704\\*](#) (6/4/10)

*Construction and Operation of a Proposed Cellulosic Biorefinery, BlueFire Fulton Renewable Energy, LLC, Fulton, Mississippi*

Cost: \$48,000

Time: 12 months

[DOE/EA-1733](#) (6/21/10)

*Calpine Enhanced Geothermal Systems Project, Sonoma County, California*

Cost: \$70,000

Time: 9 months

[DOE/EA-1759\\*](#) (5/17/10)

*Southwest Alaska Regional Geothermal Energy Project, Naknek, Alaska*

Cost: \$128,000

Time: 2 months

### **Office of Loan Programs**

[DOE/EA-1683\\*](#) (5/6/10)

*Loan Guarantee to Abengoa Solar, Inc., for the Solana Thermal Electric Power Project near Gila Bend, Arizona*

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

Time: 10 months

[DOE/EA-1690\\*](#) (4/20/10)

*Loan and Grant to A123 Systems, Inc., for Vertically Integrated Mass Production of Automotive-Class Lithium-Ion Batteries, Detroit, Michigan*

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

Time: 9 months

[DOE/EA-1692](#) (6/11/10)

*Loan Guarantee to Red River Environmental Products, LLC, for Construction and Start-up of an Activated Carbon Manufacturing Facility in Red River Parish, Louisiana*

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

Time: 11 months

[DOE/EA-1726\\*](#) (6/3/10)

*Loan Guarantee to Kahuku Wind Power, LLC, for Construction of the Kahuku Wind Power Facility in Kahuku, O'ahu, Hawaii*

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

Time: 6 months

### **National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1699](#) (5/18/10)

*Pope/Douglas Third Combustor Expansion Project, Alexandria, Minnesota*

Cost: \$4,000

Time: 9 months

[DOE/EA-1709\\*](#) (5/14/10)

*Compact Power, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Holland, Michigan*

Cost: \$45,000

Time: 5 months

[DOE/EA-1713\\*](#) (4/30/10)

*Celgard, LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Concord, North Carolina*

Cost: \$48,000

Time: 5 months

[DOE/EA-1718\\*](#) (4/7/10)

*EnerG2, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Albany, Oregon*

Cost: \$37,000

Time: 5 months

(continued on next page)

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

\* Recovery Act project



# EAs and EISs Completed April 1 to June 30, 2010

(continued from previous page)

[DOE/EA-1720\\*](#) (4/7/10)

*Pyrotek, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative, Sanborn, New York*

Cost: \$36,000

Time: 5 months

[DOE/EA-1722\\*](#) (4/21/10)

*Toxco, Incorporated, Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Lancaster, Ohio*

Cost: \$20,000

Time: 5 months

[DOE/EA-1723\\*](#) (4/30/10)

*General Motors, LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, White Marsh, Maryland, and Wixom, Michigan*

Cost: \$37,000

Time: 5 months

## National Energy Technology Laboratory/ Office of Fossil Energy

[DOE/EA-1658](#) (5/6/10)

*Development and Demonstration of a Biomass Energy Center for Food Processing Applications, Topeka, Kansas*

Cost: \$60,000

Time: 14 months

## National Nuclear Security Administration

[DOE/EA-1677](#) (5/6/10)

*Conveyance and Transfer of the Two Land Tracts Pursuant to Public Law 111-11, Section 13005, Albuquerque, New Mexico*

Cost: \$22,000

Time: 12 months

[DOE/EA-1771](#) (5/26/10)

*U.S. Receipt and Storage of Gap Material – Plutonium, Delaware, Georgia, South Carolina, and Tennessee (For Official Use Only; EA not publicly available)*

[Finding of No Significant Impact](#) (available online)

Cost: \$496,000

Time: 9 months

## Western Area Power Administration

[DOE/EA-1635](#) (5/7/10)

*Williston to Tioga Transmission Line Project, North Dakota*

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

Time: 21 months

## EISs

### Office of Fossil Energy/

### National Energy Technology Laboratory

[DOE/EIS-0409](#) (75 FR 28612, 5/21/10)

(EPA Rating: EC-2)

*Kemper County Integrated Gasification Combined-Cycle (IGCC) Project, Kemper County, Mississippi*

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

Time: 20 months

[Department of Defense was a cooperating agency.]

## Western Area Power Administration

[DOE/EIS-0415](#) (75 FR 30022, 5/28/10)

(EPA Rating: EC-2)

*Deer Creek Station Energy Facility Project, Brookings and Deuel Counties, South Dakota*

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

Time: 15 months

[Department of Agriculture, Rural Utilities Service was a cooperating agency.]

### ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

#### Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

#### Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

\* Recovery Act project

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 14 EAs for which cost data were applicable was \$41,000; the average cost was \$78,000.
- Cumulatively, for the 12 months that ended June 30, 2010, the median cost for the preparation of 38 EAs for which cost data were applicable was \$45,000; the average was \$67,000.
- For this quarter, the median and average completion time for 19 EAs was 9 months.
- Cumulatively, for the 12 months that ended June 30, 2010, the median completion time for 47 EAs was 6 months; the average was 9 months.

## EIS Cost and Completion Times

- For this quarter, there were no EISs completed for which cost data were applicable.
- Cumulatively, for the 12 months that ended June 30, 2010, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1.4 million; the average cost was \$11 million.
- For this quarter, the completion times for 2 EISs were 15 and 20 months.
- Cumulatively, for the 12 months that ended June 30, 2010, the median completion time for 5 EISs was 49 months; the average was 43 months.

# Recent EIS-Related Milestones June 1 to August 31, 2010

## Notices of Intent

### **Bonneville Power Administration**

DOE/EIS-0451

*Hooper Springs Substation and Hooper Springs-Lower Valley Transmission Line, Caribou County, Idaho*

July 2010 ([75 FR 39241](#), 7/8/10)

### **Office of Electricity Delivery and Energy Reliability**

DOE/EIS-0447

*Champlain Hudson Power Express Transmission Line Project, New York*

June 2010 ([75 FR 34720](#), 6/18/10)

### **Office of Fossil Energy**

DOE/EIS-0444\*

*Texas Clean Energy Project (TCEP), Ector County, Texas*

June 2010 ([75 FR 30800](#), 6/2/10)

DOE/EIS-0445\*

*American Electric Power Service Corporation's Mountaineer Commercial Scale Carbon Capture and Storage Demonstration, Mason County, West Virginia*  
June 2010 ([75 FR 32171](#), 6/7/10)

## Amended Notice of Intent

### **Office of Environmental Management**

[DOE/EIS-0283-S2](#)

*Supplemental Environmental Impact Statement for Surplus Plutonium Disposition, Savannah River Site, Aiken, South Carolina*

July 2010 ([75 FR 41850](#), 7/19/10)

## Draft EISs

### **Bonneville Power Administration**

[DOE/EIS-0422](#)

*Central Ferry-Lower Monumental 500-kilovolt Transmission Line Project, Garfield, Columbia, and Walla Walla Counties, Washington*

July 2010 ([75 FR 38517](#), 7/2/10)

### **Western Area Power Administration**

[DOE/EIS-0427](#)

*Grapevine Canyon Wind Project, Coconino County, Arizona*

July 2010 ([75 FR 43160](#), 7/23/10)

[DOE/EIS-0433\\*\\*](#)

*Keystone XL Oil Pipeline Project*

April 2010 ([75 FR 19969](#), 4/16/10)

[Department of State is the lead agency; WAPA is a cooperating agency.]

\* *Recovery Act project*

\*\* *Not previously reported in LLQR*

*(continued on next page)*

# Recent EIS-Related Milestones

## June 1 to August 31, 2010

(continued from previous page)

### [DOE/EIS-0435](#)

*Modification of the Groton Generation Station Interconnection Agreement*, Brown County, South Dakota  
August 2010 ([75 FR 47591](#), 8/6/10)

## Final EISs

### **Office of Energy Efficiency and Renewable Energy/Golden Field Office**

#### [DOE/EIS-0407\\*](#)

*Abengoa Biorefinery Project near Hugoton*, Stevens County, Kansas  
August 2010 ([75 FR 51458](#), 8/20/10)  
[EPA notice correcting 30-day wait period [75 FR 52736](#), 8/27/10]

### **Western Area Power Administration**

#### [DOE/EIS-0418](#)

*South Dakota Prairie Winds Project*, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota  
July 2010 ([75 FR 44951](#), 7/30/10)  
[Co-lead: Department of Agriculture, Rural Utilities Service]

## Records of Decision

### **Office of Fossil Energy/ National Energy Technology Laboratory**

#### [DOE/EIS-0409](#)

*Kemper County Integrated Gasification Combined-Cycle (IGCC) Project*, Kemper County, Mississippi  
August 2010 ([75 FR 51248](#), 8/19/10)

### **Western Area Power Administration**

#### [DOE/EIS-0415](#)

*Deer Creek Station Energy Facility Project*, Brookings and Deuel Counties, South Dakota  
July 2010 ([75 FR 39926](#), 7/13/10)

## Amended Record of Decision

### **Office of Environmental Management**

#### [DOE/EIS-0119](#)

*Decommissioning of Eight Surplus Production Reactors at the Hanford Site*, Richland, Washington  
July 2010 ([75 FR 43158](#), 7/23/10)

## Supplement Analysis

### **Office of Environmental Management**

#### **Decommissioning of Eight Surplus Production Reactors**

#### [\(DOE/EIS-0119\)](#)

#### [DOE/EIS-0119/SA-01](#)

*Decommissioning of Eight Surplus Production Reactors at the Hanford Site*, Richland, Washington  
(Decision: No further NEPA review required)  
July 2010

\* Recovery Act project

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Internal scoping meeting.* An internal scoping meeting was held with the EA preparation team to foster efficient interactions among the participants.
- *Advance scoping.* The EA was scoped well in advance. (This is the third EA for the subject project.) Some changes to the project necessitated additional NEPA documentation.
- *Coordination.* Extensive coordination with the applicant during the scoping phase transformed the EA proposed action from a greenfield development to an existing facility retrofit with only minor new construction.
- *Early issue identification.* Early coordination with the cooperating agency, as well as with EPA and the U.S. Fish and Wildlife Service (FWS), identified potential issues early in the NEPA process.

## Data Collection/Analysis

### What Worked

- *Good communication.* The EA contractor maintained regular communication with the project manager and team members to ensure proper collection and interpretation of characterization data.
- *Use of pre-existing data.* Data from previous EAs on the same subject were used and referenced where relevant.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Effective document manager.* The document manager ensured that the EA was on schedule and that all milestone dates were met.

- *EA coordinator assigned.* A coordinator was assigned to communicate the NEPA document manager's expectations and to keep the contractor on track. Biweekly progress meetings, collaboration on succinct data calls, and data call follow-ups were all used.
- *Responsive applicant.* A very responsive applicant and close coordination with FWS during the Endangered Species Act Section 7 consultation facilitated timely completion of the EA. Additionally, the applicant was very cooperative and quick to respond to requests for additional information.
- *Legal coordination.* Close coordination with DOE legal counsel regarding the progress of the draft EA and Biological Opinion helped maintain the project's schedule.
- *Pre-briefings.* Providing a pre-briefing to DOE legal counsel prior to their review of the draft EA helped to apprise them of all issues, which facilitated a timely iterative review process.
- *Organized review process.* Reviews were completed in a timely manner. Early coordination with the cooperating agency established guidelines for receiving timely input. Weekly review meetings with the applicant, cooperating agency, and the NEPA support contractor identified problem areas early.

### Factors that Inhibited Timely Completion of Documents

- *Review process.* The amount of time it would take for DOE reviews and concurrence for both the draft and final EA was not fully understood and planned for in the original schedule.
- *Loss of key personnel.* Two of three key personnel left the contractor's project team about midway through the project.
- *Disregard for schedule.* The internal DOE EA review schedule was disregarded.
- *Unanticipated comments.* Internal DOE reviews required additional time to respond to unanticipated comments.

*(continued on next page)*

# Questionnaire Results

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

- *Incomplete scoping.* Two mutually exclusive options were included in the proposed action, but the second option had not been scoped.
- *Competing workload.* DOE workloads caused slight delays in timely review of EA drafts.
- *Extensive consultation.* Extensive tribal consultation requests lengthened the EA process.

- *Multiple media outlets.* Publishing the notice of availability in four local newspapers, and providing drafts directly to several stakeholders, elicited several comments.
- *Early stakeholder support.* Early endorsement of the project site by environmental groups provided the applicant assurance during preparation of the EA.
- *Public approval.* State and local officials were supportive of the project.
- *Meeting location.* A scoping meeting location near the project location facilitated public participation.
- *Postcard use.* Postcards were sent to landowners in the area notifying them of the scoping process and the draft EIS public hearing.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Open communication.* Communication was the key to good teamwork among the contractors, the DOE team, and the applicant. Constant communication and face-to-face interactions with the contractor and the applicant helped to avoid problems and misunderstandings.
- *Productive meetings.* Efficient and timely meetings and quick follow-up facilitated teamwork.
- *Regular interaction with cooperating agencies.* Regular meetings during the NEPA process with cooperating agencies helped facilitate teamwork and EA preparation.
- *Diverse experts.* Integration of outside consultants and resource experts assisted the team's effective preparation of the EA.
- *Project management involvement.* The DOE project manager was involved in all major decisions regarding EIS analysis of impacts.
- *Establishing rules.* The NEPA support contractor was new to DOE NEPA work and ground rules for involving DOE in the analysis were established.

### Factors that Inhibited Effective Teamwork

- *Last-minute concerns.* Extensive coordination with DOE staff review team was disrupted by concerns raised late in the review process.

## Process

### Successful Aspects of the Public Participation Process

- *Prompt agency response.* Comments from the state's environmental protection and historic preservation agencies were prompt and responsive, and no objections were received.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Conservative impact analysis approach.* The EA established conservative environmental assumptions. Utilizing this approach ensured that the execution of the project would be within the established environmental boundaries.
- *Confidence provided by the NEPA process.* The NEPA process provided assurances to the decisionmakers that the project would be able to comply with applicable environmental regulations and thus proceed as planned.
- *Applicant influenced.* The NEPA process was of particular value in influencing the decisionmaking process of the program applicant. The NEPA process was the impetus behind the applicant's full consideration of the environmental consequences of their proposals. The applicant's willingness to provide detailed surveys and analyses for the EA facilitated informed and sound decisionmaking.
- *Agency procedure.* The NEPA process played a role in agency planning because it was viewed as a prerequisite to project approval.
- *Cooperative decisionmaking.* While this action could have been categorically excluded under DOE NEPA regulations, one of the cooperating agencies wanted an EA prepared. DOE management agreed to its request, resulting in cooperative and sound decisionmaking.

*(continued on next page)*

# Questionnaire Results

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

- *Issue identification.* The NEPA process identified potential issues related to the connected action of development of a lignite mine that otherwise may not have been addressed as early in the process.

### Agency Planning and Decisionmaking: What Didn't Work

- *Multiple EAs.* The NEPA process had little influence on planning or decisionmaking. This third EA for the project was prepared to address a modification.
- *Applicant environmental report.* The environmental report submitted by the applicant and the fact that required permits had been issued, rather than the DOE NEPA process, influenced DOE's decisionmaking.

## Enhancement/Protection of the Environment

- *Potential impacts minimized.* Environmental protection was enhanced because project activities were not only assessed but also revised, resulting in lesser impacts.
- *Prior agency NEPA process.* The project was already undergoing NEPA review by another Federal agency before DOE became the lead agency. Measures to minimize potential impacts were identified prior to DOE's involvement.
- *Control measures employed.* The NEPA process ensured that all practicable environmental control measures were considered and employed.
- *Protection provided by other laws.* The environment was protected by the oversight of other agencies and laws, rather than the NEPA process for this project.
- *Permits issued.* Measures to minimize potential impacts had already been determined through state and local permit conditions.
- *Environmental consequences averted.* As a result of the NEPA process, the impacts that would have been associated with a greenfield development were avoided.

## Other Issues

### Guidance Needs Identified

- *Administrative Record guidance.* Official DOE guidance on compiling and managing an Administrative Record is needed.
- *GC guidance.* Guidance is needed regarding what constitutes a "legally required" comment versus one that is just "suggested," as discussed in a memorandum from the General Counsel regarding NEPA process improvements.
- *Guidance on in-progress projects.* The NEPA process began after construction was underway, prompting the need for guidance regarding NEPA review of privately financed projects that are in progress.
- *Executive Orders.* Procedures for satisfying Executive Orders on protection of children and invasive species control should be developed.

## Effectiveness of the NEPA Process

For the purposes of this section, "effective" means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decisionmaking.

For this issue, in which 7 questionnaire responses were received for EAs and 1 response was received for an EIS, 4 out of 8 respondents rated the NEPA process as "effective."


- A respondent who rated the process as "5" stated that NEPA played a major role in the applicant's (but not DOE's) decisionmaking. The project was modified after the applicant considered the environmental and NEPA process implications derived from the original proposal. As a result, the applicant consulted with DOE staff and decided to reshape its proposal to diminish the amount of construction initially planned.
- A respondent who rated the process as "5" stated that NEPA goes beyond the permit requirements that any project must meet. Public participation and identification of mitigation measures would otherwise not occur.

*(continued on next page)*


## Questionnaire Results

### What Worked and Didn't Work

(continued from previous page)


- A respondent who rated the process as “4” stated that the NEPA process is a vital planning tool for identifying environmental aspects and impacts in accordance with requirements of the DOE Environmental Management System.
- A respondent who rated the process as “4” stated that the NEPA process played an influential role in the decisionmaking process as the finding of no significant impact reassured decisionmakers that an environmentally benign site was chosen that would not pose problems for the overall viability of the project.
- A respondent who rated the process as “2” stated that properly completing the Endangered Species Act Section 7 consultation was essential to the success of the project. Most of the NEPA work was already done by FWS before DOE became the lead agency.
- A respondent who rated the process as “2” stated that construction of the project was already underway and permits were issued when DOE became involved and began its NEPA process. As a result, DOE had a good indication from the environmental report submitted with the application that the project would not be delayed or undesirable as a result of environmental concerns.
- A respondent who rated the process as “1” stated that the NEPA process had little influence on the project because this was the third EA created for the purpose of assessing scope changes already determined to be needed.
- A respondent who rated the process as “1” stated that a public law that triggered this action had greater influence over DOE decisions than NEPA. 

## EPA Reference for Energy Efficiency Planning and Analysis

 The Environmental Protection Agency's (EPA's) Office of Federal Activities has compiled a comprehensive resource on how energy efficiency decisions are made in the Federal government and how Federal energy efficiency policies help to increase energy independence and reduce environmental pollution. The *Energy Efficiency Reference for Environmental Reviewers*, recently posted on EPA's website, is intended to serve as a guide to EPA staff in preparing scoping comments and formal EIS review comments.

The *Reference* takes the reader through the field of Federal energy efficiency policy and requirements, beginning with a chapter on relevant laws, regulations, Executive Orders, Directives, and Guidance documents. Next the *Reference* describes Federal programs promoting energy efficiency, listed by topic, including appliances and equipment,

facility siting and construction, buildings and housing, military installations, laboratory and industrial facilities, and vehicles and transportation facilities. The *Reference* then provides background information on a wide variety of renewable energy technologies. It also contains a chapter on training opportunities for those wanting more detailed information on energy efficiency.

Although produced for EPA staff, this reference manual may be of interest to those planning to prepare NEPA documents because EPA will use the *Reference* as it reviews EISs. The *Reference* cites the Council on Environmental Quality NEPA regulations (40 CFR 1502.16(e)) which specify consideration of energy requirements and conservation potential in EISs. The *Reference* also contains citations to dozens of source documents, including URL links, that may be generally useful to NEPA practitioners. 

National Environmental Policy Act  
**LESSONS  
 LEARNED**

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

December 1, 2010; Issue No. 65

Fourth Quarter FY 2010

**Celebrating NEPA's Origins and Enduring Value**

By: Eric Cohen, Office of NEPA Policy and Compliance

At a celebration of the 40<sup>th</sup> Anniversary of the National Environmental Policy Act (NEPA), sponsored by the Environmental Law Institute (ELI) and the Partnership Project, the framers of the landmark legislation joined current practitioners in praising NEPA's transformative influence on environmental awareness and citizen participation in Government decisionmaking. Participants described many examples of the effectiveness of NEPA in making Government more responsive.

Featured speakers included Representative John Dingell, who in 1969 (with Senator Henry "Scoop" Jackson) introduced the bill, which was signed by President Richard Nixon on January 1, 1970; Mr. Russell Train, who advised both Senator Jackson and the White House on environmental policy and served as the first Chair of the Council on Environmental Quality (CEQ) from 1970 to 1973; and Mr. Gary Guzy, current Deputy Chair and General Counsel at CEQ.

*(continued on page 3)*



Mr. Train (left) and Rep. Dingell congratulated each other after recounting NEPA's creation and positive results. Mr. Guzy (center) provided CEQ's forward look. (Photo courtesy of ELI.)

**CEQ Issues Categorical Exclusion Guidance**

After coordinating with Federal agencies and addressing public comments, the Council on Environmental Quality (CEQ) issued final guidance on *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* on November 23, 2010. The guidance was developed to assist agencies in making their NEPA processes more transparent and efficient. It does not impose new requirements and allows for agency flexibility.

CEQ's recommendations describe how to: establish a categorical exclusion (CX) (including defining and substantiating it); apply a CX (including determining when to prepare documentation and involve the public);

and conduct periodic reviews of CXs to assure their continued appropriateness and usefulness.



*Appropriate reliance on categorical exclusions provides a reasonable, proportionate, and effective analysis for many proposed actions, helping agencies reduce paperwork and delay.*

– CEQ Guidance, Introduction

*(continued on page 8)*



## Inside **LESSONS LEARNED**

Welcome to the 65<sup>th</sup> quarterly report on lessons learned in the NEPA process. In this issue, we conclude our celebration of the 40<sup>th</sup> Anniversary of NEPA and look forward in the year ahead to implementing new tools from the Council on Environmental Quality and finalizing our NEPA rulemaking. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

NEPA 40 <sup>th</sup> Anniversary Symposium.....	4
NEPA Reviews Support Recovery Act Goals .....	9
Recovery Act Makes 2010 a Busy Year for NEPA.....	9
Best Practices Manual on Public Outreach .....	10
Hanford Tank EIS Workshop .....	11
EPA and CEQ Environmental Justice Meeting .....	12
“Quiet” NEPA Success Stories .....	13
CX Determinations: A Year in Review.....	18
CEQ Greenhouse Gas Accounting Guidance .....	19
DOE Strategic Sustainability Performance Plan.....	20
Green Government Inaugural Symposium.....	21
Tribal Communication Preferences .....	22
NNSA Online NEPA Reading Room .....	22
Plain Writing Act of 2010 .....	23
DOE Environmental Attorneys’ Training .....	24
Training Opportunities .....	25
EAs and EISs Completed This Quarter .....	27
Cost and Time Facts.....	30
Recent EIS-Related Milestones.....	30
Contracting Update.....	32
Questionnaire Results .....	33
New Year’s Resolutions for 2011.....	36

*Carol Sington*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2011. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due February 1, 2011

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2011 (October 1 through December 31, 2010) should be submitted by February 1, 2011, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. We provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

Printed on recycled paper



This icon indicates that LLQR online ([nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned) provides a link to a referenced webpage whose URL is too long to be useful when printed.

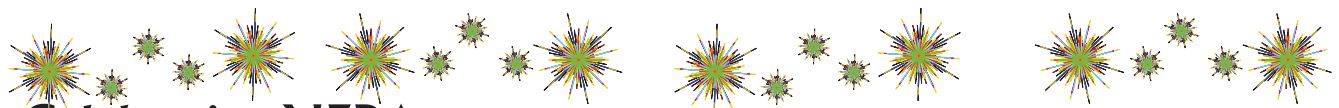
## Mark Your Calendars: Upcoming Conference

### NAEP 2011 Conference Includes NEPA and Energy Symposia

The National Association of Environmental Professionals (NAEP) 2011 conference will be held April 26–29 in Denver. The theme of this year’s conference is *Seventh Generation Thinking: Learning from the Past – Planning for the Future*.

As part of its annual conference, NAEP will hold two concurrent symposia on Tuesday, April 26. The NEPA Symposium will cover a variety of topics within the NEPA field, such as streamlining the contracting process, using geographic information systems and other tools to streamline alternative selection, linking planning and NEPA, document quality initiatives, and fast-tracking projects funded by the American Recovery and Reinvestment Act. The Energy Symposium will cover environmental planning associated with renewable and non-renewable energy siting and operation, including NEPA analysis considerations associated with applying for Federal financing under DOE and U.S. Department of Agriculture Rural Utilities Service programs. Registration and additional information are available at [www.naep.org](http://www.naep.org).





# Celebrating NEPA *(continued from page 1)*

In introducing the featured speakers, ELI President Leslie Carothers said she was especially pleased to have distinguished speakers involved in the creation of NEPA – Mr. Dingell and Mr. Train – as well as a current leader guiding its future – Mr. Guzy, and to be part of a program to showcase “an often untold story” of NEPA’s successes.

Looking back on NEPA’s origins, speakers at the 40<sup>th</sup> Anniversary Celebration noted the “surprising” positive results of the legislation:

- “NEPA’s requirement to ‘look before you leap’ has stopped many terrible mistakes from happening,” Mr. Dingell said.
- “No doubt NEPA is one of the most significant acts of legislation of our time,” said Mr. Train.

Looking forward, Mr. Guzy noted NEPA’s continuing importance, citing President Obama’s 2010 proclamation on NEPA and the new guidance tools that CEQ is developing to reinvigorate NEPA (pages 1 and 19).

The 40<sup>th</sup> Anniversary Celebration, held September 15, 2010, at the U.S. Capitol Visitor Center, also featured a symposium panel that focused on the importance of public participation in the NEPA process (page 4) and the issuance of the publication *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government* (page 13). Photographs in these articles are provided courtesy of ELI.

## Turning Initial Opposition to Support

Mr. Train described his early work on environmental issues, beginning in 1968, when he was president of the Conservation Foundation (now called the World Wildlife Fund). He said Senator Jackson and members of his staff asked him to support work on environmental impact assessment as a government process, and the Conservation Foundation agreed. After President Nixon was elected in 1968, Nixon’s transition staff asked him to work on a task force on the environment and establish a White House focal point on environmental policy called the Interagency Environmental Council. Mr. Train noted, “It accomplished nothing.”



*“What we launched in 1970 has become a contribution to the planet not less than to our citizenry,” Mr. Train wrote in the foreword to NEPA Success Stories.*

As Under Secretary of the Department of the Interior in 1969 and 1970, he said he expressed the White House’s opposition to proposed NEPA legislation on the grounds that there already was an Interagency Environmental Council. However, Mr. Train said he subsequently managed to persuade the White House to change its position on NEPA because, he believes, he convinced the White House that NEPA was going to pass in the House of Representatives overwhelmingly. Mr. Train recalled that he received a standing ovation when he testified in favor of NEPA when the legislation was introduced by Mr. Dingell.

## How the Decade of the Environment Began

“I didn’t realize it’s been 40 years!” Mr. Dingell told celebration participants as he began his remarks. “NEPA is a rather peculiar law. It surprised everybody.” “NEPA had no real effect until lawsuits were decided,” Mr. Dingell explained. “Surprisingly,” he said, “business found virtue in NEPA” because they could learn what to expect from Government.

Among other effects of NEPA, Mr. Dingell said “the Army Corps of Engineers became good stewards of the environment. Also, after the Calvert Cliffs case, the Atomic Energy Commission became an open entity. The best thing that is in NEPA is what Senator Jackson added on the Senate side – the requirement to prepare an environmental impact statement [EIS]. Also, the Council on Environmental Quality turned out to be a useful tool.”



*“NEPA covers every situation that we confront,” Rep. Dingell said. “Despite attacks over the years, people realized the tremendous success of the statute.”*

In describing the statute’s creation, Mr. Dingell said he “never thought Nixon would look kindly on NEPA, but it came together for reasons hard to explain. The real author of NEPA was Senator Jackson, who got things done quickly, in unconventional ways.” Mr. Dingell noted that the Senate bill focused on the EIS, the proposition that Government had to be an open process, and the recognition resulting from past government agency decisions of the need to “look before you leap.” He recalled that the House “received it kindly.”

After a few hearings, the bill made it out of a “remarkably bi-partisan committee” and through the House. He further recalled that, after conference with the Senate, the support

*(continued on page 7)*

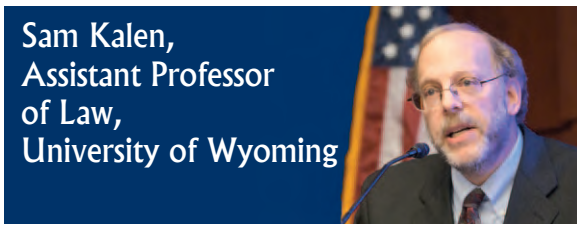


# Symposium Reflects on NEPA's Successes and Challenges

By: Eric Cohen, Office of NEPA Policy and Compliance

"The purpose of the symposium is . . . to focus on that aspect of NEPA which draws on the collective wisdom and expertise of the American people and agencies of state, local, tribal and Federal governments in making better decisions," said Jim McElfish, Director of the Environmental Law Institute's (ELI's) Sustainable Use of Land Program, at the recent NEPA 40<sup>th</sup> Anniversary Celebration.

"Democratic wisdom underneath," Mr. McElfish said, quoting the American poet Walt Whitman, is the part of NEPA that really appeals as Government seeks to make better decisions. Mr. McElfish asked symposium panelists how engagement with the public improves decisionmaking, how agency practice has improved the NEPA process, and what are opportunities to "make NEPA work even better than it has these first 40 years."



**Sam Kalen,**  
Assistant Professor  
of Law,  
University of Wyoming

## Ecological Basis Gives NEPA Resiliency

"Has age dampened NEPA's resilience?" asked Professor Sam Kalen. "After 40 years, it is not surprising that some have begun a dialogue about whether NEPA can accommodate modern day issues and concerns," he said. I would like to suggest that NEPA is perhaps one of the most resilient environmental laws, capable of adapting over time to changing circumstances." Professor Kalen said that NEPA's resiliency in large measure reflects Congress embracing the role of ecology in public administration when drafting NEPA.

"NEPA's journey began with ecologists' efforts to convince Congress of the role of ecology in the national agenda," Professor Kalen said. He cited the influence of Eugene Odum's classic text book, *Fundamentals of Ecology*, and recounted how the importance of ecology in public administration was recognized by Lynton Caldwell in his influential Congressional staff memorandum in 1967. Mr. Caldwell, then a consultant to Senator Jackson, is widely recognized as a principal architect of NEPA and author of the action-forcing provision in the statute requiring a "detailed statement."<sup>1</sup>

<sup>1</sup> Mr. Caldwell, the "Father of NEPA," served as a consultant to the Senate Committee on Interior and Insular Affairs when he prepared A National Policy for the Environment, much of which was incorporated into NEPA. See [LLQR, September 2006, page 1](#), for additional information on Mr. Caldwell's NEPA contributions.

## Ecosystem Services and Adaptive Management

Two ecology concepts have been gaining prominence over the past 20 years and these align with the NEPA process, Professor Kalen said. He explained that the central thesis of the first concept, *ecosystem services*, is that ecological resources serve as natural capital for producing not only valuable commodities such as timber, minerals, and water, but also valuable services, such as water filtration, storm surge mitigation, water recharge, soil stability, and pollination. Identifying, analyzing, and evaluating the benefits that ecosystems provide, and the impact of people on these resources, requires a blend of disciplines, as does the NEPA process, he said.

Professor Kalen described how the second concept, *adaptive management*, is rooted in the ecologist's growing recognition of the dynamic or chaotic state of nature, which results in uncertainty regarding predictions of future environmental impacts. He said that the Council on Environmental Quality (CEQ) recognized the non-static nature of the environment in recent draft guidance emphasizing the importance of monitoring to verify predicted impacts and enable appropriate measures to be taken if the predictions proved to be incorrect. "Adaptive management means there is not a single decisionmaking event, as has often been the case under NEPA," he said.

"NEPA has proved resilient enough to respond to these evolving concepts, and I am confident that NEPA also will respond to other issues such as climate change and other future challenges," he concluded.



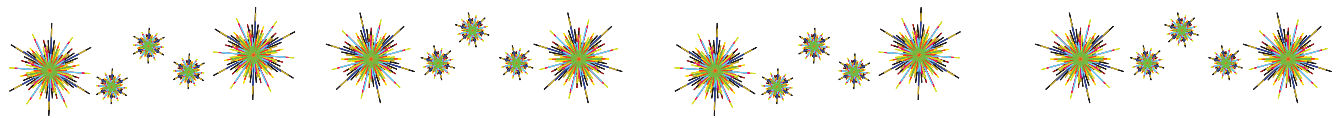
**Nicholas Yost,**  
CEQ General Counsel,  
1977-1981

## The Profound Influence of NEPA

"Alternatives and mitigation have become part of how we think because of NEPA," said Mr. Yost, key author of the CEQ NEPA Regulations and currently Partner, SNR Denton US LLP.

"The current practice of public participation is not as the founders envisioned. The statute requires Federal agencies to obtain the comments of other Federal agencies and

*(continued on next page)*



# 40<sup>th</sup> Anniversary Symposium *(continued from previous page)*

make the comments available to the President and the public. As originally written, however, NEPA documents were to be made publicly available only through the Freedom of Information Act (FOIA). Nothing further was required,” he said.

“NEPA has become a public participation model,” said Mr. Yost as he described several aspects of public participation under NEPA. He pointed out that public participation as practiced today was not required until CEQ Guidelines, and later CEQ Regulations, were issued.

Mr. Yost noted that the concept of “scoping” was borrowed from the Massachusetts Environmental Policy Act. CEQ Regulations regarding commenting on draft EISs, the “waiting period” after a final EIS, and the public participation provisions in 40 CFR 1506.6 today are the heart of the public participation mechanism. The requirement for records of decision was borrowed from the State of California, including that decisions must be linked to environmental considerations in an EIS. Mr. Yost noted a longstanding tension between public participation and efficiency of the NEPA process, which has resulted in periodic consideration of time limits.

---

***NEPA has furthered not only its stated aim of building environmental considerations into Government decisionmaking. [NEPA has] become an instrument of democracy – building public participation into that very decisionmaking.***

**– Nicholas Yost  
former CEQ General Counsel**

---

## ***Mitigation Successful in Reducing Impacts***

In discussing litigation trends, Mr. Yost noted that all “16 or 17 Supreme Court rulings were anti-NEPA.” He cited a key Supreme Court finding<sup>1</sup> that NEPA is a procedural law, not a substantive law that dictates outcomes. “Courts of Appeal, however, have unanimously upheld the concept of mitigated findings of no significant impact [FONSI]; these courts reasoned that NEPA is not intended to generate paperwork, but rather to generate environmental results. Mitigated FONSI with enforceable provisions are substantive,” Mr. Yost stated.

“This finding is significant,” he said, because of the large number of environmental assessments (EAs) prepared

in comparison with EISs: agencies annually complete about 450 draft and final EISs for about 225 EIS projects, and issue 40,000 EAs. CEQ’s early opposition to mitigated FONSI has been overtaken by the significant environmental results achieved through EAs with mitigation.”

On reflection, Mr. Yost noted that NEPA has spawned progeny in state law and has been imitated by similar laws in more than 80 countries. “NEPA has served the Nation well. Happy Birthday!” he concluded.



## ***What Works and What Doesn’t Work in Public Participation***

“We’ve come a long way since the original statute was issued, under which members of the public might have needed to file a FOIA request to see an EA,” Ms. Bear said. “The most important innovation in NEPA is the requirement to consider alternatives. Alternatives have been and remain the most important vehicle for public involvement.”

Ms. Bear cited DOE innovations in public involvement, such as recent posting of categorical exclusion determinations on the Internet. She also recounted stories of members of the public seeking to understand the NEPA process, which inspired her to prepare a basic primer on NEPA, published by CEQ in December 2007. [*A Citizen’s Guide to the NEPA: Having Your Voice Heard* is available on the CEQ and DOE NEPA websites (respectively, [NEPA.gov](http://NEPA.gov) and [nepa.energy.gov](http://nepa.energy.gov)).]

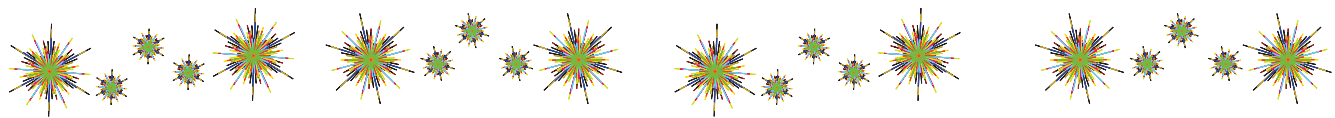
She issued a plea for future improvements to the NEPA process, including:

- **Public education.** “We need to do a better job on public education, even before we get to a proposed action. Websites are not enough. We need to explain to the public the structure of agencies, not recite the NEPA regulations to them.”
- **Open houses.** “Agency field offices should conduct open houses at least annually to explain the NEPA process, rather than trying to explain the process at the time of a hearing on an EIS.”

*(continued on next page)*

---

<sup>1</sup> From the *Vermont Yankee* case [Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 548-549 (1978)].



# 40<sup>th</sup> Anniversary Symposium *(continued from previous page)*

- **Appropriate public forums.** “Agencies should be flexible in public forums. For example, coffee house settings may be appropriate in Seattle. An easy way to improve is to understand, starting at the scoping process, how the public wants to be involved. I have experienced situations with demographic groups that hate formal hearings, but the agency refused to consider other formats. On the other hand, I have also experienced situations where a sophisticated audience wanted a formal hearing on the record, but the agency refused.”



## *The Importance of Consideration of Alternatives by the Public*

“No U.S. law comes close to NEPA in its honoring of public input and acknowledgement that anyone might have a better idea or information . . . . No U.S. law implements democracy more comprehensively than NEPA,” said Ms. O’Brien.

She described the significant positive contributions of NEPA from her perspective at Grand Canyon Trust, a conservation organization advocating for science-based solutions to energy, water, public lands, and Native American community issues throughout the Colorado Plateau.

“NEPA supports American ingenuity,” she said. “This results from the consideration of alternatives. Alternatives are at the heart of NEPA,” she said. “Through the requirement to consider alternatives in 40 CFR 1502.14, NEPA provides a clear basis for choice, and the ability to achieve, if not consensus, then at least a disinclination to litigate.”

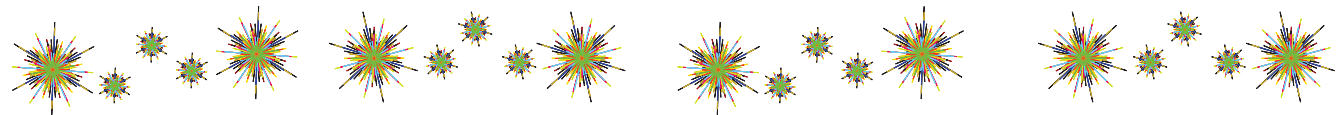
Ms. O’Brien said she was pleased to present a beautiful publication, *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government*. Issued jointly by ELI, the Grand Canyon Trust, and the Partnership Project, this publication reflects the effectiveness of NEPA in making Government more responsive (related article, page 13). Noting that there have been numerous NEPA success stories, Ms. O’Brien said that 13 examples were selected for inclusion in the publication, and described several examples (e.g., the Moab Uranium Millsite project) that illustrate the importance of considering alternatives. “Just the process of examining alternatives usually leads to better decisions, including the success stories featured in the publication,” Ms. O’Brien said, in response to a comment from the audience stating that NEPA is ineffective because it is “procedural.”

*(continued on next page)*



Dinah Bear summarized several recommendations from the 2008 National Academy of Sciences report, *Public Participation in Environmental Assessment and Decisionmaking*, which concluded that public involvement usually leads to better environmental decisionmaking, and described her observations of their applicability to the NEPA process:

- **Ensure clarity of purpose.** “Clarity is a make-or-break factor for success. Explaining why an agency is undertaking NEPA is especially important for programmatic EISs. Some recent high profile programmatic EISs had no clear purpose. When I asked why the agency was preparing the document and what decisions needed to be made, agency officials responded ‘lawyers said to do it’ and that they did not know what decisions were to be made.”
- **Use the environmental review process to inform decisions.** “Agencies are getting better at using NEPA documents to actually inform their decisions, but there is still some need for improvement.”
- **Ensure adequate resources and staff.** “This longstanding problem for agencies has been getting worse.” Ms. Bear noted that one agency that recently lost NEPA staff sought environmental information from the public because the agency lacked the resources to obtain the information independently. “It didn’t work,” she said.
- **Ensure appropriate timing of environmental reviews relative to decisions.** “Setting unrealistic schedules, such as 6 months to complete an EIS, has been done but rarely succeeds.”
- **Do not fear the public.** “This continues to be a problem for some agencies.”



## 40<sup>th</sup> Anniversary Symposium *(continued from previous page)*



### **Good Public Participation and DOE's Recent Efforts**

“Good decisionmaking is why NEPA matters,” Ms. Borgstrom said, referring to DOE’s three examples among the 13 in the *NEPA Success Stories* publication.

Observing that she was the only current Federal employee on the panel, Ms. Borgstrom said that, based on her experience at DOE “since day 1,” she has learned the importance of good public participation, which sometimes is a struggle.

In response to a comment from the audience questioning the value of public participation in the NEPA process, Ms. Borgstrom said, “the process itself deselected a lot of bad ideas, so bad ideas never make it to the table because

the agency knows that they would be subject to public scrutiny.”

Ms. Borgstrom described DOE efforts to foster public participation in the NEPA process, focusing on use of technology. “Knowledge is power,” she said, “and proper use of the Internet is part of good government.” She said the DOE NEPA Website has evolved into an effective community bulletin board, and is a resource for “all things NEPA at DOE” for NEPA practitioners as well as members of the public.

Ms. Borgstrom described key features of the DOE NEPA Website, including: requirements and guidance (including *LLQRs*), an archive of completed NEPA documents, a public participation calendar, and monthly updates of NEPA document schedules and status reports.

In addition, Ms. Borgstrom described relatively new features reflecting DOE transparency initiatives, including DOE’s online posting of: (1) categorical exclusion determinations and an associated central database of the determinations on the DOE NEPA Website (*LLQR, December 2009, page 1; March 2010, page 1*), and (2) draft EAs and an associated email notification system (*LLQR, September 2010, page 1*). **LL**

## Celebrating NEPA *(continued from page 3)*

of one more Senator was needed. After working on a compromise for about three months, Mr. Dingell said “we wound up with the same bill as the original. The problem became: how to get the bill signed? Nixon signed it on New Year’s Day, and said ‘this is going to be the decade of the environment,’ which turned out to be true.”

### **Economic, Environmental Health Linked to NEPA**

Mr. Guzy said he remembered his first meeting with Mr. Dingell and learning of his reverence for the environment. He also recalled reading the September 23, 1969, *Congressional Record* when Mr. Dingell introduced NEPA in the House.

Looking to NEPA’s continued importance in the future, Mr. Guzy cited President Obama’s proclamation on NEPA (*LLQR, March 2010, page 7*) and pointed to new tools that CEQ is developing to reinvigorate NEPA.



*Mr. Guzy said that CEQ is developing new tools to reinvigorate NEPA, including guidance on categorical exclusions (issued), mitigation and monitoring, and greenhouse gas emissions.*

“America’s economic health is inexorably linked to environmental health, and so it is linked to NEPA,” he said. “I look forward to furthering the Administration’s efforts to ensure there is a strong scientific and legal basis for our environmental policy; move the nation to greater reliance on clean energy and to increased energy security; combat global warming while growing the green economy; provide increased protection for public health and the environment; and protect and restore our great ecosystems,” said Mr. Guzy. **LL**

# New CEQ Guidance *(continued from page 1)*

## Establishing Categorical Exclusions

The CEQ Regulations (40 CFR 1508.4) define a CX as a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.

The guidance advises that the text of a CX should clearly define the eligible category of actions, as well as any physical, temporal, or environmental factors that would constrain its use. The guidance states that Federal agencies must be sure that a proposed category captures an entire action, that is, a standalone action that has independent utility (not a segment or an interdependent part of a larger action). Agencies are encouraged to provide representative examples of the types of activities covered by the text of a CX.

The CEQ Regulations (40 CFR 1508.4) require an agency's CX process to provide for "extraordinary circumstances" in which a normally excluded action may have a significant environmental effect (that is, would require analysis in an EA or EIS). The guidance states that agency NEPA implementing procedures should clearly describe the manner in which an agency considers extraordinary circumstances and the circumstances under which additional analysis in an EA or EIS is warranted.

The guidance presents four sources of information that a Federal agency may use to substantiate its determination that a proposed new or revised CX would not have significant impacts:

- **Previously implemented actions:** Use monitoring or other evaluations of the effects of implemented actions.
- **Impact demonstration projects:** Design a project to demonstrate environmental outcomes of actions that represent the scope, operational context, and the environmental context of a CX the agency is considering establishing.
- **Information from professional staff, expert opinions, and scientific analyses:** Use analysis and knowledge of qualified individuals, whether within or outside the agency.
- **Benchmarking other agencies' experiences:** Use another agency's experience with a comparable CX and the administrative record developed by that agency. May also draw support from experience of other public or private entities.

## Applying Categorical Exclusions

"The use of categorical exclusions can reduce paperwork and delay," explains the guidance, "so that EAs or EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects."

---

***Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review.***

– CEQ Guidance, Introduction


---

The guidance discusses when documentation of the use of a CX may be warranted and recommends making CX determinations available to the public. It identifies DOE's 2009 initiative to post CX determinations online as an example of increasing transparency of decisionmaking ([LLQR, December 2009, page 1](#)).

## Reviewing and Revising Categorical Exclusions

CEQ urges agencies to periodically review their CXs to identify potential for additions, revisions, and deletions to maintain a set of CXs that are current and appropriate. The guidance recommends that agencies develop a process and timeline for such periodic review and that those reviews be conducted at least every 7 years, unless the agency has a basis for a different timeframe.

The guidance also emphasizes that a Federal agency should develop and maintain the capacity to review its CXs to ensure that predictions that there will be no significant impacts are borne out in practice. The methods used may parallel those for establishing CXs. The type and extent of monitoring and other supporting information, as well as the responsible entities within an agency, will vary with the nature of the actions and anticipated effects. Overall, CEQ urges agencies to exercise sound judgment about the appropriateness of categorically excluding activities in light of changing conditions and technologies.

The guidance became effective November 23 and will soon be published in the *Federal Register*. It is posted on the CEQ and DOE NEPA websites (respectively, [NEPA.gov](#) and [nepa.energy.gov](#)). Questions about this guidance may be addressed to Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov). 



# NEPA Reviews Support Recovery Act Goals

The status of NEPA compliance for more than a quarter million projects and activities (projects) funded by the American Recovery and Reinvestment Act (Recovery Act) was tracked in the Council on Environmental Quality's (CEQ's) seventh quarterly report to Congress, submitted on November 5, 2010. During the quarter ending September 30, 2010, Federal agencies completed more than 5,600 NEPA reviews for Recovery Act projects. More than 800 (about 14 percent) of these were completed by DOE.

---

*The NEPA work continues to demonstrate environmental stewardship and commitment to the sustainability goals embodied in many of the provisions of [the Recovery Act].*

*– Council on Environmental Quality  
November 5, 2010, Report to Congress*

---

Cumulatively through September 30, 2010, Federal agencies completed almost 180,000 categorical exclusion (CX) determinations and 6,400 EAs,<sup>1</sup> and analyzed more than 820 projects in EISs. Agencies concluded that NEPA is not applicable to about 4,300 other Recovery Act projects. Together, these projects involve obligations of

approximately \$293 billion funded under Division A of the Recovery Act. In addition, CEQ reported that more than 800 NEPA reviews are underway, including approximately 290 CX determinations, 470 EAs, and 40 EISs.

As of September 30, DOE had completed more than 8,100 NEPA reviews supporting the obligation of more than \$33 billion for projects receiving Recovery Act funding, an increase of almost \$3.5 billion since June 30, 2010 (*LLQR, September 2010, page 11*). Over the next year, DOE will make additional obligations involving Recovery Act funds.

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through December 31, 2010. Federal agency reports are due to CEQ in January 2011, and CEQ will submit the next report to Congress in February.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924.

## Recovery Act Makes 2010 a Very Busy Year for NEPA

How many NEPA reviews have you done this year? If you answered more than in previous years, you are not alone. The level of NEPA activity has been exceptionally high within DOE. So far this year, DOE has issued 17 draft and 12 final EISs and completed 69 EAs. Additionally, 68 EISs and 107 EAs are in preparation.

Although the total NEPA workload fell somewhat below the level projected in the 2010 Annual Planning Summaries (APSs) (*LLQR, March 2010, page 15*), most office workloads are near their projections, and the total workload is still much higher than in years past.

Much of this unusually high level of NEPA activity is attributable to Recovery Act projects, with certain DOE offices bearing most of the workload. The National Energy Technology Laboratory (NETL) has been particularly busy preparing EAs for carbon capture and sequestration, electric vehicles and batteries, smart grid technologies, and other energy projects. At the beginning of 2010, NETL projected in its APS that it would prepare about 50 EAs during the next 12 months. With only one month remaining, NETL has completed 35 EAs and has an additional 21 EAs underway – a close match to its forecast.

The Loan Programs Office had forecast a total workload of 16 EAs during 2010 and 17 EISs during 2010 and 2011, but already has greatly exceeded that forecast with 30 EAs and 14 EISs in process or completed during the year. The Office's NEPA Compliance Officer (NCO) Matt McMillen reports: "We expect the workload to increase dramatically in December and January as final applications are submitted for projects that are trying to take advantage of [Recovery Act] credit guarantees and have their NEPA review completed in time to close the loan guarantee process and commence construction by September 30 of next year."

The Golden Field Office has completed an unprecedented number of NEPA reviews this year. Steve Blazek, NCO, said: "With the addition of thousands of Recovery Act projects, we are having an exceptionally busy year." So far this year, Golden has completed 14 EAs; 32 EAs are in preparation, 15 of which are expected to be completed by the end of the year. Efforts to more clearly define project scopes have resulted in categorical exclusions being applied to 24 projects that were earlier counted as likely EAs.

---

<sup>1</sup> This corrects the number of completed EAs (previously reported as 9,000) to take into account the use of programmatic EAs for multiple projects that previously were reported as individual EAs for these projects.



# DOE Best Practices Manual Focuses on Public Outreach

By: Michael Wach, Office of NEPA Policy and Compliance

Although conducting public outreach can be a challenge, effective outreach can help inform agency decisionmaking while building community support for projects. DOE's National Energy Technology Laboratory recently issued *Public Outreach and Education for Carbon Storage Projects*, a manual of best practices for conducting public outreach in support of carbon dioxide capture and sequestration (CCS) projects. These practices were developed for a specific type of project but could be adapted to a broad range of planning processes that involve public participation, including the NEPA process.

## Experience-based Manual

The manual is based on the experiences of seven Regional Carbon Sequestration Partnerships that were established to develop the infrastructure and knowledge base needed to commercialize CCS technologies. Working with local organizations and citizens, the Partnerships used outreach and education to inform stakeholders about CCS generally, and the pilot-scale field tests that they planned to conduct.

---

***[P]ublic outreach should be an integrated component of project management. Conducting effective public outreach will not necessarily ensure project success, but underestimating its importance can contribute to delays, increased costs, and community ill will.***

– DOE Best Practices Manual

---

The manual distills its public outreach approach into 10 best practices that share a key goal of opening and maintaining lines of communication with the public, thereby fostering trust and enabling public input at all stages of project implementation. The manual presents several case studies to illustrate the challenges of conducting effective public outreach, and describes how these challenges were met in a variety of CCS projects.

For example, the Midwest Geological Sequestration Consortium wanted a better way to show the public what carbon dioxide (CO<sub>2</sub>) sequestration actually looked like. They prepared demonstration kits with core samples of sandstone (the carbon storage unit), shale (the caprock seal), and a water dropper to show how one layer could absorb CO<sub>2</sub>, while another layer could keep the CO<sub>2</sub> from escaping. Similar kits demonstrated how enhanced oil recovery works. These kits provided learning opportunities for a broad range of audiences and stimulated discussion with members of the public.



*Public tours create opportunities for informal discussions with the technical team.*

The most important lesson learned by the Partnerships, according to the manual, is that public outreach and education should be fully integrated with the overall management of a project: outreach begins at the onset of the project, continues through the close of the project, and involves each individual on the project team. The effectiveness of the public outreach process should be assessed regularly and outreach techniques adjusted as necessary. The manual encourages a comprehensive approach to public outreach and provides detailed advice on how to build a strong outreach team.

The team should include individuals who are involved in and knowledgeable about the technical details of the project as well as those who have backgrounds in

## Best Practices for Public Outreach

- Integrate public outreach with project management
- Establish a strong outreach team
- Identify key stakeholders
- Conduct and apply social characterization
- Develop an outreach strategy and communication plan
- Develop key messages
- Develop appropriate outreach materials tailored to the audiences
- Actively oversee and manage the outreach program throughout the life of the project
- Monitor the performance of the outreach program and changes in public perceptions and concerns
- Be flexible – refine the public outreach program as warranted

*(continued on next page)*

# DOE Best Practices Manual *(continued from previous page)*



*Public outreach can include demonstrations to provide interactive learning opportunities.*

communication, education, and community relations, preferably with some knowledge of the local community. In producing communication materials, the manual suggests producing visually appealing materials that directly relate to stakeholder concerns, while incorporating credible information and expert opinion.

## Stakeholder Involvement Is Crucial

The manual provides several concise summaries of key information and steps needed to implement an outreach

strategy. The manual identifies important stakeholders – officials, regulators, business interests, landowners and neighbors, civic groups, environmental groups, senior citizens, religious groups, and educators – and describes the concerns of each group in regards to pilot-scale CCS studies.

Gathering and evaluating information to obtain an accurate portrait of stakeholder groups, their perceptions, and concerns (called “social characterization”) is a crucial step in the public outreach process. The manual also outlines major outreach goals, such as identifying and informing stakeholders, preparing for media coverage and public hearings, building public awareness and support, responding to concerns, and strengthening stakeholder relationships, and lists activities suitable for attaining each goal. It also provides readers with a detailed timeline for implementing a comprehensive public outreach process.

The manual is available on the National Energy Technology Laboratory [website](#). For additional DOE guidance on public participation in the NEPA context, see *Effective Public Participation under the National Environmental Policy Act*, Second Edition, August 1998, on the DOE NEPA Website under Guidance, then Selected Guidance Tools. **LL**



## DOE Hosts Workshop with Cooperating Agencies for Hanford Tank Closure and Waste Management EIS

DOE’s Office of River Protection convened a 3-day workshop in late October with its cooperating agencies on the *Tank Closure and Waste Management EIS for the Hanford Site, Richland, Washington (DOE/EIS-0391)*. This complex EIS includes the scope of three earlier EIS efforts and will inform DOE decisionmaking on the management of radioactive waste at the Hanford Site (*LLQR*, December 2009, page 4).

The U.S. Environmental Protection Agency (EPA) and the State of Washington’s Department of Ecology (Ecology) are cooperating agencies. Staff from EPA Region X, EPA Headquarters, Ecology, DOE’s Office of River Protection, DOE’s Office of Environmental Management, DOE’s Office of NEPA Policy and Compliance, and the EIS-preparation contractor reviewed preliminary results of new EIS

sensitivity analyses that DOE is preparing in response to Draft EIS comments from both cooperating agencies. In addition, DOE briefed participants on a number of preliminary responses to Draft EIS comments related to the workshop’s primary technical issues.

Attendees from Washington State and the Washington, DC, area participated either in person, via televideo, or using teleconference capability and a data exchange website (which allowed attendees participating by phone to view presentation slides “live” on their personal computer). “Hosting a workshop for the agencies involved is a good practice to promote understanding of important technical issues and outcomes,” said Carrie Moeller, DOE NEPA Office. **LL**

# EPA and CEQ Host Environmental Justice Meeting; White House Forum Planned

By: Denise Freeman, Office of NEPA Policy and Compliance

For the first time in more than a decade, U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson and the Council on Environmental Quality (CEQ) Chair Nancy Sutley reconvened the Interagency Working Group on Environmental Justice (Working Group) in a meeting held at the White House on September 22, 2010. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, signed by President Clinton in 1994, established the 17-member Working Group. EPA and CEQ have recently invited several additional agencies and offices to participate.

The Working Group assists Federal agencies with identifying specific projects where Federal collaboration can support the development of healthy and sustainable communities, provide opportunities for green jobs training in communities in need, and promote a clean energy economy.

---

**From September 22, 2010, EPA News Release:**

*As the chair of the Council on Environmental Quality, I am committed to ensuring that environmental justice isn't just an afterthought – it's an integral part of our mission.*

— Nancy Sutley, CEQ Chair

*Revitalizing this workgroup creates an important chance to work together on environmental justice issues that have held back the prosperity of overburdened communities for far too long.*

— Lisa P. Jackson, EPA Administrator

---

Five cabinet members participated in the Working Group meeting, and DOE was represented by Dr. Kristina M. Johnson, then Under Secretary of Energy. DOE Environmental Justice (EJ) Program Manager Melinda Downing participated in the meeting and stated, “the outcome of the meeting was a resounding commitment to EJ by all participants.”

Dr. Johnson presented three active DOE projects for interagency collaboration candidates: (1) Annual State of Environmental Justice in America Conference (provides for the exchange of new ideas and approaches to EJ among Federal, state, and local governments and EJ communities); (2) Community Leaders Institute


(provides economic development, job, and health disparities training; technical assistance; and grant writing assistance); and (3) Minority Alternative Energy Consortium (a collaboration of nonprofit organizations, Federal agencies, and private sector corporations to increase procurement opportunities with DOE for Historically Black Colleges and Universities and other Minority Serving Institutions).


The immediate next steps for the Working Group include:

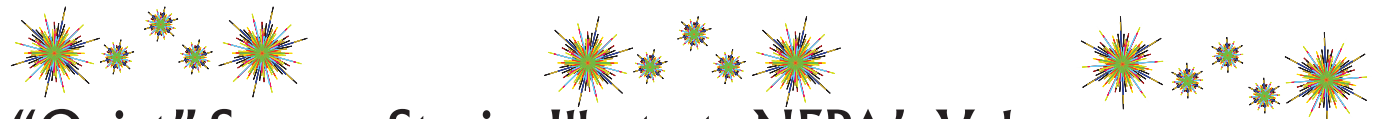
- holding monthly meetings (including assigning senior agency officials to coordinate EJ activities)
- organizing regional “Listening Sessions” in 2011 to better understand the issues facing disadvantaged groups; hold follow-up Working Group Principals Meetings in April and September 2011
- developing or updating Federal agency EJ strategies by September 2011.

In addition, the Working Group is planning a White House Forum for EJ leaders and stakeholders on December 15, 2010. The objective of the Forum is to develop working relationships and effective collaboration among EJ organizations; Federal, state, and local governments; and public and private partnerships, and to promote and establish easier access to Federal and interagency EJ programs. Participants will include community-based/grassroots environmental/EJ organizations, faith-based organizations, nongovernmental organizations (smart growth/equitable development, green jobs/economy, policy institutes, think tanks, etc.); Federal, state, and local government agencies, and tribal communities.

## Implications for NEPA Reviews

In view of the heightened focus on EJ generally, further attention to EJ issues may be warranted at all stages of a NEPA review, from scoping through document preparation to decisionmaking. Also, NEPA practitioners should be aware that EPA, as the Federal lead agency for the Working Group, considers EJ issues in reviewing and commenting on draft and final EISs. EPA’s *Final Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews* can be found on the [DOE NEPA Website](#). 

For more information about DOE’s EJ Program, contact Melinda Downing, DOE EJ Program Manager, at [melinda.downing@hq.doe.gov](mailto:melinda.downing@hq.doe.gov). Comments and questions about EJ issues in the NEPA process may be addressed to Denise Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov). 



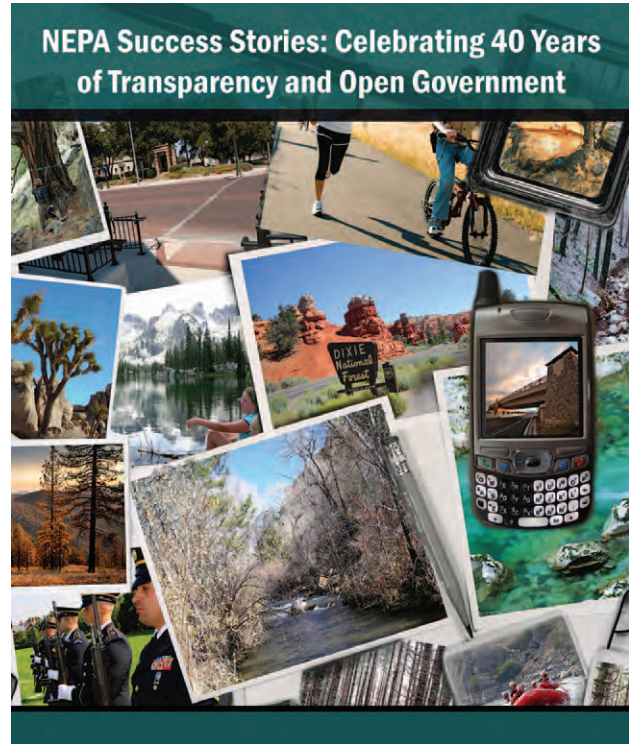
# “Quiet” Success Stories Illustrate NEPA’s Value

“It is not often that one has the opportunity to review an experiment in governance with the perspective of 40 years of experience.” Thus begins the foreword, by Russell Train, first Chair of the Council on Environmental Quality, to a recent report entitled *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government*. The report, prepared by the Environmental Law Institute (ELI), the Grand Canyon Trust, and the Partnership Project, uses the occasion of NEPA’s 40<sup>th</sup> anniversary to examine the “revolutionary change in governmental decisionmaking” brought about by NEPA. It describes 13 examples, three of which are DOE’s, of how NEPA helps improve Government decisionmaking through public input and collaboration with other agencies.

Mr. Train noted that by requiring Government officials to listen to the public and seek comment before acting, “NEPA democratized decisionmaking.” These “quiet” NEPA success stories “fundamentally examine how public involvement and careful consideration of alternatives has produced better outcomes,” he wrote.

The report highlights four important benefits of the NEPA process:

- *NEPA recognizes that when the experts work together, public and Federal government collaboration results in better decisions.* Public input often provides perspectives not considered by Federal officials. The public may present alternatives, data, and environmental issues that a Federal agency would not have otherwise identified or studied.
- *Public input really matters.* Federal officials have an obligation under NEPA not simply to solicit or collect public input, but to consider it. Most importantly, this information can change the course of an agency’s decisionmaking; Federal agencies have selected alternatives that were identified by members of the public. In addition, members of the public have identified errors in the underlying data or analyses that have affected the decisions made.
- *NEPA requires agencies to explain themselves.* The NEPA regulations lay out the decisionmaking process that Federal agencies must follow. Federal officials have a duty to explain their decisions and respond to all substantive comments, either noting how they were resolved in the analysis or why no changes were warranted.
- *Courts play an important role.* The courts are available to members of the public to address their concerns with an agency’s NEPA process. The cases that are litigated are important, but the knowledge that litigation is an option helps ensure that Federal agencies complete a comprehensive, substantive review to avoid that path.



*The NEPA process derives its power and usefulness from the way in which it provides other agencies, tribes, local governments, independent scientists, companies, and citizens an opportunity to actively participate in and contribute to these considerations.*

— NEPA Success Stories

The following are brief summaries of the 13 case studies as presented in *NEPA Success Stories*.

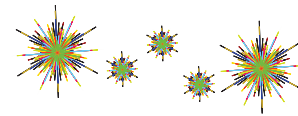
## DOE NEPA Success Stories

### Robust Consideration of Alternatives Protects Drinking Water

The case of the Moab Uranium Millsite shows how a thorough NEPA review of reasonable alternatives and their environmental consequences – including those identified by members of the public – leads to better decisionmaking. The site contained almost 16 million tons of uranium mill tailings piled within the floodplain of the Colorado River, which serves as a primary drinking water supply for millions of people. The case summary notes that after issuing a single-alternative EA in 1986, the U.S. Nuclear Regulatory Commission (NRC) issued a finding of no significant impact in 1993 on the mill owner’s plan to cap the tailings pile in place.

*(continued on next page)*

# NEPA Success Stories *(continued from previous page)*



The local county government protested this decision, wishing an alternate location to be considered, and Senator Orrin Hatch asked the NRC to prepare a full EIS on disposal options. The NRC believed that it could evaluate only alternatives proposed by its licensee, and so its EIS continued to examine only one action alternative. The EIS also did not address ground and surface water contamination because NRC determined there was no risk of contamination. Several Federal agencies challenged this assessment, presenting evidence of existing contamination. After the mill owner filed for bankruptcy, Congress assigned cleanup responsibility to DOE.

DOE held public scoping meetings and issued a draft EIS that explored the alternative of moving the tailings to a safer place. The Department received comments from diverse stakeholders, including bipartisan coalitions of Governors and Members of Congress; Federal, state, and local agencies; conservation groups; and members of the public. As a result of these comments, DOE gave greater consideration to the alternative of offsite disposal based on the risks of water contamination and to remediation alternatives, and the 2005 record of decision selected the preferred alternative from the final EIS, removing and relocating the tailings.

## Interagency Comments Spur Mitigation Planning

DOE's experience preparing the site-wide EIS for Los Alamos National Laboratory (LANL) illustrates the valuable insight to be gained through interagency comments as part of the NEPA process. The draft EIS issued by DOE in 1998 did not identify wildfire as a plausible risk in its accident scenarios. Citing a then-recent U.S. Forest Service report about the threat of wildfire, commenters from the U.S. Department of the Interior and the Forest Service urged DOE to consider wildfire in its analysis. As a result, the final EIS included an extensive wildfire as an accident scenario. DOE committed to develop a wildfire mitigation plan by the end of 1999 and immediately implemented its recommendations to reduce potential fire impacts. Less than a year later, the Cerro Grande Fire broke out, burning 7,650 acres of the LANL site. DOE relied on the final EIS to respond to public concerns during the fire and to plan post-fire recovery. As noted by Eric Cohen of the DOE Office of NEPA Policy and Compliance in his summary of the case, "Without the interagency comments DOE received during the draft EIS



*DOE responded to public and other agency concerns about the potential for the Moab tailings pile (center) to contaminate the Colorado River.*

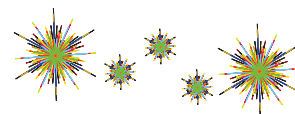
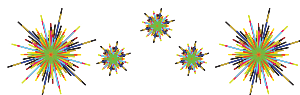
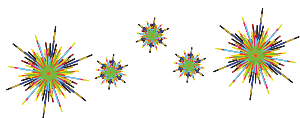
stage, DOE may have not had the foresight to consider and prepare for the possibility of a fire, resulting in more severe damage to LANL and the surrounding area."

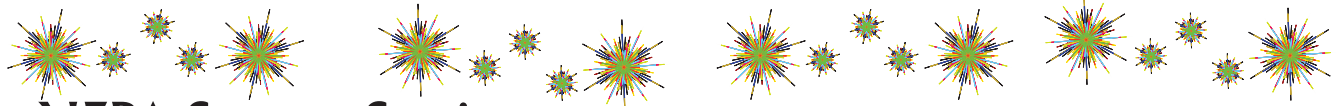
## Considering Purpose and Need Results in Better Decisions

The emphasis in the NEPA process on identifying the purpose and need for agency action supports the development of appropriate alternatives, as illustrated by DOE's analysis of alternative technologies for tritium production. In 1989, DOE began preparing an EIS to evaluate alternative reactor technologies and locations to produce tritium to support the U.S. nuclear weapons stockpile. However, by 1992, the Cold War had ended and tritium requirements were expected to drop by as much as 75 percent. This provided a new opportunity to consider alternatives previously rejected because they would not have supplied sufficient tritium for Cold War planning levels, wrote Brian Costner, DOE NEPA Office, in the case summary.

Admiral James Watkins, then Secretary of Energy, explained at the time that the analyses performed for the tritium production reactor EIS helped him avoid making a bad decision. "[T]hank God for NEPA," said Secretary Watkins, "because there were so many pressures to make a selection for a technology that might have been forced upon us and that would have been wrong for the country."

*(continued on next page)*





# NEPA Success Stories *(continued from previous page)*

## Other Agency NEPA Success Stories

### Expansion of an Army National Guard Readiness Center – Army National Guard Bureau

*Issue:* Provide new office space and parking for 1,200 relocated staff while addressing traffic concerns

*NEPA Process:* In response to an EA for new office and parking facilities, cooperating agencies, local government, community leaders, and the public identified significant concerns with regard to traffic congestion and transportation management. The Army National Guard Bureau held public meetings to better understand the concerns. Public comment helped the Army understand potential adverse effects and develop solutions to mitigate them.

*NEPA Lesson:* The successful implementation of mitigation measures can further NEPA's goal of protecting the environment and can also improve the overall project.

### A Highway, a Wetland, and a Divided Community – Federal Highway Administration

*Issue:* Reconcile the need to build a highway in wetlands with the desire to expand and protect those wetlands

*NEPA Process:* In both the draft EIS and supplemental draft EIS for a highway project, all action alternatives crossed through wetlands. The subsequent permitting process determined that information was needed on alternatives that did not cross wetlands. Pro-highway and pro-wetland groups formed a professionally facilitated collaborative to consider alternatives and encourage development of an integrated land use and transportation solution that would be broadly supported by stakeholders. The Federal Highway Administration selected a “no-build” option, meaning that the highway would not be built through wetlands.

*NEPA Lesson:* NEPA's requirement to consider alternatives can serve as the key to breaking a stalemate among stakeholders.

### Preserving a Historic Brick Highway – Texas Department of Transportation

*Issue:* Provide for roadway safety and preserve a historic highway

*NEPA Process:* The Texas Department of Transportation was concerned that a brick roadway had deteriorated and become unsafe, while local residents wanted to retain the historic highway. The Department took care to involve locals in the scoping process, resulting in a productive discussion of alternatives. The public continued to be involved after the selection of the preferred alternative all the way through construction.

*NEPA Lesson:* The NEPA process can bridge distance between government and the local community, resulting in greater trust.

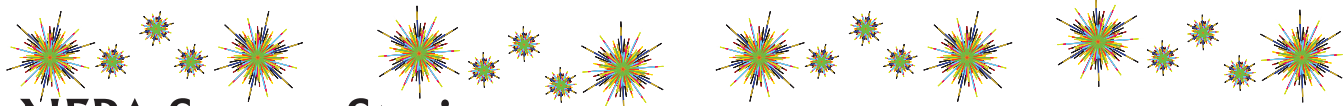
### Joshua Tree National Park – Department of the Navy

*Issue:* Allow training flights while avoiding disturbance to national park visitors and staff

*NEPA Process:* An EIS for basing a new type of aircraft at a naval air station gave the National Park Service opportunity to comment on low flights over a national park. However, the Navy's record of decision did not address these concerns. Staff from the National Park Service and the Navy prepared an EA to analyze locations for flight paths and developed a solution allowing for low flights in less sensitive areas of the park.

*NEPA Lesson:* The NEPA process can provide an avenue for developing consensus.

*(continued on next page)*



## NEPA Success Stories *(continued from previous page)*

### Siskiyou National Forest Watershed Protection Project – Forest Service

*Issue:* Reduce wildfire risks while protecting water quality

*NEPA Process:* The Forest Service planned to improve protection from wildfire by removing large trees in a national forest and selling the timber. Community members objected, citing water quality concerns, and formed a diverse group to oppose the project. The group participated in the EIS public comment process and developed an alternative proposal to thin only smaller trees and leave the large fire-resistant trees.

*NEPA Lesson:* The NEPA process provides an opportunity for the public to propose improvements to an agency proposal.

### Rethinking Routes and Roads on a National Forest – Forest Service

*Issue:* Balance environmental protection with recreational uses of a national forest

*NEPA Process:* The Forest Service is required to establish what routes are open to different types of vehicles for each of its national forests. The debate can be intense between competing desires for environmental protection and economic development related to the recreational use of vehicles in the forest. The Service facilitated public input to the EIS by providing detailed data about the existing routes, their current uses, and related environmental concerns. The scoping period was extended by a year to allow the Service to hold in-depth discussions with commentors who had proposed individual routes. Although the Service ultimately decided to close a significant number of existing routes, its decision was broadly accepted.

*NEPA Lesson:* A flexible NEPA process gives the public an opportunity to be a part of, and more readily accept, the final decision.

### Hells Canyon Comprehensive Management Plan – Forest Service

*Issue:* Revision of a comprehensive land use management plan

*NEPA Process:* The Forest Service intended to revise a land use management plan. Before the end of the scoping process, a group comprising tribal, state, and local government representatives; environmental organizations; and outside consultants developed an alternative proposal for consideration. The first draft EIS did not include this alternative, but the Service later added it to the second draft EIS. The Service convened a multi-stakeholder subcommittee of an existing advisory committee that provided input, and the final EIS included many features of the outside alternative.

*NEPA Lesson:* The NEPA process provides an opportunity to take a fresh look at current practices when revisions are being considered.

### The Point Project, Klamath National Forest – Forest Service

*Issue:* Public opposition to a logging plan restarts NEPA process

*NEPA Process:* A court ruling halted a Forest Service plan to log and sell old-growth trees and replace them with young fiber plantations, a common practice in the past but one with potentially great environmental impacts. The Service developed a new plan to thin small-diameter trees and to use controlled burning to reduce wildfire risk. During the NEPA process for the new plan, the Service worked more closely with concerned local groups to address their concerns. The resulting plan both preserved natural forest processes and protected the community from wildfire.

*NEPA Lesson:* The NEPA process facilitates the identification of innovative solutions that are sensitive to site and community needs.

*(continued on next page)*

## Changing a Highway to a Parkway, and a Road to a Multi-Modal Transportation System – Federal Highway Administration and Army Corps of Engineers

*Issue:* Highway project subject to numerous lawsuits

*NEPA Process:* A draft EIS was issued to address the issuance of permits for a portion of a state-proposed highway. Several citizen groups and state and Federal agencies, including the Environmental Protection Agency and the Fish and Wildlife Service, criticized the draft EIS on multiple grounds. Although the final EIS made changes to address these concerns, a coalition of environmental and transportation advocacy groups filed suit and won. As a result, the parties worked together to combine the best aspects of the state's proposal and the public's ideas while still fulfilling the state's intended purpose.

*NEPA Lesson:* Although agencies should strive to avoid litigation under NEPA, it can result in an improved outcome by allowing the parties to better appreciate the merits of each other's positions.

## West Alsea Landscape Management Project – Forest Service


*Issue:* Planning a habitat restoration project

*NEPA Process:* Nearly a year before the formal beginning of the scoping process, the Forest Service began reaching out to a local organization whose work was concentrated on the watershed area encompassed within the project. The Service held field tours and meetings both to provide information to and solicit input from the group and others. The Service incorporated these suggestions and concerns into the proposed action before scoping and before the draft EA was published for comment. This early involvement of the public led the Service to consider alternatives to the proposed action and improvements to the design criteria that it might not have considered otherwise and resulted in a final EA that enjoyed broad public support.

*NEPA Lesson:* Interactions between agencies and stakeholders before beginning the NEPA process can improve the success and efficiency of the subsequent process.

## Download the Report



The [report](#) is available as a free download at the ELI website at [www.eli.org](http://www.eli.org). (The story of NEPA review for the Cerro Grande Fire at the LANL site is told on page 1 of the [June](#) and [September 2000](#) issues of *LLQR*; the Moab EIS is covered in [June 2005](#) on page 8 and in [September 2005](#) on page 10; the tritium decision, in 1992, predates *LLQR*.) 



# Categorical Exclusion Determinations: A Year in Review

By: Jeffery Dorman, Office of NEPA Policy and Compliance



It's been more than a year since the effective date (November 2, 2009) of DOE's policy to document and post online its categorical exclusion (CX) determinations under Appendix B of its NEPA implementing regulations (10 CFR Part 1021). Since that time, all CX determinations posted online have been collected into a [single database](#) for public review. The CX database facilitates analysis of data about categorically excluded actions, such as where the actions are being taken and the frequency with which CX categories are invoked. DOE is the only agency to make CX determinations available in a centralized online database, and the only agency with a NEPA presence on [Data.gov](#) (*LLQR*, March 2010, page 1).



To date, more than 4,400 CX determinations, issued by 49 DOE Program and Field Offices, are in the database. The National Energy Technology Laboratory and the Office of Energy Efficiency and Renewable Energy (primarily the Golden Field Office) issued approximately 75 percent of these CXs determinations. In the past year, DOE issued CX determinations at a steady pace of about 80 determinations per week.

More than half of these CX determinations were for Recovery Act projects. The number of CX determinations

## Most Commonly Invoked CXs

(ordered by frequency; Nov. 2009 – Nov. 2010)

- B5.1** Actions to conserve energy
- A9** Information gathering, data analysis, document preparation, and dissemination, but not including site characterization or environmental monitoring
- B3.6** Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects
- A11** Technical advice and planning assistance to international, national, state, and local organizations
- B2.5** Safety and environmental improvements of a facility, replacement/upgrade of facility components

going forward likely will decrease as Recovery Act projects are implemented.

Questions and comments may be addressed to Jeffrey Dorman at [jeffrey.dorman@hq.doe.gov](mailto:jeffrey.dorman@hq.doe.gov).

## DOE NEPA Rulemaking Update

DOE is now in the final stages of interagency coordination, through the Office of Management and Budget, of a draft Notice of Proposed Rulemaking that focuses on revising the CXs listed in 10 CFR Part 1021, Subpart D, Appendices A and B. The Offices of NEPA Policy and Compliance and the Assistant General Counsel for Environment, while developing the proposal to revise DOE's CXs, were especially mindful of the policy and recommendations emphasized in the guidance that CEQ was developing at the same time (page 1).



# CEQ Issues Greenhouse Gas Accounting Guidance

The Council on Environmental Quality (CEQ) issued *Final Guidance on Federal Greenhouse Gas Accounting and Reporting*, as required by Executive Order (E.O.) 13514 (*Federal Leadership in Environmental, Energy, and Economic Performance*) in October 2010. The Guidance establishes government-wide requirements for calculating and reporting greenhouse gas (GHG) emissions from Federal agency operations, and is accompanied by a Technical Support Document providing detailed information on Federal inventory requirements and calculation methodologies. These documents may be relevant in preparing DOE NEPA documents, and are available on [CEQ's website](#).



## Intended for E.O. 13514 Reporting

Federal agencies must use this Guidance to comply with E.O. 13514, which requires agencies to measure, report, and reduce their GHG emissions from direct and indirect activities. Among other things, agencies must establish and report to CEQ and the Office of Management and Budget by January 31, 2011, a comprehensive inventory of absolute GHG emissions, including Scope 1, Scope 2, and specified Scope 3 emissions for fiscal year 2010, and to report annually thereafter. The Guidance states, however, that accounting methods for Scope 3 emissions are evolving and requires agency reporting of only certain categories of Scope 3 emissions for which reliable accounting methods are available (i.e., Federal employee air and ground travel, commuting, contracted solid waste and wastewater disposal, and transmission and distribution losses associated with purchased electricity). Annual reports will be used to measure progress in achieving GHG percentage reduction goals that agencies must establish under E.O. 13514 (related article, page 20).

Noting that some agency facilities may be subject to GHG emissions reporting under state, regional, or international protocols, the Guidance states “[F]or purposes of Federal

### GHG Emission Terms under E.O. 13514

- Scope 1 refers to direct emissions primarily from generation of electricity, heat, cooling, or steam, or from mobile sources as well as fugitive emissions.
- Scope 2 refers to indirect emissions from consumption of purchased electricity, steam, and heat.
- Scope 3 refers to all other indirect emissions not included in Scope 2, which include emissions that are attributable to an agency but released outside its organizational boundary.

GHG reporting and accounting established by E.O. 13514, this Guidance takes precedence over all other established GHG accounting protocols and standards.”

Accordingly, NEPA practitioners should use the Guidance in developing GHG analyses in NEPA documents for proposed actions at DOE facilities subject to the E.O. 13514 reporting requirements. The Guidance may be particularly applicable to site-wide EISs (*LLQR*, June 2010, page 16), and also useful in preparing other NEPA documents for proposals not subject to reporting under E.O. 13514.


## DOE Supported Guidance Development

CEQ based its guidance on DOE's Federal Energy Management Program (FEMP) recommended Federal GHG reporting and accounting procedures. As directed by E.O. 13514, FEMP developed its procedures in coordination with the Environmental Protection Agency, the Department of Defense, the General Services Administration, the Department of the Interior, the Department of Commerce, and other agencies. NEPA practitioners may be interested in the public comments on the Draft Guidance, issued on July 12, 2010, which are available [online](#).



## Future CEQ Guidance Anticipated

CEQ indicated in its *Federal Register* notice of availability of the Final Guidance (75 FR 63823; October 18, 2010) that, over time, additional requirements, methodologies, and procedures will be included in revisions to the guidance. To that end, in October 2010, CEQ asked DOE's FEMP to reconvene an interagency Federal workgroup and to plan efforts to develop additional accounting methods for certain types of Scope 3 GHG emissions, including emissions associated with leased assets, employee travel and commuting, and vendor, contractor and supply chain activities. CEQ also asked FEMP for, among other things, recommendations on accounting for emissions from biological sequestration (including consideration of land use, agriculture, and biogenic fuel sources), and for conventional and renewable energy generation by third parties on Federal property.

Additional information, including online training courses for Federal agency GHG reporting under E.O. 13514, is available on FEMP's [website](#). Further information also is available on the FedCenter GHG Inventory Reporting [website](#). *LLQR* will continue to report on future development of the CEQ Guidance and its applicability to the NEPA process. 



# DOE Strategic Sustainability Performance Plan: Analyze Sustainability Impacts in Facility EAs and EISs

The Department of Energy's first Strategic Sustainability Performance Plan, *Discovering Sustainable Solutions to Power and Secure America's Future*, has been issued by DOE's Senior Sustainability Officer, Deputy Secretary Daniel Poneman. The DOE Plan responds to Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, which includes direction for Federal agencies to achieve targeted reductions in greenhouse gas (GHG) emissions. The Executive Order includes a NEPA provision: that EISs and EAs for proposed new or expanded facilities identify and analyze impacts associated with energy usage and alternative energy sources.

Per the Executive Order, DOE established GHG emission reduction goals for fiscal year (FY) 2020 relative to a 2008 baseline. DOE committed to reducing Scope 1 and 2 emissions by 28 percent from the FY 2008 baseline. DOE set the goal of reducing Scope 3 emissions by 13 percent. (See text box, page 19.)

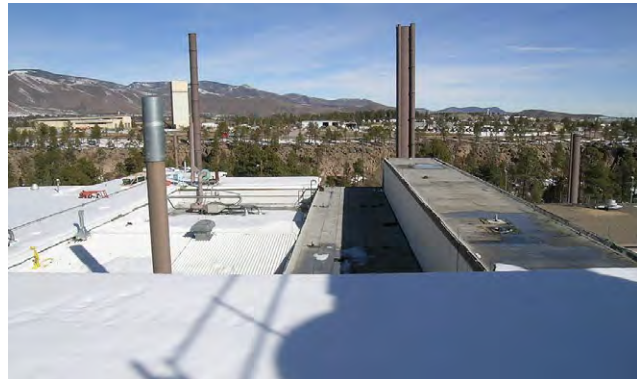
## DOE Strategies for Sustainability

DOE's strategies for attaining these targeted reductions in GHG emissions also produce improvements in related sustainability goals, particularly those involving energy.

**For Scope 1 and 2 emissions**, DOE intends to meet its targets by:

- using carbon intensity<sup>1</sup> to prioritize investment in efficiency measures and infrastructure improvements
- reducing the use of petroleum-based fuels
- deploying best practices for operations and maintenance
- metering
- upgrading real property (e.g., buildings) to meet high-performance sustainable building principles
- reducing fugitive GHG emissions other than carbon dioxide, specifically sulfur hexafluoride.

DOE will also identify approaches that could be implemented in the future to meet the FY 2020 goals. Examples include assessing the feasibility of using DOE facilities as technology innovation sites for carbon capture and sequestration or beneficial reuse, and exploring low-carbon, next-generation energy technologies such as fuel cells, cogeneration, biomass, and other renewable technologies, including emerging technologies.



*This "cool" white roof, which promotes sustainability, has been painted white and still holds snow, while the original black section has warmed up enough to melt the snow. (More at DOE's [Cool Roof Resources](#) guidelines.)*




**To reduce its Scope 3 emissions**, DOE intends to:

- expand the use of teleconferencing, video conferencing, and web-based meetings to reduce employee air travel
- reduce transmission and distribution losses through on-site power generation
- reduce waste generation by increasing sustainable purchasing and recycling.

## NEPA Guidance To Address Sustainability

The Plan outlines approaches and goals to guide the targeted emissions reductions. One such approach focuses on regional and local planning. Noting that DOE sites operate in a variety of environmental settings and social environments, such as close proximity to military bases, universities, and stand-alone facilities, the Plan cites the NEPA process as an opportunity for public involvement, through comment on proposed DOE actions. A sustainability goal identified in the Plan is to **"update Departmental policy and guidance to ensure that all EISs and EAs for proposed new or expanded Federal facilities identify and analyze impacts associated with energy usage and alternative energy sources."**

The Plan is available at [www.energy.gov](http://www.energy.gov). See [LLQR, December 2009, page 9](#), for additional information on Executive Order 13514 and [June 2010, page 16](#), for DOE's initial steps in response. For additional information on the the Plan and DOE's activities, contact Jennifer MacDonald, Acting Director, Sustainability Performance Office, at [jennifer.macdonald@hq.doe.gov](mailto:jennifer.macdonald@hq.doe.gov). 

<sup>1</sup> Carbon intensity reflects the amount of GHGs emitted by a facility or activity. Different GHGs have different global warming potential; these are all converted to units of CO<sub>2</sub>e (carbon dioxide equivalent). Carbon intensity may refer, for example, to CO<sub>2</sub>e emitted per unit of energy used, or per unit of production, or per square foot.

# Green Government Best Practices Promoted at Inaugural Symposium




“A year ago today, President Obama signed Executive Order [E.O.] 13514 to ask the Federal Government to look at itself, to push, and leverage our assets, our purchasing power, and our large and dedicated workforce to help build the clean energy economy of the future, to cut pollution . . . and to save taxpayers money in the process,” said Nancy Sutley, Council on Environmental Quality (CEQ) Chair, launching the first annual GreenGov Symposium. The E.O. acknowledges that in our day-to-day operations alone the Federal government has tremendous power to influence the direction of this country towards a 21<sup>st</sup> century sustainable future, but we also have an obligation to lead by example, she emphasized.

The Symposium, sponsored by CEQ and hosted by the George Washington University, in Washington, DC, on October 5–7, 2010, brought together leaders from Federal, state, and local governments, nonprofit organizations, academia, and the private sector to focus on the goals set forth by E.O. 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, and identify opportunities for greening the Federal government. (Related articles, pages 19 and 20.)

At the Symposium, Secretary of Energy Steven Chu announced, on behalf of the President, plans to install solar panels and a solar hot water heater on the roof of the White House Residence. These two solar installations are part of a DOE demonstration project – a “symbol of America’s commitment to a clean energy future,” said Secretary Chu. In his presentation, “The Energy Opportunity,” Secretary Chu highlighted DOE’s Federal Energy Management Program (FEMP) as a key resource for the entire Federal government that promotes cost-effective energy management and investment practices, including the use of DOE’s Energy Saving Performance Contracts. The Contracts, which can be used

for any federally-owned facility worldwide, help agencies meet energy efficiency, renewable energy, water conservation, and emissions reduction goals by streamlining contract funding for energy management, and accomplishing energy savings projects without up-front capital costs and without special congressional appropriations projects. (For more information, see FEMP’s website at [www1.eere.energy.gov/femp/](http://www1.eere.energy.gov/femp/).)

Secretary Chu also described a number of “smart” building technologies – one example involved computer-controlled building operations that use sensors and controls to allow for real-time optimization of building performance. It is all about “letting the intelligence of the building tune itself,” said Secretary Chu. “Computer-aided design and operation will lead to enhanced comfort, energy savings, and cost savings,” he said. Giving the audience his “plug” for white roofs, Secretary Chu admitted, “I personally think they are very beautiful,” explaining that if we took all urban roofs and pavement and made them white or “cool,” it would be equivalent to eliminating carbon emissions from all of the world’s automobiles for 11 years! In closing, Secretary Chu noted that “science is predicting that we are altering the destiny of the Earth,” and encouraged Symposium participants to be leaders and use available resources to help achieve a clean energy future.

“The scale of the Federal government means we can have an enormous impact,” noted Ms. Sutley. She challenged participants to use the Symposium – to “turn a vision into practice” – to teach, learn, and form partnerships that spark ideas, allowing the Federal government to lead. For more information about GreenGov, visit [www.whitehouse.gov/greengov](http://www.whitehouse.gov/greengov). GreenGov Symposium videos and speaker presentations for select sessions are available online at [www.planetforward.org](http://www.planetforward.org) (search “GreenGov”) and [www.fedcenter.gov](http://www.fedcenter.gov), respectively. 

## How Can You Start Consulting Nature?

“Biomimicry is learning from and emulating life’s genius,” said Janine Benyus, a natural sciences writer and president of the Biomimicry Institute, in her keynote address at the GreenGov Symposium. Sustainability needs to go beyond a checklist – to a culture, she said. Ms. Benyus offered a number of examples of how scientists are learning from nature, using the “biological lens to generate new ideas” – to invent things that are more efficient and sustainable. For example, she described thin-film solar films inspired by the structure and design of a leaf, mussel-inspired plywood glue as an alternative to urea-formaldehyde glue, and use of honeybee algorithms to improve data server allocation. Visit the Biomimicry Institute’s website ([www.biomimicryinstitute.org](http://www.biomimicryinstitute.org)) for additional information (and examples) on biomimicry.



Scientists are mimicking scalloped edges of humpback whales to reduce drag and improve wind turbine design.

# Survey Asked for Tribal Communication Preferences

In the summer of 2010, a team from the Office of Energy Efficiency and Renewable Energy surveyed representatives of tribal nations that participate in DOE's Tribal Energy Program to identify their preferred methods of communication when collaborating with Federal agencies. The Program promotes tribal energy sufficiency and economic growth on tribal lands by providing financial and technical assistance for renewable energy resources, and provides education and training to support sustainable energy projects.


The study team surveyed more than 240 tribal nations that had received Program funding. The responses reflect a range of preferences that can help DOE tailor communications approaches. For example, most of the tribal nation contacts in Alaska prefer to be contacted via fax and letters due to low Internet connectivity, while most in the southwestern region of the United States prefer email.

In addition to identifying their communication preferences, tribal responders recommended further improvements:

- develop a DOE collaboration protocol

- establish a working group to track and improve communication between tribal nations and DOE
- expand the communication survey to all Federally- and state-recognized tribal nations
- provide training to the tribal members on use of FedConnect ([www.fedconnect.net](http://www.fedconnect.net)), a website for those seeking government contracts, grants, and assistance funding.

The Office of Energy Efficiency and Renewable Energy intends to further improve communication practices with tribal nations to promote inclusivity and responsiveness, including in NEPA activities, reports Othalene Lawrence, NEPA Compliance Officer.

The findings were prepared by Tiara Cunningham, a junior at Spelman College in Atlanta, and a Summer 2010 participant in DOE's Minority Educational Institution Student Partnership Program. Information is available from [othalene.lawrence@hq.doe.gov](mailto:othalene.lawrence@hq.doe.gov); many related resources are available through DOE's Tribal Energy Program website, <http://apps1.eere.energy.gov/tribalenergy>. 

## e-NEPA: NNSA Unveils Online NEPA Reading Room



The National Nuclear Security Administration (NNSA) has established an online reading room for past and current NEPA reviews. The NNSA Office of Public Affairs developed this website to inform the public on current NNSA NEPA actions and documents. "We're very glad to have this site up and running with support from NNSA NEPA Compliance Officer Mary Martin, Ralph Barr of the Office of NEPA Policy and Compliance, and the NNSA NEPA Document Managers. We feel that it will be a great new tool for the public to become aware of the major NEPA actions going on at NNSA," said Jennifer Wagner, Deputy Director of Public Affairs for NNSA.

### What are the specifics?

The website is very easy to navigate. The home screen has projects listed under individual site offices. If you'd like information on a particular NEPA project, just click on the link to that project. A new window will appear on your computer screen with information about the general proposal and NEPA action that is followed by a more detailed discussion about the project. The detailed discussion is followed by a list of links to relevant

documents (such as notices of intent, fact sheets, and posters that have been displayed at public scoping meetings). At the bottom of the screen, there is contact information for the NEPA Compliance Officer and NEPA Document Manager.

On the right side of the home screen are related links (e.g., to DOE NEPA information, terminology, and press releases) and recent headlines for NNSA activities. There is also information on NNSA's history, career opportunities with NNSA, and general contact information. In addition, on the top right of all screens on the website, there are links to NNSA sites listed on Facebook, Flickr, RSS Feeds, Twitter, and YouTube.

Two EISs are currently listed – *Surplus Plutonium Disposition Supplemental Environmental Impact Statement*, and *Supplemental Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project*. Additional NEPA actions will be added.

### How do I access the site?

The URL for this site is [nnsa.energy.gov/nepa](http://nnsa.energy.gov/nepa). 

# Plain Writing Act of 2010 Promotes Clear Communication



A new [Plain Writing Act](#) (Public Law 111-274, October 13, 2010) is intended to “improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.” While the Act does not explicitly apply to EAs and EISs, the Council on Environmental Quality Regulations (40 CFR 1502.8) express a similar goal: “Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.”

---


*The term “plain writing” means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.*

— *Plain Writing Act of 2010*

---

Beginning not later than one year after the date of enactment of this Act, each agency shall use plain writing in every “covered document” that the agency issues or substantially revises. A covered document is one that is necessary for obtaining any Federal government benefit or service or filing taxes; provides information about any Federal benefit or service; or explains to the public how to comply with a requirement that the Federal government administers or enforces. It may be printed or electronic, and may be a letter, publication, form, notice, or instruction. (The Act states that it does not apply to regulations.)


The Act assigns responsibilities to Federal agencies to prepare to implement plain writing requirements.




**Plain Language.gov**  
Improving Communication from the Federal Government to the Public

### Useful Tools, Links, Examples

In preparing the preamble for the Notice of Proposed Rulemaking to revise its NEPA regulations, DOE consulted the resources of the Plain Language Action and Information Network website, such as the linked *Federal Register* webpage “[Making Regulations Readable](#).” Two recommendations are to use questions and answers to structure text, and to use personal pronouns – “we” for the agency and “you” for the other party, such as a commentator, member of the public, or entity that must comply with the regulation.



Requirements include designating one or more senior officials to oversee implementation, training employees, and creating a plain writing section of the agency’s website that is accessible from the homepage.

The Office of Management and Budget (OMB) is charged with developing implementation guidance not later than 6 months after the enactment of the Plain Writing Act. (OMB issued [preliminary guidance](#) for the Act on November 22, 2010.) Until the guidance is issued, agencies should follow the writing guidelines developed by the Plain Language Action and Information Network ([www.plainlanguage.gov](http://www.plainlanguage.gov)) or existing agency guidance that is consistent with the Act. The Act also requires each agency to report (on its website) on its compliance with plain writing requirements. 

# Collaboration and Public Outreach Featured at DOE Environmental Attorneys' Training

Many environmental professionals participated in DOE's annual Environmental Attorneys' Training, October 19–20, 2010, at DOE Headquarters in Washington, DC, and online via audio and video links. The training was jointly sponsored by DOE's Headquarters, Field, and contractor environmental attorneys and the Office of Health, Safety and Security. Highlights of particular interest to NEPA practitioners are presented below; additional information on speakers, presentations, and other materials is available at [www.ch.doe.gov/eatc-2010](http://www.ch.doe.gov/eatc-2010).

## Environmental Conflict Resolution through Collaboration

The context of an environmental conflict must be understood to assess the potential for environmental conflict resolution (ECR) to address the dispute, emphasized Suzanne Orenstein, Director of the new Washington, DC, office of the U.S. Institute for Environmental Conflict Resolution ([www.ecr.gov](http://www.ecr.gov)). She described the collaborative nature of ECR as a decisionmaking approach, which goes beyond simply providing information to and seeking advice from members of the public, but instead provides a neutral forum where an agency and members of the public work together towards a common end and share in decisions. Two-way communication is key to increasing the chances for the success of collaboration, Ms. Orenstein said.

For ECR to be successful, the parties must believe:

- they can achieve better outcomes by working together
- there is sufficient time, resources and attention to support full participation by all parties involved
- available alternatives can meet multiple needs
- the parties are likely to have continuing relations.



Ms. Orenstein provided a “scorecard” with these and other elements that she used in leading participants in ECR exercises.

## Transparency and Public Participation in the NEPA Process


Noting the importance of Field and Contractor counsel and other professionals at the frontlines of DOE actions,

and the critical role that environmental issues play in DOE's success, Scott Blake Harris, General Counsel, emphasized that DOE's continued success rests with open communication among Headquarters and Field staffs and a commitment to process changes that enhance the transparency of DOE decisionmaking. Mr. Harris highlighted important strides that the Office of the General Counsel has made to improve transparency and efficiency in the DOE NEPA process – among others, posting DOE categorical exclusions (CXs) and draft EAs online; providing a searchable CX database for public use; ongoing work to update DOE CXs to reflect new renewable energy technology; establishing an “open door” policy for DOE staff and external interests from any side of an environmental issue; and building on environmental work done by states. We are interested in increased efficiency, Mr. Harris said, not in cutting out essential steps, and added that he is always looking for good ideas.

Carol Borgstrom, Director, DOE Office of NEPA Policy and Compliance, reflected on the statement in the Proclamation issued by President Obama on the 40<sup>th</sup> Anniversary of NEPA (*LLQR*, March 2010, page 7) that the American Recovery and Reinvestment Act “reaffirmed NEPA's role . . . in ensuring transparency, accountability, and public involvement in our Government.”

Referring to a provision of the DOE NEPA Regulations (10 CFR 1021.101) that DOE act according to the letter and spirit of NEPA, she offered her five principles to meet the spirit of NEPA:

- full disclosure, with public input and scrutiny
- rigorous, objective evaluation of all reasonable alternatives as the heart of NEPA
- assessment of environmental impacts commensurate with significance
- consideration of mitigation to reduce and avoid impacts
- explanation of options weighed in making decisions.

Ms. Borgstrom emphasized that NEPA practice supports open, collaborative decisionmaking. 

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- US Institute for Environmental Conflict Resolution  
520-901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)
  - Facilitation Fundamentals\***  
Washington, DC: January 26-27  
\$500
  - Collaboration Skills\***  
Washington, DC: February 15-17  
\$750
  - Introduction to Managing Environmental Conflict**  
Denver, CO: March 1-2  
\$500
  - Advanced Multi-Party Negotiation of Environmental Disputes\***  
Washington, DC: March 22-24  
\$750
  - Negotiating Environmental Solutions**  
Denver, CO: April 19-20  
\$500
- Environmental Protection Agency  
Office of Federal Activities  
312-886-2910  
[westlake.kenneth@epa.gov](mailto:westlake.kenneth@epa.gov)  
[www.netionline.com](http://www.netionline.com)
  - NEPA and Clean Air Act, Section 309 Review**  
Chicago, IL: December 14-16 (FED103)  
No Fee
- Continuing Legal Education  
800-873-7130  
[www.cle.com](http://www.cle.com)
  - NEPA: Climate Change, Renewable Energy, and More**  
San Francisco, CA: January 20-21  
\$795 (\$695 Federal employees)  
Los Angeles, CA: February 10-11  
\$795 (\$695 Federal employees)
- International Association for Public Participation  
800-644-4273  
[training@iap2.org](mailto:training@iap2.org)  
[www.iap2.org](http://www.iap2.org)
  - Planning for Effective Public Participation**  
Milwaukee, WI: January 11-12  
Orlando, FL: February 28-March 1  
St. Louis, MO: March 14-15  
\$700
  - Communications for Effective Public Participation**  
Milwaukee, WI: January 13  
Orlando, FL: March 2  
St. Louis, MO: March 16  
\$350
  - Techniques for Effective Public Participation**  
Milwaukee, WI: February 9-10  
Orlando, FL: March 3-4  
St. Louis, MO: March 17-18  
\$700
- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del](http://www.nicholas.duke.edu/del)
  - Current and Emerging Issues in NEPA and Climate Change under NEPA**  
Durham, NC: February 14-18  
\$1,665 until 1/18/11
  - Implementation of NEPA**  
Durham, NC: March 21-25  
\$925
  - Certificate in the National Environmental Policy Act**  
Requires successful completion of one core and three elective NEPA short courses. Co-sponsored by the Council on Environmental Quality.  
Fee: Included in course registration.

*(continued on next page)*

\* Hosted by the DOE Office of Conflict Prevention and Resolution.



# Training Opportunities

(continued from previous page)

- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)

## **NEPA Climate Change Analysis and Documentation**

San Francisco, CA: January 27-28  
\$745 (GSA contract: \$655) until 12/15/10

## **NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**

New Orleans, LA: February 8-11  
\$1,145 (GSA contract: \$1,055) until 1/30/11

## **Applying the NEPA Process and Writing Effective NEPA Documents**

Atlanta, GA: February 15-18  
\$1,145 (GSA contract: \$1,055) until 1/4/11  
Dallas/Fort Worth, TX: April 19-22  
\$1,145 (GSA contract: \$1,055) until 3/8/11

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

San Francisco, CA: February 23-25  
\$945 (GSA contract: \$855) until 1/12/11  
Washington, DC: March 22-24  
\$945 (GSA contract: \$855) until 2/8/11

## **Clear Writing for NEPA Specialists**

Missoula, MT: March 1-3  
\$945 (GSA contract: \$855) until 1/19/11

## **Applying the NEPA Process: Emphasis on Native American Issues**

Albuquerque, NM: March 8-10  
\$945 (GSA contract: \$855) until 1/26/11

## **Applying the NEPA Process and Reviewing NEPA Documents**

Denver, CO: March 14-18  
\$1,345 (GSA contract: \$1,255) until 1/3/11

## **Overview of the NEPA Process**

San Diego, CA: April 5  
\$345 (GSA contract: \$255) until 2/22/11  
Orlando, FL: April 26  
\$345 (GSA contract: \$255) until 3/15/11

## **NEPA Certificate Program**

Requires successful completion of eight courses offered by The Shipley Group.  
\$5,450  
Contact: NEPA Certificate Program,  
Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/htm/students/grad-degrees/nepa](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa)

- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/index.php/training](http://www.swca.com/index.php/training)

## **Effective NEPA Writing**

Phoenix, AZ: March 7-8  
\$695

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeps@mchsi.com](mailto:jleeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
703-934-3603 or 800-532-4783  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)

# EAs and EISs Completed July 1 to September 30, 2010

## EAs<sup>1</sup>

### **Berkeley Site Office/Office of Science**

[DOE/EA-1634](#) (8/4/10)

*The Lawrence Berkeley National Laboratory Seismic Life-Safety, Modernization and Replacement of General Purpose Buildings, Phase 2B, Berkeley and Oakland, California*

Cost: \$263,000

Time: 23 months

### **Chicago Site Office/Office of Science**

[DOE/EA-1684](#) (9/16/10)

*Construction and Operation of the Facility for Rare Isotope Beams, Michigan State University, East Lansing, Michigan*

Cost: \$450,000

Time: 14 months

### **Golden Field Office/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1761\\*](#) (9/23/10)

*Clemson University Wind Turbine Drivetrain Test Facility, North Charleston, South Carolina*

Cost: \$85,000

Time: 10 months

[DOE/EA-1762\\*](#) (9/30/10)

*Wellford Landfill Methane and Greenhouse Gas to Energy Project, Spartanburg County, South Carolina*

Cost: \$130,000

Time: 6 months

[DOE/EA-1777\\*](#) (8/4/10)

*Financial Assistance to Ohio for Lincoln Electric's Wind Energy Project, Euclid, Cuyahoga County, Ohio*

Cost: \$125,000

Time: 5 months

[DOE/EA-1788\\*](#) (8/4/10)

*Sapphire Energy Inc.'s Integrated Algal Biorefinery (IABR) Facility in Columbus, New Mexico*

[DOE adopted this EA](#) on 8/4/10; therefore cost and time data are not applicable. [Department of Agriculture, the lead agency, issued a finding of no significant impact on 9/21/09.]

[DOE/EA-1790\\*](#) (9/30/10)

*Construction and Operation of a Heterogeneous Feed Biorefinery, Enerkem Corporation, Pontotoc County, Mississippi*

Cost: \$100,000

Time: 4 months

[DOE/EA-1832](#) (9/30/10)

*Rainer Biogas LLC Community Anaerobic Manure Digester, Enumclaw, King County, Washington*

[DOE adopted this EA on 9/30/10](#); therefore, cost

and time data are not applicable. [Department of Agriculture, the lead agency, issued a finding of no significant impact on 9/1/10.]

### **Idaho Operations Office/ Office of Nuclear Energy, Science, and Technology**

[DOE/EA-1772\\*](#) (8/4/10)

*Multipurpose Haul Road within the Idaho National Laboratory Site, Butte County, Idaho*

Cost: \$238,000

Time: 5 months

### **Los Alamos Site Office/ National Nuclear Security Administration**

[DOE/EA-1736](#) (8/24/10)

*Expansion of the Sanitary Effluent Reclamation Facility and Environmental Restoration of Reach S-2 of Sandia Canyon at Los Alamos National Laboratory, Los Alamos, New Mexico*

Cost: \$175,000

Time: 7 months

### **National Energy and Technology Laboratory/ Office of Electricity Delivery and Energy Reliability**

[DOE/EA-1754\\*](#) (9/17/10)

*Public Service Company of New Mexico, Photovoltaic Plus Battery for Simultaneous Voltage Smoothing and Peak Shifting Project, Bernalillo County, New Mexico*

Cost: \$26,000

Time: 6 months

(continued on next page)

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

\* Recovery Act project

# EAs and EISs Completed

## July 1 to September 30, 2010 (continued from previous page)

[DOE/EA-1756\\*](#) (9/8/10)

*Battelle Memorial Institute's Smart Grid Project at the City of Ellensburg's Renewable Energy Park, Kittitas County, Washington*

Cost: \$26,000

Time: 6 months

### **National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1715\\*](#) (9/22/10)

*Chemetall Foote Corporation, Electric Drive Vehicle Battery and Component Manufacturing Initiative, Kings Mountain, North Carolina and Silver Peak, Nevada*

Cost: \$48,000

Time: 10 months

[DOE/EA-1716\\*](#) (9/13/10)

*Honeywell International, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Massac County, Illinois*

Cost: \$41,000

Time: 10 months

[DOE/EA-1740\\*](#) (7/23/10)

*Thermal Energy Corporation Combined Heat and Power Project, Houston, Texas*

Cost: \$27,000

Time: 6 months

[DOE/EA-1742\\*](#) (8/26/10)

*Rhode Island LFG Genco, LLC Combined Cycle Electricity Generation Plant Fueled by Landfill Gas, Johnston, Rhode Island*

Cost: \$27,000

Time: 7 months

[DOE/EA-1743\\*](#) (7/13/10)

*Air Products and Chemicals, Inc., Waste Energy Project at the AK Steel Corporation Middletown Works, Middletown, Ohio*

Cost: \$27,000

Time: 6 months

[DOE/EA-1745\\*](#) (8/9/10)

*Blast Furnace Gas Flare Capture Project at the ArcelorMittal USA, Inc., Indiana Harbor Steel Mill, East Chicago, Indiana*

Cost: \$27,000

Time: 7 months

[DOE/EA-1760\\*](#) (8/26/10)

*FutureFuel Chemical Company Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Batesville, Arkansas*

Cost: \$37,000

Time: 5 months

[DOE/EA-1767\\*](#) (9/13/10)

*Virginia State Energy Program's Cephas C&D Wastes Biomass Project, Richmond, Virginia*

The cost for this EA was paid by the applicant;

therefore, cost information does not apply to DOE.

Time: 6 months

[DOE/EA-1773\\*](#) (9/13/10)

*INEOS New Planet BioEnergy, LLC, Commercial Scale Integrated Demonstration Bioenergy Center, Vero Beach, Florida*

Cost: \$150,000

Time: 6 months

[DOE/EA-1775\\*](#) (9/7/10)

*Texas A&M University Combined Heat and Power Project, College Station, Texas*

Cost: \$27,000

Time: 5 months

### **Pantex Site Office/ National Nuclear Security Administration**

[DOE/EA-1696](#) (7/30/10)

*Pantex Renewable Energy Project, Amarillo, Texas*

Cost: \$257,000

Time: 11 months

[Department of the Interior's Fish and Wildlife Service was a cooperating agency.]

### **Sandia Site Office/ National Nuclear Security Administration**

[DOE/EA-1729](#) (8/25/10, FONSI 8/27/10)

*Removal Actions at the Technical Area III Classified Waste Landfill, Sandia National Laboratories,*

*Albuquerque, New Mexico*

Cost: \$32,000

Time: 9 months

*(continued on next page)*

\* Recovery Act project

# EAs and EISs Completed July 1 to September 30, 2010

(continued from previous page)

## Western Area Power Administration

DOE/EA-1539\*\* (6/15/10)

*North Area Right-of-Way Maintenance*, California

[For Official Use Only; EA not publicly available]

[Finding of No Significant Impact](#) (available online)

Cost: \$352,000

Time: 9 months

DOE/EA-1685\*\* (6/15/10)

*Parker-Planet Tap 69-kV Transmission Line Rebuild, Upgrade and Right-of-Way Action*, San Bernardino County, California and Mohave and La Paz Counties, Arizona

Cost: \$147,000

Time: 11 months

[Department of the Interior's Bureau of Land Management and Fish and Wildlife Service were cooperating agencies.]

DOE/EA-1698 (7/28/10, FONSI 7/29/10)

*Baldwin Wind Energy Center*, Burleigh County, Baldwin, North Dakota

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

Time: 10 months

## EISs

### Office of Energy Efficiency and Renewable Energy/ Golden Field Office

DOE/EIS-0407\* (75 FR 51458, 8/20/10)

(EPA Rating: EC-2)

*Abengoa Biorefinery Project near Hugoton*, Stevens County, Kansas

Cost: \$2,550,000

Time: 24 months

[Department of Agriculture was a cooperating agency.]

### Western Area Power Administration

DOE/EIS-0418 (75 FR 44951, 7/30/10)

(EPA Rating: EC-2)

*South Dakota Prairie Winds Project*, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota

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

Time: 15 months

[Co-lead: Department of Agriculture, Rural Utilities Service. Department of the Interior's Fish and Wildlife Service was a cooperating agency.]

#### ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

##### Environmental Impact of the Action

LO – Lack of Objections

EC – Environmental Concerns

EO – Environmental Objections

EU – Environmentally Unsatisfactory

##### Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

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

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 23 EAs for which cost data were applicable was \$85,000; the average cost was \$122,000.
- Cumulatively, for the 12 months that ended September 30, 2010, the median cost for the preparation of 53 EAs for which cost data were applicable was \$45,000; the average was \$91,000.
- For this quarter, the median completion time for 25 EAs for which time data were applicable was 6 months; the average was 8 months.
- Cumulatively, for the 12 months that ended September 30, 2010, the median completion time for 63 EAs for which time data were applicable was 6 months; the average was 9 months.

## EIS Cost and Completion Times

- For this quarter, the cost for completion of one EIS for which cost data were applicable was \$2.5 million.
- Cumulatively, for the 12 months that ended September 30, 2010, the median cost for the preparation of 4 EISs for which cost data were applicable was \$2.0 million; the average cost was \$8.8 million.
- For this quarter, the completion times for 2 EISs were 15 and 24 months.
- Cumulatively, for the 12 months that ended September 30, 2010, the median completion time for 7 EIS for which time data were applicable was 24 months; the average was 37 months.

# Recent EIS-Related Milestones September 1 to November 30, 2010

## Notices of Intent

### Bonneville Power Administration

DOE/EIS-0457

*Albany-Eugene Transmission Line  
Rebuild Project*, Lane and Linn Counties, Oregon  
October 2010 ([75 FR 66750](#), 10/29/10)

### Office of Loan Programs

DOE/EIS-0458

*Loan Guarantee to Support Construction of Topaz  
Solar Farm in San Luis Obispo County*, California  
October 2010 ([75 FR 65306](#), 10/25/10)

### National Nuclear Security Administration

DOE/EIS-0350-S1

*Supplemental Environmental Impact Statement for  
the Nuclear Facility Portion of the Chemistry and  
Metallurgy Research Building Replacement Project  
at Los Alamos National Laboratory*, Los Alamos,  
New Mexico  
October 2010 ([75 FR 60745](#), 10/1/10; extension  
of scoping period, [75 FR 67711](#), 11/3/10)

### Western Area Power Administration

DOE/EIS-0461

*Hyde County Wind Energy Center Project*,  
Hyde and Buffalo Counties, South Dakota  
November 2010 ([75 FR 74040](#), 11/30/10)

DOE/EIS-0462

*Crowned Ridge Wind Energy Center Project*,  
Grant and Codington Counties, South Dakota  
November 2010 ([75 FR 74042](#), 11/30/10)

## Draft EISs

### Office of Electricity Delivery and Energy Reliability

[DOE/EIS-0414](#)

*Energia Sierra Juarez U.S. Transmission Line  
Project*, San Diego County, California  
September 2010 ([75 FR 57018](#), 9/17/10)

### Western Area Power Administration

[DOE/EIS-0439](#)

*Solar Reserve LLC Rice Valley Solar Energy Project*,  
Riverside County, California  
October 2010 ([75 FR 65320](#), 10/22/10)  
[Co-lead: Department of the Interior's Bureau of Land  
Management]

(continued on next page)

\* Recovery Act project

\*\*Not previously reported in LLQR

# Recent EIS-Related Milestones September 1 to November 30, 2010

(continued from previous page)

## Final EISs

### Office of Energy Efficiency and Renewable Energy

[DOE/EIS-0456](#)

*Cushman Hydroelectric Project*,  
Mason County, Washington  
October 2010 ([75 FR 62386](#), 10/8/10)  
[DOE adopted this FEIS from the Federal Energy  
Regulatory Commission.]

### Office of Loan Programs

[DOE/EIS-0416\\*](#)

*California Desert Conservation Area Plan  
Amendment/Final Environmental Impact Statement  
for Ivanpah Solar Electric Generating System*,  
San Bernardino County, California  
October 2010 ([75 FR 65320](#), 10/22/10)  
[DOE adopted this FEIS from the Department of the  
Interior's Bureau of Land Management.]

## Records of Decision

### Office of Energy Efficiency and Renewable Energy

[DOE/EIS-0456](#)

*Cushman Hydroelectric Project*, Mason County,  
Washington  
November 2010 ([75 FR 73059](#), 11/29/10)

### Office of Loan Programs

[DOE/EIS-0443\\*](#)

*Project Financing for Southwest Intertie  
Project-South*, Clark, Lincoln, Nye, and  
White Pine Counties, Nevada  
October 2010 ([75 FR 65615](#), 10/26/10)

### Western Area Power Administration

[DOE/EIS-0398](#)

*Delta-Mendota Canal/California Aqueduct Intertie*,  
Central Valley Project, California  
September 2010 ([75 FR 56094](#), 9/15/10)

[DOE/EIS-0418](#)

*South Dakota Prairie Winds Project*, Aurora, Brule,  
Jerauld, and Tripp Counties, South Dakota  
September 2010 ([75 FR 60102](#), 9/29/10)

## Revised Record of Decision

### Bonneville Power Administration

[DOE/EIS-0183](#)

*Bonneville Power Administration's Business Plan  
Environmental Impact Statement*  
October 2010 ([75 FR 64296](#), 10/19/10)

## Supplement Analyses

### Bonneville Power Administration

#### Transmission System Vegetation Management Program

(DOE/EIS-0285)

[DOE/EIS-0285-SA-432](#)

*Coyote Business Park FEIS - Roundup - LaGrande  
Wood Pole Replacement*, Umatilla County, Oregon  
(Decision: No further NEPA review required)  
September 2010

[DOE/EIS-0285-SA-433](#)

*Vegetation Management along the Tanner  
Tap to Snoqualmie-Lake Tradition No.1, 115-kV  
Transmission Line Corridor*, King County, Washington  
(Decision: No further NEPA review required)  
October 2010

[DOE/EIS-0285-SA-434](#)

*Vegetation Management along the Satsop-Aberdeen  
No.2 230-kV and Satsop Park-Cosmopolis No.1,  
115-kV Transmission Line Corridor Right-of-Way*,  
Grays Harbor County, Washington  
(Decision: No further NEPA review required)  
October 2010

[DOE/EIS-0285-SA-435](#)

*Vegetation Management along the Marion-Alvey  
No.1 500-kV, and the Marion-Lane No.1, 500-kV  
Transmission Line Corridor Right-of-Way*,  
Linn and Lane Counties, Oregon  
(Decision: No further NEPA review required)  
October 2010

(continued on next page)

# Recent EIS-Related Milestones

## September 1 to November 30, 2010 *(continued from previous page)*

### [DOE/EIS-0285-SA-436](#)

*Vegetation Management along the Chief Joseph-Monroe No.1, 500-kV, Transmission Line Corridor Right-of-Way, Chelan, King, and Snohomish Counties, Washington*  
(Decision: No further NEPA review required)  
October 2010

### [DOE/EIS-0285-SA-437](#)

*Vegetation Management and Access Road Maintenance Activities along the Entire Right-of-Way Corridors and Associated Access Roads of the Tacoma-Raver No.1 500-kV Transmission Line, King and Pierce Counties, Washington*  
(Decision: No further NEPA review required)  
October 2010

### Office of Environmental Management


#### **Waste Isolation Pilot Plant** (DOE/EIS-0026)

### [DOE/EIS-0026-SA-08](#)

*Packaging and Handling of Remote-Handled Transuranic Waste in Shielded Containers, Carlsbad, New Mexico*  
(Decision: No further NEPA review required)  
September 2010

## DOE-wide Contracting Update

Monique Hunter now serves as the Contact Specialist supporting the DOE-wide NEPA contracts. Ms. Hunter joined DOE 2 years ago as a Budget Analyst and last June graduated from the National Nuclear Security Administration's Future Leaders Program. Information and resources for potential users of these contracts are available on the DOE NEPA Website. For additional information, contact Ms. Hunter at [monique.hunter@nnsa.doe.gov](mailto:monique.hunter@nnsa.doe.gov) or 202-586-7651.

*On behalf of the DOE NEPA Community, we would like to thank Aneesah Vaughn, the most recent DOE-wide NEPA Contracts Administrator, for her contributions in administering the contracts. She now works for the National Aeronautics and Space Administration in Houston. We wish her well in her future endeavors.* 

\* Recovery Act project

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Early stakeholder input.* Early public meetings with tribes and other stakeholders allowed many of their perspectives to be incorporated, minimizing the amount of substantive change between the draft and the final EA.
- *Productive scoping meeting.* Public scoping was conducted for this EA due to project visibility and community interest, which turned out to be productive.
- *Focus on purpose and need.* After extensive discussion on the purpose and need, the alternatives fell into place.
- *Scoping meetings.* Public scoping meetings were effective and enabled us to gather useful information.

### What Didn't Work

- *Late scoping change.* Modifying project scope mid-way through the NEPA process was problematic.
- *Early site selection.* A frequent problem is that project advocates determine their desired location early, which inhibits the selection and evaluation of site alternatives.

## Data Collection/Analysis

### What Worked

- *Using available data.* Data gathering time for the draft EA was lessened by using pre-existing information to identify controls to minimize the impacts to sage grouse populations. A sage grouse survey in affected areas was then conducted so that the results could be included in the final EA.
- *Proven approach.* Impact analysis/methodology was consistent with previous approaches.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Comment resolution meetings.* Holding meetings with all DOE and contractor reviewers allowed timely completion of responses to public comments.
- *Management support.* Management support facilitated the timely completion of the EA.
- *Conference calls and management involvement.* Weekly conference calls and the support of both the DOE project director and the applicant's project manager facilitated completion of the EA process.
- *Action items.* The weekly review of actions associated with the schedule helped maintain everyone's awareness of what tasks needed to be completed.
- *Project proponent.* Having a very active project advocate kept pressure on the contractor to produce documents in a professional and timely matter.
- *Coordination.* Constant communication and coordination among the NEPA Document Manager, the project advocate, and the document preparation contractor helped maintain the document schedule.
- *Pre-existing environmental information.* Creative use of existing data kept the project on schedule.
- *Resource organization support.* Support for the project from the cultural and ecological resources organizations was very helpful. Their proactive approach alleviated schedule constraints and enabled timely compliance with NEPA requirements.
- *Document management experience.* The NEPA Document Manager had a great deal of experience in project management. The dual function of having NEPA and project management experience was very beneficial to timely EA completion.

*(continued on next page)*



# Questionnaire Results

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

- *Weekly calls.* Weekly calls were helpful in keeping the EIS on schedule.
- *Teamwork.* Team commitment to completing the EIS and constant communication among all team members facilitated the timely completion of the project.
- *Single point of contact.* Maintaining a single management and operating contractor point of contact with extensive NEPA experience, and who reported directly to its upper management on document progress, significantly improved this project.

### Factors that Inhibited Timely Completion of Documents

- *High comment volume.* The volume of public comments received inhibited timely completion of the EA process.
- *Extensive revisions.* EA completion ended up on the critical path due to the number of revisions needed.
- *Document control.* Difficulty in maintaining document control while tracking and resolving comments during revisions of the EA affected the schedule.
- *Coordinating environmental review and construction schedules.* The ecological operational controls needed and the project's construction schedule required close coordination with contracting and technical requirements to meet the established milestones.
- *Excessive communication.* A very active project proponent called too often and pressured DOE staff to quickly finish the EA, inhibiting its timely completion.
- *Staff resources.* Limited legal and NEPA specialists were available due to multiple projects going on at the same time, delaying the EA somewhat.
- *Staff conflict.* Staff disagreement about the need to include two actions in the EA and staff personnel issues were circumstances that caused schedule delays.
- *Vacation schedules.* Vacation schedules of the concurring parties made timely completion of the EA difficult.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Utilization of past data.* Inclusion of information from the ecological impacts reference report helped assure that the EA presented the actual analysis as opposed to a summary.

- *Project manager oversight.* The NEPA Document Manager became the main point of contact for the early phases of the EA.
- *Weekly conference calls.* Weekly conference calls and active participation of management benefitted the EA team.
- *Team equality.* All team members, DOE and contractors, were treated as valuable contributors.
- *Communication.* Regular communication and feedback facilitated the needed teamwork.

### Factors that Inhibited Effective Teamwork

- *Territorial team members.* "Territory" issues inhibited effective teamwork in the preparation of the EA.

## Process

### Successful Aspects of the Public Participation Process

- *Public acceptance.* The public participation process proceeded normally and no issues were identified.
- *Stakeholders outreach.* The availability of a proposed finding of no significant impact and meetings with local and state government officials greatly increased the public's confidence in both DOE and the project.
- *Public approval.* Public reaction to outreach efforts was very positive.
- *Early stakeholder review and media exposure.* In addition to normal EA public notices, affected neighboring land-owners were invited at the onset of the project to review the project scope and discuss their concerns. Also helpful were several stories on local TV news broadcasts about the project.
- *Meeting notification.* The public was complimentary of the public process, including notification of meetings.
- *Additional scoping meetings.* A major change in the scope of the project occurred and a second EA scoping meeting was held, which led to more public comment and participation.

*(continued on next page)*

## Questionnaire Results

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

#### Unsuccessful Aspects of the Public Participation Process

- *Meeting not predictive of comments written later.* A public information session was held during the draft EA public review period. Although no comments were received during the public meeting, many written comments on the draft EA were later submitted.
- *Minor public reaction.* The public provided very little input or reaction to the EA process.

#### Usefulness

##### Agency Planning and Decisionmaking: What Worked

- *Successful planning.* The NEPA process was an important routine aspect of the program office's planning effort, and it ensured the prevention of significant impacts.
- *Environmental expertise.* NEPA staff provided immediate feedback on several environmental aspects of the project during the planning meetings, resulting in informed decisions. The decision on project siting was directly related to the NEPA process due to floodplain and Conservation Reserve Program land issues.
- *State decisionmaking.* The NEPA process informed State decisionmaking.
- *Broad scope.* Numerous attempts by the management team to modify the scope of the project could have caused a need to prepare a new or a second EA. Fortunately, the final project scope is broad enough that no additional NEPA coverage should be required.

##### What Didn't Work

- *Existing regulations.* Existing regulations mandate the allowance of certain projects limiting the influence of NEPA in decisionmaking.

#### Enhancement/Protection of the Environment

- *Project relocated.* A better location for the project was selected as a result of the NEPA process.
- *Controls identified.* Normal operational controls were clearly identified as a part of the NEPA process to allow for protection of environmental resources.
- *Environmental focus.* The NEPA process kept project attention on the environmental aspects that will require continued attention and active management.
- *Potential impacts averted.* The environment was protected by preventing impacts to floodplain areas.
- *Mitigation measures employed.* The environment was protected as mitigation measures were devised and implemented that may not have otherwise been created without the EIS process.
- *Mitigation measure agreement.* The environment was protected as a consequence of the NEPA process due mainly to mitigation measures that the project advocate agreed to through the Biological Assessment process, which were incorporated into the finding of no significant impact.

#### Other Issues

##### Guidance Needs Identified

- *Environmental critiques.* Guidance on the preparation of environmental critiques/synopses (per 10 CFR 1021.216) would be useful.
- *Differing agency viewpoints.* Guidance on how to meld two agencies' viewpoints on significance would be useful.

*(continued on next page)*

## Questionnaire Results

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

#### Effectiveness of the NEPA Process

For the purposes of this section, "effective" means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decisionmaking.

For this quarter, in which 6 questionnaire responses were received for EAs and 1 response was received for an EIS, 5 respondents rated the NEPA process "effective."

- A respondent who rated the process as "5" stated that the applicant's state regulators were interested in, involved with, and highly complimentary of the EA process.
- A respondent who rated the process as "4" stated that the NEPA process was useful in clearly identifying the operational controls needed for environmental preservation. The impacts analysis clearly identified the environmentally preferable alternative, which was chosen by management.
- A respondent who rated the process as "4" stated that the EA process was influential in the decisions made regarding the siting of the project.
- A respondent who rated the process as "4" stated that the applicant was open to using NEPA to help identify measures that would protect the environment.
- A respondent who rated the process as "3" stated that the NEPA process was more valuable to the state as planned actions were not changed by the EA process.
- A respondent who rated the process as "2" nevertheless stated that environmental concerns influenced the design and siting of the building.
- A respondent who rated the process as "2" stated that NEPA was only minimally considered in decisionmaking due to existing regulations that mandated the project.

### A NEPA Practitioner's New Year's Resolutions for 2011

— *Anonymous*

- ✓ I will aim to complete an EIS in 15 months or less.
- ✓ I will aim to prepare an EIS that is not longer than 150 pages.
- ✓ I will use plain language in all my writing.
- ✓ I will reinforce concepts using clear and focused figures, charts, and tables.
- ✓ I will submit electronic files, questionnaires, and associated cost and time data in a timely manner.
- ✓ I will submit EA and EIS contractor evaluations to the Contracting Officer.
- ✓ I will support my management's submittal of an Annual NEPA Planning Summary to the DOE General Counsel by January 31, 2011, and make it available to the public.

*Happy New Year!*

**2011**

# LESSONS LEARNED

March 1, 2011; Issue No. 66

First Quarter FY 2011

## DOE Proposes Revisions to Its NEPA Rule To Modernize Categorical Exclusions

DOE's publication of a Notice of Proposed Rulemaking for the Department's NEPA regulations marks a major milestone in updating its categorical exclusions (CXs). Since DOE last revised the "classes of actions" in its NEPA regulations (10 CFR Part 1021) in 1996, Departmental missions and activities have changed, and new technologies have emerged. To align DOE's NEPA practices with current activities, DOE proposes new and modified CXs and associated changes to other parts of the regulations (76 FR 214; January 3, 2011). DOE is accepting public comments on the proposed changes through March 7, 2011.



A CX is a class of actions that DOE has determined do not individually or cumulatively have a significant impact on the human environment, absent extraordinary circumstances, and, therefore, normally do not require an environmental impact statement (EIS) or an environmental assessment (EA). CXs are powerful tools for efficiently meeting the obligation to consider the environmental impacts of proposed agency actions. They are not NEPA exemptions.<sup>1</sup>

In its Notice of Proposed Rulemaking, DOE proposes to add 20 CXs, modify many existing ones, and make conforming changes to the classes of actions that normally

require an EA or EIS. In addition, DOE proposes to delete one EA category and two EIS categories. The Notice summarizes the proposed changes and their rationale, invites public comment during a 45-day comment period, and announces a public hearing to receive comments. The public hearing was held on February 4 at DOE Headquarters in Washington, DC, during which one attendee presented an oral comment in support of the Department's rulemaking effort. In response to a request from the National Wildlife Federation on behalf of 10 non-governmental organizations, DOE extended the comment period, originally scheduled to end February 17, through March 7.

### Benefits of Updating DOE's CXs

**More Efficient Environmental Review and Protection:** Reducing the resources spent analyzing the environmental impacts of proposals without potentially significant environmental impacts will allow DOE to focus its resources on environmentally significant proposals. DOE expects that updating CXs will expedite proposed projects that experience has demonstrated will not have significant environmental impacts, absent extraordinary circumstances.

*(continued on page 7)*



The proposed rule includes new CXs for (left to right) lead paint removal, stormwater runoff controls, renewable energy technologies (such as small photovoltaic systems), and electric vehicle charging stations (photo, inhabitat.com).

<sup>1</sup> See "Is a Categorical Exclusion Determination a NEPA Review or a NEPA Exemption?" (LLQR, September 2010, page 9).

## Inside **LESSONS LEARNED**

Welcome to the 66<sup>th</sup> quarterly report on lessons learned in the NEPA process. This issue focuses on the Administration's new NEPA guidance and related initiatives – on scientific integrity, regulatory improvement, mitigation and monitoring, and filing EISs – and DOE's proposal to modernize its NEPA regulations. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

EPA Issues EIS Filing Guidance.....	3
Executive Order Seeks To Improve Regulations.....	4
CEQ Mitigation and Monitoring Guidance.....	5
White House Guidance on Scientific Integrity.....	6
Cooperating Agency Report to CEQ.....	8
DOE Receives the ACHP Chairman's Award.....	10
LM Receives Energy Management Award.....	10
Recovery Act Reports Focus on Pending NEPA Reviews.....	11
Keeping the "Non-Federal" Out of <i>Federal Register</i> .....	11
DOE and BLM Issue Draft Solar Energy PEIS.....	12
2011 NEPA Planning Summaries.....	14
DOE and Hawaii To Prepare Wind Energy PEIS.....	15
Transitions: Carolyn Osborne Retires.....	16
Litigation Updates.....	19
Training Opportunities.....	21
EAs and EISs Completed This Quarter.....	23
Cost and Time Facts.....	25
Recent EIS-Related Milestones.....	25
Questionnaire Results.....	27

*Carol Bergstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*.

We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 2, 2011. Contact

Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due May 2, 2011


Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2011 (January 1 through March 31, 2011) should be submitted by May 2, 2011, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. We provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

Printed on recycled paper



 This icon indicates that LLQR online ([nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned) provides a link to a referenced webpage whose URL is too long to be useful when printed.


## Mark Your Calendars: Upcoming Conferences

### National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) 2011 conference will take place April 26–29 in Denver. The theme this year is *Seventh Generation Thinking: Learning from the Past – Planning for the Future*. Topics to be covered include NEPA, energy, public involvement, sustainability, and career development. As part of its annual conference, NAEP will also hold two concurrent symposia discussing NEPA and national energy issues on Tuesday, April 26. The preliminary schedule, track descriptions, and event registration are now available at [www.naep.org](http://www.naep.org).



### State of Environmental Justice in America

 DOE, the National Small Town Alliance, Howard University School of Law, the Environmental Protection Agency, and the Department of Agriculture are jointly sponsoring a conference on the State of Environmental Justice in America. The event will cover a variety of emerging issues in environmental justice, including climate change, green jobs, and clean energy. The conference will take place in Washington, DC, on April 27–29. Contact Melinda Downing, DOE Environmental Justice Program Manager, at [melinda.downing@hq.doe.gov](mailto:melinda.downing@hq.doe.gov) or John Rosenthal, Conference Coordinator, at [ejinamerica@hotmail.com](mailto:ejinamerica@hotmail.com) for further details.





# EPA Amends EIS Filing Guidance; Reduces Paper Copy Requirements

The Environmental Protection Agency (EPA) has amended its guidance for filing EISs to change the number and format of documents to be filed, address the adoption of EISs, and add guidelines for EIS filing during Continuity of Operations Plan (COOP) events (76 FR 2681; January 14, 2011). These changes pertain to EPA's EIS Filing System Guidelines, previously issued in 1989, and address procedures for filing draft, final, and supplemental EISs, as required by Council on Environmental Quality regulations (40 CFR 1506.9). In addition, EPA solicited input on a series of questions that it will use to make future modifications to the EIS filing process.



## Key Changes to EIS Filing Guidelines

- ✓ **Four** (previously five) complete copies of the EIS (including appendices) are to be filed.
- ✓ At least **one complete paper copy** must be filed; **the other three can be on electronic media** (e.g., compact disc) (previously all paper).
- ✓ Agencies are encouraged to make EISs available online and report the URL to EPA by email, concurrent with filing the EIS.
- ✓ More detailed guidance is provided on notifying EPA of adoption of an EIS, with specific provisions depending on cooperating agency status of the adopting agency.
- ✓ A new section of the guidance addresses EIS filing procedures during COOP events.

## EPA's Filing Responsibilities

In accordance with 40 CFR 1506.9 and 1506.10, EPA is responsible for administering the EIS filing process and issuing guidelines to implement those responsibilities. EPA's role in the EIS filing process includes:

- receiving and recording EISs
- establishing the beginning and ending dates for comment and review periods for draft and final EISs, respectively
- publishing these dates in a weekly notice of availability (NOA) in the *Federal Register*
- retaining the EISs in a central repository
- determining whether time periods can be lengthened or shortened for "compelling reasons of national policy."

Lead agencies are responsible for distributing their EISs to the interested public for review.

## Filing an EIS – The Details

Federal agencies may file a draft, final, or supplemental EIS with EPA no earlier than the agencies provide it to commenting agencies and the public. An EIS may be filed by mailing or delivering four copies of the complete EIS, including the appendices. At least one copy of the entire EIS must be a paper copy; the remaining three copies can be on electronic storage devices (e.g., compact discs, USB flash drives, or memory cards). If an agency prepares an abbreviated final EIS (40 CFR 1503.4(c)), the agency should include copies of the draft EIS when filing the final version. To file an EIS using U.S. Postal Service (including express mail), copies of an EIS should be delivered to:

U.S. EPA, Office of Federal Activities  
EIS Filing Section, Mail Code 2252A  
South Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

If sending an EIS through a private delivery service, or if filing in person, use the following address:

U.S. EPA, Office of Federal Activities  
EIS Filing Section, Room 7220  
South Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

(For the telephone number required for some private delivery services, provide the EPA security desk number: 202-564-5400.)

Other important filing information includes:

- *EPA review copy.* The four EISs submitted to EPA are for filing purposes; agencies need to send a copy(s) of the EIS directly to the appropriate EPA regional office(s) for review and comment in accordance with EPA's responsibilities under Section 309 of the Clean Air Act.
- *Internet availability.* EPA encourages Federal agencies to make their EISs available on the Internet **and to email a copy of the web address (URL) for the document to [EIS-Filing@epa.gov](mailto:EIS-Filing@epa.gov), concurrent with filing the EIS.**
- *Review periods.* Agencies should notify EPA of any decision to withdraw, delay, extend, or reopen a review period on an EIS. EPA will reflect these in its published weekly NOAs. When reopening EIS review periods, the lead agency should also notify

(continued on page 8)



# Executive Order Seeks To Improve Regulations

President Barack Obama committed the Federal government to improving the regulatory landscape in [Executive Order \(E.O.\) 13563, \*Improving Regulation and Regulatory Review\*](#). The new E.O. outlines the general principles of regulation and calls on agencies to:



- promote public participation
- apply the concepts of integration and innovation
- discover flexible approaches
- ensure scientific integrity
- conduct retrospective analyses of existing rules.

The E.O. aims to incorporate into the Federal regulatory process considerations that are already central to the NEPA process, namely identification of impacts, engagement with stakeholders, transparency and accessibility of documentation, continuous improvement of tools and techniques, and using science to inform decisionmaking.

## Building on a Solid Base = Good Regulation

E.O. 13563 sets the stage for regulatory improvement by outlining general principles of good regulation (text box). The E.O. affirms and supplements the plan to reform the regulatory process established in E.O. 12866, *Regulatory Planning and Review*, in 1993. That E.O. requires agencies to adopt only those regulations whose benefits justify the costs, tailor regulations to impose the least burden on society, select approaches that maximize net benefits, specify performance objectives rather than prescribe methods of compliance, and use alternatives to direct regulation where possible. The new E.O. calls on agencies to use the best available techniques to quantify present and future benefits and costs as accurately as possible and to also consider values that can only be expressed in qualitative terms.

As noted in E.O. 13563, one aspect of good regulation is public participation and the open exchange of ideas among government officials at all levels, subject matter experts, private-sector stakeholders, and the public. Agencies should offer opportunities to comment via the Internet on


any proposed regulation for at least 60 days, and should post proposed and final rules and supporting documents, including scientific information, for search, download, and comment. Before issuing a notice of proposed rulemaking, an agency should seek the views of those likely to be affected, both those who would benefit and those who would be subject to its requirements.

The President also called for regulatory integration and innovation, recognizing that some industries face many regulatory requirements that may be redundant, overlapping, or inconsistent. Agencies should coordinate among themselves to simplify and harmonize regulations. They should seek innovative means to achieve their regulatory goals and identify flexible approaches. Reiterating the [President’s Memorandum on Scientific Integrity](#), issued March 9, 2009, the E.O. (related article, page 6) told agencies to ensure the objectivity of any scientific and technological information and process used to support their regulatory actions.



Finally, agencies should periodically review existing significant regulations to identify rules that are “outmoded, ineffective, insufficient, or excessively burdensome,” and then modify or repeal them. The E.O. directed agencies to develop and submit a preliminary plan for conducting such reviews within 120 days of the date of the E.O.

## DOE Solicits Public Input

To implement the E.O., DOE is taking two immediate steps. First, to engage the public in a transparent review process, the Department issued a [request for information](#) in the *Federal Register* (76 FR 6123; February 3, 2011) to solicit input on how best to streamline existing regulations and to identify rules that are “obsolete, unnecessary, unjustified, or simply no longer make sense.” Comments are due by March 21, 2011. DOE is also soliciting views on such rules via a link on the Office of the General Counsel’s webpage ([www.gc.energy.gov](http://www.gc.energy.gov), select *Submit Views on DOE Regulations* under the *Action Center*) or by sending a message directly to [regulatory.review@hq.doe.gov](mailto:regulatory.review@hq.doe.gov). 



### General Principles of Regulation from E.O. 13563, January 18, 2011

*Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.*



# CEQ Issues Guidance on Mitigation and Monitoring, Mitigated FONSI

“When agencies base their environmental analysis on a commitment to mitigate the environmental impacts of a proposed action, they should adhere to those commitments, monitor how they are implemented, and monitor the effectiveness of the mitigation,” according to recent guidance from the Council on Environmental Quality (CEQ) to Heads of Federal Agencies and Departments. CEQ’s guidance, *Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated FONSI*s, was published in the *Federal Register* on January 21, 2011 (76 FR 3843). The guidance outlines best management practices for agencies when making mitigation commitments, addresses mitigated findings of no significant impact (FONSI)s, and encourages agencies to inform and involve the public in these efforts. It also states that agencies may use adaptive management in cases where commitments made in the NEPA process fail to achieve projected environmental outcomes.



---

***When the Federal government commits to actions to protect the environment, it should be able to show it is following through on those commitments for the American people. This guidance will help agencies ensure their environmental reviews are credible, thorough and open to the public.***

– Nancy Sutley, CEQ Chair

---

## Mitigation, Monitoring, and Adaptive Management

The guidance describes mitigation, monitoring, and adaptive management as related components of a process for achieving “environmentally preferable outcomes” under NEPA. Monitoring and adaptive management may not be necessary for every action that involves mitigation, and “agencies are expected to apply professional judgment and the rule of reason when identifying cases that warrant monitoring,” according to CEQ.

### Offsetting Impacts

CEQ reminds agencies that the CEQ regulations require that “when an agency prepares an EIS, it must include mitigation measures (not already included in the proposed action or alternatives) among the alternatives compared in the EIS” (40 CFR 1502.14(f) and 1508.25(b)(3)).

Three categories of mitigation are addressed:

(1) mitigation that is an integral part of an agency’s project design (e.g., construction layout and timing, and best management practices), (2) mitigation commitments developed through the NEPA process, and (3) mitigation to support a mitigated FONSI.

The guidance states that agencies should not commit to mitigation measures considered in an EIS or EA absent the authority or expectation of resources to ensure that the mitigation is performed. In the decision documents concluding their environmental reviews, agencies should clearly identify any mitigation measures adopted as agency commitments or otherwise relied upon so as to ensure the integrity of the NEPA process and allow for greater transparency. The “decision document following the EA should – and a Record of Decision (ROD) must [40 CFR 1505.2(c)] – identify those mitigation measures that the agency is adopting and committing to implement, including any monitoring and enforcement program applicable to such mitigation commitments.”

“Mitigation” is defined in the CEQ regulations at 40 CFR 1508.20, as:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

### Keeping Watch

“Monitoring is fundamental for ensuring the implementation and effectiveness of mitigation commitments, [and for] meeting legal and permitting requirements . . . ,” according to CEQ. The guidance refers to the CEQ regulations, stating that “For agency decisions based on an EIS, the CEQ Regulations explicitly require that ‘a monitoring and enforcement program shall be adopted . . . where applicable for any mitigation’” (40 CFR 1505.2(c)).

(continued on page 9)





# White House Guidance on Scientific Integrity

The White House Office of Science and Technology Policy (OSTP) issued guidance on the implementation of the Administration's policies on scientific integrity, in a [memorandum](#) dated December 17, 2010. The guidance is relevant to NEPA practitioners because principles of scientific integrity are reflected in several provisions of the Council on Environmental Quality (CEQ) regulations for implementing NEPA (text box), to ensure that high-quality, objective environmental information is provided to decisionmakers and the public.



In the memorandum, OSTP Director John Holdren referred to President Obama's March 9, 2009, [memorandum](#) on scientific integrity, which assigned to the Director the responsibility "for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes."




"The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions . . . . To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking," said President Obama in his March 2009 memorandum.

The President directed OSTP to develop recommendations to guarantee scientific integrity throughout the executive branch. In response, OSTP created an interagency panel with representatives from all of the major science offices and agencies (including DOE), and launched an open, web-based process to accept detailed input from stakeholders inside and outside Government. Based on the Panel's recommendations, OSTP provides guidance in four broad categories:

- foundations of scientific integrity in Government
- public communications
- use of Federal Advisory Committees
- professional development of Government scientists and engineers.

OSTP asks agencies to develop policies implementing the Administration's directives on scientific integrity for each category, and states that policies should have the following outcomes:

- a culture of scientific integrity and credibility, with a free flow of scientific information both within the Government and with the public, providing expanded online access to scientific and technological information
- the promotion of agency openness and transparency with the media and the public regarding technological matters, including interviews with agency scientists, when appropriate
- a transparent process for the creation of Federal Advisory Committees that is focused on the recruitment of qualified experts and results in a balance of points of view
- the promotion and facilitation of the professional development of Government scientists and engineers.

Agencies have 120 days to report back to OSTP on actions taken to develop and implement these new policies. Questions regarding the OSTP memorandum can be directed to [integrity@ostp.gov](mailto:integrity@ostp.gov). 

## CEQ NEPA Regulations: Provisions Related to Scientific Integrity

"NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." [40 CFR 1500.1(b)]

"Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." [§1502.24]

"If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement . . . . The agency shall independently evaluate the information submitted and shall be responsible for its accuracy." [§1506.5(a)]

"If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment." [§1506.5(b)]

"It is the intent of these regulations that the [EIS preparation] contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project." [§1506.5(c)]

# DOE NEPA Rule Revisions *(continued from page 1)*

**Consistency:** A number of DOE’s proposed new and modified CXs are expressed with greater specificity than existing CXs. For example, renewable energy projects that previously might have been categorically excluded under a general category of “actions to conserve energy” would be eligible for consideration under new proposed CXs for specific technologies (e.g., small-scale wind turbines). Because many proposed CXs have more specific scope and limitations on actions, the proposed rule will promote more uniform CX determinations throughout DOE.

**Enhanced Transparency:** DOE’s draft rule proposes to incorporate the requirement established last year to document and post online determinations based on CXs listed in Appendix B to Subpart D of the rule.

## Proposed Rule Based on Research, Collaboration, and Consultation


DOE’s Notice of Proposed Rulemaking represents the culmination of more than a year of work by a team from the Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment, with support from the Office of the Assistant General Counsel for Legislation, Regulation and Energy Efficiency. The effort began with a memorandum from the General Counsel soliciting input from DOE Program and Field Offices through NEPA Compliance Officers, who provided extensive suggestions, collected supporting information, and helped resolve challenging issues. DOE also issued a Request for Information (74 FR 68720; December 29, 2009) that invited interested parties to propose subjects for consideration as CXs.

In parallel, DOE NEPA Office staff identified additional candidates for new or expanded CXs by reviewing the archive of DOE EAs that led to findings of no significant impact, researching the existing CXs promulgated by approximately 50 Federal agencies, and reviewing existing DOE CXs to identify potential improvements.

In developing the proposed revisions, the team followed best practices for establishing CXs from the recent Council on Environmental Quality’s (CEQ’s) [guidance](#) on CXs (November 2010).

The team documented the basis for DOE’s proposed changes in the Preamble discussion of the Notice, and created a Technical Support Document that supplements the Preamble. (See [nepa.energy.gov/1601.htm](#) and [Regulations.gov](#), Docket ID: DOE-HQ-2010-0002.)

DOE consulted with CEQ early in the development of the proposed rule. After reviewing DOE’s draft Notice in September 2010, CEQ advised that the proposal was ready for public review and comment. DOE then coordinated with the Office of Management and Budget (OMB), which provided the proposed rule to agencies with likely interest, whose comments were addressed before DOE published the Notice of Proposed Rulemaking.

DOE is now evaluating the public comments received so far (14 as of February 28). The NEPA Office plans to develop a final rule in coordination with the NEPA Compliance Officers and in consultation with CEQ and OMB, then publish the final rule in the *Federal Register*. Questions on DOE’s NEPA rulemaking may be addressed to [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov). 



## Proposed Additional Categorical Exclusions

### For renewable energy, carbon sequestration, and conservation

- Experimental wells for injection of small quantities of carbon dioxide
- Combined heat and power or cogeneration systems
- Small-scale solar photovoltaic systems
- Small-scale solar thermal systems
- Small-scale wind turbines
- Small-scale ground source heat pumps
- Small-scale biomass power plants
- Methane recovery and utilization systems
- Alternative fuel vehicle fueling stations
- Electric vehicle charging stations
- Small-scale drop-in hydroelectric systems

### For research and development

- Small-scale educational facilities
- Small-scale indoor research and development (R&D) projects using nanoscale materials
- Research in salt water and freshwater environments
- Small-scale renewable energy R&D and pilot projects
- Small-scale renewable energy R&D and pilot projects in salt water and freshwater environments

### For environmental improvement/other

- Stormwater runoff control
- Lead-based paint removal
- Recycling stations
- Determinations of excess real property

# EIS Filing Guidance (continued from page 3)


EPA of the measures that will be taken to ensure that the EIS is available to all interested parties. To ensure adequate review time, agencies should ensure that any “comment by” dates they use in public notices are based on the date of publication of EPA’s NOA in the *Federal Register*.

- *EIS adoption.* Agencies must notify EPA (by letter or email) when they adopt an EIS so that the appropriate comment or review period may commence. If an agency adopts another agency’s EIS and it was not a cooperating agency, the EIS must be recirculated and filed with EPA in accordance with 40 CFR 1506.3(b). EPA will publish an NOA in the *Federal Register* announcing the appropriate comment or review period. Adopting agencies that served as a cooperating agency need not circulate the document for public comment or review, but they should notify EPA of the adoption to ensure that the official EIS record is accurate. In this situation, to complete the public record, EPA will publish an amended NOA in the *Federal Register* that states that an adoption has occurred.
- *Filing EISs during COOP events.* If an EIS cannot be physically delivered to EPA, agencies will need to email a copy of the EIS cover sheet to [EIS-Filing@epa.gov](mailto:EIS-Filing@epa.gov) and EPA will use that information to publish its weekly NOA. Once the COOP event is over, filing agencies will have

14 days to submit the four copies of all EISs filed during the event. If EPA does not receive them within 14 days, it will formally retract the NOA for that EIS.

EPA also stated that it is considering additional modifications to the EIS filing procedures that could lead to an electronic EIS filing process, and requested comments from Federal agencies and from stakeholders and the public on certain questions:

- EPA asked Federal agencies about their current practices for posting and retaining EISs online. The NEPA Office responded for DOE, expressing appreciation for EPA’s efforts to modernize the EIS filing procedures and encouraging EPA to develop an electronic filing system. The NEPA Office also advised EPA that DOE posts draft and final EISs online for public review and intends to maintain indefinitely an electronic EIS archive on the DOE NEPA Website.
- EPA asked stakeholders and the public about their preferences regarding publishing the weekly EPA NOAs online instead of in the *Federal Register*, and making EISs available online (e.g., EPA’s website).

The Office of NEPA Policy and Compliance will incorporate the new filing procedures into the DOE NEPA *Stakeholders Directory* (issued annually in July) and a future revision of the DOE *EIS Distribution* guidance. For more information, see EPA’s [website](#). 




## Most DOE EISs Prepared with Cooperating Agencies

More than three-quarters of the 46 EISs listed in DOE’s 2010 Cooperating Agency Report to the Council on Environmental Quality (CEQ) were or are being prepared with cooperating agencies. This continues the high level of cooperating agency participation in DOE EISs seen in prior years. The required annual report covers EISs for which DOE issued a notice of intent on or after October 1, 2005, and that were completed during Fiscal Year 2010 or were still ongoing as of September 30, 2010.

Three of the 62 EAs that DOE completed as the lead agency during Fiscal Year 2010 (and therefore counted in the report) were prepared with cooperating agencies. This statistic is highly variable from year to year, depending on the extent to which the proposals evaluated in the EAs involve other agencies and the extent that consulting or commenting suffices to address their concerns.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating agency status or for terminating an established cooperating

agency relationship before completion of a NEPA review. The reasons most frequently cited by NEPA Document Managers for DOE EISs without cooperating agencies are that no candidates were identified with special expertise or jurisdiction by law (40 CFR 1501.6) and that the agencies invited as potential cooperating agencies preferred other ways to participate in the NEPA process, such as informal consultation under Section 106 of the National Historic Preservation Act.

The annual reporting requirement is part of CEQ’s ongoing efforts to encourage Federal agencies to involve other Federal, state, tribal, and local governmental organizations as cooperating agencies in NEPA reviews, promote early involvement of cooperating agencies, and track such involvement. The CEQ memoranda relating to cooperating agencies may be found on the DOE NEPA Website, at [nepa.energy.gov](http://nepa.energy.gov) under Guidance. For further information, contact Yarden Mansoor at [yarden.mansoor@hq.doe.gov](mailto:yarden.mansoor@hq.doe.gov) or 202-586-9326. See cooperating agency winners, next page. 

# Mitigation and Monitoring Guidance (continued from page 5)

Two forms of monitoring are addressed in the guidance:

- (1) *implementation monitoring*, which ensures that mitigation commitments are implemented, and
- (2) *effectiveness monitoring*, which allows agencies to determine if mitigation is achieving its intended environmental outcome.

## Making Adjustments

Adaptive management, when included in the NEPA analysis, allows an agency to take alternate mitigation actions if mitigation commitments fail to achieve projected environmental outcomes. The guidance states that “a Federal agency has a continuing duty to ensure that new information about the environmental impact of its proposed actions is taken into account, and that the NEPA review is supplemented when significant new circumstances or information arise that are relevant to environmental concerns and bear on the proposed action or its impacts.”

## Mitigated FONSI

When conducting an environmental review, CEQ notes that an agency may find that a proposed action has the potential for significant environmental impacts, but that those impacts may be mitigated so that they would no longer be significant. “CEQ recognizes the appropriateness, value, and efficacy of providing for mitigation to reduce the significance of environmental impacts” and clarifies that agencies may adopt a mitigated FONSI based on an EA that includes sufficient mitigation to avoid significant environmental impacts. When the FONSI depends on successful mitigation, however, such mitigation requirements should be made public and accompanied by monitoring and reporting. “An agency should not commit to mitigation measures necessary for a

### CEQ guidance affirms that agencies should:

- commit to mitigation in decision documents when the EA or EIS environmental analysis is based upon such mitigation (by including appropriate conditions in grants, permits, or other agency approvals, and making funding or approvals for implementing the proposed action contingent on implementation of the mitigation commitments)
- monitor the implementation and effectiveness of mitigation commitments
- make information on mitigation monitoring available to the public, preferably through agency websites
- remedy ineffective mitigation through adaptive management measures.

mitigated FONSI if there are insufficient legal authorities, or it is not reasonable to foresee the availability of sufficient resources, to perform or ensure the performance of the mitigation.”

## The Role of the Public

The guidance encourages agencies to consider including public involvement in their mitigation monitoring programs. This can include public access to mitigation monitoring reports and public assistance with actual monitoring, through public-private partnerships. Agencies’ expertise and professional judgment are key to determining the appropriate level of public involvement. In some cases, agencies may need to balance competing privacy or confidentiality concerns (e.g., protecting confidential business information or the location of sacred sites) with the benefits of public disclosure. **LL**

## And the 2010 Cooperating Agency Winners Are . . .



Eleven of Western Area Power Administration’s 13 EISs were prepared with a co-lead or cooperating agencies – the highest in absolute and relative terms. Bonneville Power Administration comes in second, with cooperating agencies for 6 of its 8 EISs.

The U.S. Army Corps of Engineers is our most popular cooperating agency, involved in 10 DOE EISs. In second place is the Bureau of Land Management with 7 EISs, and there is a three-way tie for third – the Forest Service, the Fish and Wildlife Service, and the Environmental Protection Agency – each cooperating in 5 EISs.

The Solar Programmatic EIS (related article, page 12), being prepared jointly by the Bureau of Land Management and DOE, is the champion EIS for signing up cooperating agencies: 6 Federal agencies, 6 state organizations, and 7 counties.

# DOE Receives the ACHP Chairman's Award for Streamlining Historic Preservation Reviews of Recovery Act Projects



The Advisory Council on Historic Preservation (ACHP) honored DOE and the National Conference of State Historic Preservation Officers (NCSHPO) with the ACHP Chairman's Award for Achievement in Historic Preservation at a ceremony in Washington, DC, on February 17, 2011.

"This award recognizes the creation of a Prototype Programmatic Agreement

[Agreement] that assists State Historic Preservation Officers (SHPOs), DOE, and others to more efficiently and quickly administer Section 106 of the National Historic Preservation Act in some circumstances relating to the Energy Efficiency and Conservation Block Grant, State Energy Plan, and the Weatherization Assistance Programs," said ACHP Chairman Milford Wayne Donaldson in a letter to Secretary of Energy Steven Chu, notifying him of the Award.

---

*Thanks to the proactive work of SHPOs and Federal agencies, . . . we found appropriate ways to get essential projects underway while considering the importance of historic places.*


*– Milford Wayne Donaldson, ACHP Chairman*

---



LeAnn Oliver, Weatherization and Intergovernmental Programs Manager, Office of Energy Efficiency and Renewable Energy, accepted the Award from ACHP Chairman Milford Wayne Donaldson on DOE's behalf.

"This action was essential considering the impacts of the American Recovery and Reinvestment Act of 2009 on the historic preservation review process, and the need to streamline review processes while safeguarding the nation's physical heritage. Together, DOE and NCSHPO met this challenge in a proactive manner that expedited preservation reviews and improved coordination among state energy agencies and SHPOs representing 57 states and territories," he said.

A key feature of the Agreement is the categorical approach to streamline Section 106 reviews. The type of activities exempted under the Agreement from Section 106 review also commonly qualify for categorical exclusion determinations under DOE's NEPA regulations (10 CFR Part 1021). (See [LLQR, March 2010, page 21.](#)) 

## Legacy Management NCO Accepts Energy Award

On behalf of DOE's Office of Legacy Management (LM), NEPA Compliance Officer and Environmental Program Manager Tracy Ribeiro and a contractor were recognized at the 2010 Department of Energy Management Awards ceremony for LM's System Operation and Analysis at Remote Sites (SOARS) project.

LM was one of five DOE organizations to receive such an award at the ceremony on October 6, 2010. DOE Management Awards acknowledge outstanding contributions to energy, water, and vehicle fleet management and associated cost savings at DOE facilities and field organizations.

The LM SOARS project collects and transmits real-time data from 16 sites in nine states to allow users to evaluate remediation progress. SOARS permits remote monitoring and operation of pumps and valves at some sites, reducing the energy used for travel while allowing personnel to respond rapidly to changing conditions. In Fiscal Year 2009, this amounted to a reduction in travel to sites of 37,000 miles and a savings of about 1,900 gallons of fuel. In addition, LM is often able to use photovoltaic solar energy to power the SOARS instruments and communications equipment, further reducing greenhouse gas emissions.

For more information, contact Tracy Ribeiro at [tracy.ribeiro@lm.doe.gov](mailto:tracy.ribeiro@lm.doe.gov) or 970-248-6621. 



SOARS equipment remotely monitors environmental conditions at the Shiprock Disposal Site, a former uranium and vanadium ore-processing facility in New Mexico.



# Recovery Act Reports Focus on Pending NEPA Reviews

Almost 600 NEPA reviews for projects and activities (projects) funded by the American Recovery and Reinvestment Act (Recovery Act) were pending as of December 31, 2010, the Council on Environmental Quality (CEQ) said in its latest quarterly report to Congress. The report, mandated by Section 1609(c) of the Recovery Act, identified the status of NEPA reviews for more than 272,000 Recovery Act projects across 24 Federal agencies. Approximately 190 categorical exclusion (CX) determinations, 360 EAs, and 35 EISs were pending. This includes 45 EAs and 20 EISs for DOE Recovery Act projects; DOE reported no pending CX determinations.

“The ARRA NEPA reporting is focused on ensuring that the appropriate NEPA environmental reviews are completed in a timely manner,” noted Horst Greczmiel, Associate Director for NEPA Oversight at CEQ. “As we wind down the reporting, attention is focusing on those projects and activities where the NEPA reviews have not been completed for one or more quarters; consequently, we want to accurately report the reasons those NEPA reviews remain pending and when we project they will be completed.”

---

*Over the course of the last two years, the Departments and Agencies . . . have consistently shown that economic recovery and environmental stewardship can go hand in hand.*

– Horst Greczmiel, CEQ

---

CEQ has asked that agencies provide more detail about pending NEPA reviews for use in future reports. Pursuant to CEQ guidance issued in November 2009, DOE has provided explanations for why NEPA reviews are pending for two or more quarters. These explanations have included an update on where an EA or EIS is in the preparation process, a statement that the applicant has requested that the NEPA review be placed on hold, or a statement that DOE is coordinating with other agencies. CEQ has asked agencies

to provide in future reports more details showing how long NEPA reviews have been pending.

## Trends Highlight EAs for 2011

During the quarter ending December 31, 2010, Federal agencies completed more than 1,600 NEPA reviews for Recovery Act projects. More than 600 (about 38 percent) of these were completed by DOE.

Cumulatively, Federal agencies completed more than 180,000 CX determinations and 6,600 EAs, and analyzed more than 830 projects in EISs. Agencies concluded that NEPA is not applicable to about 4,300 other Recovery Act projects. Together, these projects involve obligations of approximately \$287 billion funded under Division A of the Recovery Act.

DOE had completed more than 8,700 NEPA reviews supporting the obligation of more than \$33.4 billion for projects receiving Recovery Act funding, an increase of almost \$400 million since September 30, 2010 (*LLQR*, December 2010, page 9).

Based on the eight reports submitted to Congress to date, CEQ identified three overall trends: the number of new CX determinations has decreased, the number of new EAs has increased, and the number of pending NEPA reviews has significantly decreased.

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through March 31, 2011. Federal agency reports are due to CEQ by April 15, 2011, and CEQ will submit the next report to Congress in early May.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924. **LL**

## Keeping the “Non-Federal” Out of the *Federal Register*

By assisting other DOE offices in reviewing *Federal Register* documents such as a notice of intent (NOI) to prepare an EIS or a record of decision, the Office of NEPA Policy and Compliance is sometimes uniquely positioned to share the lessons learned from that task. Last year, *LLQR* noted ([June 2010, page 12](#)) that a *Federal Register* notice issued jointly must include all agencies’ signatures. Recently, we learned that only Federal agencies may jointly issue such a notice in the *Federal Register*. For an EIS that DOE and a state will prepare as joint lead agencies, an NOI signed by both parties was rejected by the Government Printing Office. The DOE program was able to promptly resubmit the NOI without the state signature, and thus avoid jeopardizing timely public notice of the scoping meetings.

# DOE and BLM Jointly Issue Draft Programmatic EIS for Solar Energy Development in Six Southwestern States

Following consideration of more than 19,000 comments received during two scoping periods (summers of 2008 and 2009) and coordination with 19 cooperating agencies at Federal, state, and county levels, DOE and the Department of the Interior's Bureau of Land Management (BLM) jointly issued the *Draft Programmatic EIS (PEIS) for Solar Energy Development in Six Southwestern States* (DOE/EIS-0403) for public review in December 2010. A 90-day public comment period on the Draft PEIS will conclude March 17, 2011. DOE and BLM are in the process of hosting 14 public meetings (in Washington, DC, and the six southwestern states) to receive comments on the Draft PEIS.

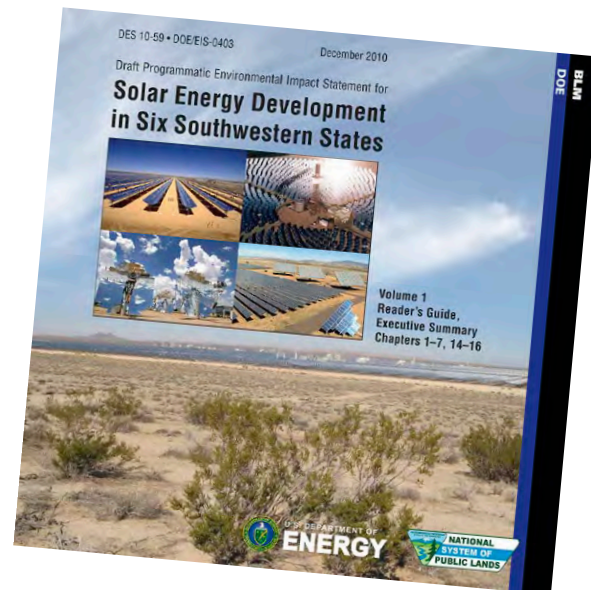
The joint DOE/BLM Solar Energy PEIS evaluates the impacts of potential utility-scale<sup>1</sup> solar energy development in Arizona, California, Colorado, Nevada, New Mexico, and Utah. The PEIS assesses the impacts of technologies considered to be viable for deployment over the next 20 years – concentrating solar technologies (parabolic trough, power tower, and dish engine) and photovoltaic solar technologies. Through the PEIS, DOE is evaluating whether to develop new guidance relevant to DOE-supported solar projects on Federal, state, tribal, or private lands; BLM is evaluating a new solar energy program that would prioritize solar energy development on specific BLM-administered lands in the six states.

## DOE and BLM Alternatives Differ

The PEIS includes separate alternatives for DOE and BLM. DOE would develop programmatic guidance with explicit environmental practices and mitigation recommendations to further integrate environmental considerations into the analysis and selection of solar projects that it may support. The PEIS states that such programmatic guidance would:

- give DOE the tools with which to make more informed, environmentally sound decisions
- help streamline future environmental analysis and documentation for DOE-supported solar projects
- support DOE's efforts to comprehensively determine where to make technology and resource investments to minimize the environmental impacts of solar technologies, and establish environmental mitigation recommendations for financial assistance recipients to consider in project plans when applying for DOE funding.

<sup>1</sup> Utility-scale projects are those that generate electricity for delivery into the electricity transmission grid. They generally have capacities greater than 20 megawatts.



BLM analyzed two action alternatives in the Draft PEIS. Both alternatives would establish a new solar energy program involving exclusion areas (categories of BLM-administered land excluded from solar energy development) and required design features (mitigation measures). BLM analyzed a Solar Energy Development Program Alternative (identified as preferred in the Draft PEIS) that would open 22 million acres of BLM-administered land in the six states to right-of-way application for solar energy development, but would prioritize development in a subset of these lands – referred to as Solar Energy Zones (SEZs). BLM proposed a total of 24 SEZs of varying sizes in the six states. BLM also analyzed an action alternative referred to as the Solar Energy Zone Program Alternative that would open BLM-administered lands only within the proposed SEZs for solar energy development (approximately 677,000 acres).

## Reasonably Foreseeable Development Scenario Defined for Analysis

To help define the potential magnitude of solar energy development that could occur within the six-state study area over the next 20 years and analyze the potential impacts of that development, DOE and BLM established a reasonably foreseeable development scenario. The agencies examined two methodologies for calculating the scenario's megawatt and acreage estimates.

*(continued on next page)*

## Solar PEIS Grew in Size and Scope

In March 2009, the Secretary of the Interior announced a policy goal of identifying and prioritizing *specific* locations best suited for large-scale production of solar energy. In June 2009, BLM announced that the Solar PEIS would include in-depth environmental analyses for 24 proposed solar energy study areas (74 FR 31308; June 30, 2009). Inclusion of these study areas drastically expanded BLM's scope and the broad, programmatic nature of the joint DOE/BLM Solar PEIS, adding a second layer of analyses.

With this expanded scope, the Draft PEIS grew to about 11,000 pages: 16 chapters and 14 appendices. To aid the public's review of the document, DOE and BLM included a Reader's Guide, which explains how information in the Draft PEIS is organized.

Due to the size of the document, DOE and BLM minimized distribution costs by limiting the number of printed copies. The agencies negotiated with EPA (in advance) to submit only two complete hard copies for filing of the Draft PEIS (more recently, EPA revised its EIS filing guidance (see related article, page 3)). In addition, with the exception of affected Federal, state, and local government agencies and applicable tribal governments that specifically requested a full or partial hard copy, the rest of the distribution list received the PEIS Summary and Reader's Guide with a DVD (or CD) that included the entire Draft PEIS. Subscribers to the PEIS [website](#) received notification of the Draft PEIS's availability on the project website and the opportunity to request the PEIS Summary and Reader's Guide with DVD or CD.




DOE and BLM carried forth the methodology that provided the maximum estimated development in the Draft PEIS, which was based on requirements for electricity generation from renewable energy resources established in Renewable Portfolio Standards in each of the six states.

DOE and BLM used the amount of power projected to be generated in the reasonably foreseeable development scenario to analyze the potential environmental impacts of solar energy development on both BLM-administered and non-BLM-administrated lands within the study area. The reasonably foreseeable development scenario projected 32,000 megawatts on 285,000 acres for *all* land in the six-state study area, including BLM-administered lands.

## Next Steps

DOE and BLM will consider the comments received on the Draft PEIS in preparing the Final PEIS, which is expected to be issued later this year.

For information on the Solar PEIS, contact Jane Summerson, NEPA Document Manager, Office of Energy Efficiency and Renewable Energy, at [jane.summerson@ee.doe.gov](mailto:jane.summerson@ee.doe.gov). Additional information is also available on the Solar PEIS website at <http://solareis.anl.gov>. (See also *LLQR*, September 2008, page 18.) For further information on DOE's Solar Energy Technology Program, contact Frank "Tex" Wilkins, Office of Solar Energy Technology, at [frank.wilkins@ee.doe.gov](mailto:frank.wilkins@ee.doe.gov). 



# 2011 NEPA Planning Summaries Forecast Continuing High DOE NEPA Activity

NEPA Annual Planning Summaries recently issued by DOE Program and Field Offices indicate that DOE foresees a large NEPA workload for 2011, but not the exceptional levels of 2010. Annual Planning Summaries, prepared each January, identify the ongoing and new EISs projected to be prepared during the next 24 months, and the EAs to be prepared during the next 12 months.

## Environmental Impact Statements


The January 2010 Planning Summaries projected 95 EISs to be in preparation or initiated in the 24-month planning window, a one-third increase over the previous projection, mostly because of anticipated increases in NEPA reviews for Recovery Act activities by the Golden Field Office and the National Energy Technology Laboratory. In this year's Planning Summaries, DOE organizations anticipate slightly fewer, 87 EISs, of which 24 are new and 8 (including both ongoing and new) are related to Recovery Act projects. The Western Area Power Administration and Loan Programs Office anticipate the largest EIS workloads, with 27 and 14 EISs, respectively. Both organizations report that for some EISs, DOE will serve as a cooperating agency and adopt EISs prepared by other Federal agencies.

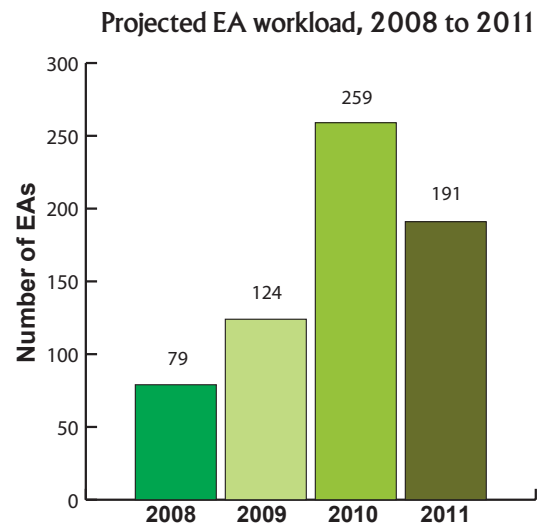
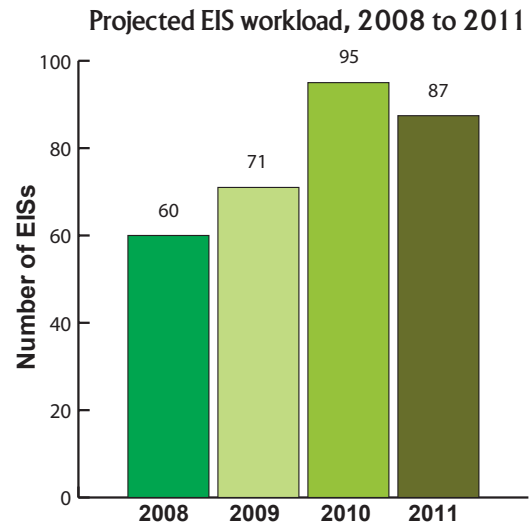
## Environmental Assessments

One year ago, DOE Offices projected 259 EAs to be prepared in 2010, more than twice the number of EAs projected for the previous year, largely to meet NEPA obligations arising from DOE funding of Recovery Act projects. In 2010, DOE actually completed 77 EAs, more than twice DOE's prior baseline completion rate of about 35 EAs per year, but much less than the number of EAs projected to be in preparation. Factors accounting for the difference may include: (1) categorical exclusion determinations ultimately were made for some actions for which an EA originally was projected based on incomplete information, and (2) a number of EAs either started late in 2010 and are ongoing in 2011, were not started until 2011, or were not started at all.

In the most recent January 2011 Planning Summaries, DOE Offices identified 191 EAs to be prepared during 2011, including 110 ongoing documents and up to 81 new EAs. The 2011 Planning Summaries identify 35 ongoing EAs and 12 new ones that are related to Recovery Act projects. The Golden Field Office and National Energy Technology Laboratory continue to be the offices projecting the heaviest EA workloads, as in 2010, but both anticipate a decline from last year's peak levels.

"DOE made tremendous progress completing NEPA reviews for Recovery Act projects in 2010, and completion of the remaining EAs and EISs continues to be one of DOE's highest priorities with regard to NEPA compliance in 2011," observed Scott Blake Harris, DOE General Counsel, in a December 8, 2010, letter to Secretarial Officers and Heads of Field Organizations. The Office of NEPA Policy and Compliance will continue to work with the Program and Field Office NEPA Compliance Officers to manage this workload as efficiently as possible.

DOE NEPA Annual Planning Summaries, guidance, and templates are posted on the DOE NEPA website, [nepa.energy.gov](http://nepa.energy.gov), under Planning Summaries. Recent trends in NEPA workload are discussed in [LLQR, March 2010, page 15](#), and [December 2010, page 9](#). 



# DOE and Hawaii To Prepare Programmatic EIS for Interisland Wind Energy Development

DOE and Hawaii's Department of Business, Economic Development and Tourism (DBEDT) hosted four public scoping meetings for the Hawaii Interisland Renewable Energy Program: Wind Programmatic EIS (HIREP Wind EIS; DOE/EIS-0459), from February 1–5, 2011. These meetings were held on the islands of Oahu, Molokai, Lanai, and Maui – the four islands that could be affected by the development of a proposed interisland transmission cable system, wind generation facilities, and the necessary improvements to the electrical grid. DOE and Hawaii issued a Notice of Intent for the project on December 14, 2010 (75 FR 77859), and a Notice of Public Scoping Meetings for the HIREP Wind EIS on January 12, 2011 (76 FR 2095).



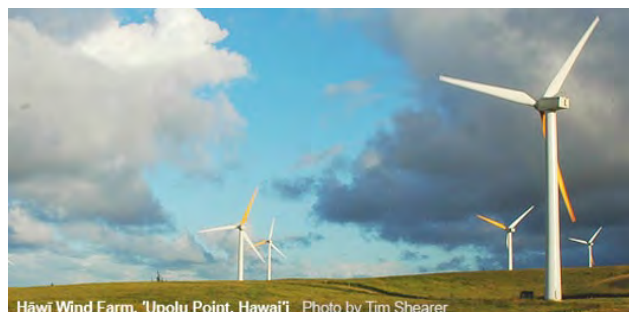
## EIS Facts

- The HIREP Wind EIS is funded by the Recovery Act through a DOE State Energy Program grant.
- This programmatic EIS may lead to one or more subsequent, project-specific Federal actions and related NEPA reviews, such as development of wind generation facilities or an undersea interisland cable.
- The Hawaii Department of Business, Economic Development and Tourism is a co-lead agency in the preparation of the EIS.

## Hawaii's Renewable Energy Standard

Because Hawaii derives nearly 90 percent of its primary energy resources from oil, the state is vulnerable to supply disruptions and high energy prices – electricity prices are more than twice the U.S. average. To address this issue, the Hawaii legislature recently mandated that 70 percent of Hawaii's energy needs be met with clean energy by 2030, including 40 percent from renewable energy and 30 percent from energy efficiency. The Hawaii statute establishes a timetable with interim goals, and requires full achievement of the "40/30 standard" by 2030 (Hawaii Revised Statutes, Chapters 269-91 through 269-95).

DOE and the State of Hawaii signed a Memorandum of Understanding in early 2008 forming a partnership to help achieve the 40/30 standard and reduce the state's high energy prices. DOE entered into this partnership, in part, because Section 355 of the Energy Policy Act of 2005 (EPA 2005) required the Secretary of Energy to assess the economic implications of the dependence of Hawaii on oil, including the technical and economic feasibility of increasing the contribution of renewable energy resources for the generation of electricity on an island by island basis. DOE has conducted or funded a number of studies and workshops, prior to and since passage of the EPA 2005, to help Hawaii achieve its goal of lower energy prices through improved efficiency and increased use of renewables.



Hāwī Wind Farm, Upolu Point, Hawai'i Photo by Tim Shearer

## A Brighter Energy Future

The proposed action in the HIREP Wind EIS envisions a program that would develop up to 400 megawatts of wind energy on the islands of Maui, Lanai, and Molokai, transmission of that energy to Oahu, via undersea power cables, and transmission system upgrades on Oahu. The island of Oahu, with 80 percent of the state's population, is the island with the greatest energy demand; however, Oahu does not have adequate identified potential renewable energy sites of its own to be self-sufficient. Maui, Lanai, and Molokai have the most abundant and viable wind resources of those islands closest to Oahu.

The scoping meetings were well attended, with representatives from native Hawaiian groups, environmental groups, the general public, and local, state, and Federal governments. Each meeting included a "workshop" session where attendees could inspect poster boards, collect handouts, and talk with DOE and DBEDT representatives. The workshops were approximately one hour long, followed by formal sessions during which comments were transcribed. Stakeholders raised a broad range of issues during the scoping meetings, such as the potential effects on:

- cultural and religious sites and practices
- sensitive fish and wildlife species and their habitats
- the visual character of Molokai and Lanai
- necessary infrastructure upgrades on Molokai and Lanai
- access to subsistence hunting and fishing areas on Molokai and Lanai
- availability of water resources on Molokai and Lanai for concrete to produce wind turbine foundations.

Stakeholders also asked whether other renewable resources could be addressed in the alternatives analysis, and about post-operational restoration planning.

DOE and DBEDT will consider scoping comments in preparing the draft EIS, which is expected to be issued for public review later this year.

# Transitions

## One of NEPA's Finest – Carolyn Osborne – Retires

After more than 30 years of service with the Federal government, Carolyn Osborne, Unit Leader, Office of NEPA Policy and Compliance, retired at the end of 2010. An ecologist by training, she served in DOE's NEPA Office for the past 24 years. Ms. Osborne primarily assisted the Offices of Electricity Delivery and Energy Reliability, Environmental Management, Fossil Energy, and Loan Programs, and the Power Marketing Administrations. Before joining DOE, she spent 6 years at the Food and Drug Administration working on NEPA compliance.

Along with her knowledge of NEPA, Ms. Osborne was noted for her expertise on floodplains and wetlands, environmental justice, DOE-wide NEPA contracting, and NEPA/CERCLA/RCRA. Most recently, she was part of the team that prepared DOE's Notice of Proposed Rulemaking for updating the Department's categorical exclusion provisions.

Before her retirement on December 30, 2010, NEPA Office staff interviewed Ms. Osborne for lessons learned, recommendations, and stories from her long NEPA career.

### Remember Past Lessons

It is important to remember and learn from DOE's past experiences, said Ms. Osborne. She expressed concern that the lessons from DOE's past are not known by today's NEPA community, and encouraged NEPA Office staff to use *LLQR* to fix this – suggesting that NEPA staff put together a compilation of case studies from past issues of *LLQR*, highlighting NEPA “nuggets” and themes, identifying those experiences relevant to today's issues. Ms. Osborne recalled, for example, the quality assurance pyramid, which encourages “building analyses from the data up” (*LLQR*, June 2006, page 4). “Such a compilation would be especially useful for people starting out in DOE's NEPA Program – they could look to things we've done previously, rather than starting from scratch,” Ms. Osborne noted.

---

***Striking the right balance between efficient project implementation and sufficient environmental review time to ensure adequate mitigation of environmental impacts is one of the Department's primary challenges.***

***– Carolyn Osborne, Ph.D.***

---

### Do It Right the First Time

Quoting the theme of a past DOE-wide NEPA contracting workshop, Ms. Osborne recommended that NEPA practitioners, “do it right the first time” and advised NEPA practitioners to “begin with the end in mind.” “We need to get into the habit of trying to think of everything early so we aren't scrambling at the last minute,” she said.



*Carolyn received a t-shirt from Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, that reads, “NEPA is a four letter word . . . like LOVE.”*

### Use DOE's NEPA Tools to Your Benefit

In her time at DOE, Ms. Osborne was instrumental in the development of a number of key DOE NEPA guidance documents, including (but not limited to) the “brief guide” to DOE-wide NEPA contracts (1997), guidance on categorical exclusion determinations (1998), guidance on Clean Air Act Conformity and NEPA (2000), guidance on application of NEPA to CERCLA and RCRA cleanup actions (2002), EIS comment-response process guidance (2004), EIS distribution guidance (2006), and *LLQR*. In fact, Carolyn was here when *LLQR* was born! She supported development of *LLQR*'s first 65 issues from 1994–2010. “I've seen *LLQR* grow, become more user friendly and comprehensive,” she remarked.

Ms. Osborne recalled some challenges in developing NEPA guidance documents. In particular, she acknowledged tradeoffs between offering a standard template for folks to follow and developing and incorporating multiple strategies to handle different situations. “It is important to develop options for different

*(continued on next page)*

# NEPA's Carolyn Osborne Retires *(continued from previous page)*



DOE NEPA "old timers" came from far and wide to celebrate Carolyn and her retirement. Left to right, Carol Borgstrom, Bob Strickler (former Director of the Project Activities Division in the DOE NEPA Office), Carolyn Osborne, Jim Daniel, and Bill Dennison (former Assistant General Counsel for Environment).

circumstances," said Ms. Osborne. When queried about future DOE NEPA guidance needs, she suggested that the NEPA Office develop guidance on preparing notices of intent and records of decision and consider developing "Qs and As" for floodplain issues. "Read all the guidance," Ms. Osborne recommended. She also praised *The Environmental Style: Writing Environmental Assessments and Impact Statements* (2005) and suggested that NEPA practitioners take it to heart.



## Bring DOE's NEPA Community Together

Recalling that the last NCO meeting was in the spring of 2009 and the last NEPA Community meeting was in the fall of 2008, Ms. Osborne urged the NEPA Office to bring DOE's NEPA Community together soon. "Bringing the NEPA Community together more frequently would be a


good thing," she said. When asked whether she would attend future NEPA meetings, Ms. Osborne smiled and said, "I will come to the happy hour, and you may add me to the distribution for future issues of *LLQR*."

Concluding the interview, NEPA Office staff asked Ms. Osborne to recall her fondest NEPA memory. Laughing in response to this question, she answered "getting out of the office." "Some of my fondest memories were attending the public meetings, outside of the Office and the four walls of DOE," she said. "I enjoyed going to the scoping meetings and hearings, interacting with people – also seeing the potentially affected environment. . . . Going to public meetings makes things real," she explained.

## Farewell, Carolyn!

Despite the snow that fell on the Washington, DC, area the night before, more than 40 associates, colleagues, and friends of Carolyn Osborne gathered on January 27, 2011, in the Forrestal Building, to celebrate her career. Scott Blake Harris, DOE General Counsel, presented Carolyn with a Distinguished Career Service Award (text box). Carolyn also received several tributes, both prose and poetry.

Ms. Osborne will continue to live in the Washington, DC, area. She plans to continue volunteering at the Washington National Zoo's Invertebrate Exhibit, relearn French, and is looking forward to traveling to Paris and Sweden. Friends may contact her at [carosborne@msn.com](mailto:carosborne@msn.com).

*On behalf of DOE's NEPA Community, the Office of NEPA Policy and Compliance thanks Carolyn for her significant contributions to DOE's NEPA Program and wishes her a long and fulfilling retirement. Bon voyage and best wishes!* 



## DISTINGUISHED CAREER SERVICE AWARD

Carolyn M. Osborne is hereby awarded the Distinguished Career Service Award in recognition of her extraordinary contributions to the Department of Energy during a Federal career spanning more than three decades. As a Unit Leader, Office of NEPA Policy and Compliance, in the Office of General Counsel and the former Office of Environment, Safety and Health, she excelled in all of her duties, earning the respect and admiration of her colleagues. She reviewed key environmental impact statements for the Offices of Environmental Management and Fossil Energy, and drafted guidance documents to promote effective and efficient NEPA compliance. Among her many accomplishments, she led the development of the

1992 DOE NEPA regulations and coordinated the team supporting establishment of DOE-wide NEPA contracts. She contributed many articles for *Lessons Learned Quarterly Reports* and exercised a high level of quality control. Through her work on these and many other NEPA-related matters, she leaves a legacy of singular professional excellence. Finally, as both a NEPA specialist and a manager, she earned the genuine affection of her associates. Because of her pragmatic, analytically-sound advice, her intelligence, her strength of character, her no-nonsense approach, and her dedication to the public interest, Carolyn M. Osborne embodies the highest traditions and ideals of public service. — **Scott Blake Harris, General Counsel – January 2011**

# Carolyn's Retirement ROD

By: Andy Lawrence

Goodbye to the maze of EISs  
To the "significant" or not debate  
Farewell to the reading of dreary tomes  
Hello to sleeping late

For Carolyn has certainly earned  
The right to sit back and relax  
To leave the piñata of NEPA behind  
And let others take their whacks

And to NEPA's elaborate lingo  
Which cryptographers can't decode  
Carolyn says "no more" to that  
Lest her head explode

From FONSI's to ARRA to GHGs  
From SEISs to CXs  
NEPA's vernacular can hit you hard  
Right in your solar plexus

For the *things* that pass for "final drafts"  
Can leave you gasping hard for breath  
And then there're preferred alternatives  
That scare you half to death

And for obtuse text and far-fetched facts  
On which if forced to make a decision  
You would recommend the issuance of  
A Record of Derision

So Carolyn is finally embracing  
The top NEPA lesson to be learned  
Leave while you're still lucid  
And enjoy the rest you've earned

But she'll need to work at R&R  
As she suddenly detects  
That decades' worth of NEPA work  
Have cumulative effects

Like the inability to enjoy a book  
And give the author credit  
For giving her pages full of prose  
That she doesn't need to edit

But through her diligence and her care  
She has shown one can  
Create a bit of harmony  
Between the environment and man

And that has sustained her all these years  
And earned her veneration  
For her key role as trustee for  
The succeeding generation

So we wish her well in all her pursuits  
And hope she takes the time to tell us  
About travels near and travels far  
That will make us all quite jealous



So three cheers and all the best  
To you from one and all  
And remember you will always have  
Friends here in Forrestal

*Andy Lawrence, a long-time colleague and currently Director, Office of Nuclear Safety, Quality Assurance and Environment, Office of Health, Safety and Security, read this poem at Carolyn's retirement celebration.*


## Office of the General Counsel

A number of key personnel changes within the Office of the General Counsel and the National Nuclear Security Administration (NNSA) have recently been made or will take place soon. As announced by the Secretary of Energy on February 22, 2011, **Scott Blake Harris**, DOE General Counsel, will be leaving the Department in early March, and **Sean Lev**, currently the Deputy General Counsel for Environment and Nuclear Programs, will become the Acting General Counsel. **Bruce Diamond**, formerly Assistant General Counsel for Environment, is now the NNSA General Counsel responsible for overall legal matters within NNSA, including NEPA compliance activities. Mr. Diamond replaced **Dave Jonas**, who now serves as Director of Legal Strategy and Analysis, DOE Office of General Counsel. **Richard Ahern** is currently the Acting Assistant General Counsel for Environment and responsible for DOE NEPA compliance activities. LL

# Litigation Updates



## DOE NEPA Litigation in Brief

 *Save Strawberry Canyon v. DOE* (N.D. Calif.): In this case, a local citizens' group challenged the EA for the Berkeley Lab Laser Accelerator Laser Acquisition, Installation, and Use for Research and Development at the Lawrence Berkeley National Laboratory ([DOE/EA-1655](#), September 2009) and associated finding of no significant impact. The plaintiff has appealed a ruling by the U.S. District Court for the Northern District of California granting the Government's motion for summary judgment. A briefing schedule has not yet been set. (Case No.: [10-0797](#))

## Other Agency NEPA Litigation in Brief

*Two recent legal decisions involving NEPA issues are summarized below, listed by lead plaintiff.<sup>1</sup> In these brief reports, LLQR summarizes outcomes using the court's language, as appropriate; the computer icons link to the full opinion. We encourage readers to examine the entire opinion for cases of interest.*

- *In Forest Service Employees, the district court found that the EA and finding of no significant impact (FONSI) revealed significant impacts to endangered and threatened species and therefore an EIS must be prepared.*
- *In Skull Valley, the district court found that an agency could not disapprove a lease agreement or right-of-way application based on the inadequacy of its own EIS.*

## Forest Service Employees for Environmental Ethics v. U.S. Forest Service

- **Agency Action:** Under a court order requiring NEPA review for the use of chemical fire retardants to fight wildfires on Forest Service lands, the U.S. Forest Service (USFS) prepared an EA and issued a FONSI that accepted alternatives contained in the Biological Opinions of the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries).
- **NEPA Issue:** First, the court rejected the plaintiff's argument that USFS should have analyzed all types of fire suppression activities as connected actions. Rather, it explained that, although fire suppression activities are related, the choice of one activity is not dependent on the choice of another, and thus such activities are not connected actions. Next, the court rejected the plaintiff's argument that the analyses contained in the EA were inadequate, finding instead that the analyses were brief but sufficient. Last, the court agreed with the plaintiff that USFS's use of chemical fire retardant would have significant impacts to listed species because the mitigation measures suggested by USFWS and NOAA Fisheries were non-binding and thus potential impacts remained significant.

USFS based its FONSI in part on USFWS's and NOAA Fisheries' biological opinions, which indicated that fire retardant use could impose significant impacts upon flora and fauna on the endangered species list and contained mitigation measures in the form of reasonable and prudent alternatives to avoid jeopardy and negative impacts. The court found that these mitigation measures "fail[ed] to impose any binding restrictions on the use of fire retardant" and therefore "failed to alleviate the risk of jeopardy to listed species," leaving a "likely" chance of significant impacts to listed species. The court granted summary judgment in favor of the plaintiff, concluding that **"the Forest Service's failure to prepare [an EIS] under these circumstances is a violation of NEPA."**

- **Other Issues:** The plaintiff argued that NOAA Fisheries and USFWS violated the Endangered Species Act in a series of claims challenging the agencies' biological opinions. The district court granted summary judgment for all but one of the plaintiff's claims and remanded the biological opinions, mandating as well "the preparation of an incidental take statement as required by statute."

-  U.S. District Court for the District of Montana. Case No.: 08-00043; July 27, 2010.

<sup>1</sup> Many cases have multiple plaintiffs and defendants, which may change during litigation. In LLQR, cases are referred to by the lead plaintiff and first defendant agency as identified in the opinion. For example, the defendant in cases involving the USDA Forest Service may be identified as USDA or USDA Forest Service in LLQR; in the broader literature, these cases may be known by the name of the Secretary of Agriculture or the Chief of the Forest Service at the time the legal document was issued.



## Skull Valley Band of Goshute Indians v. Department of the Interior

- **Agency Action:** The Department of the Interior (DOI), speaking for both the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA), issued two records of decision (RODs) (1) denying the Private Fuel Storage, LLC (PFS) right-of-way application to build and operate a transfer facility for spent nuclear fuel (SNF) on Federal land, and (2) disapproving the Skull Valley Band of Goshute Indians' (Skull Valley Band) lease agreement with PFS to build an SNF storage facility on tribal land. PFS is a consortium of utility companies formed in order to seek temporary storage options for SNF until the Federal government begins accepting SNF for "permanent storage."
- **NEPA Issue:** DOI based both decisions on a final EIS (FEIS) prepared by the Nuclear Regulatory Commission (NRC), for which BIA and BLM served as cooperating agencies. In the first ROD (71 FR 57005; September 28, 2006), DOI decided against issuing the right-of-way to PFS, concluding that the FEIS did not sufficiently analyze impacts relating to the removal of SNF from the facility as well as the risks from terrorism. DOI also raised concerns about the adequacy of existing roads and potential impacts to the Cedar Mountain Wilderness Area (designated after issuance of the FEIS).

In the second ROD (71 FR 58629; October 4, 2006), DOI disapproved Skull Valley Band's proposed lease of tribal trust lands to PFS, relying on many of the same reasons given for rejecting PFS's application for a right-of-way and also concluding there was too much risk that the SNF could remain at the site indefinitely. The Skull Valley Band and PFS filed a Federal lawsuit to overturn these decisions.

The court determined that DOI's decision to deny PFS the right-of-way "because its own FEIS was not adequate. . . . was arbitrary and capricious." The court concluded that DOI did not use "readily available mechanisms," such as a supplemental EIS, "which it could have invoked to obtain the information it found lacking in the FEIS."


Regarding DOI's ROD disapproving the lease agreement, the court stated that, as in its decision in the right-of-way ROD, DOI disapproved the lease in part after concluding that "its own FEIS inadequately addressed a possible terrorist attack and failed to consider fully the process by which the SNF would be removed from the Skull Valley facility after the NRC license expires and the lease ends." The court determined that it was "arbitrary and capricious, and an abuse of discretion" for the ROD to justify disapproving the lease because the record before the agency was deficient. The court thus vacated both RODs and remanded both applications for further agency consideration.

- **Other Issues:** Regarding the lease disapproval, the court stated that "DOI did not comply" with BIA regulations, which provide that the agency "defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible."

Following completion of the EIS, the lead agency, NRC, issued a decision to grant PFS a license to operate the storage facility; that decision is being challenged in litigation in the U.S. Court of Appeals for the District of Columbia Circuit (*Ohngo Gaudadeh Devia v. NRC*).



- U.S. District Court for the District of Utah. Case No.: 07-0526; July 26, 2010.

*DOE LLQR readers may be interested to note that the origin of the Skull Valley Project was the response of the Skull Valley Band of Goshute Indians to DOE's invitation to communities, in the early 1990s, to consider hosting a monitored retrievable storage facility for the interim storage of SNF. More than a dozen tribes applied.* 

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- US Institute for Environmental Conflict Resolution  
520-901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)
  - **Advanced Multi-Party Negotiation of Environmental Disputes\***  
Washington, DC: March 22-24  
\$750
  - **Collaboration Skills for Environmental Professionals**  
Sausalito, CA: April 19-21  
\$928
  - **Negotiating Environmental Solutions**  
Denver, CO: April 19-20  
\$500
  - **Laying the Groundwork for Effective Government to Government Consultation\***  
Washington, DC: May 3-5  
\$750
- EOS Alliance  
425-270-3274  
[pt@nwetc.org](mailto:pt@nwetc.org)  
[www.eosalliance.org/schedule/calendar/courses-eos](http://www.eosalliance.org/schedule/calendar/courses-eos)
  - **NEPA: Writing the Perfect EA/FONSI or EIS**  
Kansas City, MO: March 29-30  
Sacramento, CA: April 5-6  
Baton Rouge, LA: May 11-12  
\$545 (GSA contract: \$445)
- ICF International  
949-333-6625  
[cbeckstrom@icfi.com](mailto:cbeckstrom@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
  - **NEPA: A Step-by-Step Approach**  
Riverside, CA: April 21-22  
\$335
- International Association for Public Participation  
800-644-4273  
[training@iap2.org](mailto:training@iap2.org)  
[www.iap2.org](http://www.iap2.org)
  - **Planning for Effective Public Participation**  
San Antonio, TX: April 4-5  
Arlington, VA: May 2-3  
Denver, CO: May 10-11  
\$700
  - **Communications for Effective Public Participation**  
San Antonio, TX: April 6  
Arlington, VA: May 4  
Denver, CO: May 16  
\$350
  - **Techniques for Effective Public Participation**  
San Antonio, TX: April 7-8  
Arlington, VA: May 5-6  
Denver, CO: May 19-20  
\$700
- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del/executiveeed/courses](http://www.nicholas.duke.edu/del/executiveeed/courses)
  - **Implementation of NEPA**  
Durham, NC: March 21-25  
\$1,375
  - **Current and Emerging Issues in NEPA and Preparing and Documenting Environmental Impact Analyses (with writing workshop)**  
Durham, NC: May 16-20  
\$2,272 until 4/18/11
  - **Certificate in the National Environmental Policy Act**  
Requires successful completion of one core and three elective NEPA short courses. Co-sponsored by the Council on Environmental Quality.  
Fee: Included in course registration.

(continued on next page)

\* Hosted by the DOE Office of Conflict Prevention and Resolution.



# Training Opportunities

(continued from previous page)

- International Institute for Indigenous Resource Management  
303-744-9686  
[jeannerubin@iirm.org](mailto:jeannerubin@iirm.org)  
[www.iirm.org](http://www.iirm.org)

**Workshop on the Strategic Application of NEPA in Indian Country**  
Denver, CO: March 15-16  
\$450

- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)

**Applying the NEPA Process: Emphasis on Native American Issues**  
Albuquerque, NM: March 8-10  
\$985 (GSA contract: \$895)

**Applying the NEPA Process and Reviewing NEPA Documents**  
Denver, CO: March 14-18  
\$1,385 (GSA contract: \$1,295)

**Core Principles: Telling the NEPA Story, Keeping Documents Brief, and Meeting Legal Requirements**  
Nashville, TN: March 22-24  
\$985 (GSA contract: \$895)

**Overview of the NEPA Process**  
San Diego, CA: April 5  
\$395 (GSA contract: \$305)  
Orlando, FL: April 26  
\$345 (GSA contract: \$255) until 3/15/11

**Applying the NEPA Process and Writing Effective NEPA Documents**  
Dallas/Fort Worth, TX: April 19-22  
\$1,145 (GSA contract: \$1,055) until 3/8/11

**Collaboration in the NEPA Process**  
Phoenix, AZ: May 5-6  
\$745 (GSA contract: \$655) until 4/1/11

**Overview of the NEPA Process and Managing NEPA Projects and Teams**  
Salt Lake City, UT: May 10-13  
\$1,145 (GSA contract: \$1,055) until 3/29/11

**NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**  
San Francisco, CA: May 24-27  
\$1,145 (GSA contract: \$1,055) until 4/29/11

**NEPA Certificate Program**  
Requires successful completion of eight courses offered by The Shipley Group.  
\$5,450  
Contact: NEPA Certificate Program,  
Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/html/students/grad-degrees/nepa](http://www.cnr.usu.edu/html/students/grad-degrees/nepa)

- USDA Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[www.graduateschool.edu/course\\_details.php?cid=ENVS4435E](http://www.graduateschool.edu/course_details.php?cid=ENVS4435E)

**NEPA: Policy, Procedure, Science, and Art**  
Washington, DC: Tuesdays, April 12 – June 14  
\$375

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeps@mchsi.com](mailto:jleeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
916-737-3000  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iirm@iirm.org](mailto:iirm@iirm.org)  
[www.iirm.org](http://www.iirm.org)

# EAs and EISs Completed October 1 to December 31, 2010

## EAs<sup>1</sup>

### Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1656](#) (10/7/10)  
*MARET Center at Crowder College,*  
Neosho, Missouri  
Cost: \$56,000  
Time: 19 months

[DOE/EA-1763\\*](#) (12/23/10)  
*Geothermal Expansion to Boise State University,*  
Boise, Idaho  
Cost: \$50,000  
Time: 10 months

[DOE/EA-1782](#) (12/2/10)  
*The University of Delaware Lewes Campus Onsite Wind Energy Project,* Lewes, Delaware  
Cost: \$85,000  
Time: 8 months

[DOE/EA-1786\\*](#) (12/28/10)  
*Algenol Integrated Biorefinery for Producing Ethanol from Hybrid Algae,* Freeport, Texas and Fort Myers, Florida  
Cost: \$175,000  
Time: 7 months

[DOE/EA-1787\\*](#) (12/3/10)  
*Myriant Succinic Acid Biorefinery (MYSAB),* Lake Providence, Louisiana  
Cost: \$69,000  
Time: 7 months

[DOE/EA-1789\\*](#) (10/7/10)  
*Construction and Operation of a Proposed Cellulosic Biorefinery, Alpena Prototype Biorefinery,* Alpena, Michigan  
Cost: \$53,000  
Time: 5 months

[DOE/EA-1810](#) (12/17/10)  
*San Emidio Geothermal Exploration Project,* Washoe County, Nevada  
[DOE adopted this EA](#) on 12/17/10; therefore, cost and time data are not applicable. [Department of the Interior's Bureau of Land Management, the lead agency, issued a [finding of no significant impact](#) on 10/29/10.]

### Idaho Operations Office/ Office of Nuclear Energy

[DOE/EA-1776](#) (10/13/10)  
*Idaho National Laboratory Radiological Response Training Range,* Idaho Falls, Idaho  
Cost: \$243,000  
Time: 6 months

### Office of Loan Programs

[DOE/EA-1727\\*](#) (11/19/10)  
*Loan Guarantee to AE Polysilicon Corporation for Construction, Startup of their Phase 2 Polysilicon Production Facility,* Fairless Hills, Pennsylvania  
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 12 months

[DOE/EA-1784\\*](#) (10/1/10)  
*Loan Guarantee for Fotowatio Nevada Solar, LLC's APEX Solar Power Project,* Clark County, Nevada  
[DOE adopted this EA](#) on 10/1/10; therefore, cost and time data are not applicable. [Department of the Interior's Bureau of Land Management, the lead agency, issued a [finding of no significant impact](#) on 8/25/10.]

[DOE/EA-1797\\*](#) (11/24/10)  
*Loan Guarantee for the Agua Caliente Solar Project,* Yuma County, Arizona  
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 5 months

[DOE/EA-1827\\*](#) (10/5/10)  
*Suniva Solar Project Site Community Development Block Grant,* Thomas Township, Saginaw County, Michigan  
[DOE adopted this EA](#) on 10/5/10; therefore, cost and time data are not applicable. [Department of Housing and Urban Development, the lead agency, issued a [finding of no significant impact](#) on 1/31/10.]

*(continued on next page)*

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

\* Recovery Act project

# EAs and EISs Completed October 1 to December 31, 2010 (continued from previous page)

**National Energy Technology Laboratory/  
Office of Energy Efficiency and  
Renewable Energy**

**DOE/EA-1719\*** (11/29/10)  
*Novolyte Technologies, Inc. Electric Drive Vehicle  
Battery and Component Manufacturing Initiative  
Project*, Zachary, Louisiana  
Cost: \$44,000  
Time: 12 months

**DOE/EA-1744\*** (10/22/10)  
*Brea Power II, LLC's Olinda Combined Cycle  
Electric Generating Plant Fueled by Waste  
Landfill Gas*, Brea, California  
Cost: \$31,000  
Time: 9 months

## EISs

**Office of Energy Efficiency  
and Renewable Energy/  
Golden Field Office**

**DOE/EIS-0456** (75 FR 62386, 10/8/10)  
(EPA Rating: EU-3, 3/29/96)  
*Cushman Hydroelectric Project*, Mason County,  
Washington  
EIS was adopted; therefore cost and time data are  
not applicable. [DOE adopted the Federal Energy  
Regulatory Commission (FERC) 1996 Final  
EIS and 2010 Order as DOE's Final EIS. DOE  
recirculated the documents before filing its Final  
EIS with EPA because DOE was not a cooperating  
agency on the FERC EIS. EPA rated FERC's 1996  
Draft EIS as EU-3, but did not provide a rating for  
DOE's Final EIS.]

**Office of Loan Programs**

**DOE/EIS-0416\*** (75 FR 65320, 10/22/10)  
(EPA Rating: EC-2)  
*California Desert Conservation Area Plan  
Amendment/Final Environmental Impact  
Statement for Ivanpah Solar Electric Generating  
System*, San Bernardino County, California  
EIS was adopted; therefore cost and time data are  
not applicable. [Department of the Interior's Bureau  
of Land Management was the lead agency; DOE was  
a cooperating agency.]

**DOE/EIS-0449\*** (75 FR 76981, 12/10/10)  
(EPA Rating: EC-2)  
*Loan Guarantee for the Blythe Solar Power Project*,  
Palm Springs, California  
EIS was adopted; therefore cost and time data are  
not applicable. [Department of the Interior's Bureau  
of Land Management was the lead agency; DOE was  
a cooperating agency.]

**ENVIRONMENTAL PROTECTION AGENCY (EPA)  
RATING DEFINITIONS**

**Environmental Impact of the Action**

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

**Adequacy of the EIS**

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

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

\* Recovery Act project

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 9 EAs for which cost data were applicable was \$56,000; the average cost was \$90,000.
- Cumulatively, for the 12 months that ended December 31, 2010, the median cost for the preparation of 59 EAs for which cost data were applicable was \$45,000; the average was \$89,000.
- For this quarter, the median completion time of 11 EAs for which time data were applicable was 9 months; the average was 10 months.
- Cumulatively, for the 12 months that ended December 31, 2010, the median completion time for 68 EAs was 6 months; the average was 9 months.

## EIS Cost and Completion Times

- For this quarter there were no EISs completed for which cost and time data were applicable.
- Cumulatively, for the 12 months that ended December 31, 2010, the median and average costs for the preparation of 2 EISs for which cost data were applicable were \$17 million.
- Cumulatively, for the 12 months that ended December 31, 2010, the median completion time for 5 EISs was 20 months; the average was 31 months. (These data do not include adopted EISs, for which time data are not applicable.)

# Recent EIS-Related Milestones December 1, 2010, to February 28, 2011

## Notices of Intent

### Office of Electricity Delivery and Energy Reliability

[DOE/EIS-0459](#)

*Hawaii Interisland Renewable Energy Program:  
Wind Programmatic Environmental Impact  
Statement, Hawaii*

December 2010 ([75 FR 77859](#), 12/14/10;  
[76 FR 2095](#), 1/12/11, Notice of scoping)  
[Co-Lead: State of Hawaii]

DOE/EIS-0463

*Presidential Permit Application for Northern Pass  
Transmission, New Hampshire*  
February 2011 ([76 FR 7828](#), 2/11/11)

### Western Area Power Administration

[DOE/EIS-0450\\*](#)

*TransWest Express 600 kV Direct Current  
Transmission Project, Wyoming, Colorado,  
Utah, and Nevada*

January 2011 ([76 FR 379](#), 1/4/11)

[Co-Lead: Department of the Interior's Bureau  
of Land Management]

## Extensions of Scoping Period

### Western Area Power Administration

[DOE/EIS-0461](#)

*Hyde County Wind Energy Center Project,  
Hyde and Buffalo Counties, South Dakota*  
January 2011 ([76 FR 2903](#), 1/18/11)

[DOE/EIS-0462](#)

*Crowned Ridge Wind Energy Center Project,  
Grant and Codington Counties, South Dakota*  
January 2011 ([76 FR 2903](#), 1/18/11)

## Notice of Cancellation

### Western Area Power Administration

[DOE/EIS-0401](#)

*NextGen Project, Walworth County, South Dakota*  
December 2010 ([75 FR 80488](#), 12/22/10)

*(continued on next page)*

\* Recovery Act project

# Recent EIS-Related Milestones

## December 1, 2010, to February 28, 2011 (continued from previous page)

### Draft EISs

#### **Bonneville Power Administration**

[DOE/EIS-0421\\*](#)

*Big Eddy-Knight Transmission Project,*  
Oregon and Washington  
December 2010 ([75 FR 76981](#), 12/10/10)

#### **Office of Energy Efficiency and Renewable Energy**

[DOE/EIS-0403](#)

*Programmatic Environmental Impact  
Statement for Solar Energy Development  
in Six Southwestern States*  
December 2010 ([75 FR 78992](#), 12/17/10)  
[Co-lead: Department of the Interior's Bureau  
of Land Management]

#### **Office of Environmental Management**

[DOE/EIS-0375](#)

*Disposal of Greater-Than-Class C (GTCC) Low-Level  
Radioactive Waste and GTCC-Like Waste*  
February 2011 ([76 FR 10583](#), 2/25/11)

### Final EISs

#### **Bonneville Power Administration**

[DOE/EIS-0422\\*](#)

*Central Ferry-Lower Monumental 500-kilovolt  
Transmission Line Project,* Garfield, Columbia,  
and Walla Walla Counties, Washington  
February 2011 ([76 FR 9575](#), 2/18/2011)

#### **Office of Environmental Management**

[DOE/EIS-0423](#)

*Long-Term Management and Storage of Elemental  
Mercury,* Colorado, Idaho, Missouri, Nevada, South  
Carolina, Texas, and Washington  
January 2011 ([76 FR 5156](#), 1/28/11)

#### **Office of Loan Programs**

[DOE/EIS-0454\\*](#)

*Loan Guarantee for Tonopah Solar Energy, LLC,  
Crescent Dunes Solar Energy Project,* Tonopah,  
Nevada  
February 2011 ([76 FR 7844](#), 2/11/11)  
[DOE adopted this FEIS from the Department  
of the Interior's Bureau of Land Management.]

### Record of Decision

#### **Office of Energy Efficiency and Renewable Energy**

[DOE/EIS-0407\\*](#)

*Abengoa Biorefinery Project near Hugoton,*  
Stevens County, Kansas  
January 2011 ([76 FR 2096](#), 1/12/11)

### Supplement Analyses

#### **Bonneville Power Administration**

##### **Transmission System Vegetation Management Program**

([DOE/EIS-0285](#))

[DOE/EIS-0285-SA-440](#)

*Vegetation Management along the Covington-Maple  
Valley No. 2, 230-kV Transmission Line Corridor,*  
King County, Washington  
(Decision: No further NEPA review required)  
January 2011

[DOE/EIS-0285-SA-441](#)

*Vegetation Management along the Fairview-Rogue  
No. 1 230-kV, the Bandon-Rogue No. 1 115-kV,  
the Rogue-Gold Beach No. 1 and No. 2 115-kV  
Transmission Line Corridor Rights of Way from  
Bandon Substation to Gold Beach Substation,*  
Coos and Curry Counties, Oregon  
(Decision: No further NEPA review required)  
February 2011

##### **McNary-John Day Transmission Line Project** ([DOE/EIS-0332](#))

[DOE/EIS-0332-SA-03](#)

*McNary-John Day Transmission Line Project –  
Existing Tower Pad Access and Road Expansion  
near McNary Dam,* Umatilla and Sherman Counties,  
Oregon; Benton and Klickitat Counties, Washington  
(Decision: No further NEPA review required)  
January 2011

\* Recovery Act project

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Cooperative scoping.* Since DOE anticipated adopting this EA, DOE worked with the lead agency (as a cooperating agency) to ensure that DOE's proposed action was evaluated as part of the proposed action and reflected in the cumulative impacts section.
- *Early internal scoping.* Holding an early comprehensive internal scoping meeting with an extensive list of participants was helpful.

### What Didn't Work

- *Unclear scope.* Not having a clear understanding of the full scope of the project at the start affected the development of all viable alternatives.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Frequent communication.* Frequent conference calls with the EA contractor and applicant ensured coordination and facilitated timely completion of the document.
- *Agency collaboration and meeting deadlines.* A good alliance between the lead and cooperating agencies, and maintaining review and comment period deadlines, helped ensure timely completion of the document.
- *Early scoping meetings.* Holding early scoping meetings, including defining everyone's role and responsibilities, allowed the EA preparation to remain close to the schedule.
- *Weekly status meetings.* Holding weekly status meetings helped to keep the EA as close to the schedule as possible.

### Factors that Inhibited Timely Completion of Document

- *Acquiring comments.* Difficulty acquiring public comments from the lead agency negatively affected the document schedule.
- *Site selection.* The amount of time it took for the applicant to complete its site selection process negatively affected the document schedule.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *General Counsel consultation.* Teamwork between the DOE NEPA and legal teams assisted with interpretation of cooperating agency status and document adoption requirements.
- *Good communication.* Proactive communication and upfront coordination with respect to internal reviews facilitated effective teamwork.
- *Effective coordination.* Holding internal and public scoping meetings, weekly status meetings, reviewing the schedule weekly, and stating expectations and deliverables at every meeting was very effective.
- *Proactive approach.* Pre-briefing legal counsel on the project and EA approach allowed for effective DOE teamwork. An initial site visit and scheduled conference calls facilitated teamwork between DOE and contractor staff.
- *Direct contractor contact.* The ability to work directly with the contractor, in addition to having access to their expertise, helped reduce the amount of time needed for revisions.

### Factors that Inhibited Effective Teamwork

- *Schedule.* Teamwork was hindered by a tight EA preparation schedule. It was difficult to schedule enough time for adequate written reviews, especially for reviews by personnel who had other responsibilities.

*(continued on next page)*

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

### Process

#### Successful Aspects of the Public Participation Process

- *Public participation guidance.* The lead agency's NEPA public participation process was well defined in their handbook and easy to follow.
- *Planning.* Having a public participation plan up front and holding stakeholder briefings ensured transparency and was responsive to project inquiries.
- *Public approval.* The public response to the NEPA process was positive; they were appreciative of the opportunity to participate.

### Usefulness

#### Agency Planning and Decisionmaking: What Worked

- *Agency agreements.* A memorandum of understanding between DOE and the lead agency was created prior to commencing work on the EA to define roles and responsibilities.
- *Project knowledge.* A thorough understanding of the impacts facilitated sound and informed decisionmaking.
- *Successful decisionmaking.* The NEPA process disclosed the impacts of the project and helped staff make an informed and sound decision on the issuance of the project's loan guarantee.
- *Environmental stewardship.* The NEPA process allowed the lead agency to develop mitigative plans to protect resources and the project was able to proceed in a responsible manner.

### Enhancement/Protection of the Environment

- *Controls identified.* The NEPA process helped identify aspects of the project that could be adjusted to reduce impacts to important biological and cultural resources. It also identified certain controls to reduce impacts to workers and the public.

- *Existing regulations.* The environment was protected not as a consequence of the NEPA process, but by normal permitting requirements associated with a project of this nature. The EA demonstrated that the environment was protected.

### Other Issues

#### Guidance Needs Identified

- *Concise NEPA preparation guide.* A simple consolidated DOE NEPA document preparation guide directed to NEPA document contractors would be valuable.

### Effectiveness of the NEPA Process

For the purposes of this section, "effective" means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning "not effective at all" and 5 meaning "highly effective" with respect to its influence on decisionmaking.

For the past quarter, in which 4 questionnaire responses were received for EAs, all respondents rated the NEPA process as "effective."

- A respondent who rated the process as "3" stated that the NEPA process garnered support and stakeholder advocacy for the project.
- A respondent who rated the process as "3" stated that NEPA was a necessary step towards the issuance of a loan guarantee; however, NEPA did not play a role as an important planning tool.
- A respondent who rated the process as "3" stated that the NEPA process disclosed the impacts of the project and allowed for informed decisionmaking.
- A respondent who rated the process as "5" stated that it was important for DOE to play a role in the lead agency's decisionmaking process while funding a project in the lead agency's jurisdiction.

# LESSONS LEARNED

June 3, 2011; Issue No. 67

Second Quarter FY 2011

## Bonneville's "Balanced Scorecard" Approach to Mitigation, Monitoring, and Adaptive Management

By: Kathy Pierce, NEPA Compliance Officer, Bonneville Power Administration

*This year Bonneville Power Administration (BPA), DOE's power marketing organization in the Pacific Northwest, will spend more than \$300 million on mitigation projects to meet its mandate under the 1980 Northwest Power Act to "protect, mitigate and enhance" fish and wildlife affected by construction and operation of the Federal Columbia River Power System. How is BPA meeting its responsibility to ratepayers to ensure that these mitigation funds are spent effectively?*

Like all Federal agencies, BPA must comply with Executive Order (E.O.) 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, which requires the implementation of an environmental management system (EMS). BPA's *Environmental Management System Handbook* (2009) lays out a "Balanced Scorecard Management System," implemented throughout BPA as our EMS. An independent (i.e., non-BPA) DOE audit in September 2009 found our Balanced Scorecard to be "suitable, adequate and effective and fully implemented in conformance with the requirements of E.O. 13423."

BPA's Balanced Scorecard provides a comprehensive view of how we comply with and improve upon our performance through mitigation, action effectiveness monitoring, and adaptive management. Responsibilities are assigned to three functional groups within BPA's Environment, Fish and Wildlife office: Environmental Planning and Analysis, Pollution Prevention and Abatement, and Fish and Wildlife.

- The Environmental Planning and Analysis group prepares NEPA compliance documents and mitigation action plans.
- For transmission construction and transmission rebuild projects, the Environmental Planning and Analysis group and the Pollution Prevention and Abatement group jointly conduct implementation and post-implementation monitoring.



*A mitigation monitoring team visits a Wenatchee River Off-channel Project in Washington State to observe measures to protect water quality during construction.*

- For fish and wildlife projects, the Environmental Planning and Analysis group and the Fish and Wildlife group jointly conduct implementation and post-implementation monitoring.
- For the vegetation management program and waste management program, the Pollution Prevention and Abatement group monitors implementation and is responsible for post-implementation monitoring.

BPA's mitigation commitments are identified and established through the NEPA process. NEPA documents identify many mitigation measures as part of consultation,

*(continued on page 5)*



## Inside *LESSONS LEARNED*

Welcome to the 67<sup>th</sup> quarterly report on lessons learned in the NEPA process. This issue showcases BPA's mitigation and monitoring activities and best practices of DOE Program and Field Offices for efficiently preparing NEPA documents, involving the public, and making a difference in the quality of environmental protection. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

Promoting NEPA Transparency and Public Engagement.....	3
"Sunshine Week" Symposium .....	4
DOE Evaluating NEPA Compliance in Audits .....	6
NAEP Conference Explores Sustainability .....	7
Golden Field Office Wins NAEP Award .....	7
CEQ NEPA Climate Change Guidance .....	8
Public Participation in the GTCC EIS .....	9
DOE Finalizing NEPA Rulemaking .....	9
DOE Celebrates 41 <sup>st</sup> Earth Day .....	10
CEQ Calls for NEPA Pilot Project Proposals .....	11
Recovery Act NEPA Reviews .....	12
Internal Planning and Effective Coordination .....	13
Building the Clean Energy Economy with Equity.....	14
DOE Tribal Summit.....	15
Training Opportunities .....	16
EAs and EISs Completed This Quarter .....	18
NEPA Cost and Time Facts .....	20
Recent EIS-Related Milestones.....	20
Questionnaire Results .....	23

*Carol Songstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*.

We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 1, 2011. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due August 1, 2011

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2011 (April 1 through June 30, 2011) should be submitted by August 1, 2011, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. We provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

Printed on recycled paper




 This icon indicates that *LLQR* online ([nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned) provides a link to a referenced webpage.

## Best Practice: Make Reference Documents Available Online

Posting key reference documents on a website, concurrent with issuance of a draft or final EA or EIS, is an efficient way to fulfill NEPA requirements and further Open Government initiatives. If NEPA document managers plan ahead for such posting, they can ensure that security reviews and other procedures to release documents are completed in a timely manner.

The Council on Environmental Quality regulations state that material may not be incorporated by reference "unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment" (40 CFR 1502.21). The simplest and, for many people, most effective way to accomplish this is to post the reference documents on a website. Before such documents are posted, they should be reviewed according to standard procedures for public release of information. Reference documents that are readily available in the open literature (e.g., textbooks) need not be posted.

Reference documents should not be available only online, however. DOE should accommodate the needs of people interested in reviewing an EA or EIS but whose access to the Internet and related technology is limited. To accomplish this, NEPA document managers should follow normal business practice and place reference documents in DOE reading rooms.

References for many DOE EISs are posted online. For example, after publishing most reference documents online for the *Complex Transformation Supplemental Programmatic EIS* (DOE/EIS-0236-S4), several members of the public expressed their appreciation. Posting references online makes use of modern technology to enhance transparency and provide convenient and timely opportunities for public review of the information relied on in preparing an EA or EIS. Doing so also may have a practical benefit for DOE by lessening the potential that DOE would need to extend a public comment period if the reference documents are not reasonably available for public review. 



# Promoting NEPA Transparency and Public Engagement

“NEPA is, at its core, a transparency statute,” said Katie Scharf, Council on Environmental Quality (CEQ) Deputy General Counsel, in opening a panel discussion on using information technology to support open government initiatives, engage the public, and add value to NEPA analysis. At the March 9, 2011, event – hosted by CEQ for Federal NEPA and legal staff – speakers promoted the benefits of enhancing transparency and offered practical implementation advice. Ms. Scharf asked the speakers to address why transparency is essential to the NEPA process and describe innovative approaches and achievements.

NEPA’s value, especially with regard to EISs, is based on transparency, observed Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. He quoted from Louis Brandeis, later a Supreme Court justice, on the power of public availability of information to improve government accountability: “Sunlight is said to be the best of disinfectants.”<sup>1</sup>

## Public Comment Process Is Essential

The public comment process, which provides an opportunity to aggregate “dispersed information,” is indispensable to both NEPA and rulemaking, Mr. Sunstein said. The public has information that governments lack, which is why central management of complex systems generally fails, he noted. He praised “open government” initiatives that provide information that people can readily find and use, such as [Data.gov](http://Data.gov). The full potential of the NEPA process, he concluded, could be better realized if more EISs were available online.

Scott Blake Harris (then the DOE General Counsel) discussed lessons learned from the Department’s recent initiatives to expand transparency in its NEPA process. He described DOE’s decision to document categorical exclusion determinations and, apparently unique among Federal agencies, make them available online with only limited exceptions ([LLQR, March 2010, page 1](#)).

## Web Posting Initiative a Success

Initial internal concerns – that posting DOE categorical exclusions on a website could induce more Freedom of Information Act requests, pose litigation risks, or flood DOE offices with inquiries seeking additional information – proved groundless, he noted. The practice has resulted in no complaints, praise from stakeholders, and recommendations that other agencies follow DOE’s example. DOE’s categorical exclusion determination




*“The more transparent we are,” concluded Scott Blake Harris (center, between Katie Scharf and Chris Vein), “the better our work will be, the better the information we will get, and the more trust we will establish with the public.”*

database (which includes more than 5,800 determinations) provides information that was not previously available in any systematic way, and is identified as a high-value dataset on [Data.gov](http://Data.gov).

DOE makes draft EAs available for public comment whenever possible (concurrent with host state/tribal review). DOE now posts most draft EAs on the DOE NEPA Website ([nepa.energy.gov](http://nepa.energy.gov)) and provides timely email notification of postings and comment periods to individuals who register ([LLQR, September 2010, page 1](#)).

## Transparency May Require Greater Risks

Chris Vein, recently named Deputy Chief Technology Officer, White House Office of Science and Technology Policy, noted that increasing transparency requires government officials to be more accepting of risks and controversy, and may require substantial capital investment. In designing public datasets, he advised, approaches based on proactive collaboration with the users of information are more likely to lead to success than designs based primarily on the preferences of the sponsoring agency. He warned against losing credibility by ignoring comments once an agency has established the public expectation that comments will be taken seriously.

The ensuing discussion included a reminder that public disclosure in the NEPA process should not be limited to computer- or Internet-based technologies. These are not universally available to public stakeholders. Age, geography, and financial constraints may create environmental justice concerns if paper copies are no longer made available on request to parties who do not have Internet access. 

<sup>1</sup>“Other People’s Money,” *Harper’s Weekly*, December 20, 1913, [www.law.louisville.edu/library/collections/brandeis/writings](http://www.law.louisville.edu/library/collections/brandeis/writings).

# “Sunshine Week” Symposium Surveys Open Government Progress, Challenges

Two organizations, OpenTheGovernment.org and the Center for American Progress, jointly convened a symposium of transparency experts to evaluate the Administration’s efforts towards “creating an unprecedented level of openness in government.” Two years after President Barack Obama committed to this goal, in a memorandum issued the day following his inauguration ([LLQR, March 2009, page 1](#)), the symposium assessed progress from both policy and technical vantage points and identified plans and recommendations to further enhance government transparency.

The discussion was held during Sunshine Week (this year during the week of March 9), a yearly event to raise awareness of the importance of open government. The first panel covered policy aspects of the Open Government Initiative, while the second focused on the effects of technology on the way people obtain and use information. A [video](#) of the complete proceedings is available on the Center for American Progress website.



## Highlights:

- “We know from experience that Government is smarter, more responsive, and more ethical when its actions are open to public scrutiny.” (Introductory remarks, Reece Rushing, Director of Government Reform, Center for American Progress)
- The National Archives and Records Administration ([Archives.gov](#)) is working to improve Freedom of Information Act (FOIA) compliance, implement declassification directives, and preserve governmental electronic records such as email. Maintaining electronic records of government activities – especially email and website content – poses challenges that parallel the archiving of paper records many decades ago. The Federal Records Act needs to better recognize electronic records. (David S. Ferriero, Archivist of the United States)
- The next year will see continued progress on implementing the Open Government Initiative, including bringing in “information entrepreneurs” to make information accessible, searchable, and centralized – and thus more useful to citizens. During Sunshine Week 2011, the Administration launched [FOIA.gov](#), a consolidated interagency site, to provide quantitative information and resources. Proactive measures will be emphasized in the coming year, such as a series of “requestor roundtables” between agencies and the public. (Steven P. Croley, Special Assistant to the President for Justice and Regulatory Policy, White House Domestic Policy Council)
- Coinciding with Sunshine Week 2011, OMB Watch published [Assessing Progress Toward a 21<sup>st</sup> Century Right to Know](#), which considers how the Administration has addressed 70 detailed recommendations – on national security and secrecy, usability of government information, and creating an environment for transparency – that were endorsed by more than 300 organizations and individuals in 2008. Among the key findings are that new policies – for example, on classification, scientific integrity, and open government – have been helpful. However, they are not yet fully implemented and much remains to be done, such as improving government records management and preservation, and the use and consistency of metadata. (Gary Bass, Executive Director, OMB Watch)
- The Department of Health and Human Services (HHS) [Community Health Data Initiative](#) aims to integrate and maximize the power of data collected by multiple agencies. HHS pointed to the example of the National Oceanic and Atmospheric Administration, which publishes extensive weather data online for free for others to analyze. HHS invited a group of innovative thinkers to develop applications based on community health and provider quality data; 9 days later more than 20 new or improved applications were unveiled to great enthusiasm. “We are on a data publishing rampage . . . . The best way to take advantage of your data is to let others take advantage of it.” (Todd Park, Chief Technology Officer, HHS)
- [Data.gov](#) has been a rallying point for agencies as they grapple with how to publish data. This data catalog is a useful tool, but there is room for improvement, in particular, by making source data available. Agencies are better at releasing datasets about private actors and our society than about government activities, such as tax expenditures and agency spending. One reason for this is the age of systems that agencies use to track their activities. The government should conduct a thorough audit of the data it collects. (Tom Lee, Director, Sunlight Labs, Sunlight Foundation) The Sunlight Foundation logo, consisting of two stylized 'L' shapes.



# “Balanced Scorecard” (continued from page 1)

permit, or review requirements under environmental statutes such as the Endangered Species Act, Clean Water Act, and National Historic Preservation Act. A Mitigation Action Plan<sup>1</sup> (MAP) attached to a record of decision provides a complete list of mitigation measures and commits to mitigation monitoring. BPA also prepares a MAP when relying upon an EA and mitigated finding of no significant impact.

## The “Scorecard” Approach

Each year the Environmental Planning and Analysis group selects at least four transmission and fish and wildlife projects to review, with priority given to projects involving high complexity, resource sensitivity, and difficulty during mitigation implementation. Each annual review also includes follow-up on problems found in the previous year’s report.

### Bonneville Power Administration Fish and Wildlife Mitigation



Each year, BPA funds a variety of projects to “protect, mitigate and enhance” fish and wildlife, including:

- land acquisition and management,
- water rights acquisition and management,
- habitat restoration and improvement,
- weed control,
- riparian fencing, and
- similar wildlife conservation actions.

For example, BPA’s mitigation efforts involve fish recovery, especially salmon, which have a profound economic and cultural importance for Indian tribes in BPA’s service area. One method of fish recovery is to use hatcheries to augment the number of fish in the river system. BPA has partnered with Indian tribes establishing tribal hatcheries. For example, BPA funded the Yakima Fisheries Project, a group of four tribal hatcheries that aimed to enhance the production of spring chinook salmon in the upper Yakima basin. Successes have been documented by biologists who estimate that operation of the Yakima Fisheries Project has accounted for 70 percent to 90 percent of the increase of these spring chinooks from about 3,000 fish per year to 15,000 or more fish per year since 2001.

For each review, a mitigation monitoring team is established; the manager, team lead, and NEPA Compliance Officer join specialists in fish and wildlife, cultural resources, wetlands, and vegetation. The team develops a plan for sampling mitigation measures to determine whether mitigation measures are implemented as described in the NEPA document’s MAP, determine whether implemented measures are effective, identify causes of any shortcomings, and recommend improvements.

---

*We believe that mitigation monitoring is an agency strength that we should continue to build on to ensure our continued success.*

– Kathy Pierce

---

During a site visit, the team asks:

- Was the mitigation implemented? If not, why not?
- Was the mitigation implemented correctly? If not, what problems occurred?
- Was the mitigation effective? If not, what other mitigation should be implemented?
- Are additional site visits needed to determine effectiveness? If so, when?

The team’s findings and recommendations are presented in a report and form the basis of the annual mitigation reports.

## Monitoring Steps Depend on Project Type

Monitoring protocols, schedules, and tracking tools are tailored to the types of projects that BPA undertakes.

- **Construction and Maintenance:** Contracts for transmission construction and maintenance projects specify MAP commitments; the contractor must provide an onsite environmental representative during the entire project and a BPA environmental specialist is onsite during construction and maintenance to ensure that all environmental specifications are implemented. Depending on the complexity of the project and mitigation required, frequency of field monitoring can range from daily to once every 1 to 2 weeks.

*(continued on next page)*

---

<sup>1</sup> DOE’s NEPA regulations (10 CFR 1021.331) require preparation of a MAP to address any mitigation commitments expressed in a record of decision and explain how the mitigation commitments will be planned and implemented. A MAP is also required for a “mitigated FONSI.” DOE Order 451.1B, National Environmental Policy Act Compliance Program, requires an annual progress report on implementation of such mitigation commitments.

## “Balanced Scorecard” (continued from previous page)

- **Vegetation Management:** For each vegetation management project, BPA reviews all prescriptions for manual, chemical, mechanical, and biological treatments for consistency with the mitigation requirements of BPA’s programmatic *Transmission System Vegetation Management Program EIS* (DOE/EIS-0285) and Record of Decision (August 2000). BPA also works with the project manager or field natural resource specialist to modify any inconsistent prescriptions, and – after completing an environmental checklist – issues a supplement analysis. Rights-of-way are monitored after treatment and again within a year to determine effectiveness and identify follow-up treatments or additional mitigation as needed.
- **Waste Management:** Environmental specialists conduct regulatory compliance assessments for BPA facilities on an annual schedule using a standard operating procedure. Environmental audits are also performed to evaluate non-BPA facilities for potential waste management options and to assess the liability risk to BPA using these facilities for waste disposal.
- **Fish and Wildlife:** BPA’s Fish and Wildlife group uses two tools to facilitate mitigation monitoring. **Pisces** is BPA’s collaborative application for contractors and BPA to manage, measure, and document project progress. **Taurus** is a public website, [cbfish.org](http://cbfish.org), for tracking compliance with fish and wildlife program goals by compiling data from all projects reported in Pisces.




### Summary

Together, these efforts present a picture of BPA’s comprehensive environmental mitigation and monitoring activities. They also help assure that we are using adaptive



A BPA mitigation monitoring team inspects a new culvert installed to prevent vehicles from driving through a stream at the Libby-Troy Rebuild Project in Montana.

management successfully. We need to know which mitigation activities work and which do not work so that we really are mitigating adverse environmental impacts. For the ones that do not work as anticipated, we need to develop and implement alternate measures. Then we need to monitor their effectiveness, too.


We continue to look for additional ways to improve our program to help ensure that mitigation is providing the benefits predicted, consistent with the Council on Environmental Quality’s recent guidance, *Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated FONSI*s (76 FR 3843; January 21, 2011) (*LLQR*, March 2011, page 5). For additional information, please contact me at [kspierce@bpa.gov](mailto:kspierce@bpa.gov) or 503-230-3962. 



## DOE Evaluating NEPA Compliance in Audits

An assessment of NEPA compliance is included in new audit guidance issued by the Office of the Chief Financial Officer in February 2011. The guidance is being used in ongoing audits of for-profit recipients and subrecipients of financial assistance awards from DOE. The guidance addresses a wide range of issues such as scope of the award, financial controls, and compliance with a variety of requirements, including NEPA, the Endangered Species Act, and the National Historic Preservation Act. This is the first time DOE has issued such guidance.

In regard to NEPA, the guidance directs auditors to determine whether the recipient or subrecipient has procedures in place to ensure compliance with NEPA-related requirements in their financial award and has a process to notify DOE of changes to project scope or execution that may affect those NEPA-related requirements.

The audit guidance is available as [Policy Flash 2011-46](#); audit procedures for NEPA compliance are contained in attachment 2. For further information, contact Kim Krizanovic, Office of the Chief Financial Officer, at [kimberly.krizanovic@hq.doe.gov](mailto:kimberly.krizanovic@hq.doe.gov). 



# NAEP Conference Explores Sustainability



This year's conference of the National Association of Environmental Professionals (NAEP) focused on "sustainable stewardship," said Ron Deverman, NAEP President, in opening remarks. The 3-day conference, "Seventh Generation Thinking: Learning from the Past – Planning for the Future," held April 27 to 29, brought some 300 people to Denver from government agencies and private companies, most of whom have many years of experience implementing NEPA.

Conference sessions covered a wide range of topics regarding siting alternative energy sources, environmental regulations, land and watershed management, environmental education, cultural resources management, transportation siting, and brownfields development.

In addition, the NEPA track of the conference included sessions on the 2010 oil spill in the Gulf of Mexico, climate change, no action alternatives, an annual update of NEPA-related litigation, and techniques to improve NEPA implementation.

In summarizing a key conclusion from her annual review of NEPA-related litigation, Lucinda Low Swartz, environmental consultant and former Deputy General Counsel at the Council on Environmental Quality, said, "As always, courts upheld decisions where the agency could demonstrate it had given potential environmental impacts a 'hard look' and invalidated those where the agency failed to do so." ■■

## Golden Field Office Wins Award for Recovery Act NEPA Work

"Last year was a wild ride!" said Robin Sweeney, NEPA Compliance Officer and Director, Office of the Environment, on accepting the National Association of Environmental Professionals NEPA Excellence Award on behalf of the Golden Field Office at the NAEP Annual Conference.

Under the American Recovery and Reinvestment Act (Recovery Act), the Office processed more than 4,000 initial NEPA determinations for financial assistance for renewable energy projects, a 12-fold increase from fiscal year 2009. The Office issued six times the normal number of EAs, and reduced the average timeline for an EA to approximately 4 months. In an attempt to streamline initial reviews, the Office developed a series of forms and documents, including templates and statements of work, while the Chief Counsel Office within the Golden Field Office established programmatic agreements with many states to handle the large volume of projects requiring expedited historic preservation reviews.

In addition, the Office of the Environment reached out for help from Energy Efficiency and Renewable Energy (Office of Field Performance Management), Office of Environmental Management, National Nuclear Security Administration and Oak Ridge

Operations Office, as well as assistance from the Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment. "This was definitely a team effort," said Steve Blazek, Golden's Senior NEPA Compliance Officer. "We could not have been successful otherwise."

Most of the NEPA work of the Golden Field Office is for investments in clean energy technologies to strengthen the economy, protect the environment and reduce dependence on foreign oil. The Office monitors financial assistance awards for research on, and development and deployment of renewable technologies. Under the Recovery Act, signed into law by President Barack Obama on February 17, 2009, funding for these activities increased more than 20-fold, leading to record numbers of financial assistance awards, each requiring NEPA review.

"It was an honor for the Office of the Environment to have received this award from an esteemed external group like the National Association of Environmental Professionals," said Carol Battershell, Manager of the Golden Field Office. ■■



*The Award recognized Golden's Office of the Environment staff: (left to right, front) Steve Blazek, Lori Plummer, Robin Sweeney, Laura Margason, Casey Strickland, (back) Amy Van Dercook, Chris Carusona, Kristin Kerwin, Rob Smith, Lisa Jorgensen, and (not pictured) Melissa Rossiter.*



# CEQ Plans to Complete NEPA Climate Change Guidance

The Council on Environmental Quality (CEQ), in a series of workshops with Federal land management agencies conducted in April 2011, outlined its plans for completing guidance on considering the effects of climate change and greenhouse gas (GHG) emissions in NEPA documents. CEQ intends to issue draft guidance this summer on considering climate change for land and resource management actions. After considering public and agency comments, CEQ will combine the land and resource management guidance with the generally-applicable draft climate change guidance that CEQ issued for public comment in February 2010 (*February 2010 draft NEPA guidance*). (See *LLQR*, March 2010, page 3.) CEQ's goal is to issue the combined final guidance by the end of 2011.



## Land Management Accounting Complexities

In the February 2010 draft NEPA guidance, CEQ stated that the guidance was not intended to apply to land and resource management actions, and requested comments on the appropriate means of assessing the GHG emissions and sequestration that are affected by Federal land and resource management decisions. The draft guidance stated that “[l]and management techniques, including changes in land use or land management strategies, lack an established Federal protocol for assessing their effect on atmospheric carbon release and sequestration at a landscape scale.”

CEQ also discussed some of the complexities regarding how to calculate GHG emissions associated with land management decisions in a separate, final technical guidance document: *Federal Greenhouse Gas Accounting and Reporting Guidance*, October 2010.<sup>1</sup> That document illustrates some of the reasons why CEQ did not originally propose to make the February 2010 draft NEPA guidance applicable to land management decisions.



The October 2010 technical guidance discusses the challenges to calculating GHG emissions associated with several land use actions potentially relevant to DOE renewable energy projects, including those involving combustion of biofuels (liquid or gas fuels created from plant or animal matter) and solid biomass. For example, the guidance describes ongoing efforts to develop accounting approaches for biofuels “. . . that will appropriately reflect the true atmospheric impact.” CEQ received many comments on a draft of this technical guidance indicating substantial differing technical views on how to account for biogenic GHG emissions. These comments illustrate the uncertainty about the


GHG footprint of solid biomass combustion activities, with expert opinions ranging widely among conclusions that such activities have a positive, neutral or negative GHG footprint.

In addition, the October 2010 technical guidance discusses analytical complexities of other categories of land management that are potentially relevant to DOE, including biological sequestration, prescribed burns, composting, manure management, and livestock management.

## Workshops Solicit Agency Methods/Issues

To address land management and other guidance development issues, CEQ conducted workshops in April for Federal land and resource management agencies in Portland, Oregon; Denver, Colorado; and Washington, DC. The Udall Foundation/U.S. Institute for Environmental Conflict Resolution facilitated the workshops by soliciting comments on several questions from staff representatives of the participating agencies, which included DOE, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the Departments of Agriculture, Defense, and the Interior.

Agencies were asked whether there is a need for guidance applicable to land management decisions and for input on what models agencies use to analyze the GHG implications of such decisions. In response, agency representatives generally expressed that guidance is needed. A few agencies provided input on specific models used for some types of land management decisions, such as forestry decisions. Some agency representatives expressed concerns about the February 2010 draft NEPA guidance, mostly in regard to CEQ's proposed “presumptive threshold” of 25,000 metric tons per year of direct emissions of carbon dioxide equivalents as an indicator that a quantitative and qualitative assessment of climate change may be warranted in a NEPA document. For example, some agencies asked CEQ to clarify how to interpret the threshold in making significance determinations.

CEQ subsequently met with the Federal agency NEPA contacts to discuss the workshops and with senior managers of the land and resource management agencies to identify potential issues or concerns. The Office of NEPA Policy and Compliance will continue to track development of the climate change guidance and coordinate DOE's comments on draft CEQ documents. Comments and questions may be addressed to Eric Cohen at [eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov). 

<sup>1</sup> This guidance establishes government-wide requirements and methods for calculating and reporting GHG emissions from Federal agency operations as required by Executive Order 13514 (Federal Leadership in Environmental, Energy, and Economic Performance). Although not explicitly NEPA guidance, this document is relevant in preparing DOE NEPA documents for proposed actions at DOE facilities, including site-wide EISs, as well as at non-DOE facilities. (See *LLQR*, December 2010, page 19.)

# Public Participation in the GTCC EIS: Going the Extra Mile

By: Vivian Bowie, Office of NEPA Policy and Compliance

In conducting nine public hearings nationwide on the *Draft Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste* (DOE/EIS-0375D) (GTCC EIS), NEPA Document Manager Arnold Edelman and the Office of Environmental Management team preparing the EIS recently logged a lot of miles.


Along the way, in anticipation of substantial public interest in the proposal to provide for disposal of GTCC waste (*LLQR*, September 2007, page 1), Mr. Edelman and his team took a number of steps beyond minimum requirements to promote public involvement. For example, the team made extra efforts to notify interested parties about the hearings and to promptly respond to public requests for information, such as by making reference documents available online (related article, page 2). The team received several positive responses from members of the public for these efforts. “We went the extra mile because we understand the importance of public participation and transparency in building credibility,” Mr. Edelman said.

The team’s experience may be instructive to other NEPA reviews managed by a headquarters Program Office involving one or more DOE Field Offices. In preparation for the hearings – three in New Mexico, and one each in South Carolina, Nevada, Idaho, Washington, Oregon, and the District of Columbia – the team implemented several recommended best practices. For example, the team consulted with DOE Field Office NEPA and public affairs staff in coordinating the public hearings and in obtaining local mailing lists of potentially interested parties. The team used the mailing lists in addressing post cards to notify interested parties about the hearings and request preferences for receiving future EIS information.

A few weeks before the public hearings in Washington and Oregon, a nongovernmental organization contacted Mr. Edelman and the NEPA Office, stating that a large number of people with concerns about waste disposal at the Hanford Site, one of the alternative locations for GTCC waste disposal, did not receive notice of the public hearings. A brief investigation revealed that an outdated mailing list had been used. After the mailing list originally was provided to the GTCC EIS team, the draft EIS for the Hanford Tank Closure and Waste Management EIS was issued, which generated many comments and a substantial expansion of Hanford’s EIS mailing list. Mr. Edelman obtained the updated list and provided email notifications about the GTCC EIS public hearings to more than 3,300 parties.

The nongovernmental organization expressed appreciation for the “highly commendable” speed of the response, and stated that the additional commitment to public involvement and notice for the GTCC EIS should be a model for expanding notice and participation by ensuring that NEPA headquarters notices go to the local public involvement lists and related EIS lists.

In addition to these efforts, the team consulted with 14 participating American Indian tribal governments that have cultural or historical ties to DOE sites being evaluated in the EIS. The EIS contains “tribal narratives,” which describe the tribes’ unique perspective on the DOE sites and potentially affected environmental resources (related article, page 15).


The 120-day public comment period for the GTCC EIS ends June 27, 2011. For further information about the GTCC EIS, see the EIS website ([www.gtcceis.anl.gov](http://www.gtcceis.anl.gov)) or contact Arnold Edelman at [arnold.edelman@em.doe.gov](mailto:arnold.edelman@em.doe.gov). 

## DOE Finalizing NEPA Rulemaking

DOE is considering all 28 public comment documents received on its Notice of Proposed Rulemaking and is preparing the final revisions to its NEPA Implementing Procedures, 10 CFR Part 1021. Most of the proposed changes are to the categorical exclusion provisions contained in subpart D, appendices A and B, of the regulations (*LLQR*, March 2011, page 1).

DOE received public comments expressing either support for or opposition to particular proposed categorical exclusions. Some comments stated that DOE should not use categorical exclusions at all. Other comments requested that DOE further clarify terms including “small-scale” and “previously disturbed and developed.” Several comments expressed concerns regarding the potential use of algae, genetically engineered

microorganisms, or invasive species under several categorical exclusions.

The draft Notice of Final Rulemaking is currently under review by the Department’s NEPA Compliance Officers, who make DOE’s categorical exclusion determinations. Following that review, the DOE General Counsel plans to request Departmental concurrence and would then submit the final rule to the Council on Environmental Quality for final consultation. As appropriate, DOE would then submit the final rule to the Office of Management and Budget for interagency coordination. The revision to the rule will facilitate compliance with NEPA by providing for more efficient review of certain actions and allowing DOE to focus its resources on proposed actions that have the potential for significant environmental impacts. DOE plans to complete its NEPA rulemaking this year. 



# DOE Celebrates “Earth Day, Every Day!”

For the 41<sup>st</sup> Earth Day, DOE sponsored a week of festivities at the Forrestal and Germantown Headquarters facilities during the third week of April. Interactive exhibits promoted DOE’s commitment to the environment and clean energy, under the banner of this year’s theme: “Earth Day, Every Day! Changing Behavior to Reduce DOE’s Carbon Footprint.” Activities featured environmental films, “Green Bag” lunch speakers, a guided nature walk at the Smithsonian’s Ripley Garden, tree planting at DOE’s Earth Day Park, and an environmental panel discussion with Secretary of Energy Steven Chu and representatives of the National Renewable Energy Laboratory, Oak Ridge National Laboratory, and the Bonneville Power Administration. A “Community Day” public celebration at the DOE Plaza included posters, a live band, interactive displays, vendors of “green” products and services, educational games, recycling collection, and a farmers’ market.

The Office of NEPA Policy and Compliance helped celebrate Earth Day with an exhibit on “NEPA Analyses of Greenhouse Gas Emissions,” reproduced at right. The exhibit described DOE’s approach to greenhouse gas emissions analyses and consideration of climate change impacts in NEPA documents. This practice goes back to the 1989 Clean Coal Technology Program EIS (DOE/EIS-0146). NEPA analyses for renewable energy technologies, energy efficiency rulemaking standards, and the Clean Coal Power Initiative were used to illustrate NEPA’s contribution to this year’s Earth Day theme. **LL**

## NEPA Analyses of Greenhouse Gas Emissions

DOE has analyzed greenhouse gas (GHG) emissions in National Environmental Policy Act (NEPA) documents for many years, starting with the Clean Coal Technology Program EIS in 1989 (DOE/EIS-0146).

### DOE Practices for Considering Climate Change under NEPA

- Discuss global climate change
- Consider GHG emissions during project definition and scoping stages
- Identify and quantify, as appropriate, direct and indirect GHG emissions
- Discuss the potential environmental consequences
- Analyze cumulative impacts
- Explore potential mitigation measures and reasonable alternatives that would reduce GHG emissions
- Consider impacts of climate change on proposed actions in appropriate circumstances



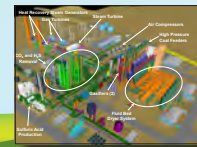
### Examples

**Renewable Energy** technologies, such as solar photovoltaics (right) and wind turbines, can produce electricity without generating substantial quantities of GHGs. DOE’s environmental assessments (EAs) and environmental impact statements (EISs) analyze the carbon offsets associated with individual project proposals, as well as environmental impacts associated with siting the project (e.g., impacts on wildlife and habitat, visual impacts, noise).

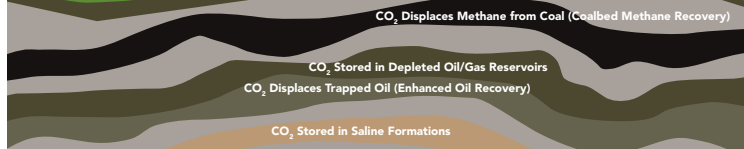


**Energy Efficiency Rulemaking/Standards EAs** analyze how different energy conservation standards for consumer products and commercial equipment, such as incandescent reflector lamps and general service fluorescent lamps (left) (DOE/EA-1664, 2009), would affect carbon dioxide (CO<sub>2</sub>) emission rates. This helps DOE develop standards to decrease the Nation’s carbon footprint.

**Clean Coal Power Initiative EISs** analyze the incremental and cumulative impacts on global climate change of CO<sub>2</sub> emissions from the use of advanced coal-based electric power generation technologies. These NEPA documents also explore potential mitigation measures, including CO<sub>2</sub> capture and sequestration. DOE’s EIS for the Kemper County Integrated Gasification Combined-Cycle Project (DOE/EIS-0409, 2010), for example, estimated that the proposed project (right) would capture up to about 67 percent of the CO<sub>2</sub> emissions. The CO<sub>2</sub> would be sold for beneficial use and geologic storage via enhanced oil recovery.



### Carbon Sequestration Approaches Analyzed in DOE NEPA Documents



For more information, visit [nepa.energy.gov](http://nepa.energy.gov)



DOE Offices joined local and national organizations in providing exhibits on varied aspects of sustainability.

Children from the DOE daycare center helped plant a bald cypress tree at Earth Day Park, adjacent to the Forrestal Building.



# CEQ Calls for NEPA Pilot Project Proposals

The Council on Environmental Quality (CEQ) is soliciting nominations of pilot projects to demonstrate innovative, efficient approaches to implementing NEPA, announced CEQ Chair Nancy H. Sutley in a March 17, 2011, [memorandum](#).



A panel of Federal NEPA experts will perform an initial screening of nominations to identify those with the greatest potential to reduce the costs and time needed to complete the NEPA process, ensure environmental protection, improve the quality and transparency of Federal agency decisionmaking, and be applicable to a variety of projects.


CEQ will then consult with the Environmental Protection Agency and the Department of Justice to select the best pilot projects, taking into account Administration priorities and project diversity with respect to location, agency participation, and natural resource management issues. CEQ will select up to five projects and then work with the agencies to track implementation of the selected pilot projects, evaluate outcomes, and highlight and promote lessons learned.

---

*Rooted in the spirit of open government, CEQ's NEPA pilot program engages the public to help make government more efficient and accountable.*

*– Nancy Sutley, May 18, 2011,  
CEQ Preliminary Plan for Retrospective  
Review of Existing Regulations*

---

CEQ will accept nominations through June 15, 2011. Details, including an online nomination form, are available on CEQ's [website](#). (See also [76 FR 16391](#); March 23, 2011.) The Office of NEPA Policy and Compliance is evaluating potential proposals for NEPA pilot projects. For further information or to suggest a potential pilot project, contact Brian Costner, NEPA Office, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov). 

CEQ welcomes nominations of pilot projects to improve any aspect of the NEPA process, including by:

- *Simplifying NEPA implementation practices*, such as data gathering, scoping, and public review and comment. NEPA applies to a wide variety of proposed actions, many of which are proposed by state and local agencies, corporations, tribes, organizations, and private individuals. CEQ is very interested in approaches that appropriately leverage and coordinate Federal, state, tribal, and local environmental review, consultation, and permitting requirements.
- *Reducing the time and cost involved in preparing NEPA reviews*, by methods such as reducing paperwork and shortening timelines; applying NEPA early in the project development process; setting page limits; addressing incomplete or unavailable information; collaboratively developing purpose and need statements; determining the scope of the NEPA analysis; and preparing concise and focused EAs.
- *Utilizing information technology* to improve the efficiency of NEPA implementation for a particular project, or when adopted program-wide.
- *Improving the effectiveness of public engagement*, such as by making NEPA documents and analyses easier to read and understand, and enhancing public involvement to address environmental justice or other community concerns.

– Nancy Sutley, March 17, 2011



# Recovery Act NEPA Reviews Uphold Environmental Values and Economic Goals

Federal agencies “have shown they can uphold our country’s environmental values and deliver projects designed to stimulate our Nation’s economy,” said Nancy H. Sutley, Chair of the Council on Environmental Quality (CEQ), in releasing the ninth quarterly report to Congress on NEPA compliance for projects and activities (projects) funded under Division A of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

CEQ announced that as of March 31, 2011, “more than 99 percent of environmental reviews for Recovery Act projects, or more than 190,000 of the 190,694 required NEPA reviews,” had been completed. In addition, CEQ noted that 12 of 24 Federal agencies had completed all NEPA reviews for projects funded by the Recovery Act.

---

*We know that the health of our environment and the health of our economy are inextricably linked.*

*– Nancy Sutley, CEQ Chair*

---

Cumulatively through March 31, 2011, Federal agencies completed more than 182,300 categorical exclusion determinations and more than 6,800 EAs, and analyzed 830 projects in EISs. Agencies concluded that NEPA is not applicable to more than 4,250 other Recovery Act projects. Together, these projects involve obligations of approximately \$292.6 billion funded under Division A of the Recovery Act. Federal departments and agencies completed more than 1,600 of these NEPA reviews during the quarter ending March 31, including more than 500 that were completed by DOE.

In addition, CEQ reported that approximately 690 NEPA reviews are underway: approximately 370 categorical exclusion determinations, 280 EAs, and 34 EISs. CEQ noted that roughly half of the pending NEPA reviews were added during the quarter ending March 31, 2011, largely due to the addition of approximately 2,000 new projects, many with NEPA reviews that have just begun. “One reason for the increase in new NEPA


reviews is that as projects are completed with cost savings, the saved funds may be returned to the agencies and can then be used for new projects or activities,” explained Ms. Sutley in her letter to Congress.

The pending NEPA reviews for DOE Recovery Act projects include 46 EAs and 21 EISs; DOE reported no pending categorical exclusion determinations. Of the 67 pending DOE NEPA reviews, 18 were included in the report for the first time. DOE NEPA reviews for 49 projects have been pending for more than 3 months (29 EAs and 20 EISs). Reasons DOE NEPA reviews are pending include a need to provide sufficient time to consider potential impacts to sensitive resources (e.g., cultural or historic properties), review information on an applicant’s change to a proposal, and respond to public comments. Also, for a number of pending NEPA reviews, DOE is a cooperating agency and must coordinate the NEPA review schedules with other Federal agencies. In one instance, DOE is coordinating its EIS schedule with a state energy commission’s review of the proposed project.

As of March 31, DOE had completed more than 9,200 NEPA reviews supporting the obligation of more than \$33.5 billion for projects receiving Recovery Act funding, an increase of almost \$100 million since December 31, 2010 ([LLQR, March 2011, page 11](#)). Of the completed reviews, more than 9,100 are categorical exclusion determinations, 106 are EAs, and 24 are EISs.

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through June 30, 2011. Federal agency reports are due to CEQ in July 2011, and CEQ will submit the next report to Congress in August 2011.

The CEQ reports to Congress are available at [NEPA.gov](#). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924. 

# Internal Planning and Effective Coordination Result in Successful Completion of EA

By: Amy Van Dercook, NEPA Document Manager, Golden Field Office

In a recent EA process, DOE’s Golden Field Office found that diligent planning and communication resulted in an exceptionally efficient outcome. DOE worked to complete the EA for the City of El Dorado Wind Energy Project (DOE/EA-1833; February 2011) in 5 months and on budget.

The proposed action was to authorize the expenditure of Federal funding appropriated under the American Recovery and Reinvestment Act (Recovery Act) to design, permit, and construct a 1.0-megawatt wind turbine to be located immediately west of the El Dorado Wetlands and Water Reclamation Facility in El Dorado, Kansas. The Kansas Corporation Commission was the grant recipient, with a sub-grant provided to the City of El Dorado for the construction of the wind turbine.


DOE published the Notice of Scoping in local newspapers and online at the Golden Field Office [Public Reading Room](#) and City of El Dorado websites, and sent copies to Federal, state, and local agencies; tribal governments; elected officials; businesses; and organizations and special interest groups.

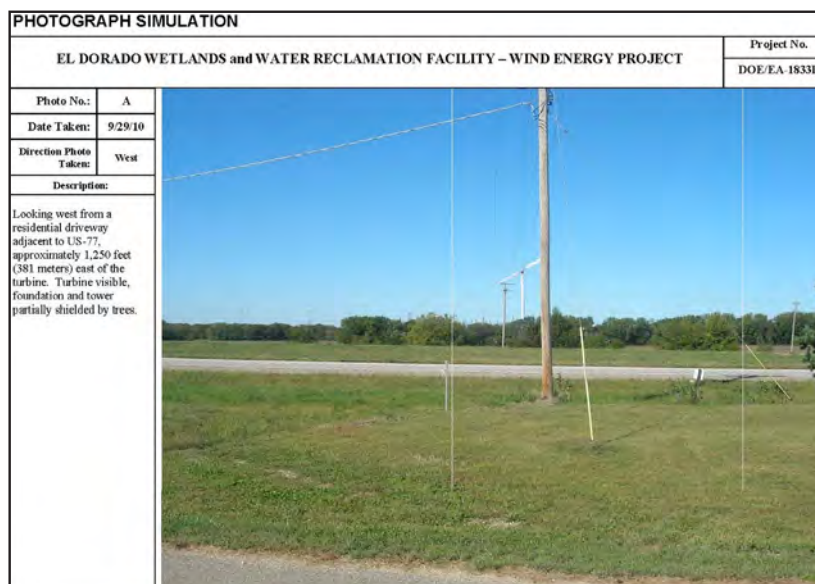
**Agency Involvement and Coordination.** One of the challenges in completing the EA was coordination among many involved parties: DOE, the Kansas Corporation Commission, City of El Dorado, a DOE contractor, a sub-recipient NEPA contractor, and the sub-recipient’s engineering firm. From the beginning of the project, we

all met weekly to discuss outstanding items. Action items were maintained in a project tracking spreadsheet and each deliverable had a set due date. This process helped all members of the team adhere to the schedule.

**Floodplain Action.** The El Dorado Wetlands and Water Reclamation Facility is located in the 100-year floodplain and the regulatory floodway of the Walnut River; therefore, DOE conducted a floodplain assessment pursuant to Executive Order 11988 and 10 CFR Part 1022. The proposed project would temporarily impact the floodplain/floodway during construction of the wind turbine foundation and installation of underground electrical connections to the facility. After completion of these activities, the affected floodplain areas would be graded, seeded, and restored to their previous condition. The proposed project required a No-Rise Certification from the City Assistant Engineer to ensure that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base (100-year) flood event. Discussions with the City’s Assistant Engineer during the development of the final EA indicated that, based on the information available for the proposed project, no adverse effects regarding floodplain issues or the issuance of a No-Rise Certification were anticipated.

**Air Navigation Impacts.** The Federal Aviation Administration (FAA) presumed hazard to air navigation in its initial aeronautical study. FAA indicated that a favorable determination could be made if the proposed structure height was reduced to 306 feet above ground level or if FAA performed additional studies for the original proposed tower height (330 feet). The City of El Dorado requested that FAA perform the additional study of the original tower height. FAA performed the requested study and subsequently issued a “Determination of No Hazard to Air Navigation” letter to the City of El Dorado. The FAA determination was subject to review if an interested party filed a petition, but no petitions were received and the determination became final on January 10, 2011.

For more information, contact Amy Van Dercook at [amy.vandercook@go.doe.gov](mailto:amy.vandercook@go.doe.gov) or 720-356-1666. 



The EA used photosimulation to represent the visual impacts of alternatives. This example shows a wind turbine (center background) as it would appear from a nearby residential driveway.



# Building the Clean Energy Economy with Equity

By: Denise Freeman, Office of NEPA Policy and Compliance

How can America foster equity in the development of alternative and renewable energy research and production? Under the theme of *Building the Clean Energy Economy with Equity*, more than 400 participants at the 5<sup>th</sup> Annual State of Environmental Justice in America Conference explored this question in Washington, DC, on April 27–29. The conference was sponsored by DOE, U.S. Department of Agriculture, U.S. Department of the Interior, U.S. Environmental Protection Agency, Howard University School of Law, and the National Small Town Alliance. Participants had the opportunity to hear and interact with a diverse mix of presenters from Federal agencies, academia, business and industry, nonprofit organizations, faith-based organizations, and local community activists. Individuals shared strategies and lessons learned and developed collaborations to help America build a clean energy economy with equity.


In opening remarks Vice Admiral (retired) Melvin G. Williams, Jr., Associate Deputy Secretary, DOE, said that the key to a clean energy economy can be summed up in three words: “commitment, fairness, and collaboration.”

- **Commitment:** DOE’s mission is to help ensure the security and prosperity of America; environmental justice is integral to that commitment.
- **Fairness:** DOE believes in fair treatment for all people and that all people should have access to information to help them make decisions.
- **Collaboration:** DOE will continue to work with other Federal, state and local agencies and communities so that they can have a meaningful voice in the decisions that affect their lives.

Associate Deputy Secretary Williams encouraged conference participants not only to engage in meaningful discussions and dialogue, but to go a step further in seeking to develop “personal relationships” and getting to know the members of the local communities.

This message harmonizes with objectives of the NEPA process to foster better decisions and build public trust and credibility. It encourages agencies to continue seeking to engage meaningfully with affected communities throughout the NEPA process, rather than only briefly at required points. For example, an agency could engage communities prior to and during preparation of a NEPA document and, as appropriate, after completion of the NEPA review when monitoring the implementation of the proposed action and the effectiveness of any associated mitigation.

In addition, Melinda Downing, DOE Environmental Justice Program Manager, recommends that, where an affected community lacks the knowledge and skills for meaningful engagement, an agency could provide technical assistance to the community or direct the community to available technical assistance in order that the community engagement could be as meaningful as possible. In these ways, communities and agencies would benefit from shared perspectives as envisioned under Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

The Presidential Memorandum that accompanies Executive Order 12898 states, “Each Federal agency shall provide opportunities for community input in the NEPA process.” Together, environmental justice and NEPA foster public trust and can help build a clean energy economy with equity. 

# DOE Tribal Summit – Capacity Building and Energy Opportunities in Indian Country

Secretary of Energy Steven Chu hosted more than 350 participants, including representatives of 54 federally-recognized American Indian and Alaska Native Tribal governments, at *DOE Tribal Summit: Winning our Future*, held in Washington, DC, to discuss DOE’s efforts to promote energy development on Indian lands. The May 2011 event aimed to identify and address obstacles and opportunities for developing tribal energy resources, in furtherance of the Administration’s commitment to effective government-to-government relationships with Native Americans.

In his keynote speech, Secretary Chu highlighted how DOE’s mission touches Indian country and tribes that are “neighbors” to DOE facilities, and emphasized his personal commitment to helping tribes create economic opportunities through energy development, education, and innovation on tribal lands. He discussed the important opportunities that energy resources found on Indian lands present for securing the Nation’s economic and energy future. Early, meaningful consultation with the tribes in the Department’s implementation of its Tribal Energy Program and other DOE tribal energy opportunities, he noted, is essential to giving tribes a direct voice in determining their own economic and energy future.

---

***Success . . . means that the Department and Tribal leaders will develop a framework for discussing important issues for the future.***

***– Secretary of Energy Steven Chu  
Tribal Summit Invitation, April 2011***


---

Inés Triay, Assistant Secretary for Environmental Management, described an approach developed by DOE staff to better incorporate input by tribes into the *Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste* (DOE/EIS-0375).



*Tracey A. LeBeau (left), Director, DOE Office of Indian Policy and Programs, introduced Nez Perce Chairman Brooklyn Baptiste, who opened the Summit with a blessing.*

Because the alternatives in the GTCC EIS include sites that are located adjacent to tribal lands or that incorporate traditional tribal lands and resources, DOE asked tribes to develop written “tribal narratives” that describe the tribes’ unique perspectives on the sites and environmental resources. (The tribal narratives are contained in [Appendix G](#) of the GTCC EIS.) Each tribal narrative included in the Draft EIS was related to the specific DOE site affiliated with the tribes and discussions with elected tribal officials, and was based on individual tribal preferences and mutually agreed-upon protocols. The narratives provide an opportunity for tribal members to speak in their own words on the potential impacts of proposed DOE activities to their communities. Ms. Triay held up this approach as an example of an important framework that enables meaningful interaction between sovereign parties.

For information about DOE’s Indian Energy Policy and other tribal-related initiatives, including the Tribal Summit, visit the DOE Office of Indian Energy Policy and Programs website ([energy.gov/indianenergy](http://energy.gov/indianenergy)). 

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information purposes only. This listing is not an endorsement of any of the training or entities listed. Cost and schedule information are subject to change; check with the course provider.

- Environmental Protection Agency  
Office of Federal Activities  
214-665-8006  
[smith.rhonda@epa.gov](mailto:smith.rhonda@epa.gov)  
[www.netionline.com/default.asp](http://www.netionline.com/default.asp)  
**NEPA and Section 309 Review (FED103)**  
Dallas, TX: June 21-23  
No Fee
- EOS Alliance  
425-270-3274  
[pt@nwetc.org](mailto:pt@nwetc.org)  
[www.eosalliance.org/schedule/calendar/courses-eos](http://www.eosalliance.org/schedule/calendar/courses-eos)  
**NEPA: Writing the Perfect EA/FONSI or EIS**  
Boise, ID: June 7-8  
\$545 (GSA contract: \$445)
- Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[www.graduateschool.edu/course\\_details.php?cid=ENVS4435E](http://www.graduateschool.edu/course_details.php?cid=ENVS4435E)  
**NEPA: Policy, Procedure, Science, and Art**  
Washington, DC: Tuesdays,  
September 20 – November 22  
\$375
- Nicholas School of the Environment  
and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del/executiveved/courses](http://www.nicholas.duke.edu/del/executiveved/courses)  
**Accounting for Cumulative Effects  
in the NEPA Process  
and Mitigation and Monitoring\***  
Durham, NC: September 12-16  
Cost information not available.  
**Certificate in the National Environmental  
Policy Act\***  
Requires successful completion of one  
core and three elective NEPA short courses.  
Fee: Included in course registration.
- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)  
**NEPA Executive Overview**  
Washington, DC: June 22  
\$385 (GSA contract: \$295)  
**Integrating Federal Environmental Laws  
into NEPA**  
Portland, OR: July 12-14  
\$985 (GSA contract: \$895)  
**Clear Writing for NEPA Specialists**  
New Orleans, LA: August 9-11  
\$945 (GSA contract: \$855) until 6/28/11  
**Preparing Specialist Reports  
as Part of the NEPA Process**  
Reno, NV: August 16-18  
\$945 (GSA contract: \$855) until 7/12/11  
San Francisco, CA: August 23-25  
\$945 (GSA contract: \$855) until 7/12/11  
**NEPA Cumulative Effects Analysis  
and Documentation and NEPA Climate  
Change Analysis and Documentation**  
Denver, CO: August 23-26  
\$1,185 (GSA contract: \$1,095)  
Portland, OR: October 4-7  
\$1,145 (GSA contract: \$1,055) until 8/23/11  
**Reviewing NEPA Documents**  
Boise, ID: September 7-9  
\$945 (GSA contract: \$855) until 7/27/11  
**NEPA Executive Overview  
and Managing NEPA Projects and Teams**  
Seattle, WA: September 13-16  
\$1,145 (GSA contract: \$1,055) until 8/2/11  
**Applying the NEPA Process  
and Writing Effective NEPA Documents**  
Las Vegas, NV: September 20-23  
\$1,145 (GSA contract: \$1,055) until 8/9/11  
**Applying the NEPA Process: Emphasis  
on Native American Issues**  
Salt Lake City, UT: September 27-29  
\$945 (GSA contract: \$855) until 8/2/11

(continued on next page)

\* Co-sponsored by the Council on Environmental Quality.

# Training Opportunities

(continued from previous page)

## Overview of the NEPA Process

Atlanta, GA: October 11

\$345 (GSA contract: \$255) until 8/30/11

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

Missoula, MT: October 18-20

\$945 (GSA contract: \$855) until 9/6/11

## Application of GIS and Graphics in NEPA Documents

Phoenix, AZ: October 25-27

\$985 (GSA contract: \$895)

## NEPA Certificate Program

Requires successful completion of eight courses offered by The Shipley Group.

\$5,450

Contact: NEPA Certificate Program, Utah State University; 435-797-0922

[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)

[www.cnr.usu.edu/htm/students/grad-degrees/nepa](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa)

- US Institute for Environmental Conflict Resolution (520) 901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/Training/Training.aspx](http://www.ecr.gov/Training/Training.aspx)

## Effective Tribal Consultation

Denver, CO: June 21-23

\$750

## Collaboration Skills

Denver, CO: September 13-15

\$750

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeps@mchsi.com](mailto:jleeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
916-737-3000  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/events/education-and-training](http://www.icfi.com/events/education-and-training)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/index.php/training/course-catalog](http://www.swca.com/index.php/training/course-catalog)

## National Association of Environmental Professionals 2012 Conference in Portland, Oregon



The National Association of Environmental Professionals (NAEP) will hold its 2012 conference on May 20–23 in Portland, Oregon. The theme for NAEP's 37<sup>th</sup> annual conference will be *Science, Politics, and Policy: Environmental Nexus*. Abstracts for presentations are due September 30. Instructions for submitting abstracts can be found at [naep.org](http://naep.org). For additional questions, contact Jennifer Lundberg at [naep2012@parametrix.com](mailto:naep2012@parametrix.com).



# EAs and EISs Completed January 1 to March 31, 2011

## EAs<sup>1</sup>

### **Berkeley Site Office/Office of Science**

[DOE/EA-1700](#) (2/25/11)  
*Computational Research and Theory Facility  
Project*, Alameda County, California  
Cost: \$210,000  
Time: 15 months

### **Golden Field Office/Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1791\\*](#) (3/9/11)  
*University of Minnesota Wind Energy Research  
Consortium Project*, Rosemount, Minnesota  
Cost: \$102,000  
Time: 12 months

[DOE/EA-1802\\*](#) (1/4/11, FONSI 2/2/11)  
*Chicago View Wind Project*, Cook County, Illinois  
Cost: \$49,000  
Time: 10 months

[DOE/EA-1804\\*](#) (1/7/11, FONSI 2/2/11)  
*Sauk Valley Community College's Wind Energy  
Project*, Lee County, Illinois  
Cost: \$34,000  
Time: 10 months

[DOE/EA-1807\\*](#) (12/30/10, FONSI 2/2/11)  
*Heartland Community College Wind Energy Project*,  
McLean County, Illinois  
Cost: \$37,000  
Time: 10 months

[DOE/EA-1815\\*](#) (2/23/11)  
*Cuyahoga County Agricultural Society Wind Energy  
Project*, Cuyahoga County, Ohio  
Cost: \$25,000  
Time: 10 months

[DOE/EA-1816\\*](#) (2/23/11)  
*Town of Hempstead Wind-to-Hydrogen Project*,  
Point Lookout, New York  
Cost: \$25,000  
Time: 10 months

[DOE/EA-1818\\*](#) (2/28/11)  
*Pettisville Local Schools Wind Energy Project*,  
Fulton County, Ohio  
Cost: \$25,000  
Time: 10 months

[DOE/EA-1819\\*](#) (2/23/11)  
*Kilowatts for Kenston Wind Energy Project*,  
Geauga County, Ohio  
Cost: \$25,000  
Time: 10 months

[DOE/EA-1820\\*](#) (2/28/11)  
*Archbold Area Local School Wind Energy Project*,  
Fulton County, Ohio  
Cost: \$25,000  
Time: 10 months

[DOE/EA-1833\\*](#) (2/11/11)  
*The City of El Dorado Wind Energy Project*,  
Butler County, Kansas  
Cost: \$53,000  
Time: 8 months

### **Idaho Operations Office/Office of Nuclear Energy**

[DOE/EA-1822](#) (3/8/11)  
*Idaho National Laboratory Stand-Off Experiment  
(SOX) Range*, Idaho  
Cost: \$11,000  
Time: 8 months

### **Office of Loan Programs**

[DOE/EA-1732](#) (1/24/11)  
*Loan to Next Autoworks Louisiana, LLC  
(Formerly V-Vehicle Company), for an Advanced  
Technology Gasoline Vehicle Manufacturing  
Project*, Monroe, Louisiana  
The cost for this EA was paid by the applicant;  
therefore, cost information does not apply to DOE.  
Time: 12 months

[DOE/EA-1796\\*](#) (2/17/11)  
*Loan Guarantee to Sempra Generation  
for Construction of the Mesquite Solar Energy  
Project*, Maricopa County, Arizona  
The cost for this EA was paid by the applicant;  
therefore, cost information does not apply to DOE.  
Time: 8 months

[DOE/EA-1834](#) (2/18/11)  
*Loan to Severstal Dearborn, Inc., for Advanced  
Technology Vehicles Manufacturing Project*,  
Dearborn, Michigan  
The cost for this EA was paid by the applicant;  
therefore, cost information does not apply to DOE.  
Time: 8 months

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

\* Recovery Act project

(continued on next page)

# EAs and EISs Completed January 1 to March 31, 2011

(continued from previous page)

## Office of Management

DOE/EA-1868 (2/25/11)

*Manhattan Project Sites*, Hanford, Washington; Los Alamos, New Mexico; Oak Ridge, Tennessee  
DOE adopted this EA on 2/25/11; therefore, cost and time data are not applicable. [Department of the Interior's National Park Service, the lead agency, issued a finding of no significant impact on 10/18/10.]

## National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy

DOE/EA-1706\* (2/2/11)

*West Tennessee Solar Farm Project*, Haywood County, Tennessee  
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 16 months

DOE/EA-1836 (3/18/11)

*Norwich Cogeneration Initiative*, Norwich, Connecticut  
Cost: \$32,000  
Time: 6 months

DOE/EA-1837\* (1/26/11)

*Performance Verification Laboratory*, Morgantown, West Virginia  
Cost: \$30,000  
Time: 3 months

## National Energy Technology Laboratory/ Office of Fossil Energy

DOE/EA-1785 (3/18/11)

*Southeast Regional Carbon Sequestration Partnership Phase III Anthropogenic Test Project*, Mobile County, Alabama  
Cost: \$47,000  
Time: 10 months

## EISs

### Bonneville Power Administration

DOE/EIS-0422\* (76 FR 9575, 2/18/11)

(EPA Rating: EC-2)

*Central Ferry-Lower Monumental 500-kilovolt Transmission Line Project*, Garfield, Columbia, and Walla Walla Counties, Washington  
Cost: \$850,000  
Time: 20 months

\* Recovery Act project

\*\* Not previously reported in LLQR

## Office of Environmental Management

DOE/EIS-0423 (76 FR 5156, 1/28/11)

(EPA Rating: LO)

*Long-Term Management and Storage of Elemental Mercury*

Cost: \$3,600,000

Time: 18 months

## Office of Loan Programs

DOE/EIS-0454\* (76 FR 7844, 2/11/11)

(EPA Rating: EC-2)

*Loan Guarantee for Tonopah Solar Energy, LLC, Crescent Dunes Solar Energy Project*, Tonopah, Nevada

EIS was adopted; therefore cost and time data are not applicable. [Department of the Interior's Bureau of Land Management was the lead agency; DOE was a cooperating agency.]

DOE/EIS-0455\* \*\* (75 FR 78992, 12/17/10)

(EPA Rating: EC-3)

*The Genesis Solar Energy Project*, California  
EIS was adopted; therefore cost and time data are not applicable. [Department of the Interior's Bureau of Land Management was the lead agency; DOE was a cooperating agency.]

## National Nuclear Security Administration/ Y-12 Site Office

DOE/EIS-0387 (76 FR 12108, 3/4/11)

(EPA Rating: EC-2)

*Site-Wide Environmental Impact Statement for the Y-12 National Security Complex*, Oak Ridge, Tennessee

Cost: \$2,000,000

Time: 64 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

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

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 15 EAs for which cost data were applicable was \$32,000; the average cost was \$49,000.
- Cumulatively, for the 12 months that ended March 31, 2011, the median cost for the preparation of 61 EAs for which cost data were applicable was \$47,000; the average was \$89,000.
- For this quarter, the median and average completion times for 19 EAs for which time data were applicable were 10 months.
- Cumulatively, for the 12 months that ended March 31, 2011, the median completion time for 74 EAs was 9 months; the average was 10 months.

## EIS Cost and Completion Times

- For this quarter, the median cost for the preparation of 3 EISs for which cost data were applicable was \$2 million; the average cost was \$2.2 million.
- Cumulatively, for the 12 months that ended March 31, 2011, the median and average costs for the preparation of 4 EISs for which cost data were applicable were \$2.3 million.
- For this quarter, the median completion time of 3 EISs was 20 months; the average was 34 months.
- Cumulatively, for the 12 months that ended March 31, 2011, the median completion time for 7 EISs was 20 months; the average was 25 months.

## Recent EIS-Related Milestones March 1, 2011 to May 31, 2011

### Notices of Intent

#### Office of Fossil Energy

DOE/EIS-0460\*

*FutureGen 2.0*, Illinois

May 2011 ([76 FR 29728](#), 5/23/11)

DOE/EIS-0464\*

*Lake Charles Carbon Capture and Storage (CCS)*

*Project*, Calcasieu Parish, Louisiana

April 2011 ([76 FR 24007](#), 4/29/11)

#### Office of Loan Programs

DOE/EIS-0465\*

*Mid-Atlantic Power Path (MAPP) Project*,

Prince George's, Calvert, and Wicomico Counties, Maryland, and Sussex County, Delaware

March 2011 ([76 FR 12088](#), 3/4/11)

### Extensions of Public Comment Period

#### Office of Energy Efficiency and Renewable Energy

DOE/EIS-0403

*Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States*

March 2011 ([76 FR 14968](#), 3/18/11)

[Co-Lead: Department of the Interior's Bureau of Land Management (BLM); on 4/13/11, DOE/BLM announced a second extension of the public comment period through 5/2/11.]

### Reopening of Scoping Period

#### Office of Electricity Delivery and Energy Reliability

DOE/EIS-0463

*Presidential Permit Application for Northern Pass Transmission Project*, New Hampshire

April 2011 ([76 FR 21338](#), 4/15/11)

(continued on next page)

\* *Recovery Act project*

# Recent EIS-Related Milestones

## March 1, 2011 to May 31, 2011 *(continued from previous page)*

### Draft EISs

**Office of Fossil Energy/  
National Energy Technology Laboratory**  
[DOE/EIS-0444\\*](#)  
*Texas Clean Energy Project*, Ector County, Texas  
March 2011 ([76 FR 14968](#), 3/18/11)

[DOE/EIS-0445\\*](#)  
*Mountaineer Commercial Scale Carbon Capture and Storage Project*, Mason County, West Virginia  
March 2011 ([76 FR 12108](#), 3/4/11; [76 FR 17406](#), 3/29/11, postponement of public hearing.)

**Office of Loan Programs**  
[DOE/EIS-0458\\*](#)  
*Loan Guarantee to Royal Bank of Scotland for Construction and Startup of the Topaz Solar Farm*, San Luis Obispo County, California  
March 2011 ([76 FR 16767](#), 3/25/11)

**National Nuclear Security Administration/  
Los Alamos Site Office**  
[DOE/EIS-0350-S1](#)  
*Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory*, Los Alamos, New Mexico  
April 2011 ([76 FR 24021](#), 4/29/11; [76 FR 28222](#), 5/16/11, extension of comment period.)

### Final EISs

**Office of Loan Programs**  
[DOE/EIS-0468](#)  
*American Centrifuge Plant*, Pike County, Ohio  
May 2011 ([76 FR 29240](#), 5/20/11)  
[DOE adopted this FEIS from the Nuclear Regulatory Commission (NRC); NRC filed this EIS with EPA on 5/11/06.]

[DOE/EIS-0471](#)  
*Areva Eagle Rock Enrichment Facility*, Bonneville County, Idaho  
May 2011 ([76 FR 29240](#), 5/20/11)  
[DOE adopted this FEIS from the Nuclear Regulatory Commission (NRC); NRC filed this EIS with EPA on 2/14/11.]

### Records of Decision

**Bonneville Power Administration**  
[DOE/EIS-0422\\*](#)  
*Central Ferry-Lower Monumental 500-kilovolt Transmission Line Project*, Garfield, Columbia, and Walla Walla Counties, Washington  
March 2011 ([76 FR 15970](#), 3/22/11)

**Office of Loan Programs**  
[DOE/EIS-0416\\*](#)  
*Ivanpah Solar Electric Generating System*, San Bernardino County, California  
April 2011 ([76 FR 21716](#), 4/18/11)

### Supplement Analyses

**Bonneville Power Administration**  
**Transmission System Vegetation Management Program**  
([DOE/EIS-0285](#))

[DOE/EIS-0285-SA-442](#)  
*Vegetation Management within Bonneville Power Administration's (BPA) Fee Owned Land Surrounding the Bell Complex*, Spokane County, Washington  
(Decision: No further NEPA review required.)  
March 2011

[DOE/EIS-0285-SA-443](#)  
*Vegetation Management along Portions of the Taft-Bell No. 1, the Bell-Lancaster No. 1, and the Bell-Trentwood No. 1 and No. 2 Transmission Line Rights-of-Way*, Spokane County, Washington and Kootenai County, Idaho  
(Decision: No further NEPA review required.)  
March 2011

*(continued on next page)*

\* Recovery Act project

# Recent EIS-Related Milestones

## March 1, 2011 to May 31, 2011 *(continued from previous page)*

### [DOE/EIS-0285-SA-444](#)

*Vegetation Management along Portions of the Keller Tap to Grand Coulee-Okanogan, No. 2 115-kV Transmission Line Corridor, Douglas, Okanogan and Ferry Counties, Washington*  
(Decision: No further NEPA review required.)  
March 2011

### [DOE/EIS-0285-SA-445](#)

*Vegetation Management and Access Road Maintenance Activities along the Entire Right-of-Way Corridors and Associated Access Roads for the Raver-Paul No. 1 Transmission Line, King and Pierce Counties, Washington*  
(Decision: No further NEPA review required.)  
April 2011

### [DOE/EIS-0285-SA-446](#)

*Vegetation Management along the East Ellensburg Tap to the Columbia-Ellensburg No.1 115-kV Transmission Line Corridor Right-of-Way from Mile 1 to Mile 4 and Access Roads, Kittitas County, Washington*  
(Decision: No further NEPA review required.)  
April 2011

### [DOE/EIS-0285-SA-447](#)

*Vegetation Management along Portions of the Libby-Bonnors Ferry No. 1 Transmission Line Right-of-Way, Lincoln County, Montana and Boundary County, Idaho*  
(Decision: No further NEPA review required.)  
April 2011

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Extensive site search.* The applicant screened more than 400 existing facilities in 11 states, then visited more than 15 sites in 9 states during the EA scoping process. Site-selection criteria included available acreage, plant size, road and rail access, labor-force availability, labor costs, environmental considerations, and socioeconomic impacts.
- *Combined notices.* A combined notice of EA scoping and notice of proposed floodplain action was distributed to an extensive list of stakeholders.

## Data Collection/Analysis

### What Worked

- *Use of examples.* The NEPA contractor used examples of DOE documents for the preparation of the floodplain/wetlands assessment.
- *Efficient use of time.* The NEPA contractor completed the floodplain and wetlands analysis prior to drafting the EA.
- *Local site research.* Local agencies prepared a feasibility study, with extensive background information, to support consideration of two locations for the wind turbine prior to the preparation of the EA.
- *Verifying compliance with requirements.* Although the State Historic Preservation Officer had already completed a no effect determination for the proposed project, an official consultation letter was prepared to ensure DOE met consultation requirements. It included information from a previous survey conducted nearby and contained language to eliminate the need for a response to DOE.
- *Federal agency support.* Other Federal agencies assisted in approving the methodology used to calculate diffuse source radionuclide emissions under existing regulations.
- *Anticipating data needs.* Anticipating the need for surveys during data collection was beneficial.

### What Didn't Work

- *Additional analysis required.* A Federal agency identified a potential hazard and indicated that further analysis would be required unless the project was modified. The additional analysis was successfully conducted but delayed the EA completion by one month.

**Editor's Note:** *Although completion of the EA was delayed, the NEPA process worked by identifying and resolving a potential hazard.*

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Responsive applicant.* The contractor and applicant were very responsive to requests for additional information and analysis.
- *General Counsel briefings.* Briefing and getting feedback from General Counsel staff prior to the draft EA's submission for review facilitated timely document completion.
- *Project management.* Use of both project tracking and schedule tracking (deliverables had set due dates) facilitated timely document completion.
- *Frequent meetings.* Holding frequent EA status meetings and conference calls facilitated timely completion.
- *Emphasis on schedule.* Regular communication with the NEPA contractor, maintaining a productive working relationship, and a strong emphasis to stay on schedule facilitated the timely completion of the document.
- *Efficient contractor.* Contractor efficiency and a motivated and well-organized grant recipient facilitated timely completion of the EA.
- *NEPA adoption benefits.* The EA was completed by another agency, but supported the need for providing funding to the project.

*(continued on next page)*

# Questionnaire Results

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

- *Work ethic.* Hard work, long hours, and a lack of project controversy facilitated the timely completion of the EA.
- *Commitment to quality.* Despite the pressure to complete the EA process on an expedited schedule, and communication difficulties with the State Historic Preservation Officer, the quality of the document was not compromised.

### Factors that Inhibited Timely Completion of Documents

- *Comment volume and litigation.* The high volume of public comments received and pending litigation made timely completion of the EA difficult.
- *Unreasonable schedule.* The EA was not completed on time due to an overly optimistic schedule. Also, several weeks were added to the EA process because of a study required by another Federal agency.

**Editor's Note:** *Early consultation could minimize such delays.*

- *Conflicting schedules.* Coordinating with external Federal agencies for regulatory approvals was difficult due to conflicting schedules.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Staff collaboration.* NEPA staff worked closely with the DOE Program Office staff on the EA. The flow of information helped integrate NEPA into overall project planning, and the assistance received from experienced NEPA staff was invaluable.
- *Proficient contractor.* The EA preparation contractor selected and paid for by the applicant was very knowledgeable, quick, and responsive.
- *Program knowledge.* Frequent communication and thorough understanding of program requirements facilitated effective teamwork.
- *Resource experts.* The addition of resource experts to the team helped to facilitate effective preparation of the EA.
- *Access to applicant resources.* Having ready access to the applicant's contractor facilitated effective teamwork and open communication.
- *Successful interagency communication.* Roundtable discussions between DOE and the lead agency responsible for document preparation helped resolve any issues that the agencies had with the EA.

- *Team diligence.* The industrious work ethic of the project staff facilitated preparation of the EIS.

### Factors that Inhibited Effective Teamwork

- *Contractor communication.* Teamwork between the field and headquarters was compromised when headquarters' staff was unable to communicate directly with the contractor to view data that were not to be included in the EA.
- *Incomplete participation.* The lack of involvement of some DOE reviewers in discussions with EA preparers inhibited information transfer.
- *Communication breakdown.* Too many data calls from headquarters and communication issues with the State Historic Preservation Officer regarding their concerns made teamwork difficult.

## Process

### Successful Aspects of the Public Participation Process

- *Interested stakeholder.* A community group was interested in the project and extremely responsive.
- *Using stakeholder lists and postcards.* Compiling an extensive list of stakeholders and mailing postcards was effective for this EA. Advertisements about the project were placed in a few local papers as well on the host city's website.
- *Effective comment responses.* Each public comment was addressed and follow-up information (e.g., an archeological survey) was provided to the commentor. After the draft EA review, there were no objections to the project.
- *Targeted briefings.* Briefings with tribes and state representatives had a positive effect on the public's perspective on the project.
- *Public support.* This was a small project with minimal environmental impact. Public reaction and comment was minimal and supportive.
- *Proactive outreach.* The project team's communication with the zoning commission and taking public comments at the beginning and end of the EA process were good ideas.
- *Public outreach.* Many people were appreciative of the team's efforts to communicate with the community.

*(continued on next page)*

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

### Usefulness

#### Agency Planning and Decisionmaking: What Worked

- *Decisionmaking influence.* The NEPA process ensured that the decisionmaking process of program applicants fully considered the environmental consequences of their proposals. In the loan application process, the environmental analysis influenced decisions by the applicant very early in the process.
- *Impacts identified.* The NEPA process helped determine the magnitude of the anticipated environmental impacts and encouraged design features to help reduce them.
- *Additional reviews identified.* Due to the NEPA review process, an additional study and floodplain/wetlands review were conducted to ensure sound decisionmaking.
- *Reduced environmental impacts.* The NEPA process informed program personnel of the benefits of placing the project in a location that would reduce environmental impacts.
- *Familiar procedures.* Previously established procedures were followed, which worked effectively and efficiently.
- *Successful planning.* The NEPA process helped to ensure that there were no sensitive environmental resources that would be adversely impacted by the project, affect its overall viability, delay the permitting process, or cause public controversy. The decision to prepare an EA bolstered this case and facilitated informed and sound decisionmaking.
- *Legal obligations.* Since the court had decided that it was necessary to conduct a NEPA review for this project, the site made an effort to develop an EA that would be legally defensible.
- *No major impacts.* The EA supported the need for the project and assisted in conveying the lack of major impacts.
- *Section 106 lessons learned.* The staff involved learned some valuable lessons concerning the Section 106 process and State Historic Preservation Officers in regards to indirect impacts to historic properties.

### Enhancement/Protection of the Environment

- *Comprehensive planning.* The care that the applicant took in selecting a site was followed by detailed planning on the exact positioning of a facility expansion. Due to this extensive planning, impacts to wetlands were minimal. The applicant also conducted a thorough remediation of the existing site.
- *Impact reduction.* The impacts of noise, greenhouse gases, and power consumption were reduced.
- *Responsible development.* The NEPA process helped to protect the environment while developing wind energy in a responsible manner.
- *Location selection.* The NEPA process facilitated the selection of a project location that would have the least environmental impact.
- *Environmental stewardship.* The NEPA process ensured that all practicable environmental control measures were considered and employed.

### Other Issues

#### Guidance Needs Identified

- *Greenhouse gas impacts.* Final guidance is needed on greenhouse gas impacts determination and clarification of how to apply local standards when determining the significance of an environmental impact. (Note: See related article, page 8.)
- *Addressing indirect impacts.* Additional guidance is needed on addressing indirect impacts, like visual impacts, associated with large wind turbine installations on listed or eligible historic properties.

*(continued on next page)*



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

## Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

For the past quarter, in which 9 questionnaire responses were received for EAs and EISs, 8 out of 9 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that NEPA was used as an effective planning tool because it outlined requirements and permits needed to complete the project.
- A respondent who rated the process as “5” stated that the responsible program office did its best to use the NEPA process to align its project with the best interest of both the human and natural environments.
- A respondent who rated the process as “4” stated that the NEPA process assisted in validating the need for this project and made it more defensible.
- A respondent who rated the process as “3” stated that the applicant took action in the design of the facility to minimize potential environmental impacts and to demonstrate environmental stewardship. This allowed the rest of the DOE team to feel confident in moving the project forward.
- A respondent who rated the process as “3” stated that even without a NEPA review, the responsible laboratory was aware of the need to reduce environmental impacts.
- A respondent who rated the process as “3” stated that it is difficult to rate the process due to DOE’s minimum level of involvement.
- A respondent who rated the process as “3” stated that because this was a very small project with only limited potential for adverse impact, the benefits of NEPA were somewhat restricted.
- A respondent who rated the process as “3” stated that the NEPA process played an influential role in the decisionmaking process. It provided decisionmakers with reassurance that the applicant had chosen an environmentally benign site that would not pose problems for the overall viability of the project.
- A respondent who rated the process as “2” stated that research on reasonable alternatives and locations was conducted prior to initiation of the NEPA process.

# National Environmental Policy Act LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

September 1, 2011; Issue No. 68

Third Quarter FY 2011

## DOE NEPA Metrics Show Positive Results

The median cost and time to complete DOE environmental assessments (EAs) decreased substantially during 2009 and 2010, according to data collected by the Office of NEPA Policy and Compliance (NEPA Office), even though DOE's overall NEPA workload more than doubled during the same time period (Figures 1 and 2). The improved performance metrics are attributable to the preparation of EAs for projects funded through the American Recovery and Reinvestment Act (Recovery Act). The median cost and time to prepare EAs for Recovery Act projects were about 40 percent lower than for all non-Recovery Act projects prepared from January 1, 2001, through December 31, 2010. This trend continues in 2011, based on data through July 31.

The cost and completion time for environmental impact statements (EISs) remained stable from 2001 through 2010, with expected variations in data from year to year.

Also throughout this period, about 75% of Lessons Learned Questionnaire respondents rated the NEPA process as "effective" and noted many ways in which NEPA compliance served to enhance or protect the environment. (See, for example, *What Worked and Didn't Work*, page 21.) DOE also has reported on the effectiveness of the NEPA process for Recovery Act projects in reports to the Council on Environmental Quality, noting many benefits of NEPA reviews (*LLQR*, March 2010, page 14).

### Recovery Act EAs Improved Trends

From 2001 through 2009, DOE typically completed about 20 to 30 EAs per year. That number jumped to 77 completed EAs in 2010, including 52 EAs for Recovery Act projects. Data on EAs completed through July 2011 and DOE workload projections for documents in preparation show a similar large workload in 2011.

(continued on page 3)

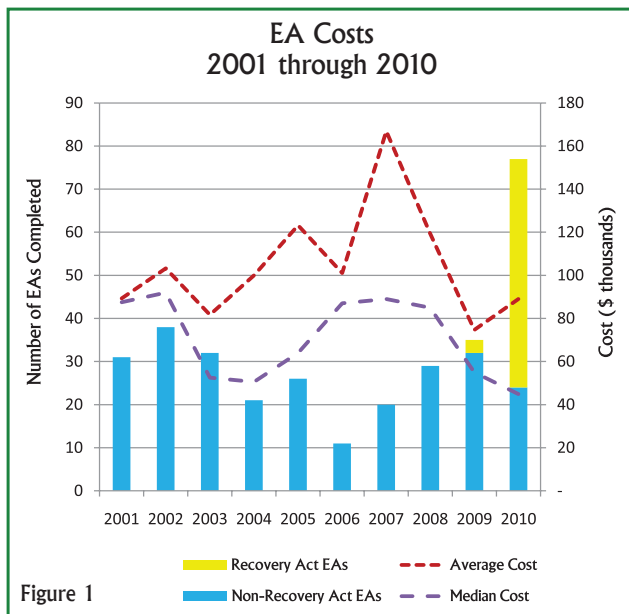


Figure 1

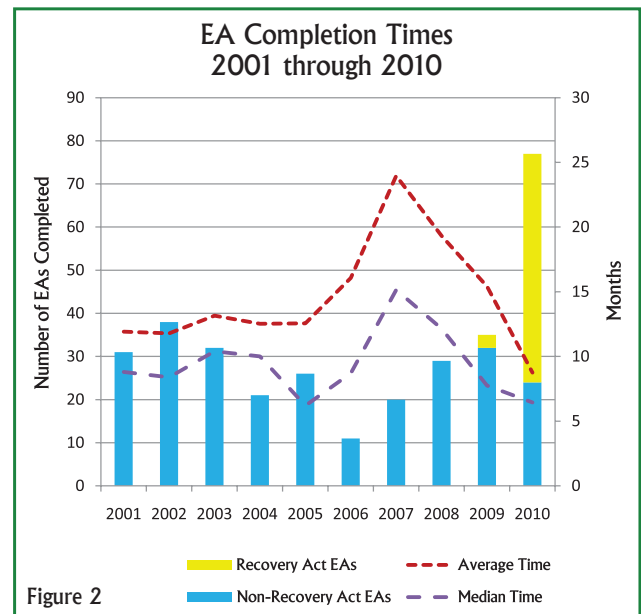


Figure 2

## Inside **LESSONS LEARNED**

Welcome to the 68<sup>th</sup> quarterly report on lessons learned in the NEPA process. This issue features an analysis of recent NEPA performance metrics. While we are pleased that EA cost and time metrics have improved, we are continuing to analyze how to apply lessons learned from the Recovery Act experiences more broadly. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

New DOE NEPA Website Design .....	5
Federal Agencies Completing Recovery Act NEPA Work .....	5
Environmental Reports To Streamline NEPA Analyses .....	6
Uranium Leasing Program PEIS Scoping Meetings .....	7
More Stakeholders Accept NEPA Documents Online .....	8
New Database Tracks Electric Transmission Projects .....	8
MOU To Standardize NEPA Air Analyses .....	9
Air Force Guidance Goes "Back to Basics" .....	10
Update on DOE NEPA Rulemaking .....	10
Transitions .....	11
Federal Agencies Sign Environmental Justice MOU .....	11
Training Opportunities .....	15
EAs and EISs Completed This Quarter .....	17
Cost and Time Facts .....	19
Recent EIS-Related Milestones .....	19
Questionnaire Results .....	21

*Carol Sington*

Director  
Office of NEPA Policy and Compliance

Printed on recycled paper



## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report (LLQR)*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2011. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due November 1, 2011

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2011 (July 1 through September 30, 2011) should be submitted by November 1, 2011, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at <http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Guidance & Requirements, then Lessons Learned. We provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) or call 1-800-472-2756.



This icon indicates that *LLQR* online (<http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned) provides a link to a referenced webpage.



## NAEP Conference Abstracts Due Sept. 30; Environmental Award Nominations Due Dec. 2

The National Association of Environmental Professionals (NAEP) seeks abstracts for presentations at its 37<sup>th</sup> annual conference, to be held May 21–24, 2012, in Portland, Oregon, under the banner of *Science, Politics, and Policy: Environmental Nexus*. The conference covers NEPA and related subjects and is open to environmental professionals in all levels of government, academia, and the private sector. NAEP also invites nominations for its annual Environmental Excellence Awards, which recognize outstanding projects and programs. Information on submitting abstracts (due September 30) and award nominations (due December 2) is available at [www.naep.org](http://www.naep.org).

## greengov<sup>SM</sup> GreenGov Symposium, Oct. 31 – Nov. 2

The Council on Environmental Quality and the Association of Climate Change Officers (who represent private sector companies; international organizations; Federal, state, and local governments; and academic institutions) are co-sponsoring the second annual GreenGov Symposium, which will be held in Washington, DC, on October 31 through November 2. The conference focuses on sustainability and other topics related to Executive Order 13514, *Federal Leadership in Environmental, Energy and Economic Performance*. Information is available at [www.greengov2011.org](http://www.greengov2011.org).

# NEPA Metrics *(continued from page 1)*

The median and average costs for 320 EAs completed during the 10-year period through 2010 were \$65,000 and \$103,000, respectively. A decrease in median EA costs in 2010 is attributable to lower costs for Recovery Act EAs; data through July 31, 2011, show a continuation of this trend. The respective median and average costs to complete 56 Recovery Act EAs in 2009 and 2010 were \$44,000 and \$62,000 per EA, which is substantially less than the corresponding costs of 264 non-Recovery Act EAs completed during the past 10 years (\$77,000 and \$112,000, respectively).

EA completion time is measured from the EA determination date to document approval. On an annual basis, median EA completion times during the past 10 years typically ranged between about 7 and 10 months, peaked in 2007-2008, then decreased in 2010 to about 6 months; data through the first half of 2011 show a continuation of this trend. Most of the decrease to date is attributable to faster completion times for Recovery Act EAs. The median time to complete 56 Recovery Act EAs in 2009 and 2010 was 6 months; the corresponding median completion time for 264 non-Recovery Act EAs over the past 10 years was 10 months. Data through July 31, 2011, show a continuation of this trend. Figure 3 provides more information on the distribution of EA completion times.

Based on informal feedback from NCOs, the improved metrics for Recovery Act EAs may be attributed to: 1) senior management attention to schedule; 2) common subjects, with most EAs for advanced battery manufacturing or wind turbines; and 3) team approaches in which the same people worked on similar EAs and shared lessons efficiently.

## Tracking and Reporting NEPA Metrics

Since 1994, the NEPA Office has solicited comments from NEPA Compliance Officers (NCOs), NEPA Document Managers, and other involved persons on lessons learned for each completed EIS and EA. The NEPA Office tracks, and reports periodically on, NEPA process performance metrics, including cost, completion time, and measures of effectiveness. The NEPA Office analyzes data trends to assess the Department's progress and recommends ways to foster improvement. In 2009, the NEPA Office began to track data for categorical exclusion (CX) determinations.

Past analyses of trends in metrics data, primarily for EISs, are reported in *LLQR*, including for the periods: 1994–2003 ([September 2003, page 4](#)), 1996–2005 ([March 2006, page 32](#)), 1997–2007 ([June 2007, page 28](#)), and 1998–2007 ([December 2008, page 16](#)).

## EIS Metrics Remained Stable

During the past 10 years DOE issued about 7 EISs per year. In 2010, DOE prepared 5 EISs. (Adopted EISs are not included in the number of EISs completed and the cost and time analyses.) Seven EISs have so far been completed in 2011. Reports from NEPA Document Managers indicate that DOE is expected to complete six more EISs this year.

EIS cost and completion time metrics must be interpreted cautiously in view of the relatively small number of documents and large variability in these metrics; one or two extraordinary documents can significantly influence statistics, particularly averages (Figures 4 and 5).

*(continued on next page)*

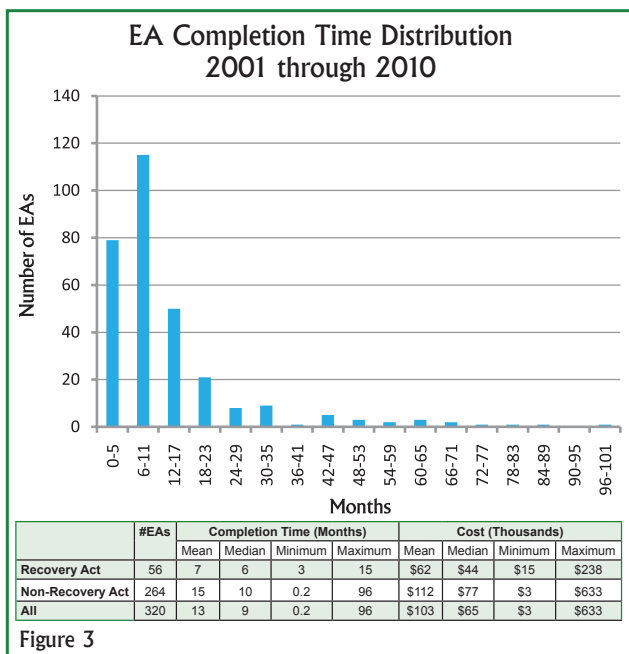


Figure 3

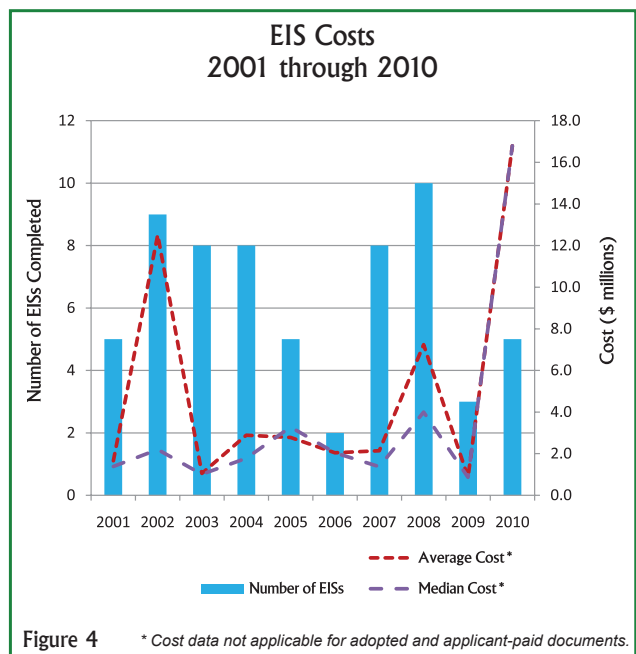


Figure 4 \* Cost data not applicable for adopted and applicant-paid documents.

# NEPA Metrics *(continued from previous page)*

For example, a spike in the cost of EISs completed in 2010 and a spike in completion time in 2009 are attributable to completion of a few extraordinary documents. Metrics for Recovery Act EISs are not distinguished in this analysis due to the small number of such documents, the completion or near completion of a few EISs before a determination to apply Recovery Act funding, and the application of Recovery Act funds to a subset of activities addressed in complex EISs.

EIS completion costs generally have remained stable over the past 10 years with median and average EIS costs of \$1.4 million and \$4.6 million, respectively, for 41 EISs for which costs are applicable to DOE. (Costs are not applicable for adopted and applicant-paid documents.)

EIS completion times are measured from DOE's notice of intent to prepare an EIS to the Environmental Protection Agency's notice of availability of the final EIS. Median EIS completion times generally have varied between 20 and 35 months.

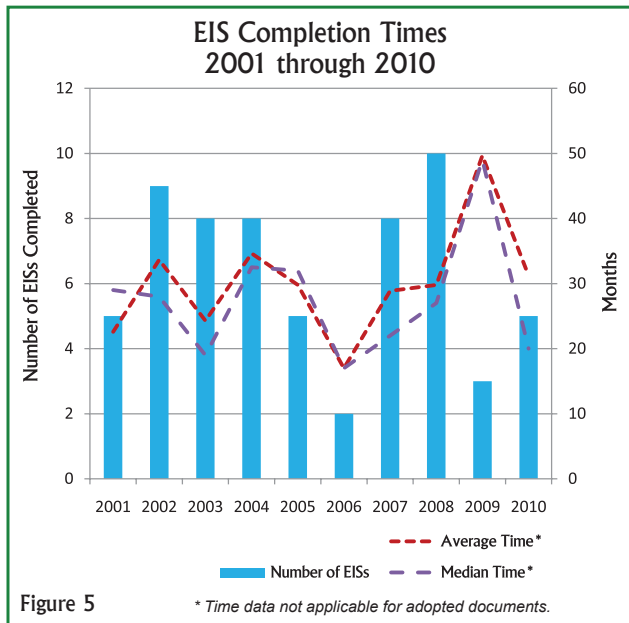
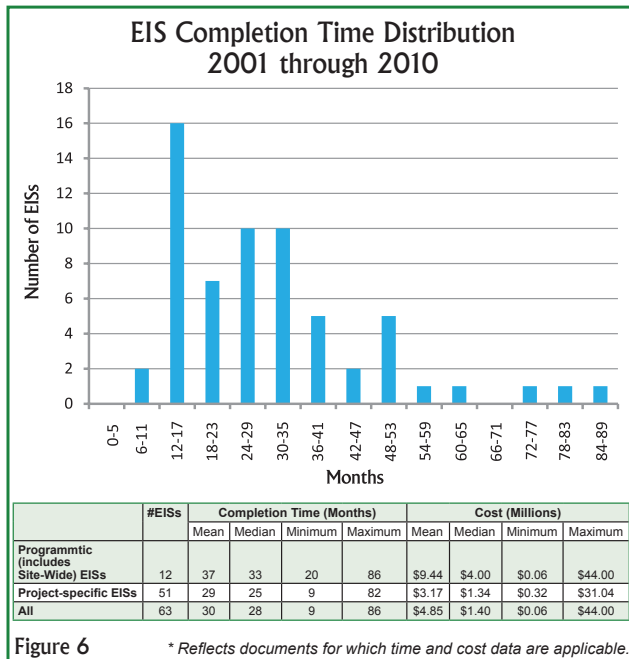


Figure 6 provides more information about the distribution of EIS completion times, indicating that, although some EISs are completed in 3 or more years, the most frequent EIS completion time is between 12 and 17 months, while 15 percent are completed in 15 months or less.

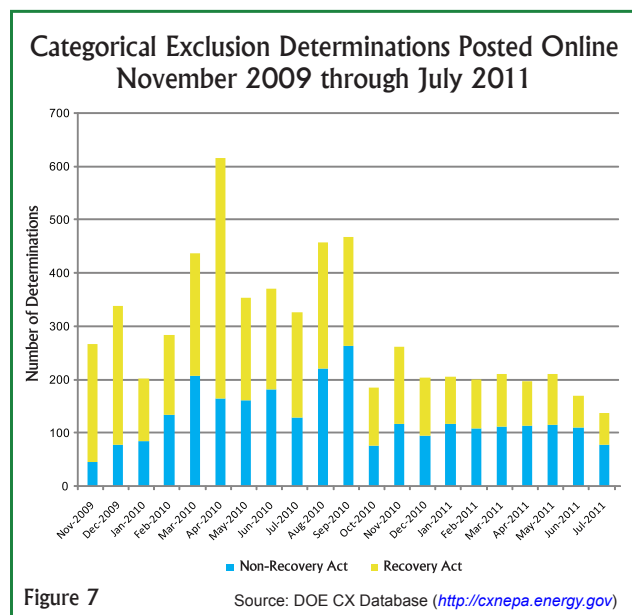
Looking forward, an increasing number of EISs are in preparation for which Document Managers report that completion milestones are “uncertain,” raising concerns about prospects for continued improvement in EIS completion time. The number of EISs tracked on DOE's Schedule of Key EISs for which completion milestone dates are uncertain has increased from about 30 percent in 2009 to 60 percent in 2011 (*Schedules of Key EISs*, updated monthly, on the DOE NEPA Website).



## CX Determinations Up Sharply

Figure 7 presents the 6,200 CX determinations by month included in the DOE CX database since November 2009, when DOE instituted a policy to publicly post CX determinations. (See *LLQR, December 2009, page 1.*)

*(continued on page 10)*



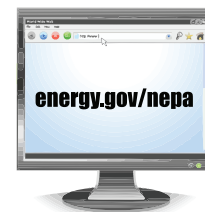
# New Design Creates Opportunities for DOE NEPA Website

Improvements to the DOE NEPA Website are underway following the roll out of a new design for *Energy.gov* on August 4, 2011. New software running the website will make it simpler to find related NEPA documents and allow users to search for documents by various criteria.



Secretary of Energy Steven Chu announced the new web redesign in a [video message](#), in which he acknowledged that the NEPA Office “spent countless hours preparing tens

of thousands of documents for the new, improved NEPA site.” In regard to the overall web redesign effort, he said, “These efforts are making *Energy.gov* easier to use, more transparent, and more participatory – all while saving taxpayers more than \$10 million each year.”



## Transitioning the DOE NEPA Website

The NEPA Office is continuing to transition files to the new web design and to make changes to take full advantage of the possibilities offered by the new software. We apologize that some files have been difficult to locate in the interim, due, in part, to the new menu choices. Archives of DOE NEPA documents, Key EIS Schedules, and the EA/EIS Status Chart are under the Services tab. NEPA regulations and guidance, and *LLQR*, are under the Guidance & Requirements tab. If you need to locate a file, have questions about the new website, or have suggestions for improvements, please email us at [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov).

The DOE NEPA Website is available via <http://nepa.energy.gov> or <http://energy.gov/nepa>.

In transitioning to the new web design, NEPA Office staff reviewed more than 18,000 individual files that make up the DOE NEPA Website – including individual NEPA documents, requirements, guidance, and *LLQR* – and added metadata, such as the title, date, and keywords, so that the content management system could create an internal index and make the entire library of documents searchable and accessible. This will allow the website to present projects undergoing NEPA review by type (e.g., solar, wind, nuclear), location, or DOE Office. The NEPA Office is exploring ways to list public comment opportunities with links to the relevant NEPA documents and information on submitting comments. New design changes will reduce maintenance costs and make it simpler to update the website. The DOE NEPA Website will continue to evolve over the coming months, with improved functions, new content, and better presentation.

# Federal Agencies Completing Recovery Act NEPA Work



Federal agencies “continue to make good progress in completing their NEPA reviews in a timely fashion,” said Nancy H. Sutley, Chair of the Council on Environmental Quality (CEQ), in releasing the tenth quarterly report to Congress on NEPA compliance for projects funded under Division A of the American Recovery and Reinvestment Act of 2009 (Recovery Act). The report highlights examples “where the environmental review process assisted Federal agencies in improving the quality of their decisions, thereby saving money and energy, protecting vital resources, and increasing public participation,” she said.

CEQ announced that as of June 30, 2011, “more than 99 percent of environmental reviews for Recovery Act projects” (or more than 191,400 of the 191,710 required NEPA reviews) had been completed. Cumulatively through June 30, 2011, Federal agencies completed more than 183,650 categorical exclusion (CX) determinations and more than 6,950 EAs, and analyzed 830 projects in EISs. Agencies concluded that NEPA is not applicable to more than 4,270 other Recovery Act projects. Together, these projects involve obligations of almost \$297 billion, an increase of \$4.2 billion since the previous quarter. Federal agencies completed more than 1,400 of these NEPA reviews during the quarter ending June 30, including more than 500 that were completed by DOE.

CEQ reported that approximately 310 NEPA reviews are underway: approximately 95 CX determinations, 180 EAs, and 30 EISs. Pending NEPA reviews for DOE Recovery Act projects include 34 EAs and 17 EISs; DOE reported no pending CX determinations.

As of June 30, DOE had completed more than 9,700 NEPA reviews supporting the obligation of more than \$34 billion for projects receiving Recovery Act funding, an increase of almost \$500 million since March 31, 2011 ([LLQR, June 2011, page 12](#)). Of the completed reviews, more than 9,600 are CX determinations, 115 are EAs, and more than 25 are EISs.

## Final Report to Congress in November

The last CEQ report to Congress, as required by Section 1609(c) of the Recovery Act, will cover NEPA activities through September 30, 2011. Federal agency reports are due to CEQ in October 2011, and CEQ will submit the report to Congress in November 2011.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924.

# EERE Environmental Reports To Streamline NEPA Analyses

The DOE Office of Energy Efficiency and Renewable Energy (EERE) is preparing reference documents describing the environmental impacts of renewable energy technologies to streamline its NEPA reviews for such projects. During its review of thousands of applications for funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act), EERE recognized that an improved base of environmental data for renewable energy technologies could benefit both applicants and DOE NEPA practitioners.

DOE nominated the first such report, which will be on geothermal heat pumps, as a pilot project in response to a recent request from the Council on Environmental Quality (CEQ). (See text box, below.) EERE plans to complete similar Renewable Energy Environmental Reports for solar and wind energy technologies.

“The Renewable Energy Environmental Report pilot project is intended to develop a process that aids EERE and other organizations in ensuring consistent, highly efficient, and focused NEPA analyses for geothermal heat pump technologies. If successful, this process can be applied to any technology,” said Scott Hine, Director of Field Operations, EERE.

The first report will discuss potential environmental impacts associated with installing, operating, and decommissioning geothermal heat pump technologies in a range of geographic settings. Geothermal heat pumps use the constant temperature of the Earth (rather than more variable air temperatures used in other types of heat pumps) to heat and cool residential and commercial buildings. This allows the system to operate at much higher efficiencies.

## Many Recovery Act Proposals Lacked Environmental Information

While reviewing applications for funding under the Recovery Act, DOE determined that many applications, including those for geothermal heat pump projects, lacked information needed to determine the appropriate level of NEPA review (categorical exclusion determination, EA,


### Geothermal Heat Pump Environmental Report Will Address:

- Geothermal heat pump technologies and how they interact with the environment
- Screening criteria that can be used to focus future NEPA reviews
- Methodologies for the analysis of potential environmental impacts common to geothermal heat pump technologies
- Potential direct and indirect impacts associated with specific technologies
- Issues to consider for cumulative impacts analysis for individual proposed geothermal heat pump projects
- Technology-specific best management practices and impact avoidance and mitigation measures
- Areas of incomplete or unavailable information
- Applicable regulations, requirements, and guidelines

or EIS). As a result, DOE had to request additional project information from applicants, thereby delaying the NEPA process. Also, while simultaneously reviewing a large number of proposals for geothermal heat pump projects, DOE identified common technical questions regarding potential impacts. From these experiences, DOE concluded that a technology-specific report would reduce the cost and time needed to complete future NEPA reviews.

DOE can use the report to develop requirements for funding solicitations for geothermal heat pump proposals. It will help DOE more clearly describe information needs and better inform applicants about potential environmental impacts that may need particular attention because of the proposed technology, location, or other factors. The report will also expedite DOE’s determination of NEPA compliance requirements and can be incorporated by reference in future NEPA documents.

## DOE To Engage the Public, Other Agencies

Participation by the public, other agencies, and subject matter experts is a key element of DOE’s planned process for preparing the report. In addition to traditional public involvement opportunities, DOE intends to utilize “crowd-sourcing,” community board, and Wiki-environments to solicit comments on the scope of the report and on a draft report. DOE will use the collective knowledge of all interested parties to inform the preparation of the report. For more information on DOE’s geothermal heat pump Renewable Energy Environmental Report, contact John Jediny, EERE Environmental Specialist, at [john.jediny@ee.doe.gov](mailto:john.jediny@ee.doe.gov) or 202-586-4790. 

### 37 Pilot Projects Nominated To Improve NEPA Efficiency

CEQ, in March 2011, invited public and Federal agencies to nominate pilot projects for improving NEPA implementation (*LLQR*, June 2011, page 11). CEQ received 37 nominations of approaches to simplify implementation, reduce the time and cost of NEPA reviews, use information technology, and improve the effectiveness of public engagement. The pilot project nominations, including this one from DOE, are posted on the CEQ [website](#). On August 31, CEQ announced its first winning pilot project: two information technology tools developed by the Forest Service and National Park Service.



DOE's Office of Legacy Management conducted four public scoping meetings for the Uranium Leasing Program (ULP) Programmatic Environmental Impact Statement (DOE/EIS-0472) in August 2011. (See Notice of Intent, 76 FR 36097, 6/21/11; and Notice of Public Scoping Meetings, 76 FR 43678, 7/21/11.) More than 200 people participated in meetings in Montrose, Telluride, and Naturita, Colorado, and Monticello, Utah. These photographs depict some of the meetings and proposed mine leasing area.



Registration desk at ULP scoping meetings.



Participants at Telluride meeting listen to presentations.



Participants at Naturita meeting listen to presentations.

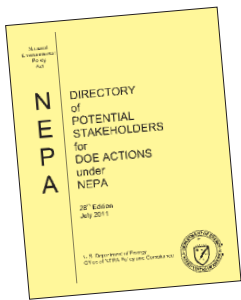


Participants view posters and discuss the program.



View of Paradox Valley in Montrose County, site of proposed leasing activity.





## More Stakeholders Accept NEPA Documents Online

Updating the annual *Directory of Potential Stakeholders for DOE Actions under NEPA* (“*Stakeholders Directory*”) includes asking more than 250 contacts in

Federal agencies, states, and national and regional nongovernmental organizations whether they prefer to receive a paper copy or compact disk of an EIS or EA, or to be notified of a web address when the document is posted online. Of the contacts who expressed such preferences, those who report that timely notification of a web address is sufficient continue to increase – **from approximately 15 percent in 2009, to 40 percent in 2010, to 60 percent in 2011.**

By understanding distribution preferences DOE can better serve its stakeholders while realizing time and cost savings in printing, packaging, and mailing. Online distribution requires a NEPA Document Manager to plan ahead to post NEPA documents and notify potential stakeholders before the start of a public review period. The Council on Environmental Quality (CEQ) NEPA regulations specify that an EIS shall be filed with the Environmental Protection Agency no earlier than it is also transmitted to commenting agencies and made available to the public (40 CFR 1506.9). When DOE is making a draft EA available online for public review, DOE policy is to post

---

*A trend identified in recent years continues: the growing acceptance of online distribution of NEPA documents if notification is timely.*

---

the document to the DOE NEPA Website before the start of the public review period (*LLQR*, September 2010, page 1).

The 28<sup>th</sup> Edition of the *Stakeholders Directory* (July 2011) is posted on the DOE NEPA Website. The *Stakeholders Directory* is intended to supplement Program and Field Office notification and distribution lists for NEPA documents. It responds to a provision of the CEQ regulations (40 CFR 1506.6(b)(2)) that directs Federal agencies to maintain a list of national organizations reasonably expected to be interested in NEPA reviews of national concern. DOE Offices are encouraged to be inclusive in providing potentially interested parties with opportunities to review DOE NEPA documents, consistent with the Presidential memorandum on *Transparency and Open Government* (January 21, 2009).

For additional information, contact Connie Chen, Office of NEPA Policy and Compliance, at [connie.chen@hq.doe.gov](mailto:connie.chen@hq.doe.gov) or 202-586-7033.

## New Database Tracks Electric Transmission Projects

DOE’s Office of Electricity Delivery and Energy Reliability (OE) recently unveiled an online project tracking system to improve coordination in the siting and permitting process for electric transmission facilities on Federal land. The e-Trans database, which is publicly accessible at [www.doe-etrans.us](http://www.doe-etrans.us), provides links to project information from applicants, Federal lead and cooperating agencies, states, and tribes. The database was developed pursuant to a Memorandum of Understanding among DOE and eight other Federal agencies<sup>1</sup> (October 23, 2009; *LLQR*, December 2009, page 12).

Currently, the e-Trans database includes 38 transmission projects. Project information is searchable by: lead Federal

agency, applicant, project name, affected states, electric current type, and voltage. NEPA information provided for each project includes type of document (i.e., EIS or EA), schedule and major milestones, and a link to any project website maintained by the lead agency. OE expects to provide additional enhancements, including maps of proposed transmission lines and links to NEPA documents.

The e-Trans database helps engage the public and provide transparency by presenting NEPA-related information and Federal agencies’ roles and responsibilities for electric transmission facilities projects. For further information, contact Brian Mills, OE’s NEPA Compliance Officer, at [brian.mills@hq.doe.gov](mailto:brian.mills@hq.doe.gov) or 202-586-8267.

The Energy Policy Act of 2005 added Section 216(h) to the Federal Power Act. Section 216(h) provides for DOE to coordinate all applicable Federal authorizations and required environmental reviews to streamline agency review and avoid duplication. The Act authorizes DOE to issue any regulations necessary to implement the provisions of 216(h) to ensure timely, efficient reviews and permitting decisions for electric transmission facilities.

---

*The e-Trans database gives applicants, interagency teams, and the public a way to track – for the first time – the progress of transmission line permitting.*

– Brian Mills

---

<sup>1</sup>The MOU was signed by the Departments of Agriculture, Commerce, Defense, Energy, and the Interior; the Environmental Protection Agency; the Council on Environmental Quality; the Federal Energy Regulatory Commission; and the Advisory Council on Historic Preservation.

# MOU To Standardize NEPA Air Analyses for DOI/USDA Oil and Gas Development Decisions



The U.S. Environmental Protection Agency (EPA), the U.S. Department of the Interior (DOI), and the U.S. Department of Agriculture (USDA) are implementing a new interagency approach to air quality analyses and mitigation for Federal oil and gas planning, leasing, and field development decisions. In a June 24, 2011, Memorandum of Understanding (MOU), the agencies commit to “a clearly defined, efficient approach to compliance with [NEPA] regarding air quality and air quality related values (AQRVs), such as visibility . . . .”

Although DOE was not a signatory, the “standardized approach” defined in the MOU may be useful to DOE NEPA practitioners conducting NEPA reviews for oil and gas projects. The MOU provides assurances to the signatories that, “if the EPA determines the MOU procedures have been followed, it will rate the resulting NEPA analyses of air quality or AQRVs as ‘adequate’ (and not ‘inadequate’ or ‘3’) under the EPA criteria for rating” draft EISs. EPA notes in the MOU that a rating of “adequate” does not mean it will necessarily conclude that the impacts will be environmentally satisfactory, and EPA will continue to provide specific comments on the environmental soundness of actions, as required pursuant to NEPA and Section 309 of the Clean Air Act.

## Emphasis on Collaboration and Mitigation

The MOU states that the standardized approach “builds on best practices from recent successful collaboration” and that the signatories expect it to lead to improved design and implementation of mitigation measures, including best management practices that will protect both air quality and AQRVs, and provide opportunities for future oil and gas development. The MOU responds to past instances in which major oil and gas development proposals were delayed by legal challenges or while questions about appropriate air analyses and mitigation measures were resolved.

To meet the goals of protecting air quality and AQRVs and facilitating the development of oil and gas resources on Federal lands, the MOU provides:

- for early interagency consultation throughout the NEPA process in determining the appropriate air quality analysis
- common procedures for determining what type of air quality analyses are appropriate and when air modeling is necessary (e.g., modeling would be

required when a substantial increase in emissions inventory is anticipated or the project location is in a non-attainment or maintenance area)


- specific provisions for analyzing and discussing impacts to AQRVs and for mitigating such impacts (including responsibilities of the lead agency to identify reasonable mitigation and control measures in collaboration with other agencies, and to ensure the measures are implemented)
- a timely inter-agency dispute resolution process.

## Technical Direction Provided

An appendix to the MOU provides a framework for modeling approaches to evaluate air quality, including an overview of commonly used air models, and direction on approaches, models, and underlying principles applicable in a range of circumstances. For example, when a reasonably foreseeable number of wells is determined based on limited or general information, the appendix explains when to use long range transport models, local-scale modeling, and add-on photochemical approaches (“add-on” in this context means to insert project-specific incremental emission estimates into an existing modeling system).

Although focused on analyzing direct, indirect, and cumulative air quality impacts and mitigation measures related to National Ambient Air Quality Standards (NAAQS) and AQRVs, the MOU procedures may also be used to assess emissions of hazardous air pollutants (HAPs) and greenhouse gas (GHG) emissions. Mitigation and control measures to address NAAQS and AQRVs often result in reductions in HAPs and GHGs, the MOU states.

The agencies have until September 22, 2011, to develop agency and joint plans for implementing and disseminating the MOU; develop appropriate joint training efforts and materials; and designate a national senior level manager to oversee implementation of the MOU.

The MOU is available on EPA’s website at [www.epa.gov/compliance/resources/policies/nea/index.html](http://www.epa.gov/compliance/resources/policies/nea/index.html). For further information, contact Jessica Trice at [trice.jessica@epamail.gov](mailto:trice.jessica@epamail.gov). 



# Air Force Guidance Goes “Back to Basics” To Strengthen NEPA Planning Process

The Air Force is setting a course to get “back to basics” in its NEPA compliance program to provide high-quality environmental impact analyses to decisionmakers at all levels of command and to make EIS and EA preparation more timely and less costly. The Air Force’s approach assigns the role of action “proponent” to the decisionmaker and reinforces the associated responsibilities. The approach establishes an intensive, early NEPA planning process, with well-defined activities to be accomplished before starting preparation of an EIS or EA.


The Air Force Center for Engineering and the Environment published guidance, *Planning Requirements for the Environmental Impact Analysis Process* (May 2011), that articulates the Air Force corporate NEPA planning process and outlines the associated responsibilities of the proponent/decisionmaker, environmental planning function, and members of the interdisciplinary team. The guidance lists the detailed contents of NEPA planning documents, designed to support four principal goals:

- complete an EA within 6 months (from notification of affected states of the intent to prepare an EA to delivery of the final EA to the decisionmaker)
- complete an analytic, not encyclopedic, EIS in 12 months (from publication of notice of intent to notice of availability for the final EIS)
- use performance-based contracting
- establish a milestone tracking system for EAs and EISs.

Implementation of the Air Force NEPA initiative includes structured internal scoping steps to be taken *before* notifying the state or issuing a notice of intent. These include developing a statement of purpose and need for action, identifying reasonable alternatives, compiling available relevant information and identifying needed data, and developing a statement of work and detailed schedule for NEPA contracting or internal document preparation. The approach also calls for developing programmatic agreements under the National Historic Preservation Act and Endangered Species Act and establishing cooperating agency relationships before the start of NEPA document preparation.

Other actions promote efficiency in a NEPA review through **management and coordination** (e.g., decisionmaker involvement in all stages of the review, periodic review meetings), **avoiding duplication of effort** (a centralized data repository, site-wide (“fence-to-fence”) NEPA documentation), **standardization** (adoption of page limits and formats, avoiding unnecessary appendices), and **training**.

A “Center for NEPA Excellence” has been established within the Air Force Center for Engineering and the Environment to provide NEPA expertise in support of these goals and promote consistency in costing, contracting, and execution.

Additional information on the Air Force NEPA planning process is available from Jack Bush, NEPA Program Manager, at [jack.bush@pentagon.af.mil](mailto:jack.bush@pentagon.af.mil) or 703-614-0237. 

---


*Although the guidance appears to require new steps, it is really “back to basics” – the requirements of the CEQ NEPA regulation and the Air Force regulation found at 32 CFR Part 989.*

— Jack Bush  
Air Force NEPA Program Manager

---

## NEPA Metrics *(continued from page 4)*

The data show the extraordinary NEPA workload attributable to Recovery Act implementation, with the number of CX determinations more than doubling in 2010 from what appears to have been the Department’s historic rate. The tide of CX determinations, as reflected in the monthly totals, appears to have peaked in late 2010 and to be ebbing in 2011, as DOE has completed NEPA reviews for most Recovery Act projects (related article, page 5).

For further information on DOE NEPA performance metrics, contact Eric Cohen, Office of NEPA Policy and Compliance, at [eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov). 

## Update on DOE NEPA Rulemaking

DOE has completed internal coordination with NCOs and senior management on the draft Notice of Final Rulemaking and is working to complete consultation with CEQ, prior to submitting the final rule to the Office of Management and Budget ([LLQR, June 2011, page 9](#)).

# Transitions

## Matt Urie: Assistant General Counsel for Environment

The Office of NEPA Policy and Compliance congratulates **Matthew (Matt) C. Urie** on his new role as DOE's Assistant General Counsel for Environment. He comes to this position with almost 30 years of law and litigation experience, most of it in the environmental arena at DOE, and earlier at the Federal Energy Regulatory Commission, Department of Justice, and Department of the Interior.

Since joining DOE in 1992, Matt has been involved in many of the Department's most challenging environmental issues and cases, ranging from the storage and disposition of spent nuclear fuel and other nuclear materials to the cleanup of legacy contamination at DOE sites. From 2003 to 2008, he managed the Department's Yucca Mountain legal office in Las Vegas, and in 2008 served as the first director of DOE's office in the United States Embassy, Baghdad. Matt also served for almost 3 years as an attorney with NNSA. Most recently, he served as the Special Assistant to the Deputy General Counsel, where he was responsible for leading the response to all document production requests from Congress, providing counsel on compliance with the Freedom of Information Act, and advising on environmental law and compliance issues, among other tasks.

*(continued on next page)*

## Federal Agencies Sign Environmental Justice MOU



DOE was among 17 Federal agencies and Executive offices that signed a [Memorandum of Understanding on Environmental Justice and Executive Order 12898 \(MOU\)](#), issued on August 4, 2011.

---

***This agreement is an important step in furthering the Administration's commitment to ensuring healthy communities for all Americans – free from environmental and health hazards.***

***– Secretary of Energy Steven Chu***


---

The MOU defines agency responsibilities, commitments, processes, and procedures outlined in Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, issued by President Bill Clinton in 1994. The MOU also expands the scope of an Interagency Working Group on Environmental Justice that includes DOE.

“Working collaboratively, we have partnered with other Federal agencies” in signing this MOU, said DOE Associate Deputy Secretary Melvin G. Williams. “It is important that we remain effective in the execution of our” environmental justice strategy and other elements of the MOU.

NEPA provisions are contained under *Areas of Focus* in the MOU. Agencies must develop and post online environmental justice strategies, obtain public input, and issue Annual Implementation Progress Reports. In doing so, agencies are to “identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations, including, but not limited to, as appropriate for its mission, in the following areas: (1) implementation of NEPA; (2) implementation of Title VI of the Civil Rights Act of 1964, as amended; (3) impacts from climate change; and (4) impacts from commercial transportation and supporting infrastructure.”

Environmental justice strategies are to be updated by September 30, 2011. DOE's environmental justice strategy was originally prepared in 1995 and updated in 2008. On July 29, 2011, DOE approved its *Environmental Justice Five-Year Implementation Plan – Second Annual Progress Report*, which evaluates how well the Department is following its environmental justice strategy.

For further information about DOE's Environmental Justice Program or to request copies of the Progress Report, contact Melinda Downing, Environmental Justice Program Manager, at [melinda.downing@hq.doe.gov](mailto:melinda.downing@hq.doe.gov). For information on environmental justice and NEPA, contact Denise Freeman, Office of NEPA Policy and Compliance, at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov). 

# Transitions *(continued from previous page)*

## Senior Attorney Rick Ahern, NEPA Stalwart, Retires

Richard (Rick) F. Ahern, who has most recently served as Acting Assistant General Counsel for Environment after Bruce Diamond's departure to NNSA in February 2011, retired on August 31.

Rick joined DOE in 1979 as an attorney–advisor charged with administering enforcement of the Department's Economic Regulatory Administration (ERA) oil price control program. A year later he went to work for a Los Angeles law firm, where he began his career as a litigator in Federal courts. In 1987, he returned to DOE to bring his skills as a litigator to bear in the service of ERA, filing and prosecuting actions to recover oil overcharges across the United States. After several years, he was promoted to Assistant Director of Judicial Litigation and managed a small staff of lawyers. He served in this capacity until ERA was disbanded in 1996, and he was offered the opportunity to join General Counsel's Environmental Law Section.

Rick's interest in environmental law grew from his lifetime as an outdoorsman. Working to apply NEPA and all of the other environmental laws was for him far more than an intellectual challenge; it was also a labor of love, a chance to give back and to preserve the chance for future generations to enjoy the land as he did. He rose to the position of Deputy Assistant General Counsel in 2005 and, as noted above, capped his career by serving during his final months as the Acting Assistant General Counsel for Environment. He has been a true legal partner over the years, providing valuable assistance and advice, including supporting and speaking at DOE NEPA Community Meetings.

A few key suggestions and recommendations from Rick are highlighted below:

In his review of the 2003 litigation over the Presidential permits issued for electric transmission lines that connect new power plants in Mexico with the California power grid, Rick emphasized important lessons learned for DOE's NEPA practitioners ([LLQR, September 2003, page 9](#)):

- thoroughly understand the environmental issues of local interest,
- independently verify all work performed by the applicants and their experts, and
- always support and explain a conclusion that an impact is not significant – an unsupported conclusory assertion that an impact is “insignificant” is not sufficient for judicial review.

Rick reminded NCOs that “DOE does not serve an applicant well if the NEPA process is not followed, impacts are not adequately analyzed, and information is not validated or verified” in a session on applicants and the DOE NEPA process at the 2008 NEPA Community Meeting.

In offering advice on considerations by the courts, Rick suggested that if a NEPA document is challenged, a court might ask: Do the alternatives make sense vis-à-vis the purpose and need? Has the agency listened to comments and taken them seriously? Has the agency been thorough? Is the EIS coherent and consistent?

*On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance wishes Rick success and fulfillment in his future endeavors.*

*(continued on next page)*

I believe in NEPA. I believe that making the Federal government consider and publically share the environmental consequences of its conduct works to serve the aims of Federal governance, the concerns of affected communities, and the voiceless but dependent denizens with whom we share this good earth.

I have never seen NEPA fail to make an agency think, and then think twice; and I believe this can only be good.

The only real problem with NEPA is that it costs a lot and takes time. Unfortunately, these issues, especially in times of perceived economic crisis such as the present, make NEPA vulnerable to exigency. The solution to these problems lie with you, the practitioners of this rare craft that I now leave behind. Tomorrow, you will have no choice but to be briefer and faster, to cost less and inform more clearly. The challenge to NEPA in the future will not lie in the science or the law, but in the mechanics of execution and communication.

I will miss the fray and I will miss all of you. It has been a joy to work with you.

– Rick Ahern  
August 2011



## Transitions *(continued from previous page)*

### NEPA Compliance Officer Transitions

#### Livermore Site Office: Dan Culver

**Daniel Culver** has been designated as NEPA Compliance Officer (NCO) for the National Nuclear Security Administration's (NNSA's) Livermore Site Office. He joined the Office in May 2010 as an attorney after retiring from service in the U.S. Army as a judge advocate. For over 20 years, he advised environmental specialists and represented the Army in NEPA and other environmental matters in several states and the Pacific Territories. As a new NCO, Dan says that he is thankful for the advice and support of the Livermore and NNSA environmental staffs as he learns to actually do the things he talked and wrote about for so long. He can be reached at [daniel.culver@oak.doe.gov](mailto:daniel.culver@oak.doe.gov) or 925-422-3126.

**Karin King**, who wore multiple hats while serving as NCO from 2006 through 2011, will continue to serve as the Sustainability Lead and Federal Energy Manager at the Livermore Site Office. We appreciate her many contributions to DOE's NEPA program.

#### Southwestern Power Administration: Darlene Low

**Darlene Low**, Southwestern Power Administration's Aviation, Environmental, Safety, and Health Program Manager, is resuming her role as NCO, a position she held from 2000 through 2008. Before joining Southwestern in 1989, she worked for the Alaska Power Administration, the Veterans Administration, and the U.S. Fish and Wildlife Service. She can be reached at [darlene.low@swpa.gov](mailto:darlene.low@swpa.gov) or 918-595-6750.

We thank **Larry Harp** for his 3 years of service as Southwestern's NCO. He continues to serve as Director, Division of Engineering and Planning.

#### Western Area Power Administration Names 3 NCOs

##### Desert Southwest Region: Linda Hughes

The new NCO for the Desert Southwest Region, **Linda Hughes**, just transferred to Western from the Bureau of Land Management (BLM), Gila District, Arizona. Linda brings with her 20 years of experience in natural resource management, with expertise in NEPA and planning. She has spent her first month in Western's Environmental Division learning about the operational similarities and differences between Western and BLM. Linda can be reached at [hughes@wapa.gov](mailto:hughes@wapa.gov) or 602-605-2524.

*Desert Southwest Region's former NCO, **John Holt**, continues to serve as a NEPA Document Manager.*

##### Rocky Mountain Region: Gene Iley, Jr.

The new NCO for the Rocky Mountain Region, **Gene Iley, Jr.**, has 37 years of experience in environmental compliance, the last 20 with Western. He has provided environmental guidance to Western's maintenance, construction, and property staff and integrated environmental requirements into construction and maintenance projects. Gene reports that he enjoys working with all the different folks at Western and DOE. Gene can be contacted at [iley@wapa.gov](mailto:iley@wapa.gov) or 970-461-7294.

***Jim Hartman**, Rocky Mountain Region's former NCO, now serves in Western's Natural Resources Office in Lakewood, Colorado, managing environmental projects and serving as NEPA Document Manager for many of Western's EISs.*

##### Sierra Nevada Region: Gerald (Jerry) Robbins

The new NCO for Sierra Nevada Region, **Jerry Robbins**, has 25 years of experience in managing environmental compliance, conducting remediation actions, and integrating NEPA requirements into construction projects, as an environmental consultant and with the Department of Defense and the Department of the Interior. Most recently, for the Bureau of Reclamation, he managed NEPA programs involving agricultural drainage and the expansion of water reservoirs, and led the Hazardous Materials Group. He is a Registered Geologist and Registered Environmental Assessor in the State of California. He can be contacted at [grobbins@wapa.gov](mailto:grobbins@wapa.gov) or 916-353-4032.

*We congratulate Sierra Nevada Region's former NCO, **Steve Tuggle**, who was recently promoted to supervisor of the Technical Support Group for the Maintenance Organization.*

*(continued on next page)*



## Transitions *(continued from previous page)*

### Farewell to Long-term NCO Elizabeth Withers

On behalf of the DOE NEPA Community, we offer best wishes to **Elizabeth Withers** on retirement, along with gratitude for her many contributions to DOE's NEPA compliance program. As NCO for the Los Alamos Site Office for 11 years and then for the National Nuclear Security Administration's Service Center in Albuquerque for 5 years, she managed major NEPA reviews, including two site-wide EISs for the Los Alamos National Laboratory (LANL), the EIS for the conveyance and transfer of certain land tracts at LANL, a special environmental analysis for emergency actions taken at LANL after the 2000 Cerro Grande fire in New Mexico, the EIS for the Chemistry and Metallurgy Research Building Replacement Project (CMRR), and the just-completed Supplemental EIS for the Nuclear Facility Portion of CMRR. Elizabeth also served on the team that established the DOE-wide NEPA contracts, contributed to DOE's NEPA guidance and rulemaking efforts, and shared her considerable experience through presentations at numerous NCO meetings.

### Also Retiring

*On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance offers best wishes in retirement to two former NCOs.*

**Tony Como**, who served as the first NCO for the Office of Electricity Delivery and Energy Reliability (OE) from 2006 to 2007, and more recently as OE's Director for Permitting and Siting, retired in August. As NEPA Document Manager for the Office of Fossil Energy and OE, he managed the preparation of major EISs, including for the sale of Naval Petroleum Reserve No. 1 and for Presidential permits for transboundary transmission lines.


**Mike Mazaleski** was the NCO for the Office of Nonproliferation and National Security starting in 1994 and then for the Office of Intelligence from the organization's establishment in 1998 until his recent retirement.

## EPA/Office of Federal Activities: NEPA Director Robert Hargrove Retires



**Robert Hargrove**, Director of the Environmental Protection Agency's (EPA's) NEPA Compliance Division, recently retired after 32 years of dedicated Federal service. Mr. Hargrove began his career in 1979 as an environmental reviewer and EIS project manager with EPA Region 2 in New York. In 2004, Mr. Hargrove became Director, NEPA Compliance Division, Office of Federal Activities, at EPA headquarters in Washington, DC. In this position, he advanced EPA's NEPA compliance program, served on national work groups for developing policy and guidance, and provided numerous training courses on NEPA and environmental impact assessment techniques. Mr. Hargrove received many awards for his accomplishments at EPA, including a Gold Medal for developing NEPAassist, an environmental Geographic Information System application ([LLQR, September 2008, page 1](#), and [December 2008, page 7](#)), and the Administrator's Award for Excellence in Management.

*On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance conveys our appreciation for his achievements and best wishes in his retirement.*

**Cliff Rader**, a senior member of the NEPA Compliance Division, now serves as its Acting Director. Mr. Rader joined the EPA Headquarters Office of Water in 1988, after several years as a wetlands and NEPA specialist for the U.S. Army Corps of Engineers, Los Angeles District. 

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information purposes only. This listing is not an endorsement of any of the training or entities listed. Cost and schedule information are subject to change; check with the course provider.

- Environmental Protection Agency  
Office of Federal Activities  
202-564-6069  
[mims.alice@epa.gov](mailto:mims.alice@epa.gov)  
[www.netionline.com/default.asp](http://www.netionline.com/default.asp)  
  
**NEPA (Overview of NEPA Process) – Recorded Webinar (LIS155R)**  
June 2 – September 30  
No Fee
- EOS Alliance  
425-270-3274  
[pt@nwetc.org](mailto:pt@nwetc.org)  
[www.eosalliance.org/schedule/calendar/courses-eos](http://www.eosalliance.org/schedule/calendar/courses-eos)  
  
**NEPA and CEQA Training**  
Oakland, CA: October 25-26  
\$545 (GSA contract: \$445)  
  
**NEPA: Writing the Perfect EA/FONSI or EIS**  
Richland, WA: November 8-9  
\$495 (GSA contract: \$395) until 9/10/11  
Pasadena, CA: November 30-December 1  
\$495 (GSA contract: \$395) until 10/29/11
- Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[www.graduateschool.edu/course\\_details.php?cid=ENVS4435E](http://www.graduateschool.edu/course_details.php?cid=ENVS4435E)  
  
**NEPA: Policy, Procedure, Science, and Art**  
Washington, DC: Tuesdays,  
September 20 – November 22  
\$375
- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del/executiveed/courses](http://www.nicholas.duke.edu/del/executiveed/courses)  
  
**Accounting for Cumulative Effects in the NEPA Process and Mitigation and Monitoring**  
Durham, NC: September 12-16  
\$2,610  
  
**Implementation of NEPA**  
Durham, NC: October 31 – November 4  
\$1,400 until 10/3/11
- **Health Impact Assessment and NEPA and Climate Change under NEPA**  
Durham, NC: November 14-18  
\$2,520 until 10/17/11  
  
**Certificate in the National Environmental Policy Act**  
Requires successful completion of one core and three elective NEPA short courses.  
Co-sponsored by the Council on Environmental Quality.  
Fee: Included in course registration.
- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)  
  
**Applying the NEPA Process: Emphasis on Native American Issues**  
Salt Lake City, UT: September 13-15  
\$985 (GSA contract: \$895)  
Ocean Shores, WA: October 25-27  
\$945 (GSA contract: \$855) until 9/13/11  
  
**NEPA Executive Overview and Managing NEPA Projects and Teams**  
Seattle, WA: September 13-16  
\$1,185 (GSA contract: \$1,095)  
  
**Applying the NEPA Process and Writing Effective NEPA Documents**  
Las Vegas, NV: September 20-23  
\$1,185 (GSA contract: \$1,095)  
Baltimore, MD: January 10-13  
\$1,145 (GSA contract: \$1,055) until 11/29/11  
  
**NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**  
Portland, OR: October 4-7  
\$1,185 (GSA contract: \$1,095)  
Atlanta, GA: January 24-27  
\$1,145 (GSA contract: \$1,055) until 12/13/11  
  
**Overview of the NEPA Process**  
Atlanta, GA: October 11  
\$385 (GSA contract: \$295)  
  
**Core Principles: Telling the NEPA Story, Keeping Documents Brief, Meeting Legal Requirements**  
Missoula, MT: October 18-20  
\$945 (GSA contract: \$855) until 9/6/11

(continued on next page)



# Training Opportunities

(continued from previous page)

## **Clear Writing for NEPA Specialists and Collaboration in the NEPA Process**

St. Louis, MO: October 24-28  
\$1,385 (GSA contract: \$1,295)

## **Application of GIS and Graphics in NEPA Documents**

Phoenix, AZ: October 25-27  
\$985 (GSA contract: \$895)

## **Applying the NEPA Process and Writing Effective NEPA Documents and NEPA Cumulative Effects Analysis and Documentation**

Salt Lake City, UT: October 31 – November 4  
\$1,345 (GSA contract: \$1,255) until 9/19/11  
St. Louis, MO: November 14-18  
\$1,345 (GSA contract: \$1,255) until 10/3/11

## **NEPA Cumulative Effects Analysis and Documentation**

Salt Lake City, UT: November 3-4  
\$745 (GSA contract: \$655) until 9/21/11

## **Overview of the NEPA Process and Cultural and Natural Resource Management**

San Francisco, CA: November 29 – December 2  
\$1,145 (GSA contract: \$1,055) until 10/18/11

## **Clear Writing for NEPA Specialists**

Bountiful, UT: December 13-15  
\$945 (GSA contract: \$855) until 11/1/11

## **NEPA Certificate Program**

Requires successful completion of eight  
courses offered by The Shipley Group.  
\$5,450

Contact: NEPA Certificate Program,  
Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/htm/students/grad-degrees/nepa](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa)

- US Institute for Environmental Conflict Resolution  
(520) 901-8501  
[usiocr@ecr.gov](mailto:usiocr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)

## **Collaboration Skills for Environmental Professionals**

Denver, CO: September 13-15  
\$750  
Sausalito, CA: December 6-8  
\$928

## **Effective Tribal Consultation\***

Albuquerque, NM: September 27-29  
Washington, DC: November 1-3  
\$750

## **Advanced Multi-Party Negotiation of Environmental Disputes**

Albuquerque, NM: October 25-27  
\$750

## **Collaboration Skills for Environmental Leaders**

Sausalito, CA: November 15-17  
\$928

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeps@mchsi.com](mailto:jleeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting  
International Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
916-737-3000  
[www.icfi.com/events/education-and-training](http://www.icfi.com/events/education-and-training)
- International Institute for Indigenous  
Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/index.php/training/course-catalog](http://www.swca.com/index.php/training/course-catalog)

\* Hosted by the Department of Energy

# EAs and EISs Completed April 1 to June 30, 2011

## EAs

### **Bonneville Power Administration**

[DOE/EA-1731\\*](#) (5/17/11)

*Walla Walla-Tucannon River Transmission Line Rebuild Project, Walla Walla and Columbia Counties, Washington*

Cost: \$120,000

Time: 17 months

[DOE/EA-1739\\*](#) (5/3/11)

*Bandon-Rogue Transmission Line Rebuild Project, Towns of Bandon and Nesika Beach, Oregon*

Cost: \$5,000

Time: 16 months

### **Brookhaven Site Office/Office of Science**

[DOE/EA-1854](#) (6/29/11)

*Waste Water Treatment Modifications for Improved Effluent Compliance, Brookhaven National Laboratory Sewage Treatment Plant, Upton, New York*

Cost: \$29,000

Time: 6 months

### **Golden Field Office/Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1858](#) (6/3/11)

*Nippon Paper Industries USA, Company Biomass Cogeneration Project, Port Angeles, Clallam County, Washington*

Cost: \$120,000

Time: 5 months

[DOE/EA-1859\\*](#) (5/25/11)

*Kirkwood Community College Wind Turbine Project, Cedar Rapids, Iowa*

Cost: \$42,000

Time: 8 months

[DOE/EA-1875\\*](#) (6/2/11)

*The Jackson Laboratory Biomass Energy Center Project, Bar Harbor, Maine*

Cost: \$65,000

Time: 10 months

### **Office of Legacy Management**

[DOE/EA-1770](#) (6/9/11)

*Photovoltaic Solar Project at the Durango Disposal Site, Colorado*

Cost: \$94,000

Time: 14 months

### **Office of Loan Programs**

[DOE/EA-1795\\*](#) (4/18/11)

*Loan Guarantee to Diamond Green Diesel, LLC for Construction of the Diamond Green Diesel Facility, Norco, Louisiana*

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

Time: 10 months

[DOE/EA-1839\\*](#) (4/28/11)

*Loan Guarantee to Cogentrix of Alamosa, LLC for Construction of the Cogentrix Solar Project, Alamosa, Colorado*

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

Time: 7 months

[DOE/EA-1848\\*](#) (6/21/11)

*Loan Guarantee to Fulcrum Sierra BioFuels, LLC for a Waste-to-Ethanol Facility, McCarran, Storey County, Nevada*

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

Time: 7 months

### **National Energy Technology Laboratory/ Office of Electricity Delivery and Energy Reliability**

[DOE/EA-1753\\*](#) (4/27/11)

*Beacon Power Corporation Flywheel Frequency Regulation Plant, Chicago Heights, Illinois (Site 1) and Hazle Township, Pennsylvania (Site 2)*

Cost: \$52,000

Time: 13 months

(continued on next page)

\* Recovery Act project

# EAs and EISs Completed April 1 to June 30, 2011

(continued from previous page)

## National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy

DOE/EA-1828\* (5/3/11)

*Industrial Carbon Capture and Sequestration (ICCS) Area 1 Project, "CO<sub>2</sub> Capture from Biofuels Production and Sequestration into the Mt. Simon Sandstone," Decatur, Illinois*

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

Time: 9 months

## Oak Ridge Office/Office of Science

DOE/EA-1764 (6/10/11)

*Spruce and Peatland Responses Under Climatic and Environmental Change Experiment (SPRUCE) at the Marcell Experimental Forest, Itasca County, Minnesota*

Cost: \$87,000

Time: 15 months

## Rocky Flats Field Office/ Office of Legacy Management

DOE/EA-1747 (5/31/11)

*Rocky Flats Site Surface Water Configuration, Jefferson County, Colorado*

Cost: \$300,000

Time: 16 months

## EISs

### Bonneville Power Administration

DOE/EIS-0421 (76 FR 41791, 6/15/2011)

(EPA Rating: LO)

*Big Eddy-Knight Transmission Project, Oregon and Washington*

Cost: \$1,405,000

Time: 24 months

## Office of Loan Programs

DOE/EIS-0448\* (76 FR 37111, 6/24/11)

(EPA Rating: EC-2)

*Desert Sunlight Solar Farm Project, Riverside County, California*

EIS was adopted; therefore cost and time data are not applicable. [Department of the Interior's Bureau of Land Management was the lead agency; DOE was a cooperating agency.]

## Western Area Power Administration

DOE/EIS-0435 (76 FR 32197, 6/3/11)

(EPA Rating: EC-2)

*Modification of the Groton Generation Station Interconnection Agreement, Brown County, South Dakota*

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

Time: 21 months

DOE/EIS-0439\* (76 FR 34072, 6/10/11)

(EPA Rating: EC-2)

*Rice Solar Energy Project, Riverside County, California*

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

Time: 15 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

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

\* Recovery Act project

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 10 EAs for which cost data were applicable was \$75,000; the average cost was \$90,000.
- Cumulatively, for the 12 months that ended June 30, 2011, the median cost for the preparation of 55 EAs for which cost data were applicable was \$49,000; the average was \$87,000.
- For this quarter, the median completion time of 14 EAs for which time data were applicable was 10 months; the average was 11 months.
- Cumulatively, for the 12 months that ended June 30, 2011, the median and average completion times for 67 EAs were 9 months.

## EIS Cost and Completion Times

- For this quarter, the cost of one EIS for which cost data were applicable was \$1.4 million.
- Cumulatively, for the 12 months that ended June 30, 2011, the median cost for the preparation of 5 EISs for which cost data were applicable was \$2 million; the average was \$2.1 million.
- For this quarter, the median completion time of 3 EISs for which time data were applicable was 21 months; the average was 20 months.
- Cumulatively, for the 12 months that ended June 30, 2011, the median completion time for 8 EISs was 21 months; the average was 25 months.

# Recent EIS-Related Milestones June 1 to August 31, 2011

## Notices of Intent

### Office of Legacy Management

DOE/EIS-0472

*Programmatic Environmental Impact Statement for the Uranium Leasing Program, Colorado*  
June 2011 ([76 FR 36097](#), 6/21/11; [76 FR 43678](#), 7/21/11, notice of public scoping meetings and extension of scoping period)

### National Nuclear Security Administration/ Sandia Site Office

DOE/EIS-0466

*Site-wide Environmental Impact Statement for Ongoing Operations at Sandia National Laboratories, Albuquerque, New Mexico*  
June 2011 ([76 FR 37100](#), 6/24/11; [76 FR 50212](#), 8/12/11, reopening of scoping period)

### Western Area Power Administration

DOE/EIS-0469

*Wilton IV Wind Energy Center Project and Lifting of the 50 Average Annual Megawatt Generation Cap on the Existing Wilton I, Wilton II, and Baldwin Wind Energy Center Projects, Burleigh County, North Dakota*  
July 2011 ([76 FR 43324](#), 7/20/11)

## Notice of Cancellation

### Western Area Power Administration

DOE/EIS-0462

*Crowned Ridge Wind Energy Center Project, Grant and Codington Counties, South Dakota*  
July 2011 ([76 FR 40354](#), 7/8/11)

## Reopening of Scoping Period

### Office of Electricity Delivery and Energy Reliability

DOE/EIS-0463

*Presidential Permit Application for the Northern Pass Transmission Project, New Hampshire*  
June 2011 ([76 FR 34969](#), 6/15/11)

## Draft EISs

### Bonneville Power Administration

DOE/EIS-0425

*Mid-Columbia Coho Restoration Project, Okanogan County, Washington*  
June 2011 ([76 FR 37111](#), 6/24/11)

*(continued on next page)*

# Recent EIS-Related Milestones

## June 1 to August 31, 2011 *(continued from previous page)*

### **National Nuclear Security Administration/ Nevada National Security Site**

[DOE/EIS-0426](#)

*Site-wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations, Nevada*  
July 2011 ([76 FR 45548](#), 7/29/11)

### **Final EISs**

#### **Office of Fossil Energy**

[DOE/EIS-0444](#)

*Texas Clean Energy Project, Ector County, Texas*  
August 2011 ([76 FR 47578](#), 8/5/11)

#### **Office of Loan Programs**

[DOE/EIS-0458\\*](#)

*Loan Guarantee for the Topaz Solar Farm, San Luis Obispo County, California*  
August 2011 ([76 FR 50213](#), 8/12/11)

### **Record of Decision**

#### **National Nuclear Security Administration/ Y-12 Site Office**

[DOE/EIS-0387](#)

*Site-wide Environmental Impact Statement for the Y-12 National Security Complex, Oak Ridge, Tennessee*  
July 2011 ([76 FR 43319](#), 7/20/11)

### **Amended Records of Decision**

#### **National Nuclear Security Administration**

[DOE/EIS-0240](#)

*Disposition of Surplus Highly Enriched Uranium-American Assured Fuel Supply*  
August 2011 ([76 FR 51358](#), 8/18/11)

#### **National Nuclear Security Administration/ Los Alamos Site Office**

[DOE/EIS-0380](#)

*Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico*  
July 2011 ([76 FR 40352](#), 7/8/11)

\* Recovery Act project

### **Supplement Analyses**

#### **Bonneville Power Administration**

##### **Transmission System Vegetation Management Program**

([DOE/EIS-0285](#))

[DOE/EIS-0285-SA-448](#)

*Vegetation Management along the Pearl-Marion No.1 500-kV Transmission Line Corridor Rights-of-Way, Clackamas and Marion Counties, Oregon*  
(Decision: No further NEPA review required.)  
August 2011

#### **Office of Electricity Delivery and Energy Reliability**

##### **Montana Alberta Tie Ltd. (MATL)**

##### **230-kV Transmission Line**

([DOE/EIS-0399](#))

[DOE/EIS-0399-SA-01](#)

*Supplement Analysis for the Montana-Alberta Tie Ltd. 230-kV Transmission Line Project, Great Falls, Montana*  
(Decision: No further NEPA review required.)  
August 2011

#### **Office of Energy Efficiency and Renewable Energy**

##### **Abengoa Biorefinery Project**

([DOE/EIS-0407](#))

[DOE/EIS-0407-SA-01](#)

*Supplement Analysis for the Final Environmental Impact Statement for the Proposed Abengoa Biorefinery Project, Hugoton, Stevens County, Kansas*  
(Decision: No further NEPA review required.)  
July 2011

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Proactive meetings.* Holding preliminary meetings with stakeholders to discuss alternatives benefitted the scoping process.
- *Evaluation process.* DOE's process of evaluating environmental issues provided the background for developing an effective EA.
- *Public input.* In response to public comment, the proposed action was modified.

## Data Collection/Analysis

### What Worked

- *Impact analysis.* Local regulators identified areas of concern for greater attention in the impact analysis, such as visual impacts.
- *Adequate analysis.* The science involved in the analysis was sufficient to show impacts would not be significant, but the public was very vocal in opposition to the proposed action.

### What Didn't Work

- *Site access.* DOE lacked permission to enter private property for about half of the project, which hindered scientific surveys. Much of the work was done from roadsides with binoculars, aerial photography, maps, databases and other sources.
- *EA presentation.* The use of additional graphics would have been beneficial to this EA which dealt with surface water.
- *Additional analysis needs unclear.* It was unclear if additional sampling was needed.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Key assignments.* Key staff were dedicated to the project throughout a critical period due to its high priority.
- *Prepared applicant.* The applicant entered the NEPA process with a significant amount of environmental work completed as a result of going through the local permitting processes.
- *Review schedule and meetings.* Concurrent reviews and bi-weekly meetings were used to discuss comments, resolve issues, and keep the EA on schedule.
- *General Counsel review.* The document was shared with HQ General Counsel before the EA was finalized.
- *Work ethic.* The NEPA Document Manager worked extra hours throughout the project's development and did not take much annual leave to keep up with the workload.
- *Steady communication.* Weekly meetings were held or emails were sent on the progression of the EA. Constant communication was key to the success of this project.
- *Project schedule.* The team was aware of the schedule from the beginning of the project.

### Factors that Inhibited Timely Completion of Documents

- *Timeframe.* The project's schedule contributed to the NEPA process being on the critical path.
- *Multiple adjustments.* Project adjustments that occurred due to public/agency input, complicated issues, and multiple agency involvement inhibited timely completion of the EA.
- *Scoping process.* It took several months to schedule EA scoping meetings with county, state and other affected parties. Additionally, the comment resolution process took longer than anticipated to complete.

*(continued on next page)*

# Questionnaire Results

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

- *HQ review.* For this EA delegated to the field, there were issues in terms of whether HQ needed to review the document.
- *Communication set-backs.* Timely completion was made difficult due to communication issues, availability of other agencies, and the time it took to educate the applicant.
- *Employee workload.* The workload of other employees delayed receipt of needed information and reviews.
- *Schedule.* The timeline was extremely short and deadlines on other projects may have been missed as a result.
- *Personnel shortage.* Staff shortage was an issue mainly for sister agencies. In addition, personnel changes slowed down progress even more.
- *Workload issues.* Staff, including the NCO and legal counsel, were too busy.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Open discussions.* Holding numerous candid discussions and meetings helped in the planning effort.
- *Use of outlines.* The contractor prepared an annotated outline that was approved by DOE and used by the team to prepare the EA.
- *DOE process.* The legal work of the Environmental Management Consolidated Business Center in bringing in General Counsel certainly is commendable and facilitated teamwork.
- *Review process.* Holding concurrent reviews and frequent meetings facilitated teamwork.
- *Local contractors.* The use of local contractors allowed for quick responses to field visits when design changes were needed.
- *Staff collaboration.* Using two DOE offices on the project was beneficial. One office handled lead agency tasks, while the other was available for questions.
- *Teamwork.* The contractor worked closely together with the DOE team in formulating the EA, as well as in responding to public comments. This teamwork resulted in a product that was technically correct, as well as easily understandable to the public.
- *Effective communication.* Investment staff and project managers kept NEPA staff in the loop and informed of project news and site visits.

### Factors that Inhibited Effective Teamwork

- *Contractor experience.* There were too many inexperienced specialists doing the field work and the contractor's products were of unsatisfactory quality.
- *Late review.* The late submittal of the EA for legal review inhibited any in-depth challenges to the methodology of the project.
- *Lack of meetings.* There were not enough project meetings, so coordination was difficult.

## Process

### Successful Aspects of the Public Participation Process

- *Open house format.* The open house style EIS public meetings were well attended and allowed for personal interaction of landowners with engineers, realty specialists, and environmental staff. Though the public expressed opposition to the project, having the right staff to discuss concerns with the landowners was appreciated and provided good information about issues to be addressed.
- *Successful planning.* The public scoping meeting was well planned and was well received by the public. Public attendees spoke freely and good comments were made.
- *Public comments applied.* Public comments contributed to a change in the proposed action of the EA.
- *Public outreach.* The public was more accustomed to the CERCLA process than the NEPA process at this site. During public meetings it was often necessary to explain the NEPA process in relation to how it differs from CERCLA. DOE was liberal in its interpretation of the public requirements in relation to the public meetings for an EA in order to meet the public's needs.
- *Scoping meetings.* While on site the project team provided a good tour and discussion throughout the scoping meetings.
- *Good communication.* The public felt they had access to the correct staff for their issues and adequate communication.
- *Public appreciation.* The public seemed to appreciate the process.

*(continued on next page)*

# Questionnaire Results

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

- *Adaptive Management.* Public interest in the project was very high, with resistance to the proposed action. DOE worked with the public to develop an Adaptive Management Plan (AMP) to address concerns about residual contamination of surface water. DOE is reporting the results of this monitoring on a “real time” basis and sending notification of availability to all AMP parties. The AMP will serve to continue providing information to the public throughout the duration of the project (up to 2020).
- *Early stakeholder input.* Early involvement with stakeholders on the proposed action made the public participation process useful to all parties.
- *Online NEPA resources.* Guidance tools provided on the DOE NEPA Website were of great use throughout the project.
- *Stakeholder communication.* Part of the NEPA process involves early public participation and open dialogue. DOE made information available to the public (primarily representatives from surrounding community governments). The open dialogue helped facilitate understanding of the proposed action, and diffused confrontational action.
- *Minimizing impacts.* Completion of the NEPA process ensured that the project would be constructed and operated with minimal impacts to the environment.

### Unsuccessful Aspects of the Public Participation Process

- *Mixed reaction.* Some appreciated DOE's efforts and the EIS process, and thought the documents were well written. Others thought that DOE gave public landowners priority and were frustrated that part of the project was routed through their area.
- *Public interest.* The public did not have a significant reaction to the document.
- *Small public response.* There was not much participation, possibly due to members of the public not being located near the project area.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Routes identified.* The NEPA process was instrumental in determining viable transmission line routes and design. It was also vital for informing the public and getting support from numerous agencies and tribes.
- *Communication platform.* The NEPA process established a framework to engage the public and obtain valuable feedback.
- *NEPA process.* The NEPA process helped resolve some issues that arose during project development.
- *Mitigation measures identified.* The NEPA process influenced mitigation, including agency best management practices.
- *Potential impacts identified.* The NEPA process helped outline possible impacts of the project.

## Enhancement/Protection of the Environment

- *Selected alternatives.* The selected alternative avoided high quality habitats and utilized existing DOE-owned property for half of the transmission line route. DOE also decided to tear down and rebuild portions of other transmission lines in order to place both the existing and new line on the same set of towers, lessening footprint and visual impacts.
- *Minor impacts.* Impacts to the environment were negligible.
- *Mitigation input.* Mitigation was influenced by input from stakeholders, including local, state and federal agencies, and landowners.
- *State NEPA process.* Many mitigation measures were put into place as a result of the state NEPA process.
- *Added habitat.* The project will provide additional habitat for a critically listed species, and additional wetland areas.
- *Permitting process.* Due to the project's location, anticipated impacts, and permit process requirements, there was no real need for further mitigation.

## Other Issues

### Guidance Needs Identified

- *Legal review.* Guidance on when an HQ legal review is warranted could be developed.

*(continued on next page)*



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

#### Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

- For the past quarter, in which 9 questionnaire responses were received for EAs and EISs, 7 out of 9 respondents rated the NEPA process as “effective.”
- A respondent who rated the process as “5” stated that it was through the NEPA process that the project design was developed and problems were resolved prior to start of construction.
- A respondent who rated the process as “4” stated that the project benefitted greatly from the General Counsel’s decision to review the EA before it was issued.
- A respondent who rated the process as “4” stated that since it was necessary to rebuild an existing facility the NEPA process influenced how it was done, not so much if it would be done.
- A respondent who rated the process as “4” stated that NEPA creates a mechanism for evaluating impacts early in the planning stages and helps eliminate surprises.
- A respondent who rated the process as “3.5” stated that DOE was pro-active in assessing the potential impacts associated with the project.
- A respondent who rated the process as “3” stated that it was hard to say how much NEPA affected the overall decision since there were not many adverse impacts and there was no reason not to go forward with the project.
- A respondent who rated the process as “3” stated that the project was fairly straightforward.
- A respondent who rated the process as “2” stated that the project was small, well-sited, and had little to no emissions.

# LESSONS LEARNED

December 1, 2011; Issue No. 69

Fourth Quarter FY 2011

## DOE Updates NEPA Regulations To Improve Efficiency and Transparency

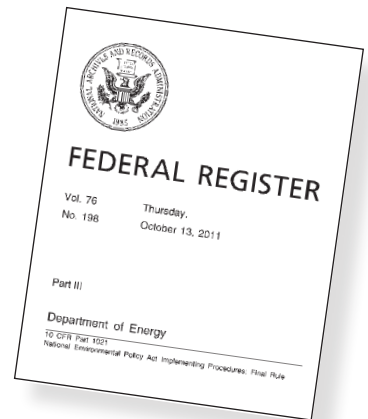
The Department of Energy (DOE) has revised its National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR Part 1021) to better align them with current DOE missions and improve the efficiency and transparency of its environmental reviews. The revisions focus on the categorical exclusion provisions. Since DOE last revised its categorical exclusions 15 years ago, its missions and activities have evolved, and the Department has gained experience with additional actions and technologies. The primary goal of the revisions, accordingly, was to align DOE's categorical exclusions with current activities and recent experience, and update the provisions with respect to current technologies and regulatory requirements.

*Updating our NEPA rule allows us to accomplish our environmental reviews more efficiently, reduces costs to taxpayers as well as applicants for DOE permits and financial support, and focuses resources on evaluating proposals that have the potential for significant environmental impacts.*

*– Sean A. Lev, DOE Acting General Counsel*

DOE's final rule, which became effective November 14, 2011, is a result of extensive internal DOE evaluation, public participation, and Council on Environmental Quality (CEQ) review. It established 20 new categorical exclusions – “classes of actions” that normally may be categorically excluded from further NEPA review (neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required) – most of them for small-scale renewable energy projects and research and development activities.

The revised NEPA rule also modified several existing categorical exclusions, most often by adding examples of applicable technologies and activities, but also by adding limitations and clarifications. In addition, the revised rule established a new integral element specifying that a categorical exclusion (under Subpart D, Appendix B) may not be applied to a proposed action involving genetically engineered organisms, synthetic biology, noxious weeds, or invasive species, unless contained or confined to prevent release and in accordance with applicable requirements. These changes are expected to increase transparency by providing the public more specific information as to the circumstances in which DOE is likely to invoke a categorical exclusion. They also will increase uniformity throughout the Department by establishing more consistent interpretation of the intended scope of categorical exclusions. To further transparency, the revised rule also codified DOE's 2009 policy to document and post online Appendix B categorical exclusion determinations ([LLQR, December 2009, page 1](#)).



### Public Comments Informed Changes

DOE revised its NEPA regulations through a public rulemaking over the course of 2 years. DOE solicited public comments first in December 2009 with a Request for Information seeking input on activities that should be considered for new or revised categorical exclusions.

*(continued on page 4)*

## Inside **LESSONS LEARNED**

Welcome to the 69<sup>th</sup> quarterly report on lessons learned in the NEPA process. This issue celebrates the revision of DOE's NEPA regulations, which became effective on November 14, 2011. The culmination of a 2-year rulemaking process, the regulations establish 20 new categorical exclusions and revise other provisions to promote efficiency and transparency. Thank you for your continued support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

DOE NEPA Website Tools .....	3
Informal Public Involvement at Livermore .....	8
Can We Issue a ROD on Monday? .....	9
Keep the Public Informed When EIS Plans Change .....	9
Final CEQ Recovery Act Report to Congress.....	10
CEQ Selects Pilot Projects to Improve NEPA Efficiency .....	11
Fugitive Emissions Working Group Wins Award .....	12
Guidance on Health Impact Assessment.....	13
DOD, NRDC Partnership Produces Mapping Tool .....	15
DOE Environmental Attorneys' Training .....	16
Training Opportunities .....	17
EAs and EISs Completed This Quarter .....	19
Cost and Time Facts.....	21
Recent EIS-Related Milestones.....	21
Questionnaire Results .....	23

  
Director  
Office of NEPA Policy and Compliance

Printed on recycled paper



## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report (LLQR)*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2012. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due February 1, 2012

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2011 (October 1 through December 31, 2011) should be submitted by February 1, 2012, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at <http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Guidance & Requirements, then Lessons Learned. We provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) or call 1-800-472-2756.




This icon indicates that *LLQR* online (<http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned) provides a link to a referenced web page.

## New EPA Web Resource on EJ and NEPA

The Environmental Protection Agency (EPA) recently launched a web page dedicated to [Environmental Justice \(EJ\) Considerations in the NEPA Process](#). This web resource provides links to EJ guidance tools and documents that can be used by NEPA practitioners, including:



- Executive Order 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, and associated documents
- CEQ and Federal agency guidance on EJ and NEPA, for example:
  - CEQ's recently updated [Agency Resources on NEPA and Environmental Justice](#) web page<sup>1</sup>
  - Best practices found in the [U.S. Air Force's Guide to EJ Analysis](#)
- Methodologies that support EJ considerations, including information on use of health impact assessments (related article, page 13)
- Online tools useful for EJ analyses, including EPA's NEPAassist and EJView, and other databases and geographic information mapping tools. 

<sup>1</sup>For DOE's NEPA and EJ guidance, see Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements ("Green Book"), Second Edition (December 2004), Section 6.7.




# DOE NEPA Website Tools Foster Public Participation

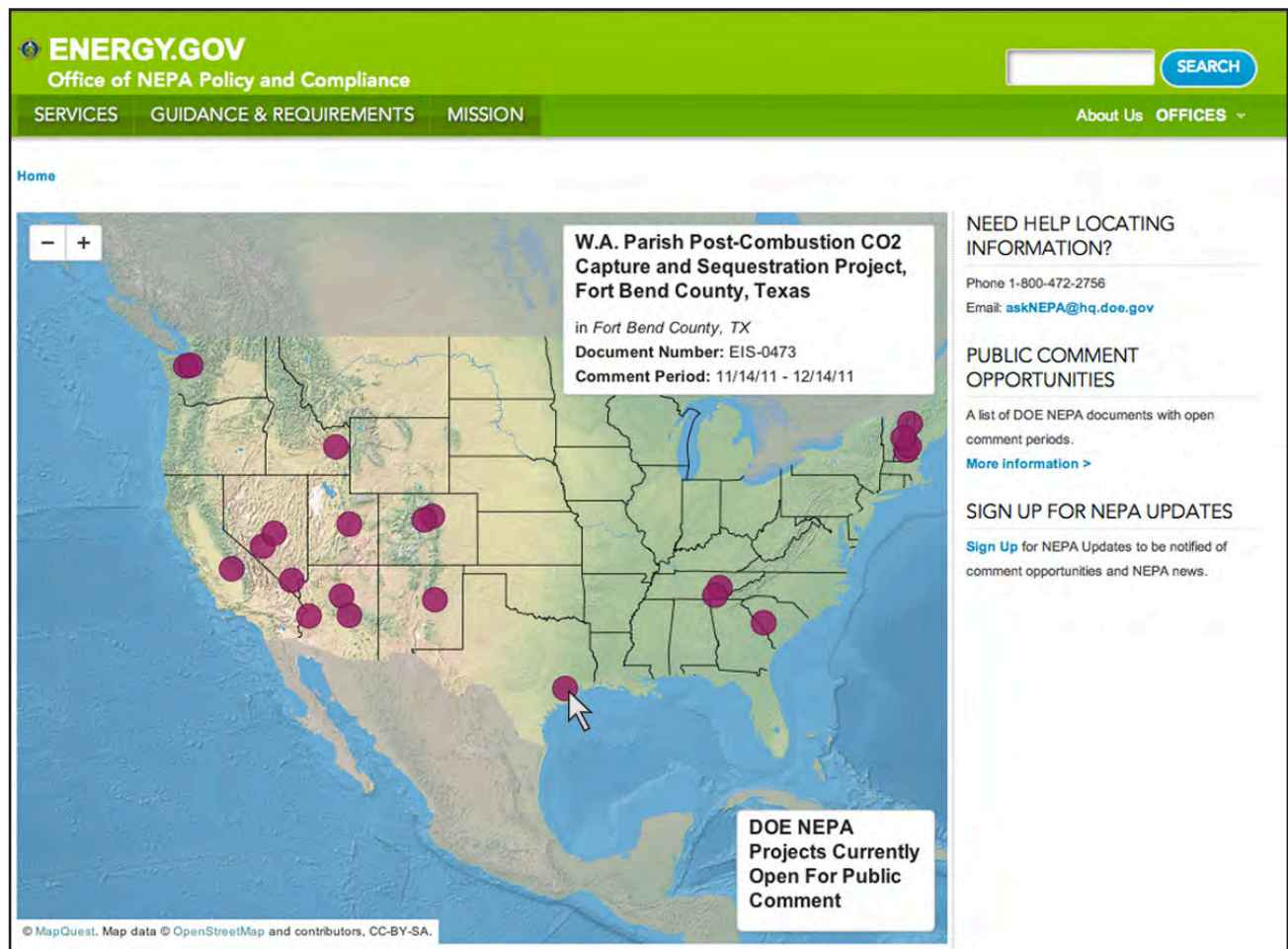
The redesign of the DOE NEPA Website (<http://energy.gov/nepa>), consistent with the overall new design for *Energy.gov*, was introduced in the [September 2011 issue of LLQR](#). Considerable effort has been expended since then to improve the NEPA Website's content, organization, and functionality. The site now includes new features that support DOE's transparency and public participation goals, including an interactive map and a Public Comment Opportunities page.

Front and center on the new home page of the NEPA Website is an interactive map, marked with red dots designating the locations of all DOE NEPA projects for which there are open public comment periods. Pointing to any of the dots brings up a window displaying the project name and location and the beginning and ending dates for the comment period. (For example, pointing to the dot in Texas reveals a proposed carbon capture and sequestration project in Fort Bend County. See illustration.) Clicking on the dot takes the visitor to a page that describes the project, provides a link to

download the document under review, and explains how to submit comments.

Also linked from the home page of the DOE NEPA Website, the Public Comment Opportunities page lists all DOE NEPA projects, in reverse chronological order, for which there are open comment periods. This list provides instructions for submitting comments and also links to the project description page discussed above. The website also provides a list of the Latest NEPA Documents & Notices to help users locate recent documents.

Using the new website to increase accessibility to ongoing NEPA projects and facilitating comment submission demonstrates DOE's commitment to robust public participation in the NEPA process. The DOE NEPA Website Team – Jeff Dorman, Denise Freeman, and Mike Wach – welcomes suggestions for site improvements. Comments, questions, and requests for further information may be addressed to the Team at [eNEPA@hq.doe.gov](mailto:eNEPA@hq.doe.gov). 



**ENERGY.GOV**  
Office of NEPA Policy and Compliance

SERVICES GUIDANCE & REQUIREMENTS MISSION About Us OFFICES

Home

**W.A. Parish Post-Combustion CO2 Capture and Sequestration Project, Fort Bend County, Texas**  
in Fort Bend County, TX  
Document Number: EIS-0473  
Comment Period: 11/14/11 - 12/14/11

**DOE NEPA Projects Currently Open For Public Comment**

NEED HELP LOCATING INFORMATION?  
Phone 1-800-472-2756  
Email: [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov)

**PUBLIC COMMENT OPPORTUNITIES**  
A list of DOE NEPA documents with open comment periods.  
[More information >](#)

**SIGN UP FOR NEPA UPDATES**  
[Sign Up](#) for NEPA Updates to be notified of comment opportunities and NEPA news.

© MapQuest. Map data © OpenStreetMap and contributors, CC-BY-SA.

# DOE NEPA Rulemaking *(continued from page 1)*

DOE considered public comment together with input from the Department's NEPA Compliance Officers (NCOs) in drafting proposed changes that it published in January 2011 in a Notice of Proposed Rulemaking. DOE received comments on the proposed changes from individuals, trade associations, nongovernmental organizations, Federal agencies, and a tribal agency.

Those comments primarily expressed either support for or opposition to particular proposed categorical exclusions. For example, several comments expressed support for the establishment of new categorical exclusions for renewable energy technologies. Some comments stated that DOE should not use categorical exclusions at all or expressed general objections or concerns regarding DOE's proposed revisions. Other comments requested that DOE further clarify phrases such as "small-scale" and "previously disturbed and developed" (included in several categorical exclusions). Several comments expressed concerns regarding the potential use of algae, genetically engineered microorganisms, or invasive species under specific categorical exclusions.

---

*There was great benefit from involving the NCOs. The new and revised classes of action represent a lot of NCO experience with actual use of the process and the categorical exclusions, and the end result will be more confidence in the determinations.*

*– Drew Grainger  
Savannah River Site NCO*

---

In developing the revised rule, DOE considered all comments received on the proposed rulemaking, including late comments and comments on categorical exclusions for which DOE did not propose any changes. DOE incorporated suggestions from these comments into its final NEPA rule.

## Major Changes to the Rule

DOE's new categorical exclusions include many small-scale research and development projects, and small-scale, commercially available, renewable energy projects. DOE also established new categorical exclusions for stormwater runoff control measures, lead-based paint removal, recycling stations, and determinations of excess property. In addition, DOE removed two categorical exclusion categories, one EA category, and three EIS categories. The new categorical exclusions are based on DOE's experience preparing EAs, categorical exclusions established by other Federal agencies, and analysis by DOE experts.

## New DOE Categorical Exclusions

### Renewable Energy and Conservation

- B5.13 Experimental wells for injection of small quantities of carbon dioxide
- B5.14 Combined heat and power or cogeneration systems
- B5.15 Small-scale renewable energy research and development and pilot projects
- B5.16 Solar photovoltaic systems
- B5.17 Solar thermal systems
- B5.18 Wind turbines
- B5.19 Ground source heat pumps
- B5.20 Biomass power plants
- B5.21 Methane gas recovery and utilization systems
- B5.22 Alternative fuel vehicle fueling stations
- B5.23 Electric vehicle charging stations
- B5.24 Drop-in hydroelectric systems

### Research and Development

- B3.14 Small-scale educational facilities
- B3.15 Small-scale indoor research and development projects using nanoscale materials
- B3.16 Research activities in aquatic environments
- B5.25 Small-scale renewable energy research and development and pilot projects in aquatic environments

### Other

- B1.33 Stormwater runoff control
- B1.34 Lead-based paint containment, removal, and disposal
- B1.35 Drop-off, collection, and transfer facilities for recyclable materials
- B1.36 Determinations of excess real property

They generally include criteria (e.g., acreage, location, and height limitations) that limit the covered actions to those that normally would not have the potential to cause significant environmental impacts.

To address public concerns regarding genetically engineered organisms, synthetic biology, noxious weeds, and invasive species, DOE considered the addition of further restrictions to individual categorical exclusions, but instead established a new integral element (applicable to all Appendix B categorical exclusions). In order to apply a categorical exclusion, a proposal must not involve genetically engineered organisms, synthetic biology, noxious weeds, or invasive species, unless the proposed

*(continued on next page)*

# DOE NEPA Rulemaking *(continued from previous page)*

activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements.

*The revised regulations incorporate lessons learned from environmental reviews conducted by DOE and others over the past two decades. By expanding and clarifying the scope of categorical exclusions, the regulations will reduce undue delays in the commencement of research and development projects. The revised regulations will also allow NCOs to focus their attention and resources on projects that require greater due diligence.*

*– Matthew Dunne  
ARPA-E NCO*

DOE modified several existing categorical exclusions to include, either explicitly or by adding examples, new technologies and activities. For example, categorical exclusion B1.7, for the installation and operation of electronic equipment, now identifies as an example equipment that enables the adoption of smart grid technologies. In response to public comments, DOE also clarified the phrases “previously disturbed and developed” and “small or small-scale” (at 10 CFR 1021.410(g)). Further, DOE made several minor technical and organizational changes, including updates to outdated references and corrections to cross-references within the rule.

## Resources and Implementation

As of November 14, 2011, NCOs must use the recently promulgated categorical exclusions established through the rulemaking. To assist NCOs, the Office of NEPA Policy and Compliance (NEPA Office) posted explanatory materials, such as a file of the rule with changes tracked from the previous rule, on the DOE NEPA Website’s

*(continued on page 7)*

## Limitations Define Categorical Exclusions

DOE crafted limitations – based on DOE and other agency experience and regulatory requirements – to ensure that categorical exclusions would not cover proposals with potential to cause significant impacts. Categorical exclusion B5.18, for example, is titled “wind turbines” but is limited to:

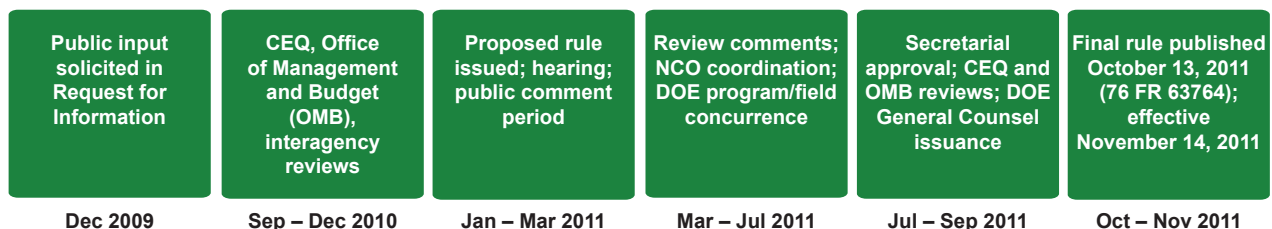
The installation, modification, operation, and removal of a small number (generally not more than 2) of commercially available wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that

- (1) Are located within a previously disturbed or developed area;
- (2) are located more than 10 nautical miles (about 11.5 miles) from an airport or aviation navigation aid\*;
- (3) are located more than 1.5 nautical miles (about 1.7 miles) from National Weather Service or Federal Aviation Administration Doppler weather radar;
- (4) would not have the potential to cause significant impacts on bird or bat populations; and
- (5) are sited or designed such that the project would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise).

Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices. Covered actions include only those related to wind turbines to be installed on land.

*\* See page 15 for an article on a tool that could help identify the proximity of a proposed project to military activities and training (e.g., special use airspace).*

## Brief Rulemaking Chronology



## Categorical Exclusions 101

### What Is (and Isn't) a Categorical Exclusion?

As defined in the CEQ NEPA regulations (40 CFR 1508.4), a categorical exclusion is “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. . . . Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” In addition, CEQ’s recent guidance on Establishing, Applying, and Revising Categorical Exclusions (75 FR 75631; December 6, 2010) explained that: “Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review. . . . Once established, categorical exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs or EISs.” (See also *LLQR*, September 2010, page 9.)



### Establishing a Categorical Exclusion

DOE establishes categorical exclusions pursuant to a rulemaking, such as the recent one, for defined classes of actions that the Department determines are supported by a record showing that actions of this type normally will not have significant environmental impacts, individually or cumulatively. This record is based on DOE’s experience, the experience of other agencies, completed environmental reviews, professional and expert opinion, and scientific analyses. (For this most recent rulemaking, DOE’s record of support for its revisions, including the categorical exclusions, was provided in the preamble to the *Federal Register* notice for the final rulemaking and in the Technical Support Document. In preparing the final rule, DOE updated and expanded its Technical Support Document, which provides analysis and identifies reference documents supporting the revisions.) DOE also considers public comment received during the rulemaking.

Categorical exclusions listed in Appendix A of the DOE NEPA regulations are classes of actions that apply to general agency actions, such as routine DOE business actions and procedural rulemakings. A determination that a proposal fits within an Appendix A categorical exclusion need not be documented. Appendix B categorical exclusions are classes of specific agency actions, and are divided into seven groups relating to: facility operation; safety and health; site characterization, monitoring, and general research; electric power and transmission; conservation, fossil, and renewable energy; environmental restoration and waste management; and international activities. Categorical exclusion determinations for actions listed in Appendix B must be documented and made available to the public by posting online, subject to exclusions for classified information, “confidential business information,” or other information that DOE would not disclose pursuant to the Freedom of Information Act (5 U.S.C. 552).

### Making a Categorical Exclusion Determination

DOE’s approach for making a categorical exclusion determination relies heavily on the responsibility and expertise of its NCOs to assess whether a proposal may be appropriately categorically excluded, or whether an EA or EIS should be prepared. Specifically, only a designated DOE Program or Field Office NCO may apply a categorical exclusion to a particular proposed action. The determination is a finding, in accordance with 10 CFR 1021.410(b), that: the proposed action fits within an established categorical exclusion listed in Appendix A or B to Subpart D, including any conditions specified in the categorical exclusion; there are no extraordinary circumstances related to the proposed action that may affect the significance of the environmental impacts of the proposed action; and the proposed action has not been segmented to meet the definition of a categorical exclusion, is not “connected” to other actions with potentially significant impacts, is not related to other actions with cumulatively significant impacts, and is not an impermissible interim action pursuant to 40 CFR 1506.1 and 10 CFR 1021.211.

To fit within a class of action listed in Appendix B, the proposal must meet the conditions stated at the beginning of that Appendix as “integral elements,” for example, a proposal may not: threaten a violation of applicable environmental, safety, and health requirements; or require siting and construction, or major expansion, of a waste storage, disposal, recovery, or treatment facility. (For the complete list of integral elements, see Appendix B to Subpart D, paragraph B.)

# DOE NEPA Rulemaking *(continued from page 5)*

rulemaking page, <http://energy.gov/nepa/doe-nepa-rulemaking>. The NEPA Office has also provided training on the revised rule to DOE environmental and legal staff.

## Recordkeeping Updates for Categorical Exclusion Determinations

Conforming changes in processes for documenting categorical exclusion determinations and posting them on the Internet have been made to implement the revised NEPA regulations. For example, forms used to document categorical exclusion determinations after November 14, 2011, should now reflect (1) the new or revised text and current numbers for classes of action invoked and (2) revised regulatory requirements language. (Categorical exclusion determinations involving classes of actions listed in Appendix B of the DOE NEPA regulations should continue to be documented and posted online in accordance with DOE's 2009 posting policy, and now, the revised rule.)

---

*The rulemaking process is painstaking, but through a lot of hard work and collaboration, we have created a better set of regulations to use in meeting our NEPA responsibilities.*

*– Shane Collins  
Western Area Power Administration NCO*

---



The NEPA Office revised a model [categorical exclusion determination form](#) for optional use by NCOs. The fillable pdf form uses pull-down menus to list the categorical exclusions invoked and contains model regulatory requirements text. It also features an electronic means to submit categorical exclusion determinations for web posting. The DOE NEPA Website will continue to provide links to program and field office websites containing categorical exclusion determinations. The NEPA Office is also working on new ways to view categorical exclusion

determinations on the DOE NEPA Website (text box) to reflect the revised NEPA regulations.

---


*The opportunity to weigh in during the development of the revised rule, especially based on the recent Recovery Act work experience, should result in better supported decisionmaking with greater consistency in application of categorical exclusions.*

*– Jane Summerson  
Energy Efficiency and Renewable Energy NCO*

---

## Path Forward

CEQ's 2010 categorical exclusion guidance (Section VI) instructs agencies periodically to review their categorical exclusions to ensure that they remain current and appropriate. To aid in future NEPA rulemakings, the CEQ guidance also recommends that agencies monitor impacts of implemented actions to validate that categorically excluded actions, as well as actions reviewed under an EA and finding of no significant impact, in fact do not have significant environmental impacts. The NEPA Office welcomes suggestions regarding workable approaches to monitoring implemented actions and future improvements to the rule. Questions about DOE's NEPA regulations, as well as suggestions for future improvements, may be directed to [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov).

*Many share credit for completion of the revised rule. The Office of NEPA Policy and Compliance offers its appreciation to all of those DOE Offices and individuals that contributed to the rulemaking effort, including the Office of the Assistant General Counsel for Environment, members of the DOE NEPA Community, and especially the NCOs. The NEPA Office particularly thanks those who recommended needed changes to the rule, reviewed drafts, and helped resolve issues. *

## DOE Categorical Exclusion Database Changes

The NEPA Office plans to update the comprehensive database of categorical exclusion determinations to reflect all determinations documented before November 14, 2011, and posted online. The database will be archived (available on the categorical exclusion web page) and new methods will be used to enable users to search and view categorical exclusion determinations.

Going forward, the NEPA Office will post the determinations in the categorical exclusion database and those issued after November 14 on the DOE NEPA Website. Website users will be able to download a spreadsheet containing the information on the determinations, or view them directly online. Online users may also view all determinations in reverse chronological order, or grouped by class of action, location of the proposed action (state/territory), or program or field office. Web pages listing categorical exclusion determinations invoking new or revised classes of actions will advise users that determinations made before November 14 were under the previous DOE NEPA regulations.



# Informal Public Involvement at Livermore Promotes Information Exchange, Builds Good Will

By: Mike Wahlig, Ph.D., NEPA Document Manager,  
and Dan Culver, NEPA Compliance Officer, Livermore Site Office

The Council on Environmental Quality NEPA regulations require agencies to encourage and facilitate public involvement in decisions affecting the quality of the environment (40 CFR 1500.2(d)), but leave most details about how to accomplish this to the agencies' discretion. For a supplement analysis, DOE regulations require us only to supply copies of the finished document on request and make it available to the public. For a recent supplement analysis concerning Lawrence Livermore National Laboratory (LLNL), we wanted to do more.

---

*The public involvement question was not "What must we do?" but rather, "What should we do?"*

*– Mike Wahlig, NEPA Document Manager*

---

Under the DOE NEPA regulations, a site-wide EIS must be evaluated at least every 5 years by means of a supplement analysis to determine whether the existing EIS remains adequate or whether to prepare a new site-wide EIS or supplement the existing EIS (10 CFR 1021.330(d)).

Accordingly, the National Nuclear Security Administration's Livermore Site Office (LSO) reviewed its *Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory* (DOE/EIS-0348; March 2005) by preparing a supplement analysis (DOE/EIS-0348-SA-03; August 2011).



This supplement analysis, which was prepared with the help of LLNL environmental staff (but without outside contractors), examined new and modified plans, projects, and operations for the 2010 through 2015 period, as well as new information that was not available for consideration when the 2005 site-wide EIS was prepared. These include modified operation of the National Ignition Facility, access control modifications, a new Commons/Visitor Center, and a new Applied Energy Simulation Center (a computational facility).

We decided to widely distribute the Draft Supplement Analysis for comment and conduct public informational meetings. We announced the availability of the Draft Supplement Analysis using paid advertisements, press releases, and letters to over 3,000 stakeholders; posted it on the LSO and LLNL websites; and provided copies to LLNL reading rooms, local libraries, and parties who had previously shown interest in LLNL activities. We invited comments and scheduled two public meetings in the City



*The LSO and LLNL supplement analysis team: (row 1, left to right) Mike Wahlig, Karin King; (row 2) Robert Kong, Igor Tregub, Tony Sy; (row 3) Vijay Mishra, Claire Holtzapfle, Doug Eddy; (row 4) Sam Brinker, Mike Brown, and LSO Public Affairs Director John Belluardo. (Not shown: Dan Culver, Janis Parenti, James Davis III, Sarah Hartson, and Kirk Keilholtz.)*

of Livermore on April 14, 2011, midway through the 45-day comment period.

In planning the public meetings, we decided to try a more informal approach than we had used before, and to focus on describing the supplement analysis process, document scope, the environmental resources and impacts at issue (for example, energy consumption, radiological impacts, and accident consequences), and especially the new information not available in 2005. We structured the meetings as opportunities for interested parties to ask questions that would enhance their ability to provide informed comments, and not as formal hearings to provide oral comments through a court reporter.

The meetings attracted about two dozen participants. The first half of each meeting was an informational open house built around posters, each staffed by knowledgeable LSO and LLNL staff members, on major elements of the supplement analysis. The second block of time consisted

*(continued on page 14)*

# Time Is of the Essence! Can We Issue a ROD on Monday?


An agency may be eager to issue a record of decision (ROD) at the earliest permissible date after completing an EIS, perhaps in conjunction with other public events. How is that date determined?

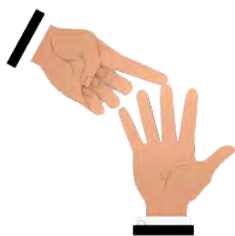
Under the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1506.10), an agency may issue a ROD no sooner than the later of 90 days after the Environmental Protection Agency's (EPA's) notice of availability of the draft EIS, or 30 days after EPA's notice of availability of the final EIS.

CEQ and EPA call the 30-day waiting period a "review period." Interested parties may comment during the review period, and DOE's practice is to acknowledge any such comments in the ROD.

Any time period based on *Federal Register* publication starts with the calendar day after publication. When the

period (e.g., 30 days) ends on a weekend or holiday, the last day of the time period will be the next Federal business day (1 CFR 18.17). The earliest a ROD may be signed is the day *following* the last day of the review period, not the last day of the period, advises EPA's Office of Federal Activities.

**Together, these provisions mean that the earliest date that a ROD can be signed will normally fall on a Tuesday or, if Monday of that week is a Federal holiday, on a Wednesday.** Because EPA publishes its notice of availability in the *Federal Register* every Friday, "day 1" is Saturday and "day 30" is the fourth subsequent Sunday, so the last day of the review period is on Monday (unless it's a holiday) and the ROD may be signed on Tuesday. When a Federal holiday occurs on a Friday, EPA publishes its notice of availability one day earlier, and the earliest a ROD may be signed would still be on Tuesday. 



It is not necessary to calculate the time period and insert a specific date into a *Federal Register* notice. The Government Printing Office will do so where the electronic file submitted for publication uses this wording and formatting: **[INSERT DATE XX DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For planning purposes – for example to schedule public events – in the first issue of each month, the last page in the *Federal Register* is a "Table of Effective Dates and Time Periods," which provides the dates that are 15, 21, 30, 35, 45, 60, and 90 days after each Federal business day that month. See, for example, page iii of [Reader Aids](#) in the November 1, 2011, issue.



## Keep the Public Informed When EIS Plans Change

DOE's plans may change during the preparation of an EIS, resulting in a decision to suspend, reactivate, cancel, or make major changes in the scope of the NEPA review. Keeping regulators, cooperating agencies, and the general public informed of EIS status and schedule is a good management practice that promotes transparency and helps stakeholders plan for effective involvement.


Notification is an important first step when EIS plans change, and additional public involvement also may be appropriate. Substantial changes in the proposed action or alternatives relative to those announced in a notice of intent, for example, may call for additional public scoping.

Sometimes an EIS process is significantly extended for consideration of comments received during scoping or on a draft EIS, new alternatives, new information on technologies or costs, or other, unanticipated factors. In these circumstances, periodic announcements to stakeholders should be considered.

When a project's proponent – i.e., a program, site, or applicant – suspends active preparation of an EIS, announcing that the EIS is on hold helps inform

stakeholders. Also, DOE measures the time spent preparing NEPA documents in addition to costs and other metrics, and tracking the beginning and end of suspension periods would make time metrics more accurate and informative.

When a project's proponent cancels preparation of an EIS, a brief announcement in the *Federal Register* is appropriate to inform the public and close the record. (To view prior notices of cancellation, enter "cancellation" in the search box at the upper right of any page of the DOE NEPA Website.)

Although current [status and schedules](#) of DOE EISs are posted on the DOE NEPA Website, these charts alone do not provide adequate notification or explanation to interested and affected parties. Appropriate mechanisms for communicating changes to the public are the same ones used throughout the NEPA process: *Federal Register* notices, announcements in local media and on DOE websites, and mail or email to known interested parties. The measure(s) should be tailored to the circumstances. 





## Final CEQ Report to Congress: Nearly All Recovery Act NEPA Work Is Done

Federal agencies have completed nearly all required NEPA reviews for projects funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act), said the Council on Environmental Quality (CEQ) in its eleventh and final report to Congress on the status of Recovery Act-related NEPA actions. Through their efforts, Federal agencies “demonstrate that we can respect the health of our environment and add value to our decisions by conducting environmental reviews while expeditiously contributing to our nation’s economic health,” said CEQ Chair Nancy H. Sutley in her November 2, 2011, transmittal letter.


To address concerns that NEPA might delay projects receiving Recovery Act funds, Congress directed that agencies devote adequate resources to ensure that applicable NEPA reviews are completed expeditiously. Section 1609(c) of the Recovery Act contained a novel reporting requirement to keep Congress abreast of the status of NEPA compliance activities through September 30, 2011.

CEQ reported that approximately 99.9% of the environmental reviews for Recovery Act projects (or 192,707 of the 192,912 required NEPA reviews) had been completed. Federal agencies completed close to 1,200 of these NEPA reviews during the quarter ending September 30, including more than 300 that were completed by DOE. Cumulatively for Recovery Act projects through September 30, 2011, Federal agencies completed more than 184,730 categorical exclusion (CX) determinations and more than 7,130 EAs, and analyzed more than 840 projects

in EISs. Agencies concluded that NEPA is not applicable to fewer than 4,280 other Recovery Act projects. Together, these projects involve obligations of more than \$300 billion, an increase of almost \$3.8 billion since the previous quarter.

CEQ reported that, as of September 30, fewer than 210 NEPA reviews were underway: approximately 80 CX determinations, 110 EAs, and 20 EISs. These pending NEPA reviews for Recovery Act projects included 12 DOE EAs and 8 DOE EISs; DOE reported no pending CX determinations. “Agencies continue to complete the NEPA reviews that are underway and expect they will conclude their NEPA reviews in time to allow for the orderly expenditure of the ARRA funds,” CEQ reported. Agencies, including DOE, could identify the need for additional NEPA reviews as they consider proposals for remaining Recovery Act funds.

As of September 30, DOE had completed more than 10,150 NEPA reviews supporting the obligation of more than \$35 billion for projects receiving Recovery Act funding, an increase of more than \$1.2 billion since June 30, 2011 (*LLQR*, September 2011, page 5). Of the completed reviews, more than 9,990 are CX determinations, approximately 130 are EAs, and more than 30 are EISs.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924. 

# CEQ Selects Pilot Projects to Improve NEPA Efficiency




The Council on Environmental Quality (CEQ) has selected three pilot projects to demonstrate ways to improve NEPA implementation. The first pilot project, selected August 31, spotlights two information technology tools developed by the U.S. Forest Service and the National Park Service. The other two pilot projects, announced on October 19, will identify best practice principles for EAs and improve access to the Environmental Protection Agency's (EPA's) NEPAAssist geographic information system (GIS) tool.

“The NEPA Pilot Program is part of CEQ’s broader effort to modernize and reinvigorate Federal agency implementation of NEPA and improve the transparency and effectiveness of Federal environmental reviews,” wrote CEQ in announcing the first NEPA pilot project.

In response to its March 2011 request (*LLQR*, June 2011, page 11), CEQ received 37 nominations, including 19 from the public, for simplifying NEPA implementation, reducing the time and cost of NEPA reviews, using information technology, and improving the effectiveness of public engagement. In collaboration with the relevant agencies, CEQ will track implementation of the selected projects, evaluate their outcomes, and disseminate lessons learned.

## Next Steps

In its October announcement, CEQ said that it will select up to two more pilot projects with the potential to increase the efficiency of environmental reviews in ways that can be replicated across the Federal government. For more information, see the CEQ NEPA Pilot Program [web page](#) and the August 31 and October 19 announcements on CEQ’s [website](#). 

*NEPA is a cornerstone of our Nation's effort to protect the health of our communities and the natural resources that fuel our economy. These pilot projects will help Federal agencies save time and money, and promote more efficient and effective environmental reviews for projects that create jobs, grow our economy, and protect the health and environment of our communities.*

– Nancy H. Sutley, CEQ Chair  
October 19, 2011, News Release

### Forest Service, Park Service: Deploy Information Technology Tools

This pilot project features two information technology tools: the electronic Modernization of NEPA (eMNEPA) and the Planning, Environment and Public Comment System (PEPC), developed by the U.S. Forest Service and the National Park Service, respectively. Deployment of these tools will “have significant potential to reduce costs and save time in Federal NEPA implementation . . . [and] facilitate Federal agencies’ compliance with President Obama’s memorandum . . . on ‘Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review,’” noted CEQ. The selected tools “improve the efficiency of environmental reviews by enabling online submission and processing of public comments, or allowing personnel from different agencies or jurisdictions to coordinate review timelines, share data, and review documents through a common, internet-based platform.” (DOE NEPA staff and NEPA Compliance Officers participated in recent webinars on use of these NEPA process management tools.)

### NAEP: Identify Best Practice Principles for EAs

As its pilot project, the National Association of Environmental Professionals (NAEP) will engage Federal agency NEPA practitioners to identify experience-based best practices for preparing EAs that are timely and cost-effective, and that incorporate those environmental issues that are most relevant to the decisionmaking process. The goal is to improve the quality and transparency of agency decisionmaking by decreasing the length and complexity of EAs, encouraging the use of timelines and page limit ranges, providing for expedited review, and promoting public involvement. NAEP will assemble lessons learned and identify best practices in a report to CEQ. CEQ will solicit agency and public comment, and will provide a final report to the agencies for their use.

### EPA: Expand Access to NEPAAssist GIS Tool for NEPA Reviews

This project broadens access to EPA’s NEPAAssist, a web-based GIS designed to help NEPA practitioners analyze and use environmental and geographic data. NEPAAssist facilitates coordination in environmental reviews by providing standardized data from Federal, state, and local agencies, and helps identify areas where impacts should be avoided or mitigation would be most helpful. The pilot project will make NEPAAssist publicly available (in spring 2012) and create a more user-friendly interface. (See *LLQR*, September 2008, page 1, and December 2009, page 10.)

# Fugitive Emissions Working Group Wins Secretarial Award

Energy Secretary Steven Chu presented DOE's Fugitive Emissions Working Group (FEWG) with the Secretary's Achievement Award for uniting more than 20 DOE laboratories, power marketing administrations, and National Nuclear Security Administration facilities in a successful campaign to significantly reduce DOE emissions of the most highly potent greenhouse gases (GHGs). The award is the Department's highest nonmonetary honor for a group or team effort.

After the award ceremony on October 27, FEWG Chair Josh Silverman commented on the special role the Working Group plays for DOE: "When we began assessing fugitive emissions within the Department, we were shocked by how much these potent gases expand DOE's carbon footprint. Thanks to the efforts of FEWG participants, fugitive emissions have quickly turned from a major environmental challenge into a DOE climate change success story."

Through the use of science, technology, and managerial know-how, FEWG members identified and implemented measures that reduced DOE's fugitive emissions by almost 40% from 2008 to 2010, largely due to a decrease in sulfur hexafluoride (SF<sub>6</sub>) emissions. Sulfur hexafluoride is a nontoxic gas used in industrial applications such as electric insulation. It is the most potent GHG – with a global warming potential nearly 24,000 times greater than carbon dioxide (CO<sub>2</sub>). Sulfur hexafluoride may be inadvertently released through valve leaks or breaks, but emissions often can be prevented through measures such as replacing and tightening valves and gaskets. In addition to providing effective maintenance, FEWG is deploying technologies to capture and reuse these gases – for example, in electron microscopes, accelerators, and other high-energy equipment.



At DOE's Princeton Plasma Physics Laboratory, a technician tightens seals on a high-voltage enclosure to prevent sulfur hexafluoride leaks.

Eliminating fugitive emissions reduced overall DOE GHG emissions by almost 6%, avoiding the release of nearly 600,000 metric tons of CO<sub>2</sub>-equivalent since 2008. The FEWG plans to cut fugitive emission rates from DOE operations in half again by 2014. This will put DOE on track to achieve as much as one-third of its goal to reduce GHG emissions by 28% at very low cost well before the 2020 deadline.


*DOE is reducing its greenhouse gas footprint, years ahead of schedule, by aggressively controlling its fugitive emissions.*

*– Josh Silverman, FEWG Chair*



A Western Area Power Administration electrician checks a circuit breaker, which contains 85 pounds of sulfur hexafluoride to protect substation equipment from excessive electrical currents.

DOE committed in its 2010 *Strategic Sustainability Performance Plan* to a combined Scope 1 and Scope 2 GHG emissions reduction goal of 28% by 2020 relative to the fiscal year 2008 baseline. (Scope 1 covers direct emissions from operations owned or controlled by DOE; Scope 2 emissions result from generation of purchased electricity, heat, and steam.) NEPA analyses for proposed new or expanded facilities are expected to serve as an important tool to meet these GHG reduction goals by identifying impacts associated with energy usage and alternative energy sources. (See [LLQR, December 2010, page 20.](#))

The FEWG promotes the sharing, among DOE sites, of information and best practices in inventory management, monitoring and control technologies, and environmentally preferable substitutes. For further information contact Josh Silverman, Director, Office of Sustainability Support, at [josh.silverman@hq.doe.gov](mailto:josh.silverman@hq.doe.gov) or 202-586-6535. 

# National Research Council Provides Guidance on Health Impact Assessment and NEPA

Even when human health is not the primary focus of an agency proposal, an action may have significant health impacts that should be factored into the decisionmaking process through a systematic Health Impact Analysis (HIA). This is the principal recommendation of *Improving Health in the United States: The Role of Health Impact Assessment*, a report prepared by the National Research Council of the National Academies (September 2011).

*Many now realize that substantial improvement in public health will occur only by ensuring that health considerations are factored into projects, programs, plans, and policies in non-health-related sectors.*

– *Improving Health in the United States: The Role of Health Impact Assessment*

## NEPA-related Health Assessment Provisions

### NEPA

- Section 2: “The purposes of this Act are: . . . to promote efforts which will . . . stimulate the *health* and welfare of man . . . .”
- Section 101: The government must “assure for all Americans safe, *healthful* . . . surroundings; attain the widest range of beneficial uses of the environment without . . . risk to *health* . . . .” “The Congress recognizes that each person should enjoy a *healthful* environment . . . .”

### CEQ Regulations, 40 CFR Part 1508

- Section 1508.8: “Effects includes . . . *health*, whether direct, indirect, or cumulative.”
- Section 1508.27: “The degree to which the proposed action affects public *health* or safety” should be considered when evaluating intensity.

### Executive Orders (E.O.)

- E.O. 12898: Environmental Justice in Minority Populations and Low-Income Populations (Presidential Transmittal Memorandum)
- E.O. 13045: Protection of Children from Environmental Health Risks and Safety Risks

HIA, as defined in the report, is a systematic process for assessing the potential effects of a proposed policy, plan, program, or project on the health of a population and the distribution of those effects within the population. HIA uses an array of data sources and analytic methods, considers input from stakeholders to identify effects, and communicates them to decisionmakers and the public. HIA can serve as a basis for recommendations on monitoring health effects and mitigating adverse effects.

## General Guidance for NEPA Reviews

NEPA, the Council on Environmental Quality (CEQ) regulations, and Executive Orders establish the foundation for including analysis of health impacts in an EIS. To assist agencies, an appendix to the report provides general NEPA guidance on five issues, summarized below.

### • Determine when to analyze health impacts.

The report observes that the CEQ NEPA regulations require health impacts to be considered (40 CFR 1508.8) but analyzed in detail only when there is reason to conclude that they may be significant (40 CFR 1501.7(a)(3)). In determining the potential for significant health impacts, consider scoping comments, whether health concerns are controversial (40 CFR 1501.7 and 1508.27(b)(4)), and whether the proposal is likely to result in significant changes to factors known to affect health, such as changes in emissions of hazardous substances; community demographics; industry actions or practices, employment, government revenues, or land-use patterns; modes or safety of transportation; access to natural resources; and food and agricultural resources. Principles of environmental justice guidance may be generally relevant to health effects in the general population, as well as low-income and minority-group communities, the report advises and notes that CEQ’s 1997 [NEPA guidance on environmental justice](#) suggests that agencies should consider outreach to public health agencies and clinics.



### • Determine the appropriate scope.

The report recommends systematic consideration of the potential for direct, indirect, or cumulative health impacts associated with a proposed action and alternatives (40 CFR 1508.8), not just obvious or direct health effects, such as those related to emissions or discharges. Health determinants may include factors such as the quality and affordability of housing; access to employment and government

(continued on next page)

## Informal Public Involvement *(continued from page 8)*

of a brief presentation by the NEPA Document Manager, followed by a question and answer period facilitated by the LSO Public Affairs Director. The final block of time was structured as a return to the posters, offering participants an opportunity to follow up with any additional questions based on what they had just learned.


We asked that comments on the Draft Supplement Analysis be submitted in writing – at the public meetings or via email or mail during the comment period. LSO received comments from 50 organizations and individuals, and responded to all comments in a separate volume of the Supplement Analysis.

Based on the Supplement Analysis, LSO found that for continued and reasonably foreseeable LLNL operations for 2010 through 2015, potential impacts for all resource types would not be significantly different from those analyzed in the 2005 site-wide EIS. Therefore, LSO

determined that neither a supplement nor a new EIS was needed.

***Did this public involvement approach work?*** Despite low attendance at the meetings, feedback was uniformly positive and many of the written comments on the Draft Supplement Analysis reflected information presented at the meetings.

***Was it worthwhile?*** The meetings required a high level of LSO and LLNL effort for a fairly small number of attendees. We believe, however, that the open discourse helped public understanding and built some good will. We look forward to applying these lessons in the future.

For more information, please contact us at [michael.wahlig@oak.doe.gov](mailto:michael.wahlig@oak.doe.gov) (925-422-2602) or [daniel.culver@oak.doe.gov](mailto:daniel.culver@oak.doe.gov) (925-422-3126). 

## Health Impact Assessment *(continued from previous page)*

revenues; the quality and accessibility of parks, schools, and transportation services; neighborhood safety; exposure to environmental hazards; the quality and affordability of food resources; and the extent and strength of social networks.

- **Identify affected populations and communities; describe baseline conditions.**

A description of the affected environment establishes the baseline against which impacts of the alternatives can be compared. In an HIA, the report advises, the baseline should include a concise description of public health status and health determinants relevant to the health impacts that will be analyzed. Consultation or cooperating agency relationships with relevant health agencies may be desirable.


- **Analyze health impacts in a scientifically and legally defensible manner.**

Although the CEQ NEPA regulations do not provide specific guidance on methods for assessing health impacts, they establish basic standards and expectations (as for all other effects considered in

an EIS) regarding a broad-based, interdisciplinary, and scientifically sound approach.<sup>1</sup> In the face of uncertainty, this may include making informed judgments about reasonably foreseeable impacts.

- **Identify mitigation of identified effects on public health.**

Agencies are required to consider mitigation as part of the alternatives or in response to any identified significant effects. Health mitigation measures may be implemented by the lead agency and through actions taken by a cooperating agency, another government entity, or a local, state, or tribal health department, or through voluntary actions taken by a project proponent or another stakeholder.

The National Research Council report is available (for purchase or free download) at [www.nap.edu/catalog.php?record\\_id=13229](http://www.nap.edu/catalog.php?record_id=13229). The June 2008 issue of *LLQR* (page 18) summarizes a presentation by one of the authors at a CEQ meeting of the Federal NEPA Contacts. The presentation described the lack of HIA in a sample of EISs examined, and identified approaches to overcoming obstacles to preparing HIAs. 

<sup>1</sup>DOE's Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements ("Green Book"), Second Edition (December 2004), Section 6.2, provides general recommendations related to health impact analysis (for example, to consider all potential exposure routes and state the basis for calculations, such as timing of exposure and effects) and detailed recommendations on carcinogenic effects from radiation exposure and effects from chemical exposure.

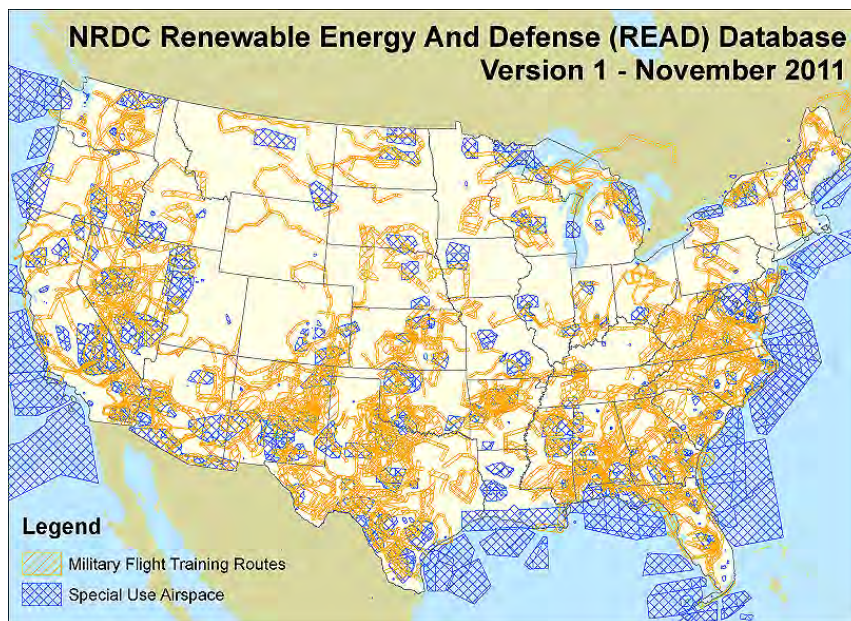


# DOD, NRDC Partnership Produces Mapping Tool To Aid in Siting Renewable Energy Projects


The Natural Resources Defense Council (NRDC), in collaboration with the U.S. Department of Defense (DOD), recently announced an online mapping tool to aid developers in siting renewable energy projects. This tool also could be helpful to NEPA practitioners when evaluating proposed project locations. The Geographic Information Systems (GIS)-based tool, called the Renewable Energy And Defense Geospatial Database (READ-Database), can help identify locations that are unlikely to interfere with military activities and training. It includes three geospatial data layers (“Military Installations, Ranges, and Training Areas,” “Military Training Routes and Special Use Airspace,” and “Radar Sites”) compiled from both open sources and unclassified information provided by DOD.

Users can enter geographic coordinates into the READ-Database to identify potential conflicts with military operations and proposed project locations. For example, the mapping tool can help identify sites where projects such as wind turbines could interfere with technical radar systems. For example, DOE categorical exclusion B5.18 includes a minimum distance from aviation navigation aids (text box, page 5). In addition, the READ-Database offers conservation-based data layers relevant to renewable energy siting in western states (e.g., national parks and national wildlife refuges).

“NRDC has created a one-stop shop for developers to prescreen potential project locations for environmental impacts as well as conflicts with military testing, training and homeland defense operations,” said David Belote, Executive Director of the DOD Siting Clearinghouse.



*The READ-Database allows users to identify potential conflicts between locations of proposed renewable energy projects and, for example, military flight training routes and special use airspace.*

Users can request access to the READ-Database via NRDC’s website: [www.nrdc.org/energy/readgdb.asp](http://www.nrdc.org/energy/readgdb.asp). Users should note DOD’s disclaimer that the information may not be current and should be used for preliminary planning purposes only. If use of the READ-Database indicates an intersection of a planned renewable energy project and a DOD activity, individuals are advised to contact the DOD Siting Clearinghouse at [DoDSitingClearinghouse@osd.mil](mailto:DoDSitingClearinghouse@osd.mil). DOD encourages all renewable energy developers to contact the Clearinghouse as early as possible in the siting process. For further information about the READ-Database, please contact Dr. Matthew McKinzie, NRDC scientist, at [mmckinzie@nrdc.org](mailto:mmckinzie@nrdc.org). 



# DOE Environmental Attorneys' Training: Resolving Conflict, Sharing Lessons Learned

Environmental professionals from DOE and other Federal agencies gathered at DOE Headquarters in Washington, DC, and online via audio and video links, to participate in DOE's 2011 Environmental Attorneys' Training. The annual training, held October 18–19, 2011, was jointly sponsored by DOE's Headquarters, Field, and contractor environmental attorneys, the Office of Conflict Prevention and Resolution, and the Office of Health, Safety, and Security.

## Resolving Environmental Conflict

The critical role for conflict resolution to help settle environmental controversy was a highlight of the training agenda. Participants brushed up on essential techniques, such as joint fact-finding, consensus building, and collaborative problem-solving approaches, as they interacted in a hands-on, hypothetical case study designed by staff from the U.S. Institute for Environmental Conflict Resolution ([www.ecr.gov](http://www.ecr.gov)). The case study allowed participants to exercise their collaborative skills in considering how to support existing financial commitments to states and tribes at a time when Federal budgets are being cut. The exercise underscored the advantages of collaborative leadership when parties believe they can achieve better outcomes by working together and when a continuing relationship between parties is anticipated. The theme of collaboration flowed into presentations about DOE's Environmental Justice Program guidance and Native American tribal law.

## Sharing Lessons Learned

"We strongly support alternative dispute resolution," stated DOE Acting General Counsel, Sean A. Lev, as he reflected on lessons gained from collaboration in recent departmental energy efficiency rulemaking activities. Because alternative dispute resolution techniques focus on building good will, common understanding, and trust among stakeholders over time, DOE has successfully established efficiency standards for products (such as refrigerators) that offer more features while also providing energy and space savings to consumers and are widely supported by both consumer advocates and industry groups. These experiences illustrate the potential for collaborative decisionmaking efforts to save money and time, promote DOE decisions that industry can live with, and protect consumer interests and the environment, he said.

Lessons learned from recent DOE National Historic Preservation Act (NHPA) Section 106 consultations with Native American tribes were shared by Rachel Rosenthal from the Office of the Assistant General Counsel for Environment. She provided simple suggestions for

complying with requirements under Section 106 of the NHPA, including initiating consultation early, reaching out to consulting parties often, being mindful of potential cultural sensitivities when engaging Native American tribes, and thinking ahead about the proper means (e.g., a memorandum of understanding) for resolving adverse effects to cultural or historic properties from a Federal undertaking.

Legal staff from the U.S. Department of Defense (DOD) shared their experiences with property transfers, asset revitalization, and environmental review related to DOD's Base Realignment and Closure activities. In a corresponding presentation, Cynthia Anderson, Program Executive Officer, DOE Asset Revitalization Initiative (ARI), discussed the ARI Task Force Phase 1 Status Report and ARI (Phase II) path forward. The implementation of ARI will focus on potential opportunities to improve the efficiency of the environmental review process related to DOE property transfers and other ARI activities. These discussions highlighted a key lesson for the DOE NEPA Community from experiences with property transfers: NEPA reviews can be expedited by knowing the intended end use for a property.

## Suggestions for Improving DOE NEPA Reviews

The process leading to the recent revision of the DOE NEPA implementing regulations at 10 CFR Part 1021 (related article, page 1) was a collaborative experience that engaged several Federal and non-Federal stakeholders in improving the efficiency of DOE NEPA reviews. Brian Costner, Office of NEPA Policy and Compliance, provided an update on the revised NEPA rule that focused on an underlying goal for continuous improvement in NEPA review process efficiencies. Drawing from the rulemaking experience, as well as from a systematic review of NEPA compliance cost data, time data, and examples of "what worked and what didn't work" provided by DOE NEPA Compliance Officers and NEPA document managers, he also offered suggestions for further expediting DOE NEPA reviews. These included: (1) focusing management attention on key EIS schedules that are "uncertain," (2) improving skills in project management that promote higher quality EISs that are presented to a DOE NEPA review team, and (3) analyzing the range of reasonable alternatives in an EIS to avoid delays if a project proposal changes over time.

Information about speakers, access to presentations, and other helpful materials from this year's training can be found at: [www.ch.doe.gov/eatc-2011](http://www.ch.doe.gov/eatc-2011). **LL**

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information purposes only. This listing is not an endorsement of any of the training or entities listed. Cost and schedule information are subject to change; check with the course provider.

- Environmental Protection Agency  
Office of Federal Activities  
202-564-6069  
[mims.alice@epa.gov](mailto:mims.alice@epa.gov)  
[www.netionline.com](http://www.netionline.com)  
  
**National Environmental Policy Act (Recorded Webinar LIS155R)**  
Available through September 30, 2012  
No Fee
- Continuing Legal Education  
800-873-7130  
[www.cle.com](http://www.cle.com)  
  
**NEPA: Recent Developments under NEPA**  
Sacramento, CA: January 23-24  
\$795 (GSA contract: \$695)
- EOS Alliance  
425-270-3274  
[pt@nwetc.org](mailto:pt@nwetc.org)  
[www.eosalliance.org/schedule/calendar/courses-eos](http://www.eosalliance.org/schedule/calendar/courses-eos)  
  
**NEPA/SEPA Training**  
Lacey, WA: December 13-14  
\$545 (GSA contract: \$445)  
  
**NEPA: Writing the Perfect EA/FONSI, or EIS**  
Glendale, AZ: January 17-18  
\$595 (GSA contract: \$545)  
Gulfport, MS: February 28-29  
\$545 (GSA contract: \$495) until 12/17/11  
San Diego, CA: March 13-14  
\$545 (GSA contract: \$495) until 1/14/12  
Portland, OR: April 24-25  
\$545 (GSA contract: \$495) until 2/25/12
- Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[www.graduateschool.edu/course\\_details.php?cid=ENVS4435E](http://www.graduateschool.edu/course_details.php?cid=ENVS4435E)  
  
**NEPA: Policy, Procedure and Science/Art**  
Washington, DC: Tuesdays, April 10 – June 12  
\$375
- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)  
  
**Clear Writing for NEPA Specialists**  
Bountiful, UT: December 13-15  
\$985 (GSA contract: \$895)  
  
**Applying the NEPA Process and Writing Effective NEPA Documents**  
Baltimore, MD: January 10-13  
\$1,185 (GSA contract: \$1,095)  
Portland, OR: March 6-9  
\$1,145 (GSA contract: \$1,055) until 1/24/12  
Houston, TX: April 17-20  
\$1,145 (GSA contract: \$1,055) until 3/5/12  
  
**NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**  
Morrow, GA: January 24-27  
\$1,145 (GSA contract: \$1,055) until 12/13/11  
Missoula, MT: April 24-27  
\$1,145 (GSA contract: \$1,055) until 3/13/12  
  
**Reviewing NEPA Documents**  
Las Vegas, NV: February 1-3  
\$945 (GSA contract: \$855) until 12/21/11  
  
**Core Principles: Telling the NEPA Story, Keeping Documents Brief, Meeting Legal Requirements**  
Albuquerque, NM: February 7-9  
\$945 (GSA contract: \$855) until 12/27/11  
  
**Overview of the NEPA Process**  
San Francisco, CA: February 14  
\$345 (GSA contract: \$255) until 1/3/12  
  
**Preparing Specialist Reports as Part of the NEPA Process**  
Sacramento, CA: February 22-24  
\$945 (GSA contract: \$855) until 1/11/12  
  
**Overview of the NEPA Process and Managing NEPA Projects and Teams**  
Nashville, Tennessee: March 13-16  
\$1,145 (GSA contract: \$1,055) until 1/31/12  
  
**Applying the NEPA Process: Emphasis on Native American Issues**  
Nashville, TN: April 2-4  
\$945 (GSA contract: \$855) until 2/20/12

(continued on next page)

# Training Opportunities

(continued from previous page)

## **NEPA Certificate Program**

Requires successful completion of eight courses offered by The Shipley Group.

\$5,450

Contact: NEPA Certificate Program,  
Utah State University; 435-797-0922

[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)

[www.cnr.usu.edu/htm/students/grad-degrees/nepa](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa)

- U.S. Institute for Environmental Conflict Resolution  
520-901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)

## **Advanced Multi-Party Negotiation of Environmental Disputes**

Denver, CO: April 10-11

\$500

## **Introduction to Managing Environmental Conflict**

Denver, CO: May 9-10

\$500

## Upcoming Conference

- National Association of Environmental Professionals  
[NAEP@bowermanagementservices.com](mailto:NAEP@bowermanagementservices.com)  
[www.naep.org](http://www.naep.org)

### **Science, Politics, and Policy: Environmental Nexus**

Portland, OR: May 21-24, 2012

\$545; discounts for Government employees  
and early registration

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeps@mchsi.com](mailto:jleeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting  
International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
916-737-3000  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/events/education-and-training](http://www.icfi.com/events/education-and-training)
- International Institute for Indigenous  
Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/index.php/training/course-catalog](http://www.swca.com/index.php/training/course-catalog)

# EAs and EISs Completed July 1 to September 30, 2011

## EAs<sup>1</sup>

### **Golden Field Office/Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1705\\*](#) (7/1/11)

*Construction and Operation of a Proposed Cellulosic Biorefinery*, Kinross Charter Township, Michigan

Cost: \$90,000

Time: 22 months

[DOE/EA-1792](#) (9/26/11)

*University of Maine's Deepwater Offshore Floating Wind Turbine Testing and Demonstration Project*, Maine

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

Time: 16 months

[DOE/EA-1800](#) (8/11/11)

*Monarch Warren County Wind Turbine Project*, Warren County, Illinois

Cost: \$75,000

Time: 15 months

[DOE/EA-1814\\*](#) (7/6/11, FONSI 7/7/11)

*City of Montpelier Combined Heat and Power and District Energy System*, Montpelier, Vermont

Cost: \$40,000

Time: 14 months

[DOE/EA-1861\\*](#) (7/7/11)

*Frito-Lay Biomass Boiler Project*, Beloit, Wisconsin

Cost: \$65,000

Time: 7 months

[DOE/EA-1890](#) (8/24/11)

*Reedsport PB150 PowerBuoy Deployment and Ocean Test Project*, Reedsport, Oregon

DOE adopted this EA on 8/24/11; therefore, cost and time data are not applicable. [Federal Energy Regulatory Commission was the lead agency.]

### **Office of Loan Programs**

[DOE/EA-1798\\*](#) (7/7/11, FONSI 7/8/11)

*Abengoa Mojave Solar Project*, Barstow, California

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

Time: 13 months

[DOE/EA-1824](#) (7/11/11)

*Construction of a Wind Energy Project*, Roxbury, Maine

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

Time: 11 months

[DOE/EA-1826\\*](#) (8/1/11, FONSI 8/2/11)

*AV Solar Ranch One Project*, Los Angeles and Kern Counties, California

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

Time: 12 months

[DOE/EA-1840\\*](#) (8/3/11)

*California Valley Solar Ranch Project*, San Luis Obispo and Kern Counties, California

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

Time: 10 months

[DOE/EA-1849\\*](#) (7/29/11, FONSI 8/22/11)

*Ormat Nevada Northern Nevada Geothermal Power Plant Projects*, Elko, Pershing, and Lander Counties, Nevada

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

Time: 8 months

### **National Energy Technology Laboratory/ Office of Electricity Delivery and Energy Reliability**

[DOE/EA-1750\\*](#) (8/26/11)

*Smart Grid, Center for Commercialization of Electric Technology (CCET), Technology Solutions for Wind Integration*, Houston, Texas

Cost: \$26,000

Time: 17 months

(continued on next page)

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

\* Recovery Act project

# EAs and EISs Completed July 1 to September 30, 2011

(continued from previous page)

## National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy

[DOE/EA-1869\\*](#) (9/29/11)

*Supplemental Environmental Assessment for General Motors LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative (DOE/EA-1723-S1), White Marsh, Maryland*  
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 7 months

[DOE/EA-1876\\*](#) (8/31/11)

*Pennsylvania State Energy Program's Conergy Navy Yard Solar Project, Philadelphia County, Pennsylvania*  
The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 5 months

## National Energy Technology Laboratory/ Office of Fossil Energy

[DOE/EA-1846\\*](#) (7/8/11)

*Demonstration of CO<sub>2</sub> Capture and Sequestration of Steam Methane Reforming Process Gas Used for Large Scale Hydrogen Production, Jefferson and Brazoria Counties, Texas*  
Cost: \$183,000  
Time: 8 months

## Western Area Power Administration

[DOE/EA-1617](#) (9/23/11)

*Lovell-Yellowtail and Basin-Lovell Transmission Line Rebuild Project, Big Horn County, Wyoming and Big Horn and Carbon Counties, Montana*  
Cost: \$708,000  
Time: 42 months

[DOE/EA-1853](#) (7/8/11)

*Perrin Ranch Wind Energy Interconnection Project, Coconino County, Arizona*  
The cost of this EA was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 7 months

[DOE/EA-1864](#) (7/26/11, FONSI 8/9/11)

*Electrical District 5-Palo Verde Hub Project, Maricopa and Pinal Counties, Arizona*  
Cost: \$97,000  
Time: 5 months

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

\* Recovery Act project

## EISs

### Bonneville Power Administration

[DOE/EIS-0419](#) (76 FR 54767, 9/2/11)

(EPA Rating: LO)  
*Whistling Ridge Energy Project, Skamania County, Washington*  
The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 29 months

### Office of Fossil Energy/National Energy Technology Laboratory

[DOE/EIS-0444\\*](#) (76 FR 47578, 8/5/11)

(EPA Rating: EC-2)  
*Texas Clean Energy Project, Ector County, Texas*  
The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 14 months

### Office of Loan Programs

[DOE/EIS-0458](#) (76 FR 50213, 8/12/11)

(EPA Rating: EC-2)  
*Construction and Startup of the Topaz Solar Farm, San Luis Obispo County, California*  
The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.  
Time: 10 months

### National Nuclear Security Administration/ Los Alamos Site Office

[DOE/EIS-0350-S1](#) (76 FR 54768, 9/2/11)

(EPA Rating: EC-2)  
*Supplemental Environmental Impact Statement for the Nuclear Facility Portion of the Chemistry and Metallurgy Research Building Replacement Project, Los Alamos National Laboratory, Los Alamos, New Mexico*  
Cost: \$2,150,000  
Time: 11 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

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

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 8 EAs for which cost data were applicable was \$83,000; the average cost was \$160,000.
- Cumulatively, for the 12 months that ended September 30, 2011, the median cost for the preparation of 42 EAs for which cost data were applicable was \$53,000; the average was \$90,000.
- For this quarter, the median completion time of 17 EAs for which time data were applicable was 11 months; the average was 13 months.
- Cumulatively, for the 12 months that ended September 30, 2011, the median completion time for 61 EAs was 10 months; the average was 11 months.

## EIS Cost and Completion Times

- For this quarter, the cost for the preparation of one EIS for which cost data were applicable was \$2.2 million.
- Cumulatively, for the 12 months that ended September 30, 2011, the median and average costs for the preparation of 5 EISs for which cost data were applicable was \$2 million.
- For this quarter, the median completion time of 4 EISs for which time data were applicable was 13 months; the average was 16 months.
- Cumulatively, for the 12 months that ended September 30, 2011, the median completion time for 10 EISs was 20 months; the average was 23 months.

# Recent EIS-Related Milestones September 1 to November 30, 2011

## Notices of Intent

### **Office of Fossil Energy/National Energy Technology Laboratory**

DOE/EIS-0473

*W.A. Parish Post-Combustion CO<sub>2</sub> Capture and Sequestration Project (PCCS),*

Fort Bend County, Texas

November 2011 ([76 FR 70429](#), 11/14/11)

### **National Nuclear Security Administration**

DOE/EIS-0288-S1

*Supplemental Environmental Impact*

*Statement for the Production of Tritium in a Commercial Light Water Reactor, Spring City and Soddy-Daisy, Tennessee*

September 2011 ([76 FR 60017](#), 9/28/11)

## Notice of Cancellation

### **Western Area Power Administration**

DOE/EIS-0461

*Hyde County Wind Energy Center Project,*  
Hyde County, South Dakota

October 2011 ([76 FR 64941](#), 10/19/11)

## Extension of Public Comment Period

### **National Nuclear Security Administration/ Nevada National Security Site**

[DOE/EIS-0426](#)

*Site-wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations, Nevada*

October 2011 ([76 FR 65508](#), 10/21/11)

## Draft EISs

### **Energy Efficiency and Renewable Energy/ Golden Field Office**

[DOE/EIS-0403-S1](#)

*Supplement to the Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States*

October 2011 ([76 FR 66925](#), 10/28/11)

[Co-lead: Department of the Interior's Bureau of Land Management]

*(continued on next page)*

# Recent EIS-Related Milestones

## September 1 to November 30, 2011

(continued from previous page)

### Western Area Power Administration

[DOE/EIS-0440](#)

*Quartzsite Solar Energy Project and Proposed Yuma Field Office Resource Management Plan Amendment*, La Paz County, Arizona  
November 2011 ([76 FR 70130](#), 11/10/11)  
[Department of the Interior's Bureau of Land Management is a cooperating agency.]

### Records of Decision

#### Bonneville Power Administration

[DOE/EIS-0421\\*](#)

*Big Eddy-Knight Transmission Project*, Wasco County, Oregon and Klickitat County, Washington  
September 2011 ([76 FR 59394](#), 9/26/11)

#### Office of Fossil Energy/National Energy Technology Laboratory

[DOE/EIS-0444\\*](#)

*Texas Clean Energy Project*, Ector County, Texas  
September 2011 ([76 FR 60478](#), 9/29/11)

#### Office of Loan Programs

[DOE/EIS-0407\\*](#)

*Abengoa Biorefinery Project*, Hugoton, Stevens County, Kansas  
October 2011 ([76 FR 2096](#), 1/12/11)

[DOE/EIS-0448\\*](#)

*Desert Sunlight Solar Farm Project*, Riverside County, California  
October 2011 ([76 FR 60252](#), 10/6/11)

[DOE/EIS-0454\\*](#)

*Crescent Dunes Solar Energy Project*, Tonopah, Nye County, Nevada  
September 2011 ([76 FR 60475](#), 9/29/11)

[DOE/EIS-0455\\*](#)

*Genesis Solar Energy Project*, Riverside, California  
September 2011 ([76 FR 54454](#), 9/1/11)

### Amended Record of Decision

#### National Nuclear Security Administration/ Los Alamos Site Office

[DOE/EIS-0350](#)

*Chemistry and Metallurgy Research Building Replacement Project*, Los Alamos National Laboratory, Los Alamos, New Mexico  
October 2011 ([76 FR 64344](#), 10/18/11)

### Supplement Analyses

#### Bonneville Power Administration

##### Transmission System Vegetation Management Program

(DOE/EIS-0285)

[DOE/EIS-0285-SA-449](#)

*Vegetation Management along the Kalispell-Kerr No. 1, 115-kV Transmission Line Corridor Right-of-Way*, Flathead and Lake Counties, Montana  
(Decision: No further NEPA review required.)  
September 2011

[DOE/EIS-0285-SA-450](#)

*Vegetation Management along the Flathead-Hot Springs No. 1, 230-kV Transmission Line Corridor Right-of-Way*, Flathead, Lake, and Sanders Counties, Montana  
(Decision: No further NEPA review required.)  
September 2011

[DOE/EIS-0285-SA-451](#)

*Vegetation Management along the Carlton-Tillamook No. 1, Transmission Line Corridor*, Yamhill and Tillamook Counties, Oregon  
(Decision: No further NEPA review required.)  
November 2011

[DOE/EIS-0285-SA-452](#)

*Vegetation Management and Access Road Maintenance Activities along the Entire Right-of-Way Corridors*, Clark County, Washington and Multnomah County, Oregon  
(Decision: No further NEPA review required.)  
November 2011

[DOE/EIS-0285-SA-453](#)

*Vegetation Management and Access Road Maintenance along the Entire Rivergate-Keeler No. 1, 230-kV Transmission Line Corridor*, Multnomah and Washington Counties, Oregon  
(Decision: No further NEPA review required.)  
November 2011

\* Recovery Act project

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Review of state processes.* Reviewing information regarding the state energy commission process assisted in DOE's EA scoping process.

### What Didn't Work

- *Late change to scope.* Addressing late scope changes and late comments from cooperating agencies was challenging.

## Data Collection/Analysis

### What Worked

- *Use of existing documentation.* A NEPA document from a nearby location contained much of the affected environment's background information.
- *Adaptive management strategy.* The project proponent prepared an avian and bat protection plan with the Fish and Wildlife Service to implement an adaptive management strategy for golden eagles and bats.

### What Didn't Work

- *Changing cooperating agency requirements.* Changes in requirements made by some cooperating agency resource specialists created a problem.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Coordination and focus.* Effective coordination with cooperating agencies, the Fish and Wildlife Service, and the State Historic Preservation Officer (SHPO), as well as regular interagency meetings focused on meeting milestones, facilitated timely completion of the EA.

- *Timely data submittal.* The applicant supplied needed data in a timely fashion.
- *Close coordination.* Close coordination with the SHPO in developing a Memorandum of Agreement and historic properties treatment plan to resolve adverse impacts to National Register of Historic Places eligible properties helped keep the EA on schedule.
- *Responsive applicant.* The applicant was responsive to requests for additional information and analysis.
- *Communication methods.* Timely communication and "tracking changes" in draft documents facilitated timely reviews and revisions.
- *NEPA adoption benefits.* All permits, applications, and consultations had been done prior to DOE's involvement, allowing timely EA adoption.
- *Lack of controversy.* No public conflicts with the project made timely completion of the EA easier.
- *Excellent contractors.* Constant communication with excellent NEPA contractors, who responded quickly to DOE requests, kept the EA on schedule.
- *Early data collection.* The proponent began gathering bird count data prior to the start of the EA.
- *Monthly meetings.* Monthly team meetings helped to keep the EA on schedule.
- *Coordination with cooperating agencies.* Extensive coordination with and reminders to cooperating agencies facilitated timely EA completion.
- *Potential cultural resources.* DOE had to mitigate some areas potentially containing cultural resources, but was able to do so in a timely manner by starting early.

### Factors that Inhibited Timely Completion of Documents

- *Data gaps.* Floodplain information was lacking and required additional data collection.
- *Additional public review.* Public requests for more review time delayed EA completion.

*(continued on next page)*



## Questionnaire Results

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

- *State agency review.* The state agency review process was time consuming and somewhat piecemeal. State-specific needs were not identified up front, resulting in a need to collect more information, extending the preparation time.
- *Poor writing skills.* A subcontractor's inability to write in plain language resulted in lost time.
- *Late scope changes.* A significant change to the project's scope late in the EA process resulted in additional coordination with cooperating agencies regarding the National Historic Preservation Act, delaying completion.
- *Agency consultation.* Several comments were received that an EIS should be completed due to potential impacts to a federally listed endangered species. Consultation with the U.S. Fish and Wildlife Service resulted in a no-jeopardy determination, which was incorporated into the final EA and was not challenged.
- *Open-house meeting.* Holding a public scoping open-house meeting clearly established the start of the public participation process.
- *Organized approach.* The public process for this project included mailings to agencies, five newspaper ads, and a public open house meeting, all of which ran smoothly.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Weekly meetings.* Holding weekly meetings between DOE and contractors facilitated effective teamwork.
- *Budgeting review time.* Reviewers were notified in advance of EA reviews so they could budget their time.
- *Well-written document.* A well-written and thoroughly analyzed EA, meeting all of DOE's expectations, facilitated teamwork and the adoption of the document.
- *NEPA and project staff communication.* Program office NEPA and project staff worked closely on the project. The flow of information helped integrate NEPA into overall project planning.
- *Email address.* The contractor's establishment of a project-specific email address facilitated teamwork.
- *Knowledgeable contractor.* The contractor was very knowledgeable, quick, and responsive.
- *Communicating expectations.* Working with the DOE project manager and communicating expectations to NEPA contractors was the key to success.

## Process

### Successful Aspects of the Public Participation Process

- *Prior state process.* Because this project went through the state process prior to the NEPA process, there was very little public reaction to the DOE process.
- *Incorporation of previous agreements.* The project had gone through extensive public participation during a state process, and DOE incorporated the project conservation measures, project footprint, and other items that were agreed to by the county into the EA.

- *Multiple opportunities.* Public meetings, mailings, and establishing a website with an email address allowed many opportunities for public input.
- *Effective process.* Although a few people said the NEPA process took too long, overall public feedback was positive and useful in identifying alternatives.

### Unsuccessful Aspects of the Public Participation Process

- *Mixed reaction.* Some members of the public felt that the process was rigged and that a decision was preordained.
- *Scope changes.* Late scope changes resulted in a need for DOE to provide a second public comment period.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *NEPA adoption benefits.* The availability of a sound final EA led to an expeditious and informed DOE adoption decision, allowing for the first full-size wave energy device to be deployed with DOE funds.
- *Consideration of environmental consequences.* The project office found the NEPA process of value in ensuring that program applicants fully consider the environmental consequences of their proposals.
- *Prior state review.* A state review prior to the EA resulted in the applicant designing the project to mitigate potential environmental impacts.
- *Reduced environmental impacts.* The EA showed that environmental concerns were addressed.

*(continued on next page)*

## Questionnaire Results

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

- *Decisionmaker insight.* The NEPA process gave the decisionmaker insight through scientific analysis of impacts and public comments.
- *Agency input.* Feedback from cooperating and other agencies definitely facilitated informed decisionmaking.

### Enhancement/Protection of the Environment

- *Environment protected.* The NEPA process ensured that all appropriate environmental measures were employed.
- *Protection provided.* The NEPA process provided protection for endangered species and cultural finds.
- *Resources protected.* As a result of the EA, a national recreation area and other resources will be protected through mitigation.

### Other Issues

#### Guidance Needs Identified

- *Plain Language.* More guidance emphasizing the use of plain language in NEPA documents would be useful. A good technical writer is important in making technical topics understandable to the public.

### Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

For the past quarter, in which 9 questionnaire responses were received for EAs, 9 out of 9 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that the NEPA process facilitated coordination with cooperating and other agencies. Useful suggestions and alternatives were identified that were both practical and good for resource protection.
- A respondent who rated the process as “4” stated that although another agency had already conducted a review, DOE was able to make an informed decision.
- A respondent who rated the process as “4” stated that because the energy project was in an area needing more power, the NEPA process was understood and effective.
- A respondent who rated the process as “4” stated that the NEPA process helped DOE take a hard look at the environmental impacts associated with the Federal action and the connected action.
- A respondent who rated the process as “4” stated that clarifying that environmental concerns were protected had a positive effect on the project moving forward.
- A respondent who rated the process as “3” stated that the NEPA process verified the evaluation done previously by the state.
- A respondent who rated the process as “3” stated that, although the site was already approved by the state and county, DOE’s process allowed for an informed decision.
- Two respondents who rated the process as “3” stated that the applicant designed the facility to minimize potential environmental impacts and to demonstrate environmental stewardship. This gave the the DOE team confidence in moving the project forward.

# LESSONS LEARNED

March 5, 2012; Issue No. 70

First Quarter FY 2012

## Keys to Managing an Expanded NEPA Workload: Close Communication and Coordination

Frequent communication between senior program managers and NEPA staff, as well as close coordination among all involved DOE offices, enabled the Office of Energy Efficiency and Renewable Energy (EERE) to meet the challenge of completing an unprecedented number of NEPA reviews in recent years. From 2009 through 2011, EERE distributed approximately \$16.8 billion from the American Recovery and Reinvestment Act of 2009 (Recovery Act) through about 3,000 grants, many of which included subrecipient awards that required separate NEPA review. This involved about 8,000 categorical exclusion determinations and preparation of about 70 environmental assessments (EAs).

### Efficient, Effective Project Management

EERE holds quarterly Program Management Reviews with each EERE technology program to discuss the status of Recovery Act projects. It held 32 such meetings in 2011. In these meetings, EERE NEPA staff briefs Program Managers on specific NEPA and permitting issues for their projects. In addition, NEPA staff circulates a biweekly status report on ongoing EAs throughout EERE, including to its senior managers, and to senior staff across the Department.

“Reporting the status of NEPA actions and integrating project management and NEPA review schedules are essential elements of this process,” explained Scott E. Hine, Director, EERE Office of Project Management and Evaluation. “Frequent communication ensures that EERE Program Managers and senior staff have the information they need to effectively manage their Recovery Act projects.” It greatly reduced duplicative data requests received by NEPA staff, as the reports could be referenced consistently in preparing the various Recovery

Act briefings and for other communications over the past 3 years, he added.


EERE’s Recovery Act NEPA workload could not be completed without close coordination among EERE and DOE senior leadership, the EERE technology programs, EERE’s NEPA Compliance Officers and document managers, the Office of General Counsel, and the multiple field organizations supporting the EERE NEPA reviews, explained Mr. Hine. For example, EERE’s process for preparing EAs included early team meetings to discuss document structure for similar projects, alternatives, proposed action language, and impact analysis. Teamwork was necessary to produce EAs that were consistent in format and level of impact analysis for similar projects across technology areas, he added.

---

*Constant tracking and communication of Recovery Act NEPA work ensured that all levels of program leadership were made aware of the NEPA status of their projects, which enabled them to effectively manage an unparalleled amount of highly visible work in a limited time frame and with limited resources.*

– Scott E. Hine, Director  
EERE Office of Project Management and Evaluation

---

One result of these efforts is that EERE’s median cost and time to complete EAs for Recovery Act projects is about 40 percent lower than DOE’s median for other EAs (based on data presented in [LLQR, September 2011, page 1](#)). For more information, contact Caroline Mann, Program Analyst, EERE, at [caroline.mann@ee.doe.gov](mailto:caroline.mann@ee.doe.gov) or 202-287-5380. 

## Inside **LESSONS LEARNED**

Welcome to the 70<sup>th</sup> quarterly report on lessons learned in the NEPA process. This issue features successful practices from recent NEPA reviews and current Council on Environmental Quality initiatives promoting efficient NEPA compliance. Thank you for your continued support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

Recent NEPA Reviews Illustrate Lessons Learned .....	3
NEPA Order Revision Incorporates Public Review of EAs .....	5
Bureau of Reclamation Updates NEPA Handbook .....	5
CEQ Expands NEPA Modernization Activities .....	6
CEQ Draft Guidance Promotes Efficiencies .....	6
CEQ Selects Pilot Projects .....	7
DOE-Wide NEPA Contracts Update .....	8
NEPA Contracts: Task Ordering Process .....	9
Most DOE EISs Involve Cooperating Agencies .....	10
Annual Planning Summaries .....	11
Transitions .....	12
Litigation Updates .....	13
2012 National Environmental Justice Conference .....	13
Training Opportunities .....	14
NAEP Annual Conference .....	15
EAs and EISs Completed this Quarter .....	16
Cost and Time Facts .....	18
Recent EIS-Related Milestones .....	18
Questionnaire Results .....	21

*Carol Bergstrom*

Director  
Office of NEPA Policy and Compliance

Printed on recycled paper



## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report (LLQR)*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 1, 2012. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due May 1, 2012

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of Fiscal Year 2012 (January 1 through March 31, 2012) should be submitted by May 1, 2012, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at <http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Guidance & Requirements, then Lessons Learned. We provide paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).



This icon indicates that *LLQR* online (<http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned) provides a link to a referenced web page.

## DOE to Hold Asset Revitalization Workshop

DOE is planning a two-day workshop on its Asset Revitalization Initiative to be hosted by the Oak Ridge Office (ORO) in mid-June 2012.

The focus of the workshop is to share lessons learned and best practices associated with property transfers, NEPA reviews, and stakeholder interactions. "We hope by sharing these lessons and best practices that we can streamline the processes and establish contacts with other organizations and individuals who have relevant experience," said Cynthia Anderson, Program Executive Officer for Asset Revitalization.

DOE's Office of NEPA Policy and Compliance, Loan Programs Office, Property Transfer Working Group,

and several field offices, and the U.S. General Services Administration, will present lessons learned and best practices associated. In addition, DOE's Offices of Tribal and Intergovernmental Affairs and of Civil Rights, and the U.S. Institute for Environmental Conflict Resolution, will present best practices with respect to Tribal consultation, diversity, and stakeholder communications to ensure success. The agenda is still being developed and other topics may be added.

ORO will be setting up teleconferencing and/or televideo access. For further information, contact Shirley Olinger at [shirley.olinger@rl.doe.gov](mailto:shirley.olinger@rl.doe.gov) or 509-539-3229.

# Recent NEPA Reviews Illustrate Lessons Learned

*Below we feature lessons learned from two recent DOE NEPA reviews: an environmental impact statement (EIS) for a proposed solar farm and an EA for proposed use of DOE property for military training exercises. The Loan Programs Office (LP) completed the EIS in 10 months, and the NEPA Document Manager, Angela Colamaria, shares tips from her experience developing an aggressive schedule and holding everyone to it. Drew Grainger, NEPA Compliance Officer at the Savannah River Site (SRS), highlights the importance of teamwork in preparing a plan to avoid adverse environmental impacts. We invite other NEPA practitioners to share their lessons learned in future issues of LLQR. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) with your ideas.*

## An EIS in 10 Months . . . It Can Be Done!

The project proponent applied for a DOE loan guarantee for the construction and startup of the Topaz Solar Farm in San Luis Obispo County, California, in the fall of 2010, and DOE issued the final EIS ([DOE/EIS-0458](#)) in August 2011. Although the applicant ultimately withdrew its request for a loan guarantee and pursued the project with other funding, the experience provides helpful insights on how to successfully conduct an expedited NEPA review.



### Get a Head Start and Make Every Minute Count

Ms. Colamaria met with local and state officials early on to discuss issues identified during the California Environmental Quality Act (CEQA) process. “Meetings with county and state parties were helpful in identifying potential ‘big issues’ for DOE’s NEPA process ahead of time,” said Ms. Colamaria.

Ultimately, discussions with state and local officials and use of select analyses from the environmental impact report (CEQA’s EIS-equivalent) decreased the data collection needs and gave LP a head start in preparing the EIS. LP began drafting parts of the EIS (purpose and need, proposed action, alternatives) before the scoping period ended. Later, LP supplemented the drafted chapters with text regarding any new issues or recommendations that arose during the scoping period.

For internal review of the EIS, LP shared individual chapters with DOE reviewers as they were completed. This



*Arrays of ground-mounted PV modules would be manufactured and installed at Topaz Solar Farm by the project proponent, First Solar, LLC.*

approach facilitated early identification of concerns and agreement on the overall approach prior to review of the entire preliminary EIS. “We were able to make edits in real time, allowing for a quick overall review of the document once fully drafted,” Ms. Colamaria explained. LP used a similar “batch” approach in sharing public comments on the draft EIS with the internal DOE team as they were received in order to keep the group apprised of issues.

### Get Team Buy-In on Schedule

Throughout preparation of the EIS, LP focused on clear communication with internal DOE team members and outside resource agencies, including the U.S. Army Corps of Engineers (a cooperating agency). LP first assembled the internal DOE team to discuss the approach for completing the EIS on an expedited schedule. “Negotiate a schedule with detailed due dates for every review milestone and deliverable, and obtain agreement from reviewers,” recommended Ms. Colamaria. “If all parties have negotiated and agreed to a schedule in writing, it provides an extra layer of accountability.”

LP also identified potential cooperating and consulting agencies at the beginning of the process. Ms. Colamaria explained that negotiating review schedules with outside resource agencies was an essential part of integrating NEPA requirements with other environmental review and consultation requirements, and “it allowed us to stay on schedule.” For example, DOE negotiated a firm 135-day review period with the U.S. Fish and Wildlife Service (USFWS) in order to complete Section 7 consultation under the Endangered Species Act (ESA). Then LP stayed in contact with USFWS staff to answer questions as they arose and engaged the DOE Office of General Counsel and Department of the Interior’s Office of the Solicitor to assist with resolving a challenging ESA issue regarding the scope of the Incidental Take Statement. Ms. Colamaria recommends that NEPA Document Managers share drafts of the Biological Assessment with USFWS staff and follow up with them to address any concerns prior to DOE’s formal submission of the assessment.

LP also monitored the local permitting and approval process that was ongoing as the Topaz Solar Farm EIS was being finalized. “Ultimately, the local (or state) permitting process can affect the scope, location, or layout of a project. If you have a good working relationship with the

*(continued on next page)*

# Recent NEPA Reviews *(continued from previous page)*

state or local agency, they can inform you of any potential changes that would need to be reflected in the NEPA document,” noted Ms. Colamaria.

For additional information on LP’s expedited preparation of the Topaz Solar Farm EIS, contact Ms. Colamaria at [angela.colamaria@hq.doe.gov](mailto:angela.colamaria@hq.doe.gov).

## Suggested Tips for Managing an Expedited NEPA Document

by Angela Colamaria, NEPA Document Manager

- Obtain agreement on the schedule from all reviewers and outside agencies, particularly agreement on turnaround times.
- Keep team members’ expectations realistic.
- Conduct regular phone calls (e.g., weekly) with the EIS contractor and team members to discuss information needs and keep everyone on the same page.
- Distribute a work product by close of business, rather than first thing the next morning; this can make a big difference when you need a signature or other time-sensitive step completed.
- Keep a detailed list of promised deliverables from all team members and remind, remind, remind – or when all else fails, nag.

## Teamwork Generates Plan to Avoid Impacts of Military Training Exercises at SRS

The approximately 300-square-mile SRS includes large tracts of undeveloped land with road networks, terrain features, vegetative cover, and existing or proposed decommissioned facilities suitable for low-intensity tactical maneuver training; SRS’s location near Aiken, South Carolina, allows groups from different Army bases to converge for joint training exercises. In view of these advantages, DOE and the Army entered into an Interagency Agreement in 2009 to provide the Army access to SRS for such training. The agreement called for preparation of an *EA for the Proposed Use of Savannah River Site Lands for Military Training* (SRS Military Training EA) (DOE/EA-1606). DOE established an integrated project team to identify SRS areas appropriate for the proposed military training exercises and to develop procedures to jointly meet the SRS mission, satisfy the Army’s training needs, and ensure no significant impact to the environment.

The challenge in preparing this EA stemmed from the wide range of activities, potential locations, and interconnected



*In one type of military training exercise planned for SRS, participants disable a storage cask.*

issues of interest to multiple parties, including other “tenants” who perform work at SRS, federal and state regulators, and agencies with jurisdiction over special resources, explained Mr. Grainger. To meet this challenge, the integrated project team of representatives of DOE, the Army, U.S. Forest Service-Savannah River, Savannah River National Laboratory, and Savannah River Nuclear Solutions (an SRS contractor) worked together to define areas suitable for the various kinds of training exercises the Army would carry out. These areas meet the physical needs for the types of training, do not interfere with SRS missions, and respect environmental considerations, such as areas set-aside under the Site’s National Environmental Research Park program.

---

***Collaborative teamwork by an integrated project team led to the successful identification of areas suitable for Army military training exercises at SRS and development of planning procedures to ensure no significant impact to the environment.***

***– Drew Grainger  
SRS NEPA Compliance Officer***

---

After months of challenging collaboration, the team agreed on the Joint Standard Operating Procedures, a set of guidelines and processes governing the Army’s use of SRS for military training. “The Joint Standard Operating Procedures ensure that each exercise can be conducted without interfering with SRS operations and that SRS operations do not interfere with the Army’s training exercise,” explained Mr. Grainger. “Further, the procedures represent a process not just to mitigate environmental impacts, but to ensure that no significant damage occurs in the first place.”

*(continued on next page)*

## Recent NEPA Reviews *(continued from previous page)*

The procedures place limits on the training activities, which help define the potential environmental effects. For example, because the procedures limit wetland crossings to small numbers of personnel at designated areas, DOE was able to determine that impacts on wetlands would not be significant. Similarly, because known locations of endangered species are off limits to the training exercises, the USFWS agreed with DOE's determination that the proposed action is not likely to adversely affect threatened or endangered species. The Army, DOE, and the Forest Service, which manages the SRS recovery plan for endangered red-cockaded woodpeckers, worked closely with the USFWS to modify the recovery plan to incorporate Army experience from other installations that support both military training and protection of red-cockaded woodpeckers. The EA also considered that the Army must incorporate Best Management Practices into its training exercises to protect water quality.

The commitment of DOE and the Army to making SRS lands available for military training, and the close working relationship in developing the EA and the procedures, culminated in a Final EA and Finding of No Significant Impact in December 2011. The first Army training exercise at SRS, a hostage rescue scenario, was conducted




*The procedures analyzed in the Military Training EA are designed to avoid impacts to endangered species found at SRS – the red-cockaded woodpecker (shown), wood stork, shortnose sturgeon, smooth purple coneflower, and pondberry – and the formerly endangered American bald eagle.*

*(photo: Michael McCloy for U.S. Fish and Wildlife Service)*

successfully a month later; additional exercises have been conducted and more are planned for the future.

DOE and the Army have agreed to start slowly, with small numbers of military personnel, in order to ensure the procedures function as intended. In addition, the procedures recognize the need for adaptive management related to unforeseen impacts.


For additional information on the SRS Military Training EA, contact Steve Danker, NEPA Document Manager, at [stephen.danker@srs.gov](mailto:stephen.danker@srs.gov) or 803-952-8603. 

## NEPA Order Revision Incorporates Public Review of EAs

DOE has updated its NEPA Order (DOE Order 451.1B, Change 3, *National Environmental Policy Act Compliance Program*) to incorporate the policy articulated in the Deputy Secretary's memorandum on "[Public Involvement in the Environmental Assessment Process](#)" (July 16, 2010; [LLQR, September 2010, page 1](#)). The two substantive changes are:

- A new paragraph 4.h stating that DOE's NEPA Compliance Program shall include "Opportunity, whenever possible, for interested parties to review an environmental assessment (concurrent with host state/tribal review under 10 CFR 1021.301) prior to DOE approval."

- An addition to NEPA Compliance Officer (NCO) responsibilities stating, in paragraph 5.d, that "when an Office makes a draft environmental assessment available for public review, in addition to its usual method of doing so, [the NCO shall] ensure that the draft is posted on the Department's NEPA website before the start of the public review period."

DOE also made several technical corrections – for example, an update to recognize the October 2006 disestablishment of the Office of Environment, Safety and Health. The changes became effective January 19, 2012. The [DOE NEPA Order](#) is available on the DOE NEPA Website. 

### Bureau of Reclamation Updates NEPA Handbook

The Bureau of Reclamation (BOR) issued a February 2012 update of its *NEPA Handbook* ([www.usbr.gov/nepa](http://www.usbr.gov/nepa)), a guidance tool for BOR staff. The BOR *NEPA Handbook* outlines the elements of the NEPA process in the context of BOR programs and activities. It provides a categorical exclusion checklist, EA and EIS guidance, and resources, such as an example of a cooperating agency memorandum of understanding. Appendices include a collection of regulations, procedure manuals, and guidance issued by the Council on Environmental Quality, Environmental Protection Agency, Department of the Interior, and BOR.



# CEQ Expands NEPA Modernization Activities

The Council on Environmental Quality (CEQ) initiated two new activities in the past quarter as part of its efforts to modernize and reinvigorate NEPA. (See related article, page 7.)

## Creating a NEPA IT Toolbox


Developing a “NEPA IT Toolbox” to facilitate effective integration, collaboration, and engagement over the life cycle of the NEPA process is one goal of CEQ’s new interagency NEPA IT (“information technology”) Working Group. The working group will address impediments to acquiring and using information technology to improve NEPA implementation, said John Jediny, Deputy Associate Director of NEPA Oversight. (Mr. Jediny, an Environmental Specialist with DOE’s Office of Energy Efficiency and Renewable Energy (EERE), is currently on detail to CEQ.)

The working group has conducted an informal survey of federal agency NEPA contacts to assess the availability and accessibility of IT tools. The working group intends to further explore IT tools available to NEPA practitioners across the Federal Government, including tools for data collection and analysis, process management, document management, and public involvement (e.g., comment receipt and analysis tools, or use of maps and other geospatial platforms to facilitate commenting).

Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance, is serving as DOE’s representative on the NEPA IT Working Group. He may be reached at [eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov).

## Sharing Examples of NEPA Efficiencies

CEQ has established a web-based NEPA Efficiencies Clearinghouse for federal agencies to share examples of ways to help prepare timely, effective, and efficient NEPA reviews. Examples are grouped into nine categories: concise NEPA documents, early NEPA integration in planning, scoping, inter-governmental coordination (state, local, or tribal environmental reviews), coordinating reviews and documents under other applicable laws, adoption, incorporation by reference, expediting responses to comments, and clear timelines for NEPA reviews.

The clearinghouse is designed to allow NEPA practitioners to freely share ideas and learn from each other. DOE has posted two items developed by EERE’s Golden Field Office: a template for a cooperating agency memorandum of understanding and a template for the initial chapter of an EA. Participation requires a Federal Government email address and registration at [www.max.gov](http://www.max.gov). The clearinghouse is located in CEQ’s portion of the website. 

# CEQ Draft Guidance Promotes Efficient NEPA Reviews


The Council on Environmental Quality (CEQ) issued draft guidance in December 2011 that “offers concrete tools for each step of the NEPA review process, providing, in sum, a more thorough, efficient, and informed analysis of environmental issues.” CEQ explains that NEPA and the CEQ NEPA Regulations (40 CFR 1500–1508) “provide numerous techniques for preparing efficient and timely environmental reviews” and that the guidance is intended to “emphasize and clarify these techniques, consistent with a thorough and meaningful environmental review.”

The draft guidance makes clear that many provisions of the CEQ Regulations that specifically refer to an EIS can also apply to preparation of an EA. The draft guidance notes, for example, that although the CEQ Regulations address scoping of an EIS, agencies “can also choose to take advantage of scoping when preparing an EA that deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action.”

“The individual issues addressed,” CEQ summarizes in the draft guidance, “include the use of concise NEPA documents focused on particular environmental issues, the integration of NEPA into preliminary parts of the

planning process, and a more prevalent role of scoping in the development of NEPA reviews. The guidance also advises agencies to collaborate with other government bodies – including state, local, or Tribal – and coordinate reviews and documents with other laws to allow for greater efficiency. It further explains the adoption of other Federal agency reviews, the procedure and ability to incorporate information contained in other documents into a review, and the role of reasonable and proportionate responses to comments within the NEPA process. Finally, the guidance proposes agencies utilize appropriate time limits to promote efficiency.”

## Next Steps

CEQ received approximately 60 comments on “Improving the Process for Preparing Efficient and Timely Environmental Reviews under [NEPA]” (76 FR 77492; December 13, 2011) during a public review period that ended on January 27, 2012. The draft guidance and public comments are available on [CEQ’s website](http://CEQ's website). CEQ will review and consider all public input before finalizing the guidance. 





# CEQ Selects More Pilot Projects Aimed at Expediting NEPA Review



The Council on Environmental Quality (CEQ) recently selected its fourth and fifth pilot projects under an initiative it launched in March 2011 to demonstrate ways to improve NEPA implementation. The fourth project is a Department of Transportation (DOT) NEPA pilot project for high-speed passenger rail service, and the fifth project is a U.S. Forest Service (Forest Service) proposal for identifying lessons learned from two ongoing forest restoration projects. The first three NEPA pilot projects selected by CEQ involve the use of information technology and identification of best practices for the preparation of EAs. (See [LLQR, December 2011, page 11](#), and [June 2011, page 11](#).)

## DOT High-Speed Rail Service Project

By starting the environmental review process early, involving stakeholders, and posting project timelines and progress, DOT aims to save time and money through its NEPA pilot project for high-speed passenger rail service in the Northeast. “The Northeast Corridor is the busiest rail corridor in the U.S.,” said DOT Secretary Ray LaHood. “Our planned improvements will lead to more jobs, a stronger rail system and a stronger economy. By bringing all involved parties to the table earlier in the process, we will do the job better and finish it sooner.”

“Through this pilot project, CEQ and DOT will work with stakeholders to identify efficiencies to speed the environmental review process that will inform selection of service types and station locations for high-speed rail in the Northeast Corridor. The pilot will engage Federal, state, and local governments and the public in the environmental review process earlier to set benchmarks that maintain rigorous environmental protections and save time and costs by avoiding conflicts and delays in the later steps of rail-project development,” explained CEQ and DOT in their January 13, 2012, announcement. “CEQ will use efficiencies identified for the high-speed rail project to develop best practices for environmental reviews across the Federal Government.”

---

*[NEPA] provides essential protections for American communities and the natural resources our economy depends on. This [DOT] pilot project will ensure a collaborative environmental review process for quicker, better-informed decisions for the Northeast Corridor high-speed rail project.*

– Nancy Sutley, CEQ Chair, January 13, 2012

---

“To promote transparency and public input,” the announcement described, “DOT will post project timelines and progress on the [Federal Infrastructure Projects Dashboard](#),” which was launched in November 2011 to track high-impact infrastructure projects on expedited review schedules. A federal interagency group called the Transportation Rapid Response Team will “help coordinate the high-speed rail planning process to ensure quick resolution of any interagency conflicts,” the announcement added.



## U.S. Forest Service Restoration Projects

The Forest Service will compare and contrast environmental review methods used for a landscape-scale (approximately 1 million acres) forest restoration initiative in Arizona and a smaller-scale project (approximately 5,000 acres) in Oregon. “These two projects demonstrate that by involving partners early in the NEPA process we can cut costs and operate more efficiently while still maintaining strong environmental safeguards at the ground level,” said Forest Service Chief Tom Tidwell.

---

*NEPA is a cornerstone of our country’s environmental protections and critical to protecting the health of American communities and the natural resources we depend on. This [Forest Service] pilot project will promote faster and more effective Federal decisions on projects that will help restore our forests and support strong and healthy communities and economies.*

– Nancy Sutley, February 9, 2012

---

For the Arizona project, the Forest Service will “employ a collaborative NEPA approach to plan and analyze the proposed restoration activities in an [EIS] of unprecedented scale and scope for forest restoration activities,” stated the February 9, 2012, announcement by CEQ and the Forest Service. For the Oregon project, the Forest Service will “employ an innovative approach to NEPA by engaging local, state and tribal partners in the environmental review process up front to an unprecedented extent. In an effort to reduce potential conflicts and delays, the partners will collaboratively prepare the environmental review and implement the selected land restoration project,” the announcement continued. Together, CEQ and the Forest Service will compile lessons learned and use them to develop best practices for future land restoration projects.

More information on CEQ’s NEPA pilot program is available on the [CEQ website](#). 



# DOE-Wide NEPA Contracts Update


The Contact Specialist now administering the DOE-wide NEPA contracts is Virginia (Ginny) Odierno, who joined DOE one year ago as a participant in the National Nuclear Security Administration's (NNSA's) Future Leaders Program. Ms. Odierno is located in the Office of Acquisition Management and can be reached at [virginia.odierno@nnsa.doe.gov](mailto:virginia.odierno@nnsa.doe.gov) or 202-586-3240.

In late 2008 and early 2009, DOE awarded seven contracts for NEPA support services – three under full and open competition and four under a small business set-aside. These contracts are the third set of indefinite delivery-indefinite quantity task order contracts for the preparation of EISs, EAs, and related environmental documents. This approach to NEPA support contracts was first established in 1997 (*LLQR*, June 1997, page 1), as an outcome of a [NEPA Contracting Reform Initiative](#).

The contracts, established in advance of specific task needs, are managed by NNSA to provide DOE Program and Field Offices, and the Federal Energy Regulatory Commission, with quick access to a complete range of expertise in disciplines required for DOE NEPA documents.

Additional information and resources for potential users of the DOE-wide NEPA contracts, including the contracts' Statement of Work (which can be a model for a task statement of work) and a listing of the contractors' Contracts Program Managers, are available on the DOE NEPA Website at <http://energy.gov/nepa/doe-wide-nepa-contracting>.

## Task Orders Awarded

The following Task Orders awarded under the current DOE-wide NEPA contracts have not been previously reported in *LLQR*. Prior tasks awarded under these contracts are listed in *LLQR*, June 2009, page 13; September 2009, page 19; December 2009, page 16; and June 2010, page 14. 

Description	DOE Contact	Date Awarded	Contract Team
EIS for Disposition of the Kansas City Plant	Nathan Gorn 816-997-4197 <a href="mailto:nathan.gorn@nnsa.doe.gov">nathan.gorn@nnsa.doe.gov</a>	1/12/2011	JAD Environmental
Supplemental EIS for Production of Tritium in Commercial Light Water Reactors	Curtis Chambellan 505-845-5073 <a href="mailto:curtis.chambellan@nnsa.doe.gov">curtis.chambellan@nnsa.doe.gov</a>	4/22/2011	JAD Environmental
EA for Commercial Domestic Production of the Medical Isotope Molybdenum-99	Jeffrey Chamberlin 202-586-1474 <a href="mailto:jeffrey.chamberlin@hq.doe.gov">jeffrey.chamberlin@hq.doe.gov</a>	5/12/2011	Los Alamos Technical Associates
Site-wide EIS for Sandia National Laboratories	Susan Lacy 505-845-5542 <a href="mailto:susan.lacy@nnsa.doe.gov">susan.lacy@nnsa.doe.gov</a>	9/7/2011	Los Alamos Technical Associates
EIS for Hanford Site Natural Gas Utility Service and Pipeline	Doug Chapin 509-373-9396 <a href="mailto:douglas.chapin@rl.doe.gov">douglas.chapin@rl.doe.gov</a>	9/30/2011	JAD Environmental

# NEPA Contracts: Task Ordering Process

When a DOE office identifies the need for contractor support for a NEPA document and is considering use of the DOE-wide support contracts, the technical

## Team Lead for Contracting Officer's Representatives

Janet Langweil  
[janet.langweil@nnsa.doe.gov](mailto:janet.langweil@nnsa.doe.gov)  
202-287-6074

lead of the “ordering office” (usually the NEPA Document Manager) should contact NNSA’s Team Lead for Contracting Officer’s Representatives as early as possible.

After this consultation, the ordering office may rely on the NNSA Office of Business Operations and Office of Enterprise Project Management to conduct the task procurement and administration, or may perform these functions itself. When NNSA provides the

## Contracting Officer's Representative

Won B. (Bo) Sim  
[won.sim@nnsa.doe.gov](mailto:won.sim@nnsa.doe.gov)  
202-586-6556

services, the Contracting Officer’s Representative for the DOE-wide NEPA contracts will assist the NEPA Document Manager in developing the task’s procurement request:

- Determination to prepare an EA or EIS
- Task statement of work
- Independent government cost estimate
- Reporting requirements list
- Other documents, including a Contracting Officer’s Representative designation, an organizational conflict of interest fact sheet, and, if needed, a Contract Security Classification Specification Form.

After reviewing a completed procurement request package, a Contract Specialist in NNSA’s Office of Acquisition

## Contract Specialist

Virginia (Ginny) Odierno  
[virginia.odierno@nnsa.doe.gov](mailto:virginia.odierno@nnsa.doe.gov)  
202-586-3240


Management will advise the NEPA Document Manager on ways to improve the statement of work or performance work statement and work with the NEPA Document Manager to develop a task order strategy: whether the

task should be reserved for small business or competed in full-and-open competition, whether proposing teams’ technical approach will be presented via written proposal or oral presentation, and the evaluation criteria (typically a combination of technical approach, price, and past performance) and their weightings.

The Contract Specialist will then submit a request for proposal or a “request for quote” to the DOE-wide contractor teams, usually with proposals due 10 calendar days later. The Contract Specialist will evaluate the resulting task proposals with the NEPA Document Manager and issue the task order. A major benefit of the DOE-wide NEPA contracts is that a task order is awarded on average 3 weeks after the request for quote is issued.

The NNSA Contract Specialist will continue to run the task award process for both NNSA and non-NNSA tasks; alternatively, non-NNSA offices may request that contract funds be transferred to them, and they can award their own task. NNSA administers tasks for NNSA, but usually non-NNSA Headquarters or Field procurement staff would administer their offices’ tasks. “We will assist anyone or any office,” affirms Bo Sim, NNSA Contracting Officer’s Representative.

## Small Business Policy

Under 48 CFR 19.502-2(b) of the Federal Acquisition Regulation, a task order exceeding \$3,000 but not over \$150,000 is automatically reserved for small businesses. (Since the DOE-wide contracts were awarded, the upper limit for small business set-aside was raised from \$100,000 to \$150,000.) Further, for multiple award contracts, DOE applies the “Rule of Two” to competitions for task orders. That is, for a task order worth over \$150,000, if at least two small businesses are qualified to perform the work at fair market price, the task order will be set aside for competition among the small businesses. In meeting this requirement, a small business contractor may team with one of the other DOE-wide teams or other contractors and serve as the lead on the task, and must perform at least half of the work. 

## Tips for an Effective Statement of Work

- Conduct internal scoping before the task order process to establish a concise statement of purpose and need and the alternatives to be analyzed – for proposals to more closely match the desired document.
- Strive for short NEPA documents, for example setting page limits and specifying that technical material shall be placed in appendices or incorporated by reference – to expedite document preparation, review, and approval.
- Specify the content of each deliverable instead of how the contractor should perform the work – to encourage innovative approaches.
- Include interim deliverables and prompt feedback commitments – so resources are not wasted going down a wrong path.

# Most DOE EISs Involve Cooperating Agencies

In 2011, 72 percent of DOE EISs were being prepared with cooperating agencies, according to DOE's latest annual Cooperating Agency Report to the Council on Environmental Quality (CEQ). The report covers 57 EISs for which DOE is the lead or co-lead agency and that were completed during Fiscal Year 2011 or were still ongoing as of September 30, 2011. Since reporting began (for Fiscal Year 2006), between half and three quarters of DOE EISs have had cooperating agencies.


A cooperating agency participates in the preparation of an EIS based on its jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action or reasonable alternative, and may be a federal, state, or local agency, or an Indian tribe (40 CFR 1508.5). The selection and responsibilities of a cooperating agency are described at 40 CFR 1501.6.

Of the 41 DOE EISs with cooperating agencies, almost half have just one cooperating agency, and most of the remainder have two to five. A small number of EISs have many more cooperating agencies, including 21 for the Programmatic EIS for Solar Energy Development in Six Southwestern States (DOE/EIS-0403), and more than 40 for an EIS for the TransWest Express Transmission Project in Wyoming, Colorado, Utah, and Nevada (DOE/EIS-0450)! DOE also reported that 7 of the 61 EAs

(11 percent) that DOE completed during Fiscal Year 2011 were prepared with cooperating agencies.


This annual report is part of CEQ's efforts to encourage the involvement of nonfederal agencies as cooperating agencies. Eighty-five percent of DOE EISs with cooperating agencies in 2011 had at least one federal agency; 40 percent had at least one state agency; 22 percent had at least one local agency; and 5 percent involved at least one tribal government.

In the report, each agency must identify the reasons for not establishing cooperating agency status. The reasons most frequently cited by NEPA Document Managers for DOE EISs without cooperating agencies are that no candidates were identified with special expertise or jurisdiction by law and that the agencies invited as potential cooperating agencies have other ways of participating in the NEPA process.

The report does not address all the ways that agencies participate in DOE EISs. For example, American Indian tribal governments participate substantively in many DOE EIS processes through government-to-government consultation. CEQ guidance on cooperating agencies is available on the DOE NEPA Website at <http://energy.gov/nea/cooperating-agencies>. For further information, contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov). 

## NEPA Document Managers See Benefits from Participation of Cooperating Agencies

### Better Information, More Efficiently




A cooperating agency's expertise can make a NEPA process more informative and efficient, as illustrated by DOE's EA for *Geothermal Expansion to Boise State University, Boise, Idaho* (DOE/EA-1763, 2010). DOE and the Department of Housing and Urban Development (HUD), the cooperating agency, proposed to provide funding for the design and construction of a 2-mile extension of the City of Boise's geothermal system. Under HUD's regulations (24 CFR 58.4), the City assumed responsibility for environmental review, decisionmaking, and action that would otherwise apply to HUD under NEPA.

The City's 13-mile geothermal heating system heats approximately 3.8 million square feet of building space. The expansion would carry the system to the university campus and add capacity to heat another 1 million square feet. "The City's expertise in the technology and site-specific conditions allowed us to incorporate information into the analysis very efficiently," concluded Melissa Rossiter, NEPA Document Manager, DOE's Golden Field Office. "They enabled us to work through the EA process smoothly, including coordinating with the Army Corps of Engineers and Fish and Wildlife Service, and the State Historic Preservation Office," she observed.

### Many Jurisdictions, Many Cooperating Agencies

The proposed new TransWest Express transmission line, involving more than 40 cooperating agencies, would span more than 700 miles to connect proposed renewable energy resources in Wyoming to electricity customers in southern Nevada. The Bureau of Land Management and Western Area Power Administration, the joint lead preparers of [this EIS](#), recognize that the right-of-way applications and construction activities potentially affect the interests of several federal land and resource management agencies (e.g., Forest Service, Fish and Wildlife Service, National Park Service) and the Department of Defense (Corps of Engineers, Navy); 4 states and 20 counties; and 6 other agencies such as conservation districts and grazing boards. Native American tribes also are involved, through government-to-government consultation.



Although it is challenging to organize communications among so many cooperating agencies, it is most efficient to establish their participation early in the environmental review process, observed Liana Reilly, Western's NEPA Document Manager. "We aim to develop a document that takes all agencies' concerns into account," she said, "and that can be used to inform each cooperating agency's decision."

# Annual NEPA Planning Summaries Need DOE Senior Management Involvement


DOE Order 451.1B, *NEPA Compliance Program*, requires that each Secretarial Officer and Head of a Field Organization submit an annual NEPA planning summary (APS) to the General Counsel by January 31 of each year and make it available to the public. As specified in the Order, an APS must include the status of ongoing NEPA compliance activities, as well as any EAs expected to be prepared in the next 12 months and any EISs expected to be prepared in the next 24 months. An APS must also contain estimated cost and schedule for completion of each NEPA review identified.

These requirements were instituted to help ensure that senior management officials are involved in their organizations' NEPA planning process and that adequate resources (money, staff, and time) are allocated to enable timely compliance, as noted in the [APS guidance](#) issued in 2003. This 2003 guidance on preparing APSs also specifies that the Secretarial Officers and Heads of Field Organization (or their acting designees) should sign the APSs, not the NEPA Compliance Officers, to assure the involvement of senior management in their organization's NEPA planning process. An APS is intended to help ensure that NEPA activities are aligned with program priorities to enable timely decisionmaking. While the Office of General Counsel is the gatekeeper for all of DOE's APSs and uses them to help plan its future workload and identify

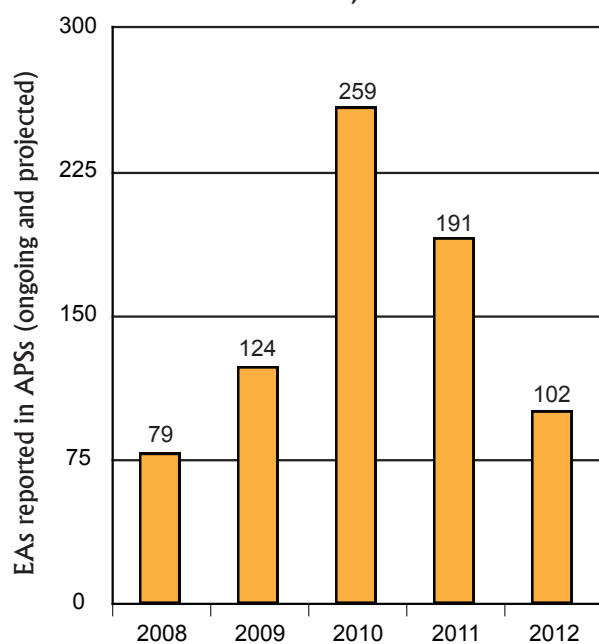


crosscutting issues within the Department, these activities are a byproduct of the intended purpose.

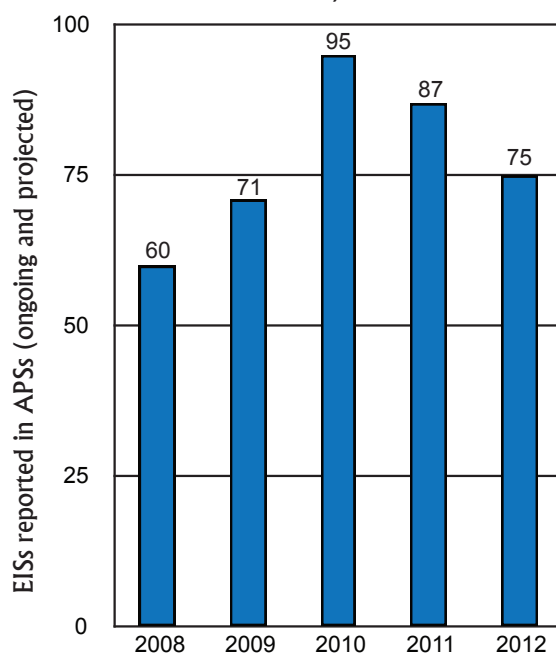
Forty-seven DOE organizations submitted APSs for 2012. Seventeen organizations projected that they would be starting a total of 46 new EAs in 2012 and 18 new EISs in 2012–2013. This projected new workload is in addition to the 56 EAs and 57 EISs currently being prepared by all of DOE. Of the 47 APSs submitted, most did not include cost and schedule information. For example, only about 35 percent of EAs and approximately 30 percent of EISs contained appropriate schedule information. Without a target to aim at, a number of these EAs and EISs may not progress as efficiently or smoothly as those with detailed schedules.

The anticipated workload for ongoing and projected EAs and EISs is much lower than reported in the previous 2 years (Figures 1 and 2, and [LLQR, March 2011, page 14](#)), due, in part, to completion of many of the NEPA reviews for projects funded by the American Recovery and Reinvestment Act of 2009. The most noticeable decrease in workload is for EAs, a reduction of more than half from the 2010 level. It should be noted, however, that the projected workloads for both EAs and EISs exceed pre-Recovery Act levels of 2008. The APSs are available for review on the DOE NEPA Website at <http://energy.gov/nepa/nepa-documents/document-status-schedules>. 

Projected DOE EA Workload, 2008 to 2012, Based on APSs



Projected DOE EIS Workload, 2008 to 2012, Based on APSs



# Transitions



## New NEPA Compliance Officers

### Advanced Research Projects Agency-Energy: Bill Bierbower

**William (Bill) Bierbower**, Chief Counsel of Advanced Research Projects Agency-Energy (ARPA-E), is ARPA-E's new NEPA Compliance Officer (NCO). (He also was ARPA-E's first NCO, from October 2009 through January 2010.) He previously served as Chief Counsel of the National Aeronautics and Space Administration's (NASA's) Marshall Space Flight Center and, earlier, as Directorate Lead Counsel at NASA Headquarters. Mr. Bierbower can be reached at [william.bierbower@hq.doe.gov](mailto:william.bierbower@hq.doe.gov) or 202-287-6585.

Matt Dunne, ARPA-E's Deputy Chief Counsel and the previous NCO, has accepted the challenge of serving as the NEPA Document Manager for a programmatic EIS arising from ARPA-E's Plants Engineered to Replace Oil and Electrofuels technology development programs, which are intended to accelerate the commercial deployment of advanced biofuels.

### Bonneville Power Administration: Stacy Mason

Bonneville Power Administration (BPA) has designated **Stacy Mason** as an NCO to assist the lead (and long-term) NCO, Kathy Pierce, in meeting the challenges of a growing NEPA work load. During her 23 years in BPA's Environment, Fish and Wildlife organization, Ms. Mason managed environmental analyses for transmission line projects, including four EISs. She can be reached at [slmason@bpa.gov](mailto:slmason@bpa.gov) or 503-230-5455.

### Pacific Northwest Site Office: Theresa Aldridge

**Theresa Aldridge** was recently designated as the first NCO for the Office of Science's Pacific Northwest Site Office (PNSO) in Richland, Washington. Ms. Aldridge has been a member of the PNSO Operations Team, which oversees the technical and operational activities under the Environmental Management System at the Pacific Northwest National Laboratory (PNNL) and has served as the PNSO NEPA coordinator for the past 10 years. She also has served as a Radiological Control Manager and DOE Program Manager for PNNL Dosimetry Services for the DOE-Richland Operations Office. Previously, Peter Siebach, NCO for DOE's Chicago Office, provided NEPA assistance to PNSO. Ms. Aldridge can be reached at [theresa.aldrige@pnso.science.doe.gov](mailto:theresa.aldrige@pnso.science.doe.gov) or 509-372-4508.


## NEPA Office

### Farewell to Jon Hale and Mike Wach

Two members of the Office of NEPA Policy and Compliance, both hired as limited term appointments using American Recovery and Reinvestment Act of 2009 funds, recently left DOE to pursue other opportunities.

With his expertise in biological and environmental disciplines, including 11 years as a NEPA specialist with the U.S. Fish and Wildlife Service (FWS) and in the private sector, **Jon Hale** became the NEPA Office point-of-contact for marine issues after coming aboard in December 2009. He provided valuable expertise in the NEPA rulemaking, particularly for categorical exclusions related to aquatic environments, and served as the Office contact for the Hawaii Interisland Renewable Energy Programmatic EIS. Jon and his wife, a FWS employee, along with their children, moved to Portland, Oregon, at the end of January.

While working in the NEPA Office from February 2010 through December 2011, **Mike Wach** made valuable contributions to both the NEPA rulemaking and redesign of the DOE NEPA Website. Mike enjoyed "the satisfaction of working on a couple of key DOE projects and seeing them to completion," he said. Since starting his new position with the International Life Sciences Institute in Washington, DC, as Senior Scientist for the Center for Environmental Risk Assessment, he has traveled to Brazil and will soon visit Uganda, Vietnam, and Bangladesh.

*The NEPA Office deeply appreciates the contributions Jon and Mike made during their time with DOE. We offer our best wishes for their future endeavors.* 

# Litigation Updates



## Appeals Court Affirms that DOE Took a “Hard Look” at Intentional Destructive Acts at LLNL Biosafety Lab



The U.S. Court of Appeals for the Ninth Circuit in February affirmed the sufficiency of DOE’s analysis of intentional destructive acts in the *Revised EA for the Proposed Construction and Operation of a BSL-3 Facility at Lawrence Livermore National Laboratory, Alameda County, California* (DOE/EA-1442-R, 2008). DOE’s NEPA compliance regarding the biosafety level-3 facility at LLNL was the subject of previous litigation in 2006 when the U.S. Court of Appeals for the Ninth Circuit upheld the original EA (DOE/EA-1442, 2002), except for DOE’s failure to consider the environmental impacts of a terrorist attack. (See *LLQR*, March 2009, page 24; December 2006, page 3.) On remand, DOE prepared a revised EA to address this issue.

In this most recent round of litigation, *Tri-Valley CAREs v. DOE*, plaintiffs alleged that in the revised EA DOE failed to take a “hard look” at the human health, safety, and environmental risks associated with an intentional terrorist act. The District Court for the Northern District of California disagreed and found in 2010 that the revised EA did adequately consider the environmental impact of such an attack on the BSL-3 facility at LLNL. In the revised EA, DOE considered three general types of terrorist attacks. First, DOE used a bounding analysis to evaluate the potential consequences of a direct attack on the LLNL BSL-3 facility, resulting in loss of containment. The appeals court accepted DOE’s reasoning that a catastrophic release that might result from an earthquake or accidental plane crash is analogous to a direct attack scenario (e.g., intentional plane crash, suicide bombing) because the triggering events would result in similar structural damage to the facility. In reaching its conclusion that DOE had taken a hard look at this scenario, the court further noted that DOE provided ample justification and evidence for its choice of model and the manner in which it applied the model to the unique circumstances of the LLNL facility.

Second, in assessing the threat of theft and release by a terrorist outsider, DOE used a comparative nationwide analysis to determine that the LLNL BSL-3 facility would not be an attractive target. The revised EA explained the large number of other BSL-3 facilities in the United States that regularly handle and store the same substances as LLNL’s BSL-3 facility and that such substances are also available from common environmental sources. The revised EA also described the high level of security employed at LLNL. The court found no proof in the record that the LLNL BSL-3 facility “is more prone or attractive to terrorist theft and release of a pathogen by an outsider than any other BSL-3 facility.”

Third, to analyze the potential theft and release of pathogenic material by an LLNL terrorist insider, the court found that DOE “engaged in a thorough two-step probabilistic analysis” that assessed, first, the probability that an insider with access to BSL-3 pathogens would have the motive to commit such an attack and, then, the resulting public threat. Based on this analysis, the court held that “DOE reasonably concluded, based upon its discretion and a thorough examination . . . that the threat of terrorist attack . . . [from an LLNL terrorist insider] was not significant.” (Case No.: 10-17636; February 7, 2012, opinion at [www.ca9.uscourts.gov/opinions](http://www.ca9.uscourts.gov/opinions)).

## 2012 National Environmental Justice Conference

“Enhancing communities through capacity building and technology assistance,” is the theme of the 2012 National Environmental Justice Conference and Training Program, a 3-day discussion jointly sponsored by DOE, several other federal agencies, and the Howard University School of Law. The conference will be held in Washington, DC, on April 11–13. Melinda Downing, DOE Environmental Justice Program Manager, and Dr. Willie Taylor, Director, Office of Environmental Policy and Compliance, U.S. Department of the Interior, will participate in a conference “kick-off” session. Deputy Secretary of Energy Daniel B. Poneman, Council on Environmental Quality Chair Nancy Sutley, and U.S. Environmental Protection Agency Administrator Lisa P. Jackson have been invited as keynote speakers.



**2012 National Environmental Justice Conference  
& Training Program**

In addition, Ms. Downing will lead a session on “Future Leaders of Environmental Justice.”

Other potential items of interest to the NEPA community include a session titled “Environmental Justice Federal Interagency Working Group Stakeholder Dialogue” and a plenary session by the Department of Justice’s Iganicia Moreno, Assistant Attorney General, Environmental and Natural Resources Division.

More information, including the agenda, is available at the conference website ([www.thenejc.org](http://www.thenejc.org)) or by contacting Ms. Downing at [melinda.downing@hq.doe.gov](mailto:melinda.downing@hq.doe.gov).

# Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information purposes only. This listing is not an endorsement of any of the training or entities listed. Cost and schedule information are subject to change; check with the course provider.

- Environmental Protection Agency  
Office of Federal Activities  
202-564-6069  
[mims.alice@epa.gov](mailto:mims.alice@epa.gov)  
[www.netionline.com](http://www.netionline.com)  
**NEPA – Recorded Webinar [LIS155R]**  
October 1, 2011 – September 30, 2012  
No Fee
- Aarcher Institute of Environmental Training  
410-897-0037  
[training@aarcherinstitute.com](mailto:training@aarcherinstitute.com)  
[www.aarcherinstitute.com](http://www.aarcherinstitute.com)  
**NEPA Navigator**  
Scottsdale, AZ: April 2-4  
\$1,299
- EOS Alliance  
425-270-3274  
[pt@nwetc.org](mailto:pt@nwetc.org)  
[www.eosalliance.org/schedule/calendar/courses-eos](http://www.eosalliance.org/schedule/calendar/courses-eos)  
**NEPA: Writing the Perfect EA/FONSI, or EIS**  
San Diego, CA: March 13-14  
Dallas, TX: April 10-11  
Portland, OR: April 24-25  
\$595 (GSA contract: \$545)
- Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[www.graduateschool.edu/course\\_details.php?cid=ENVS4435E](http://www.graduateschool.edu/course_details.php?cid=ENVS4435E)  
**NEPA: Policy, Procedure and Science/Art**  
Washington, DC: Tuesdays, April 10 – June 12  
Washington, DC: Thursdays, September 20 – November 29  
\$375
- International Institute for Indigenous Resource Management  
303-733-0481  
[jeannerubin@iirm.org](mailto:jeannerubin@iirm.org)  
[www.iirm.org](http://www.iirm.org)  
**Workshop on the Strategic Application of NEPA in Indian Country**  
Denver, CO: March 21-22  
\$495
- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del/executiveeed/courses](http://www.nicholas.duke.edu/del/executiveeed/courses)  
**Implementation of NEPA**  
Durham, NC: March 26-30  
\$1,475  
**Scoping, Public Involvement, and Environmental Justice and the Law of NEPA**  
Durham, NC: May 14-18  
\$2,475 until 4/16/12  
**Current and Emerging Issues in NEPA and Accounting for Cumulative Effects in the NEPA Process**  
Durham, NC: June 18-22  
\$2,475 until 5/21/12
- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)  
**Overview of the NEPA Process and Managing NEPA Projects and Teams**  
Nashville, TN: March 13-16  
\$1,185 (GSA contract: \$1,095)  
Reno, NV: June 19-22  
\$1,145 (GSA contract: \$1,055) until 5/1/12  
**Applying the NEPA Process: Emphasis on Native American Issues**  
Nashville, TN: April 2-4  
\$985 (GSA contract: \$895)  
**Clear Writing for NEPA Specialists**  
Virtual Classroom: April 2-4  
\$890 (GSA contract: \$790)  
**Applying the NEPA Process and Writing Effective NEPA Documents**  
Houston, TX: April 17-20  
\$1,145 (GSA contract: \$1,055) until 3/5/12  
**NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**  
Missoula, MT: April 24-27  
\$1,145 (GSA contract: \$1,055) until 3/13/12

(continued on next page)



# Training Opportunities

(continued from previous page)

## Overview of the NEPA Process

Virtual Classroom: May 1  
\$325 (GSA contract: \$225) until 3/20/12

## Integrating Federal Environmental Laws into NEPA

Baltimore, MD: May 8-10  
\$945 (GSA contract: \$855) until 3/27/12

## Applying the NEPA Process and Reviewing NEPA Documents

Seattle, WA: May 14-18  
\$1,345 (GSA contract: \$1,255) until 4/2/12

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

Denver, CO: May 22-24  
\$945 (GSA contract: \$855) until 4/10/12

## Applying the NEPA Process

Virtual Classroom: June 12-14  
\$850 (GSA contract: \$750) until 5/1/12

- U.S. Institute for Environmental Conflict Resolution  
520-901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)

## Collaboration in NEPA

Washington, DC: April 24-25  
Denver, CO: June 6-7  
\$500

## Effective Tribal Consultation

Washington, DC: May 2-3  
\$500


## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeeps@mchsi.com](mailto:jleeeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
916-737-3000  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/events/education-and-training](http://www.icfi.com/events/education-and-training)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)
- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/index.php/training/course-catalog](http://www.swca.com/index.php/training/course-catalog)

## 37<sup>th</sup> NAEP Annual Conference – Portland, Oregon



The 2012 National Association of Environmental Professionals (NAEP) conference will take place May 21–24 in Portland, Oregon. The theme this year is *Science, Politics, and Policy: Environmental Nexus*. Topics to be covered include NEPA, energy, public participation, wetlands, visual resources, cultural resources, and land and watershed management. Sessions under the NEPA track include NEPA and climate change, alternatives, an update of NEPA case law and policy, effective use of categorical exclusions, implementation of third-party NEPA analyses, and transboundary impacts. In addition, Yardena Mansoor, Office of NEPA Policy and Compliance, will make a presentation on the recent DOE NEPA rulemaking.

As part of its annual conference, NAEP will host two concurrent full-day symposia discussing NEPA and decisionmaking and advanced topics in visual resource impact assessment. The advance program, track descriptions, and event registration are available at [www.naep.org/2012-conference](http://www.naep.org/2012-conference). 

# EAs and EISs Completed October 1 to December 31, 2011

## EAs<sup>1</sup>

### Argonne Site Office/Office of Science

[DOE/EA-1866](#) (11/1/11)

*Argonne National Laboratory Modernization Planning*, Argonne, Illinois

Cost: \$128,000

Time: 9 months

### Bonneville Power Administration

[DOE/EA-1679](#) (12/16/11)

*Grand Coulee's Third Powerplant 500-kV Transmission Line Replacement Project*, Grant and Okanogan Counties, Washington  
[Co-lead: Department of the Interior's Bureau of Reclamation]

Cost: \$115,000

Time: 29 months

[DOE/EA-1894](#) (10/1/11, FONSI 11/4/11)

*Albeni Falls Dam Flexible Winter Power Operations*, Bonner County, Idaho

[Co-lead: U.S. Army Corps of Engineers]

EA was prepared by DOE staff, therefore, cost data are not applicable.

Time: 4 months

### Carlsbad Field Office/

### Office of Environmental Management

[DOE/EA-1905](#) (11/4/11)

*Double Eagle Water System*, Carlsbad, New Mexico

DOE adopted this EA from Department of the Interior's Bureau of Land Management (BLM) and issued a [finding of no significant impact](#) on 11/4/11.

[BLM, the lead agency, issued a finding of no significant impact on 9/30/11.]

### Office of Energy Efficiency and Renewable Energy

[DOE/EA-1774-S1](#) (11/8/11)

*Energy Conservation Standards: Energy Conservation Standards for Direct Heating Equipment*

Cost: \$10,000

Time: 4 months

[DOE/EA-1871](#)\*\* (7/13/11)

*Final Rule, Energy Efficiency Standards for New Federal Commercial and High-Rise Multi-Family Residential Buildings and Energy Efficiency Standards for New Federal Residential Low-Rise Residential Buildings Baseline Standards Update*

Cost: \$5,000

Time: 5 months

[DOE/EA-1881](#) (10/5/11, FONSI 10/20/11)

*Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts*

Cost: \$31,000

Time: 6 months

### Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1823](#)\* (12/2/11)

*Rockford Solar Energy Project*, Winnebago County, Illinois

Cost: \$40,000

Time: 21 months

[DOE/EA-1862](#)\* (11/10/11)

*Oneida Seven Generations Corporation: Energy Recovery Project*, Green Bay, Wisconsin

Cost: \$155,000

Time: 11 months

[DOE/EA-1907](#)\* (10/13/11)

*Construction and Operation of a Proposed Biogas Anaerobic Digester Facility at an Ethanol Plant*, Gove County, Kansas

DOE adopted this EA from U.S. Department of Agriculture (USDA) and issued a [finding of no significant impact](#) on 10/13/11. [USDA, the lead agency, issued a finding of no significant impact on 8/30/11.]

### Idaho Operations Office/Office of Nuclear Energy

[DOE/EA-1793](#) (12/21/11)

*Replacement Capability for Disposal of Remote-Handled Low-Level Radioactive Waste Generated at the Department of Energy's Idaho Site*, Idaho Falls, Idaho

Cost: \$1,230,000

Time: 20 months

(continued on next page)

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

\* Recovery Act project

\*\* Not previously reported in LLQR

# EAs and EISs Completed October 1 to December 31, 2011

(continued from previous page)

## National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy

[DOE/EA-1851](#)\* (12/19/11)

*Delphi Automotive Systems, LLC Electric Drive Vehicle Battery and Component Manufacturing Initiative Application*, Kokomo, Indiana

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

Time: 12 months

## National Energy Technology Laboratory/ Office of Fossil Energy

[DOE/EA-1769](#) (10/28/11)

*Battleground Energy Recovery Project*, Harris County, Texas

Cost: \$39,000

Time: 19 months

[DOE/EA-1829](#)\* (11/9/11)

*Phycal Algae Pilot Project*, LLC, Wahiawa and Kalaeloa, Hawaii

Cost: \$65,000

Time: 14 months

[DOE/EA-1867](#) (10/13/11)

*RTI International Scale-Up of High Temperature Syngas Cleanup and Carbon Capture and Sequestration Technologies*, Polk County, Florida

Cost: \$89,000

Time: 8 months

[DOE/EA-1870](#) (12/23/11)

*Utah Coal and Biomass Fueled Pilot Plant*, Kanab, Utah

Cost: \$137,000

Time: 10 months

## Oak Ridge Operations Office/Office of Science

[DOE/EA-1640](#) (10/5/11)

*Transfer of Land and Facilities within the East Tennessee Technology Park and Surrounding Area*, Oak Ridge, Tennessee

Cost: \$159,000

Time: 36 months

## Savannah River Operations Office/ Office of Environmental Management

[DOE/EA-1606](#) (12/15/11)

*Use of the Savannah River Site Lands for Military Training*, Augusta, Georgia and Aiken, South Carolina

Cost: \$83,000

Time: 50 months

## Western Area Power Administration

[DOE/EA-1665](#) (10/10/11)

*Davis-Kingman Tap 69-kV Transmission Line Rebuild Project*, Mohave County, Arizona

Cost: \$316,000

Time: 31 months

[DOE/EA-1697](#) (12/2/11)

*Right-of-Way Maintenance in the San Joaquin Valley*, California

Cost: \$275,000

Time: 27 months

## EISs

There were no EISs completed during this quarter.

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

\* Recovery Act project

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 15 EAs for which cost data were applicable was \$115,000; the average cost was \$191,000.
- Cumulatively, for the 12 months that ended December 31, 2011, the median cost for the preparation of 48 EAs for which cost data were applicable was \$65,000; the average was \$120,000.
- For this quarter, the median completion time of 17 EAs for which time data were applicable was 15 months; the average was 18 months.
- Cumulatively, for the 12 months that ended December 31, 2011, the median completion time for 67 EAs for which time data were applicable was 10 months; the average was 13 months.

## EIS Cost and Completion Times

- There were no EISs completed this quarter.
- Cumulatively, for the 12 months that ended December 31, 2011, the median and average costs for the preparation of 5 EISs for which cost data were applicable were \$2 million.
- Cumulatively, for the 12 months that ended December 31, 2011, the median completion time for 10 EISs for which time data were applicable was 20 months; the average was 23 months.

# Recent EIS-Related Milestones December 1, 2011 to February 29, 2012

## Notices of Intent

### **Office of Environmental Management/ Richland Operations Office**

DOE/EIS-0467

*Acquisition of a Natural Gas Pipeline and Natural Gas Utility Service at the Hanford Site, Richland, Washington*  
January 2012 ([77 FR 3255](#), 1/23/12)

### **National Nuclear Security Administration**

DOE/EIS-0475

*Disposition of the Bannister Federal Complex, Kansas City, Missouri*  
January 2012 ([77 FR 3259](#), 1/23/12)

## Amended Notice of Intent

### **National Nuclear Security Administration**

DOE/EIS-0283-S2

*Surplus Plutonium Disposition Supplemental Environmental Impact Statement, Aiken, South Carolina*  
January 2012 ([77 FR 1920](#), 1/12/12)

## Notice of Cancellation

### **Office of Fossil Energy/National Energy Technology Laboratory**

DOE/EIS-0445

*Mountaineer Commercial Scale Carbon Capture and Storage Demonstration, Mason County, West Virginia*  
January 2012 ([77 FR 3459](#), 1/24/12)

## Extension of Public Comment Period

### **Western Area Power Administration**

DOE/EIS-0440

*Quartzsite Solar Energy Project, La Paz County, Arizona*  
December 2011 ([76 FR 76972](#), 12/9/11)

(continued on next page)

# Recent EIS-Related Milestones

## December 1, 2011 to February 29, 2012 (continued from previous page)

### Draft EIS

#### Bonneville Power Administration

[DOE/EIS-0457](#)

*Albany-Eugene 115-kilovolt No. 1 Transmission Line Rebuild Project*, Linn and Lane Counties, Oregon  
January 2012 ([77 FR 2979](#), 1/20/12)

### Final EIS

#### Office of Loan Programs

[DOE/EIS-0476](#)

*Vogtle Electric Generating Plant, Units 3 and 4*, Burke County, Georgia

February 2012 ([77 FR 9652](#), 2/17/12)

[DOE adopted a Final EIS and a Final Supplemental EIS from the U.S. Nuclear Regulatory Commission (NRC); NRC filed these EISs with EPA on 8/15/08 and 3/18/11.]

### Records of Decision

#### Western Area Power Administration

[DOE/EIS-0435](#)

*Modification of the Groton Generation Station Interconnection Agreement*, Brown County, South Carolina

December 2011 ([76 FR 75876](#), 12/5/11)

[DOE/EIS-0439](#)

*Rice Solar Energy Project*, Riverside County, California

December 2011 ([76 FR 78916](#), 12/20/11)

### Amended Record of Decision

#### National Nuclear Security Administration/ Los Alamos Site Office

[DOE/EIS-0293](#)

*Conveyance and Transfer of Certain Land Tracts Administered by the U.S. Department of Energy and Located at Los Alamos National Laboratory*, Los Alamos and Santa Fe Counties, New Mexico  
January 2012 ([77 FR 3257](#), 1/23/12)

### Supplement Analyses

#### Bonneville Power Administration

##### Transmission System Vegetation Management Program

(DOE/EIS-0285)

[DOE/EIS-0285-SA-454](#)\*\*

*Vegetation Management along the Schultz-Raver No. 1, 500-kV Transmission Line Shared Corridor Right-of-Way*, King and Kittitas Counties, Washington  
(Decision: No further NEPA review required.)  
November 2011

[DOE/EIS-0285-SA-455](#)

*Vegetation Management Activities along the Entire Right-of-Way Corridors*, Coos and Curry Counties, Oregon  
(Decision: No further NEPA review required.)  
December 2011

[DOE/EIS-0285-SA-456](#)

*Vegetation Management along Portions of the Albeni Falls-Sandcreek No. 1 and the Sandcreek-Bonnors Ferry No. 1 and No. 2 Transmission Line Right-of-Way*, Bonner and Boundary Counties, Idaho  
(Decision: No further NEPA review required.)  
January 2012

[DOE/EIS-0285-SA-457](#)

*Vegetation Management along the Paul-Satsop No. 1 Transmission Line Corridor*, Thurston County, Oregon  
(Decision: No further NEPA review required.)  
January 2012

[DOE/EIS-0285-SA-0458](#)

*Vegetation Management along Portions of the Bonneville PH 1-Alcoa 1 and 2 No. 2 115-kV Transmission Line Corridor Right-of-Way and Associated Access Roads*, Clark and Skamania Counties, Washington  
(Decision: No further NEPA review required.)  
January 2012

*(continued on next page)*

\*\*Not previously reported in LLQR

# Recent EIS-Related Milestones

## December 1, 2011 to February 29, 2012

(continued from previous page)

### [DOE/EIS-0285-SA-0459](#)

*Vegetation Management along the Santiam-Alvey No. 1 and No. 2 230-kV Transmission Line Shared Corridor Right-of-Way and Associated Access Roads, Linn and Lane Counties, Oregon*  
(Decision: No further NEPA review required.)  
January 2012

### [DOE/EIS-0285-SA-0460](#)

*Vegetation Management along the 500-kV Echo Lake-Maple Valley Transmission Line and Shared Rights-of-Way Corridors, King County, Washington*  
(Decision: No further NEPA review required.)  
February 2012

### [DOE/EIS-0285-SA-0461](#)

*Vegetation Management along the Olympia-Grand Coulee No. 1 287-kV Transmission Line Right-of-Way Corridor, King and Pierce Counties, Washington*  
(Decision: No further NEPA review required.)  
February 2012

### **Office of Environmental Management/ Office of River Protection**

#### **Hanford Tank Closure and Waste Management (DOE/EIS-0391)**

### [DOE/EIS-0391-SA-01](#)

*Supplement Analysis of the Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington*  
(Decision: DOE determined that neither a new draft nor a supplemental EIS is required.)  
February 2012

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Worked

- *Site visits.* During scoping, the proposed affected areas were visited in order to better understand the proposed action and alternatives.
- *Use of annotated outlines.* Annotated outlines were used to assist with the scoping of the EA.
- *Use of previous EAs.* The review of previous EAs for similar projects assisted in determining a broader scope for the EA.
- *Tenant-provided scope of activities.* Having the tenant provide a detailed scope of proposed activities and identify preferred sites to be evaluated early in the NEPA process assisted in the development of the proposed plan and subsequent alternatives analysis.

### What Didn't Work

- *External agency requirements.* The environmental requirements imposed by external agencies were very strict, affecting the scope of the EA. Adhering to the requirements adversely impacted the schedule due to the time it took for completion of external reviews.

## Data Collection/Analysis

### What Worked

- *Use of existing data.* The NEPA team relied heavily on a previously approved EA and related studies.
- *Subject matter experts.* The use of subject matter experts who were thoroughly familiar with the site greatly assisted in the preparation of the EA.
- *Federal agency and tenant provided data.* The tenant, whose activities were being evaluated in the EA, provided the Biological Assessment and Noise Analysis, which helped expedite document preparation. Additionally, input and data provided by other federal agencies aided the NEPA analysis.

- *Preparation of standard operating procedure.* DOE and the tenant, whose proposed activities were being evaluated in the EA, jointly prepared a standard operating procedure document that provided guidelines, procedures, and processes governing their use of the DOE site. It placed bounds on the tenant's activities that allowed an accurate assessment of potential environmental effects, including effects on the operations of other tenants.

### What Didn't Work

- *Use of existing groundwater analysis.* The EA preparation team could not use an existing groundwater analysis performed for an EIS for the same location because that analysis was too conservative.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Periodic meetings.* The NEPA team reviewed EA progress in periodic meetings, facilitating the timely completion of the document.
- *Compressed internal review schedule.* Compressed internal document review schedules, and a full day comment response meeting with all team members, were effective in eliminating additional review cycles and keeping the EA on schedule.
- *Management involvement.* The involvement of management, as well as a dedicated EA team, facilitated the timely completion of the EA.

### Factors that Inhibited Timely Completion of Documents

- *Intense public interactions.* High levels of public interaction and comment required substantially more review and analysis, thereby increasing the time required to complete the EA.

*(continued on next page)*

## Questionnaire Results

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

- *Lack of funding.* The project was started and stopped over the course of 3 years largely due to the lack of funding, resulting in schedule changes and delays.
- *Litigation and public reaction.* Litigation, public reaction to current events such as a local wildfire and the Fukushima accident, and requests for additional public meetings and comment period extensions resulted in EIS schedule delays.
- *Timing of schedule changes.* Compressed schedules given to EA team members at the end of the year competed with vacation and use-or-lose time.
- *Wide range of complex issues.* The EA addressed a wide range of complex and sensitive issues, which required extensive coordination with multiple organizations and numerous reviews and revisions in order to develop a quality analysis of potential environmental impacts. The emphasis for this effort was placed on thoroughness and quality rather than timeliness.
- *Waiting for development of procedures.* Having to wait for the development and approval of a joint standard operating procedure with a tenant federal agency, whose activities were the subject of the EA, caused a major delay in the EA process.
- *Rushed reviews.* Technical content of the EA was good; however, editorial review of the appendices suffered in an effort to expedite publishing the document.
- *Late start.* The Supplement Analysis that, in part, led to the decision to prepare the Supplemental EIS was started too long after new seismic information was known, resulting in the EIS being on the critical path.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Effective review process.* The timely review of EA drafts, followed by effective comment resolution meetings among team members, enhanced teamwork.
- *Frequent communication.* Frequent communication and timely responses to questions and inquiries between DOE staff and contractors proved invaluable in completing the EA.
- *Dedicated team.* A dedicated DOE team made a big difference in facilitating the preparation of the EA.

- *Integrated team approach.* Use of an integrated project plan team approach and excellent communication had key players from DOE and affected and participating federal and state agencies working closely together throughout the EA development and review process.

### Factors that Inhibited Effective Teamwork

- *Unique project and diverse perspectives.* The project was unique and had diverse partners with different perspectives working together for the first time, which required a lot of education on each perspective to foster an effective team.
- *Lack of timely feedback.* Despite providing funding to a cooperating agency, it was sometimes difficult getting timely feedback from the severely understaffed agency.
- *DOE staff changes.* Multiple planners and project managers were assigned over the long timeline of this EA, resulting in inefficiencies in the transfer of project knowledge and teamwork.
- *Multiple offices' involvement.* The involvement of multiple DOE offices required additional time and coordination, inhibiting effective DOE teamwork.
- *Lack of appropriate review.* The Management and Operating contractor did not review its NEPA subcontractor's work before the EA was submitted to DOE to ensure their input was accurately incorporated.

## Process

### Successful Aspects of the Public Participation Process

- *Public forum.* A community leaders round table was effective in communicating with the public and soliciting their participation.
- *Multiple public meetings.* Conducting scoping and multiple public meetings with town residents, tribal representatives, and other stakeholders proved to be very effective in assessing support and opposition for the project and in soliciting public involvement.
- *Working relationships and protocols.* Developing good working relationships with tribal staff, and following DOE tribal consultation protocols, proved to be critical to the successful interaction between DOE and tribal nations.

*(continued on next page)*



# Questionnaire Results

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

- *Public appreciation.* The majority of the public comments on the NEPA process were expressions of appreciation that DOE took the time to listen to public concerns and to consider their input.
- *Extended review period.* DOE extended the review period, which allowed the public to provide additional comments.
- *New alternative identified.* Response to public comments led to the identification of a new alternative that was a combination of two onsite alternatives.
- *Periodic updates.* Periodic updates to the Citizens Advisory Board were helpful throughout the EA process, although there was a lack of public interest and involvement during the public comment process.
- *Stakeholder involvement.* The primary stakeholder tenant was willing to provide detailed information throughout the EA process that was valuable in allaying other tenants' concerns. They also demonstrated flexibility in their proposed activities to avoid conflict with existing tenants.
- *Future modifications.* The information obtained during the EA process can help the proposed tenant modify its future activities, which will be beneficial to both the environment and the tenant.

### Unsuccessful Aspects of the Public Participation Process

- *Excessive accommodations.* Political pressure resulted in DOE making excessive accommodations to requests for comment period extensions and additional hearings.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Stakeholder participation.* The NEPA process allowed all those interested in the management of the resources at the DOE site to be heard and to participate.
- *Sound and informed evaluation.* DOE used the EA process effectively in facilitating sound and informed evaluation of potential cumulative impacts from the project.
- *Public interactions.* The public participation portion of the EA process helped DOE's NEPA staff to accurately assess the degree of NEPA analysis required.
- *Sufficient scope.* The NEPA process resulted in an EA with a broad scope that will allow multiple activities to occur.
- *Basis for project approval.* The EA provided the basis, among other considerations, for the Site Manager's approval to proceed with the proposed project, and a finding of no significant impact.

## Enhancement/Protection of the Environment

- *Expert input.* Experts voiced concerns and helped develop effective mitigation measures to protect the environment.
- *Mitigation measures identified.* Several mitigation measures were included in the finding of no significant impact that will reduce negative impacts and protect the environment.
- *Mitigation Action Plan prepared.* DOE prepared a Mitigation Action Plan that identified several measures designed to protect the environment.
- *Incorporation of operational controls.* Once DOE understood the impacts, operational controls were incorporated to reduce potential environmental impacts.
- *Procedures adopted.* By following the NEPA process, the tenant adopted numerous procedures to minimize or prevent adverse environmental impacts.
- *Best Management Practices.* As a result of the NEPA process, activities will be generally prohibited in streams, wetlands, and areas near endangered species or culturally sensitive resources. Activities to be conducted will also incorporate best management practices to protect water quality.

## Other Issues

### Guidance Needs Identified

- *Supplemental EIS guidance needed.* Guidance similar to the existing Supplement Analysis guidance is needed for preparation of Supplemental EISs.

*(continued on next page)*

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

- *Revised accident analysis guidance needed.* Revisions to the DOE NEPA guidance reflecting the nuclear safety requirements for DOE nuclear facilities are needed to address differences between the NEPA guidance and DOE regulatory approaches and assumptions.
- *DOE Order 413 alternatives analysis.* Some guidance would be helpful on how the DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, alternatives analysis correlates to the NEPA alternatives selection process and where those two activities fit within the project schedule.
- *Generating public interest.* Guidance on how to generate more public interest to ensure greater public participation during EA development, the public comment period, and at public meetings would be useful.
- A respondent who rated the process as “5” stated that the NEPA process allowed for the utilization of DOE resources by multiple federal organizations and also addressed a critical training shortfall. Additionally, the EA demonstrated that multiple activities, some without defined site boundaries, can be adequately analyzed.
- A respondent who rated the process as “5” stated that the NEPA process was a useful tool to ensure that pertinent options were analyzed and appropriate actions considered, minimizing impacts to the environment.
- A respondent who rated the process as “4” stated that the NEPA process produced a thorough inventory of environmentally sensitive areas and resources, culturally sensitive areas, and contaminated/hazardous areas that must be avoided during proposed activities. The environmental analysis resulted in a standard operating procedure and map to form a foundation for planning similar activities at the site in the future.

### Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

For the past quarter, in which 10 questionnaire responses were received for 9 EAs and 1 EIS, 9 out of 10 respondents rated the NEPA process as “effective.” Four rated the process “5” and five rated the process “4.” One respondent did not rate the NEPA process.

- A respondent who rated the process as “5” stated that the NEPA team’s timely review of EA drafts, effective resolution of issues and comments, and active participation of subject matter experts were critical to the successful completion of the EA.
- A respondent who rated the process as “5” stated that both the scoping and public meetings allowed DOE staff to accurately assess the degree of NEPA analysis required for the project, resulting in the sufficient evaluation of appropriate resource areas.
- A respondent who rated the process as “4” stated that the NEPA process was successful in that DOE changed the selected action based on public comments.
- A respondent who rated the process as “4” stated that the NEPA process allowed for a close look at possible impacts of the project.
- A respondent who rated the process as “4” stated that the NEPA process was successful in that it examined the proposed actions in a context where the public is aware of them before action is taken.
- A respondent who rated the process as “4” stated that NEPA is a good tool for allowing interested parties to participate and reach consensus.

# LESSONS LEARNED

## How to Manage an EIS Schedule Successfully

By: Brian Costner and Carrie Moeller, Office of NEPA Policy and Compliance

Developing and maintaining the schedule for preparation of an environmental impact statement (EIS) is one of a NEPA Document Manager's most important responsibilities. The Office of NEPA Policy and Compliance recently asked several NEPA Compliance Officers (NCOs) and NEPA Document Managers to share their advice for completing an EIS on time.

An EIS schedule goes through several stages, they observed. An initial schedule must be revised as data and analytical needs are identified, cooperating agencies provide input, and public comments are reviewed. Regular communication helps everyone respond promptly to changes and keep the document on track. Overall, teamwork and effective project management are vital contributors to success.

### Collaborate on Schedule Development

"Can you prepare an EIS without a schedule? Yes. Can you do it efficiently and with reasonable cost without one? I don't think so," said Jane Summerson, an NCO for the Office of Energy Efficiency and Renewable Energy and an experienced NEPA Document Manager.



"An EIS schedule is a tool for managing your work," continued Ms. Summerson. To use that tool effectively, she and others explained, the EIS schedule must be developed collaboratively.

Kathy Pierce, NCO for Bonneville Power Administration (BPA), said that BPA EIS schedules are developed by the project team, which includes the NEPA Document Manager, the project engineer (or project manager), legal counsel, public affairs, and others. Also consider

information from any cooperating agency or other involved agencies, she added.

The project manager contributes information about decision deadlines, as well as project descriptions, the availability of existing data, and other factors that influence what needs to be analyzed. Working closely with the project manager is particularly important, noted Mark McKoy, NCO and NEPA Document Manager at DOE's National Energy Technology Laboratory. "One of the main places where schedule time is lost is in waiting for sufficient planning and design work to be done. Before starting to prepare an EIS, make sure project management understands how much information and what details will be required in order to analyze the environmental impacts," he said.

---

*A NEPA Document Manager shall . . . [m]anage the document preparation process, including reviewing internal drafts for technical adequacy, controlling cost, and maintaining schedule.*

– DOE Order 451.1B, NEPA Compliance Program

---

Shane Collins, NCO for Western Area Power Administration, recommends that NEPA Document Managers "understand the full scope of the project – insist on details." Ms. Collins explained that Western's NEPA Document Managers "develop EIS schedules replete with targets and milestones based on the initial project scope, the adequacy of project description information, and the level of available information regarding known and expected resource concerns."

Ms. Summerson added that the NEPA Document Manager should know how "hard and fast" milestones are, what

*(continued page 4)*

## Inside **LESSONS LEARNED**

Welcome to the 71<sup>st</sup> quarterly report on lessons learned in the NEPA process. The need for timely preparation of quality EISs has not lessened since DOE initiated the NEPA Lessons Learned program in 1994. This issue provides advice on developing and maintaining EIS schedules from some of the Department's most experienced NEPA practitioners and highlights guidance and GIS tools that can help DOE prepare NEPA documents more efficiently. Thank you for your continued support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

EPA Electronic EIS Filing.....	3
Scientific Integrity .....	6
CEQ NEPA Efficiency Guidance.....	7
Online Mapping Tools.....	8
Keeping Track of NEPA Documents.....	9
NAEP Conference Report .....	10
Transitions .....	12
2013 NAEP Conference Announcement.....	12
DOE-Wide NEPA Contracts Update .....	12
EAs and EISs Completed This Quarter.....	13
Questionnaire Results.....	14
Cost and Time Facts.....	16

*Carol Borgstrom*

Director  
Office of NEPA Policy and Compliance

Printed on recycled paper



## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report (LLQR)*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 1, 2012. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due August 1, 2012


Lessons Learned Questionnaires for NEPA documents completed during the third quarter of Fiscal Year 2012 (April 1 through June 30, 2012) should be submitted by August 1, 2012, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at <http://energy.gov/nepa> under Guidance & Requirements, then Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Guidance & Requirements, then Lessons Learned. We provide paper copies only on request. The online version includes links to most of the documents referred to herein. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).


## LLQR Improvements Underway

In the spirit of continuous improvement, the NEPA Office is looking at ways to modernize *LLQR*, taking into account the expansion of information readily available on the web. With this issue, we are implementing two such changes. First, *LLQR* will no longer list NEPA training courses other than those sponsored by federal agencies. NEPA training opportunities may be located by an online search or by checking the [NEPA training provider listing](#) on CEQ's [NEPA.gov](http://NEPA.gov) website, under Other NEPA Information. Second, *LLQR* will no longer list DOE's Recent EIS-Related Milestones. An up-to-date listing of recent notices related to DOE EIS milestones is available on the DOE NEPA Website under the heading "Latest Documents & Notices."

If you have suggestions for other improvements to *LLQR* – focusing on sharing lessons learned in the NEPA process – please send them to Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov). 

## Training: Collaboration in NEPA

The U.S. Institute for Environmental Conflict Resolution is offering a 2-day course titled "Collaboration in NEPA" on November 27-28, 2012, in Washington, DC. The course is intended for individuals responsible for or participating in a collaborative NEPA process, including federal agency personnel; representatives of tribal, state, and local governments; and nongovernmental stakeholders. The course aims to extend guidance from the Council on Environmental Quality's [Collaboration in NEPA](#) handbook. According to the course description, "Realistic roleplaying exercises, involving multiple governmental entities and nongovernmental stakeholders, will provide opportunities to practice essential skills needed to design, implement, and participate effectively in collaborative NEPA processes."

The registration fee is \$500. For more details or to register, see the Institute's [Course Catalog Listing](#). The Institute is a program of the Udall Foundation, an independent federal agency. 

# EPA Intends To Require Electronic Filing of EISs



The Environmental Protection Agency (EPA) is testing a system for federal agencies to electronically file draft and final EISs. EPA expects the system to save agencies time and money by eliminating the need to print and deliver four copies (at least one printed; others can be on CD or other electronic storage device<sup>1</sup>) of each EIS to EPA Headquarters. Instead, agencies can complete filing by uploading an EIS to a secure EPA website.


EPA intends to require all agencies to use this e-filing system by October 1, 2012. “I urge you all to consider having your agency participate in the test phase to ensure that we all start reaping the benefits of [information technology],” emphasized Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality, in endorsing EPA’s electronic filing system.

The electronic files must be formatted to meet EPA’s specifications. (See text box.) EPA will provide agencies with an email confirmation of successfully filed EISs and will publish a notice of availability in the *Federal Register* each Friday for EISs submitted electronically to EPA on or before 5:00 p.m. on the prior Friday. EPA plans to make the EISs publicly available on the web and to host them for future reference in perpetuity.

The Office of NEPA Policy and Compliance (NEPA Office) will continue to file DOE EISs with EPA per Section 5.g.(7) of the DOE Order 451.1B, *NEPA Compliance Program*. The NEPA Office completed the first electronic filing for DOE on May 30 for the Energia Sierra Juarez Transmission Line Project Final EIS ([DOE/EIS-0414](#)). “We successfully submitted the first DOE EIS through EPA’s electronic filing system, but there was a learning curve,” said Connie Chen, NEPA Office. “Electronic filing requires early collaboration among the EIS preparation contractor, NEPA Document Manager, and NEPA Office staff to meet EPA’s requirements.”

## EIS Distribution Requirements Unaffected

Electronically filing an EIS does not affect agency responsibilities for public distribution of EISs (paper or electronic, as appropriate) in accordance with 40 CFR 1502.19, 40 CFR 1503.1, and 10 CFR 1021.301(a) and (c). (See guidance issued by the NEPA Office, [EIS Distribution](#), June 2006.<sup>2</sup>) “EISs must be filed no earlier than they are transmitted to commenting agencies and made available to the public (40 CFR 1506.9),” EPA reminded agencies in announcing the new system. “This will assure that the EIS is received by all interested parties by the time EPA’s notice appears in the *Federal Register*, and, therefore, allows for the full minimum comment and review periods.”

DOE offices must continue to provide one printed copy of a complete EIS to the NEPA Office for archiving; NEPA Office staff may request an additional copy as a working reference. The NEPA Office will use the electronic files and associated information provided for EPA filing to complete posting of the EIS on the DOE NEPA Website. For questions regarding filing an EIS, contact Eric Cohen, NEPA Office, at [eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov) or 202-586-7684. 

## How to e-File an EIS

Provide the electronic files meeting EPA specifications and the other information required for filing (see below) to Denise Freeman ([denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov)) with a copy to Eric Cohen ([eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov)), NEPA Office, no later than Wednesday of the week when an EIS is to be filed with EPA. This will allow time to ensure the files are formatted correctly and that all required information is available. Promptly notify Ms. Freeman and Mr. Cohen by email when distribution is complete, so that the NEPA Office may file the EIS with EPA. Electronic filing of EISs eliminates the need to prepare a letter for filing with EPA.

## EPA Electronic Filing Requirements\*

To take advantage of EPA’s e-filing system, a draft or final EIS must be in Adobe Acrobat format (.pdf) with the following attributes:

- Chapters are bookmarked
- Bookmark view is shown when file is opened
- Files are optimized (file size reduced)
- Document text is searchable
- Metadata are included; use Document Summary and enter data into “Subject,” “Author,” and “Keywords” fields [File→Properties→Descriptions”]

## Other Required Information\*

- EIS title
- EIS type (i.e., draft EIS, final EIS)
- File size for EIS and appendices (MB)
- Number of pages for each file
- Lead agency(s)
- Lead agency contact (name, phone number, and email)
- Cooperating agencies (including federal and other)
- Length of comment period (days)

\* EPA may revise these requirements during the testing period. Check with the NEPA Office at the time of filing for updates.

<sup>1</sup> Under EPA’s current Amended EIS Filing Guidance ([76 FR 2681](#); January 14, 2011)

<sup>2</sup> The NEPA Office plans to update DOE’s EIS Distribution guidance to account for these changes to the EPA filing procedures.

# Manage an EIS Schedule Successfully *(continued from page 1)*

level of detail the EIS will cover, whether standard methodologies are available, or if field work is needed.

Sachiko McAlhany, a NEPA Document Manager for the National Nuclear Security Administration (NNSA), said that it is important to use this information to identify critical path items in the schedule. That helps prioritize work and illustrates where a document manager needs to focus attention.

It is important to get management approval of the schedule. NEPA Document Managers often incorporate regular management briefings into their planning process. Ms. Pierce said that BPA also includes the initial schedule in the notice of intent to prepare the EIS that is submitted to the BPA Administrator for approval.

## Adapt the Schedule As Needed

“We are not reluctant or hesitant to modify an EIS schedule based on issues identified through the prescribed public process if additional effort is warranted to resolve technical, environmental, or political concerns,” said Ms. Collins.

Ms. Pierce offered examples of situations where a document manager might revise an EIS schedule:

- during scoping, additional alternatives may be proposed that need to be considered and analyzed,
- when results of engineering studies and field surveys suggest adjustments to an alternative that need to be analyzed, or
- in working with cooperating agencies – whether tribal, federal, or state – that are often overworked and underfunded and their priorities and schedule may not coincide with ours.

She emphasized that “EIS schedules are issue-driven and adaptively managed based on the results of impact analyses and input provided by project stakeholders.”

“You’ve got to be flexible,” said Mary Martin, NCO for NNSA. Be ready to handle requests for scoping or public comment period extensions, she advised. Ms. Pierce added, “Don’t make your schedule so tight you can’t accommodate problems.”

Ms. McAlhany recognized the need for flexibility but also cautioned, “There will be a point where you have a hard end date and completion of NEPA is part of the critical path for program and project plans.” Sometimes it is better to “show that you are behind” and keep the team’s focus on maintaining the schedule to minimize the delays, she added.

When schedule changes are being considered, everyone agreed on the importance of communication. “Don’t

be afraid to communicate ‘bad’ news,” said Ms. Pierce. “Things happen. The sooner the team is aware of an issue, the sooner it can be addressed.” Ms. Summerson agreed. You must be upfront early on with managers about potential risks, she advised. “You have to be realistic when building a schedule,” she said, “There are some things you can’t change.”

---

*Information gained through public scoping, cooperating agency involvement, impact analyses, and project changes will influence the schedule through the life of the project.*

– Shane Collins, Western NCO

---

Ms. Summerson recommended that NEPA Document Managers brief their program managers each month on EIS progress and accomplishments related to the EIS schedule. Ms. Pierce explained that at BPA, “Any changes to the schedule are discussed by the project team and approved by the executive team.” Ms. Collins similarly explained that at Western, “Schedule updates are coordinated with and reported to the NCO and project, program, and executive managers.”

## Communicate Constantly

All agreed on the importance of communication throughout preparation of an EIS. This is underscored above for developing and revising a schedule. Communication needs are broader, though, and good communication is key to the NEPA Document Manager’s success.

“Use the schedule to facilitate discussions between all the parties involved in preparing an EIS,” said Mr. McKoy. “This includes the DOE management for the project,

*(continued on next page)*

### What’s in a Schedule?

A schedule should show **what** work is to be done, **who** will do the work, and **when** it should be completed. This will help the NEPA Document Manager identify where additional resources may be needed to meet the schedule and ensure that work is done in a logical order (e.g., some sections of an EIS cannot be completed before wildlife surveys are done; an EIS cannot be filed with the Environmental Protection Agency before distribution is complete). A Gantt chart is the most common format for presenting a schedule.

Project management training and educational materials cover scheduling in depth. One such resource is DOE’s Earned Value Management Tutorial Module 3: [Project Scheduling](#).

# Manage an EIS Schedule Successfully *(continued from previous page)*

cooperating government agencies, and all private-sector project participants. If there are participants who are not familiar with the EIS process, put into the schedule the details that will make all aware of the extent and nature of work to be done.”

“Establish clear roles and responsibilities and communicate regularly with the project team,” said Ms. Pierce. Reviewing the status of schedule milestones on a weekly basis is important, Ms. McAlhany added. She suggested that NEPA Document Managers maintain an

## Contract Management and Scheduling

When using a contractor to help prepare an EIS, the statement of work should lay a foundation for ensuring that schedules are appropriately developed and maintained. Mr. McKoy recommends that DOE include a basic schedule in the statement of work “so that potential contractors better understand what would be expected of them. In addition to helping them prepare a cost estimate and identify proposed staffing, it enables the winning contractor to begin work more quickly.”

Ms. Summerson added that the statement of work should require the contractor to submit a project management plan early in the process with a detailed schedule showing tasks, durations, specific staff assigned to each task, and potential conflicts. “It is important to document these details and identify assumptions used to develop the schedule,” she said.

Mr. McKoy further recommended making “the incentive fee award based in part on the contractor’s adherence to the schedule (with exceptions for things that are beyond the control of the contractor). The incentive fee also should be based on quality of work and control of costs.” For a complex EIS on a firm schedule, Mr. McKoy suggested that the contract “allow for the contractor employees to be paid for their overtime work and the contractor firm to be appropriately rewarded if they succeed in adhering to the schedule.”

Ms. McAlhany described how she uses her action item list to assess contractor performance during preparation of the EIS. She explained that it is “important to identify interim milestones and deliverables to ensure you are on track.” Ms. Summerson reiterated the importance of staying constantly involved and “document your concerns.” Ms. Summerson highlighted the need to hold the EIS contractor accountable to the schedule and meeting deliverable timetables with a product of acceptable quality. You have to be honest with the contractor about the document’s quality because ultimately that’s the only thing you have, she said.

action item list identifying actions, status, and who has the action and when it is due and to tie the action item list to the EIS schedule. “I monitor the progress of the actions and schedule weekly with the NEPA Team,” she said.

Ms. Summerson advised that NEPA Document Managers verbally engage their contractors on at least a weekly, if not daily, basis. “Ask questions,” she said. For example, a NEPA Document Manager should ask for preliminary language for certain chapters of the EIS or inquire as to whether a particular analysis has run into trouble. “Frequently the schedule is short enough that it doesn’t allow time to recover from a problem identified in a monthly status report. Regular communication is key.”

Ms. Martin advised NEPA Document Managers to communicate often with project managers to bridge the “gap” between NEPA and project staff. She explained that the project manager maintains his or her own project schedule (separate and apart from the NEPA schedule) that addresses design changes, fluctuating budgets, and other factors. Through frequent communication, the document manager will be aware of any key project changes as they arise, she said.

---

*BPA relies on a project management team to ensure good communication and coordination. We can’t make sure there are no surprises during the course of a project, but we can make sure everyone is equally surprised.*

– Kathy Pierce, BPA NCO

---

Both Ms. Pierce and Ms. Collins highlighted the importance of communication with stakeholders and cooperating agencies in staying on schedule. Ms. Collins advised that NEPA Document Managers meet with project stakeholders regularly and adequately address stakeholder concerns up front. “Meet to resolve issues with the interested public, make personal contact with affected landowners, and coordinate early with Native American tribes,” she suggested. Ms. Pierce recommended that you don’t “go dark” between scoping and the draft EIS or between the draft and final EIS. She suggested that NEPA Document Managers prepare fact sheets or project updates to keep the public informed.

## Prepare for Internal Review

Review of the preliminary drafts of an EIS is an important part of the document preparation process. Successful NEPA Document Managers plan for this internal review from the outset by employing a team approach and incorporating the review into the EIS schedule.

*(continued on next page)*


## Manage an EIS Schedule Successfully *(continued from previous page)*

Ms. Summerson emphasized the importance of identifying review team members from the technical program and the General Counsel's office early on. "Get agreement on technical approaches and NEPA strategy before you bring a document to them for review and concurrence or approval," she advised. "You must have those discussions prior to the review to get an understanding among review team members. To leave those discussions for the concurrence or approval review will result in problems," she cautioned.

Ms. Martin emphasized the importance of conducting the site or program review of the NEPA document before it goes to General Counsel staff. Also, NEPA Document Managers "should not assume that one draft of a NEPA document is good enough – include multiple rounds of review into your schedule," Ms. Martin suggested. "When making schedules for EISs and EAs," agreed Mr. McKoy,

"assume that the preliminary drafts of the document will go through at least three rounds of DOE (including field office) review and contractor revision before the documents will be approved. This holds for the 'Final' as well as for the 'Draft' of each EIS and EA."

For additional information or questions, please contact Ms. Collins at [collins@wapa.gov](mailto:collins@wapa.gov), Ms. Martin at [mary.martin@nnsa.doe.gov](mailto:mary.martin@nnsa.doe.gov), Ms. McAlhany at [sachiko-w.mcalhany@nnsa.srs.gov](mailto:sachiko-w.mcalhany@nnsa.srs.gov), Mr. McKoy at [mark.mckoy@netl.doe.gov](mailto:mark.mckoy@netl.doe.gov), Ms. Pierce at [kspierce@bpa.gov](mailto:kspierce@bpa.gov), and Ms. Summerson at [jane.summerson@ee.doe.gov](mailto:jane.summerson@ee.doe.gov).

*The NEPA Office thanks these individuals for their hard work to implement NEPA effectively and for sharing their lessons learned.* 

## NEPA Process Incorporates Scientific Integrity Principles

"Science and technology are at the core of what we do at the Department. Since its establishment in 1977, the Department has maintained a high standard of scientific integrity," explained Secretary of Energy Steven Chu in announcing his March 23, 2012, [Secretarial Policy Statement on Scientific Integrity](#).

The Secretarial Policy Statement explains that the "Department's mission relies on objective, reliable, accurate, and accessible scientific and technical information." The Secretarial Policy Statement addresses the foundations of scientific integrity at DOE, public communication promoting openness and transparency, use of federal advisory committees, and professional development of government scientists and engineers.

NEPA reflects many of the principles contained in the Secretarial Policy Statement, and DOE documents prepared in compliance with NEPA will satisfy these principles. For example, in compliance with NEPA and the Council on Environmental Quality (CEQ) and DOE NEPA regulations, DOE ensures that data and research used to support decisions in the NEPA process are of high scientific and technical quality and objectivity. The CEQ NEPA regulations emphasize the importance of information quality. In particular, 40 CFR 1500.1(b) says "[t]he information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." Further, 40 CFR 1502.24 requires agencies to ensure "the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact

statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement."


---

*The credibility of the research the Department supports and conducts, the decisions we make, and the information we disseminate rest upon our collective integrity.*

– *Secretarial Policy Statement on Scientific Integrity*  
March 23, 2012

---

In addition, quality assurance is an important part of ensuring scientific integrity in DOE NEPA documents. DOE Order 451.1B, *NEPA Compliance Program*, requires each secretarial officer and head of field organization to ensure that a NEPA quality assurance plan is prepared for matters under the office's purview. (See [LLQR, June 2006, page 1](#).)

The Secretarial Policy Statement on Scientific Integrity is a useful reminder of the importance of quality and should serve as a challenge to DOE's NCOs and NEPA Document Managers to strive to achieve the "culture of scientific integrity" described in the Statement. As the Secretary directs, DOE should "ensure that data and research used to support policy decisions are of high scientific and technical quality and objectivity." 



# Use Existing Tools To Improve NEPA Efficiency



The Council on Environmental Quality (CEQ) has issued new guidance titled “Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act” (NEPA Efficiency Guidance) that encourages federal agencies to “provide the best use of agency resources in ensuring a timely, effective, and efficient NEPA review.” The NEPA Efficiency Guidance highlights existing provisions under the CEQ regulations implementing NEPA (40 CFR Parts 1500–1508) that help meet this objective. These provisions are available for the preparation of EAs, as well as EISs, and the Guidance encourages their use in an “effective process that is tailored to avoid excessive burden.” (See [LLQR, March 2012, page 6.](#))

The final NEPA Efficiency Guidance is in line with strategies contained in the August 2011 Presidential Memorandum, “Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review,” and it sets forth means by which the CEQ NEPA Regulations support those strategies. The Guidance features techniques and tools organized by the following topics: concise NEPA documents; early NEPA

integration in planning; scoping; inter-governmental coordination (state, local, or tribal environmental reviews); coordinating reviews and documents under other applicable laws; adoption; incorporation by reference; expediting responses to comments; and clear timelines for NEPA reviews.

For example, on the subject of expediting responses to comments, CEQ reminds agencies that they “should provide a reasonable and proportionate response to comments on a draft EIS by focusing on the environmental issues and information conveyed by the comments.” The Guidance explains that the agency may use the draft EIS as the final EIS if changes in response to comments are minor and are limited to factual corrections and/or explanations of why the comments do not warrant further agency response. “Similarly, if an agency issues an EA for comment and the changes in response to comments are minor and limited to factual corrections and/or explanations of why the comments do not warrant further agency response, then the agency may prepare a similar cover and errata sheet and use its draft EA as the final EA,” explains CEQ. CEQ recommends that agencies “facilitate public review and comment by also publishing the EISs and EAs, and subsequently the comments received, on agency Web sites.”

## Key Principles in New CEQ Guidance

CEQ’s NEPA Efficiency Guidance encourages agencies to be mindful of six key principles in conducting environmental reviews pursuant to NEPA.

- NEPA encourages straightforward and concise reviews and documentation that are proportionate to potential impacts and effectively convey the relevant considerations to the public and decisionmakers in a timely manner while rigorously addressing the issues presented;
- NEPA shall be integrated into project planning to ensure planning and decisions reflect environmental considerations, avoid delays later in the process, and anticipate and attempt to resolve potential issues rather than be an after-the-fact process that justifies a decision already made;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference;
- Early and well-defined scoping can assist in focusing environmental reviews on appropriate issues that would be meaningful to a decision;
- Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should respond to comments in proportion to the scope and scale of the environmental issues raised.

## CEQ Chair Focuses on Improving NEPA Implementation

On the day CEQ issued its NEPA Efficiency Guidance, CEQ Chair Nancy Sutley reiterated the Council’s focus on modernizing NEPA in testimony before the House Committee on Natural Resources. Ms. Sutley described recent CEQ priorities, including “a robust effort” to revise NEPA guidance documents, “active dialogue with the general public on evidenced-based NEPA reforms,” and “active engagement with the President’s Jobs Council and Federal agencies on enhanced collaboration on expedited permitting for infrastructure projects.” “One of CEQ’s primary focuses has been improving the efficiency and effectiveness of the NEPA process,” said Ms. Sutley.

“Now in its 42<sup>nd</sup> year, NEPA has a proven record of protecting public health, safety, and environmental quality by ensuring transparency, accountability, and public involvement in Federal actions and in the use of public funds. As environmental issues grow more complex, CEQ strives to provide the agencies a consultative resource and an institutional base of NEPA knowledge,” she concluded.

The final CEQ guidance is available on CEQ’s website ([77 FR 14473](#); March 12, 2012).

# Online Mapping Tools Can Assist NEPA Reviews

The combination of data and mapping – typically through a geographic information system (GIS) – offers many benefits to the NEPA practitioner for understanding the affected environment, developing alternatives, and analyzing potential environmental impacts. DOE has long relied on such geospatial data and analysis tools in preparing its NEPA documents. *LLQR* first noted this in December 1997 when it captured the response to a Lessons Learned Questionnaire that the use of a GIS “permitted rapid and cost-effective analysis of complex data and ‘what-if’ scenarios in developing alternatives. While a somewhat expensive tool, GIS more than paid for itself in time and cost savings.”

Over the past 15 years, costs have come down and the availability of quality data has gone up. In addition, the proliferation of geospatial data on the web makes it simpler than ever to find information and put it to use right away. Below are sources of publicly available geospatial data that may be helpful in preparing NEPA analyses.

## Geo.data.gov Provides Data

Federal agencies provide access to more than 400,000 geospatial datasets through [geo.data.gov](http://geo.data.gov).



Files can be freely downloaded for use in GIS software and related applications. Each set of files identifies the date of the data, and the agency that made the data available and verified that the data are consistent with federal privacy, national security, and information quality policies.

Datasets useful for NEPA analyses include the National Wetlands Inventory, soil surveys, sole source aquifers, critical habitat for threatened and endangered species, census data, boundaries for federal resource areas (e.g., parks, refuges, forests), wind speed data from DOE’s National Renewable Energy Laboratory, and many others. These can be located via keyword search or by browsing lists organized by content type and topic. In addition to datasets, the website provides links to applications, such as live map servers that allow viewing the mapped data on the web.

Geo.data.gov is part of [data.gov](http://data.gov), which provides an alternative method (<http://www.data.gov/catalog/geodata>) to find the geospatial datasets available at [geo.data.gov](http://geo.data.gov), as well as many other types of data from federal agencies. For example, [energy.data.gov](http://energy.data.gov) provides information on

historic energy use by the federal government and a database of active and pending carbon capture and storage projects worldwide that includes technology type, project cost, and schedule.

## NEPAssist and EJView Provide Mapping

The Environmental Protection Agency (EPA) made [NEPAssist](#), a web-based GIS tool, available to the public in April 2012. The Council on Environmental Quality (CEQ) had selected this expansion of NEPAssist’s availability as one of its pilot projects to improve NEPA efficiency (*LLQR*, December 2011, page 11). This tool has been available since 2008 to registered users, primarily government employees and other NEPA practitioners (*LLQR*, September 2008, page 1).



“NEPAssist draws information from publicly available federal, state, and local datasets, allowing NEPA practitioners, stakeholders and the public to view information about environmental conditions within the area of a proposed project quickly and easily at early stages of project development,” explained EPA in its announcement of the public release.

Nancy Sutley, CEQ Chair, said that “Making this tool available to the public will help make information more accessible, a key part of our effort to increase transparency for projects that impact American communities.”

To use NEPAssist, one goes to the website and selects a study area. That brings up a map of the selected location and options to add various data layers for hazardous waste, air and water quality, schools, hospitals, demographics, water features, administrative and political boundaries, and other topics. A user also may measure distances between points on the map, add custom data (e.g., labels), and generate reports.

EPA also hosts [EJView](#), formerly known as the Environmental Justice Geographic Assessment Tool. The user interface is similar to that for NEPAssist, and the two tools share some functions. EJView includes more health-related data (e.g., risk of certain health outcomes), neighborhood boundaries, and information on community-based EPA grants. Also, EJView allows users to search for a specific facility and view a related map or report. [L](#)

# Keeping Track of NEPA Documents

## What's in a Number?

One of the first tasks a NEPA Compliance Officer should undertake for a new EA, EIS, supplemental EIS, or supplement analysis (SA) is to request a document number from the Office of NEPA Policy and Compliance. DOE uses these numbers to track NEPA documents and identify the relationship among documents.

Assigning a document number yields many benefits. NEPA document numbers systematically link later documents to their original EIS, even if – as is often the case – the title of the SA or supplemental EIS is different from the original EIS. Document numbers are helpful when DOE needs to refer to multiple documents that support a particular decision and to ensure the accuracy and completeness of an administrative record. They also help in regular communication regarding the status of DOE's NEPA reviews. In addition, document numbers enable searching and tracking of related documents on the DOE NEPA Website.

To request a document number, contact the NEPA Office staff point of contact for the relevant program or field office (list available at [energy.gov/nepa](http://energy.gov/nepa) under About Us). Please provide the document type, project title, affected location(s), responsible DOE office, lead agency, and date of the determination to prepare the NEPA document. It is best to obtain a NEPA document number early so the number can be used on all official records of the NEPA review, such as a notice of intent. Requests typically should be made after a determination to prepare the NEPA document, or for DOE to be a joint-lead or cooperating agency. For some EISs, including supplemental EISs, the document number may be requested prior to the EIS determination, such as when the recommendation to prepare an EIS and the notice of intent are circulated together for approval.

### Document Numbers Identify the Agency, Review Type, Proposal (by Number), and Sequence

EA:	DOE/EA-9876
EIS:	DOE/EIS-0987
Supplemental EIS:	DOE/EIS-0987-S1
SA:	DOE/EIS-0987-SA-01


### EIS and EA Status Chart Gets Links

Every month, the NEPA Office updates and posts on the DOE NEPA Website a listing of all active EISs and EAs, including dates of important milestones. Beginning with the May 2012 update, the status chart includes links to relevant web pages. EIS and EA titles are linked to project pages on the DOE NEPA Website that summarize the proposed action and list related NEPA documents. Links in the Milestones Accomplished column are to the documents associated with the milestones (e.g., notices of intent).

## What's in a Name?

While a NEPA document number unambiguously identifies an EA or EIS, DOE and the public generally refer to a NEPA document by its title. To avoid changing the title during preparation of a NEPA document, establish an appropriate name in the initial steps of the NEPA process – before the determination is sent to the NEPA Office for “logging in” (i.e., assignment of a document number) and before issuing a notice of intent or other public announcement.

### Tips for a Good NEPA Document Title

- ✓ **Be concise:** In addition to the cover, the title will appear throughout the document and on web pages, charts, and presentation slides – where brevity is a virtue.
- ✓ **Match the document's content:** When a supplemental EIS has a different scope from the EIS it supplements, consider changing the name to correspond to the content of the supplemental EIS. For example, the second supplemental EIS for *Defense Waste Processing Facility, Savannah River Plant* was titled *Savannah River Site Salt Processing Alternatives* to clearly identify the document's scope.
- ✓ **Begin a title with the subject, rather than the level of NEPA review:** *DOE Project EIS* identifies the scope first and is shorter than *EIS for the DOE Project*.
- ✓ **Use punctuation, not just a line break, for a title with two or more parts:** Use of a colon or other punctuation clarifies meaning when the document title is written out without the line break – for example, *NE Oregon Hatchery Program: Grande Ronde Imnaha Spring Chinook Project*.
- ✓ **Indicate location:** Specify, as appropriate, the city, county, state, or region for the proposal.
- ✓ **Avoid new abbreviations:** A widely used abbreviation does not have to be defined in the title (e.g., kV for kilovolt). Avoid introducing a new abbreviation, such as for a site or facility, in the title; do it in the text instead.
- ✓ **Avoid “Proposed” or “Proposal to” in the title:** It's implicit that a NEPA review is for a proposal.
- ✓ **Avoid “Draft” or “Final” in the title:** These indicate the document's status, not its name. 

# NAEP Conference Explores Interconnected Issues



By: Yarden Mansoor, Office of NEPA Policy and Compliance

Diverse environmental professionals from all levels of government joined academics, consultants, and representatives of nongovernmental organizations at the 2012 conference of the National Association of Environmental Professionals (NAEP), held May 22–24 in Portland, Oregon. More than 300 participants at this conference, on the theme of *Science, Politics, and Policy: Environmental Nexus*, explored the complex interconnected issues that environmental professionals must address. “Environmental professionals are part of what makes America great,” said Paul Loony, NAEP President. “We are the nexus of science, politics, and policy.”

---

***Go slow to go fast! Time spent at the beginning of a NEPA review documenting roles and responsibilities, establishing expectations, and developing timelines will pay off in a more efficient EIS.***

---

### **Panel Discussion Keys to Successful 3<sup>rd</sup> Party NEPA Processes**

---

*In addition to the NEPA sessions this writer attended, the conference covered brownfields, wetlands, land and watershed management, transportation, visual resources, cultural resources, and public participation. Special sessions addressed professional development, environmental issues relating to defense activities, and an “energy boot camp” on renewable energy and facility siting. DOE’s contribution to the conference was a presentation on the NEPA rulemaking that concluded in October 2011, in a panel on improving NEPA efficiency. (See [LLQR, December 2011, page 1.](#))*

## **CEQ Updates**

The Council on Environmental Quality (CEQ) Associate Director for NEPA Oversight, Horst Greczmiel, provided an overview of CEQ’s recent NEPA-related developments (text box, right). CEQ’s guidance on “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act,” published on March 12, 2012, is primarily a refresher, noted Mr. Greczmiel, on ways that the NEPA regulations encourage agencies to efficiently conduct their environmental reviews. (See related article, page 7, and [LLQR, March 2012, page 6.](#))

Mr. Greczmiel advised NEPA practitioners to reread CEQ’s regulations, write NEPA documents to be comprehensible and useful to their audience, and aim for concise documents. A pragmatic approach to EAs, he said, is to provide public involvement that goes beyond

regulatory requirements to avoid unanticipated issues at the end of the process, and to coordinate NEPA reviews with other required analyses. Mr. Greczmiel recommended proportionate responses to comments and establishment of clear time lines.

## **Litigation Updates**

Lucinda Low Swartz, environmental consultant, discussed NEPA-related opinions from the U.S. Courts of Appeals. During 2011, these courts issued 14 decisions that involved issues of NEPA implementation; of these, 12 were issued by the U.S. Court of Appeals for the Ninth Circuit. The 14 cases involved 10 departments and agencies, including DOE (*California Wilderness Coalition v. U.S. Department of Energy*, 631 F.3d 1072 (Ninth Circuit 2011)). The Federal Government prevailed in 5 of the cases (36 percent). The U.S. Supreme Court issued no NEPA opinions in 2011.

The court opinions addressed, among other issues, the standards for supplementing an EIS, extraordinary circumstances for categorical exclusions, selection of alternatives for detailed consideration, standing to challenge a FONSI on an EA that had a public comment period, and impact analysis for greenhouse gas emissions.

*(continued on next page)*

### **LLQR Articles Describe Major NEPA-Related Developments Discussed at the NAEP Conference**

- CEQ initiated a NEPA Pilot Projects program ([LLQR, March 2012, page 7](#); [December 2011, page 11](#); and [June 2011, page 11](#))
- The White House established a Federal Infrastructure Projects Dashboard website ([LLQR, March 2012, page 7](#))
- The Environmental Protection Agency (EPA) issued Amended EIS Filing System Guidance ([LLQR, March 2011, page 3](#))
- The U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. EPA signed a memorandum of understanding regarding air quality analysis and mitigation for federal oil and gas decisions through NEPA ([LLQR, September 2011, page 9](#))
- EPA announced new web resources for environmental justice and NEPA ([LLQR, December 2011, page 2](#))
- National Research Council of the National Academies published *Improving Health in the United States: The Role of Health Impact Assessment* ([LLQR, December 2011, page 13](#))

# NAEP Conference *(continued from previous page)*

Ms. Swartz's litigation report will be incorporated into the Annual NEPA Report of the NEPA Working Group, which NAEP will submit to CEQ and make publicly available later this year.

## Heard at the NAEP Conference

*It can be challenging to figure out a "reasonable range" of "reasonable alternatives" for detailed analysis in an EIS. The CEQ NEPA regulations and Forty Most Asked Questions do not define the term "reasonable," leaving it open to agency interpretation.*

*Courts generally tend to uphold the agencies' analyses when agencies explain their reasoning for dismissing one or more alternatives. Conversely, if alternatives that the court considers to be reasonable are dismissed with insufficient explanation, the analysis is likely to be overturned.*

Panel Discussion  
Selecting the Right Alternatives for Detailed Discussion

---

*Success of a NEPA third party process (when an applicant for agency funding, permit, or approval pays for NEPA document preparation by a contractor selected by and under the direction of the agency) requires excellent communications, involvement of all the parties, flexibility to adapt to change, people who are committed and take ownership of the process, and time to correctly assess the proposed action. This is best accomplished through a core project management group using an open, orderly communication system.*

*The Bureau of Land Management, Fish and Wildlife Service, and the US Forest Service all use a "shadow interdisciplinary team" to inform, review, and validate 3<sup>rd</sup> party contract work.*

Panel Discussion  
Keys to Successful 3<sup>rd</sup> Party NEPA Processes


---

*Impacts from greenhouse gas emissions are inherently cumulative, and are either direct or reasonably foreseeable indirect impacts. The preparer of an EIS or EA should ask "what is my project's contribution to climate change, and how would climate change affect my proposal and the resources affected by my proposal?"*

Panel Discussion  
NEPA and Climate Change

## National Environmental Excellence Awards

The 2012 **NEPA Excellence Award** was presented to representatives of the Colorado Department of Transportation (CDOT), Federal Highway Administration, and their contractors for a [programmatic EIS](#) (PEIS) for the I-70 Mountain Corridor, a 144-mile-long interstate from Denver to Glenwood Springs, Colorado. The corridor experiences many hours of congestion, particularly on weekends, as travelers access ski areas, hiking areas, and other recreational destinations in the Rocky Mountains. The PEIS evaluated alternatives for a reconstruction project to add capacity and improve mobility along the corridor. The initial draft PEIS identified a preferred alternative that did not have the support of the majority of corridor stakeholders. Beginning in 2007, CDOT initiated a collaborative process to incorporate options for location, travel modes, and capacity into a new preferred alternative and the team then prepared a revised PEIS. "The process used to complete the I-70 Mountain Corridor PEIS used innovative approaches to collaborative decisionmaking, reader-friendly NEPA documentation, streamlined agency and consultant teams, environmental stewardship, and an adaptive management approach to implementing the preferred alternative," said the award citation.

The **Best Available Environmental Technology Award** was presented to the intergovernmental team for the [Columbia River Crossing](#), which in 2009 also received the NEPA Excellence Award for an outstanding EIS. The large and complex project to replace one of the Portland bridges had the potential for years of in-water construction within a migratory corridor for 13 threatened and endangered fish species. More than 1,000 temporary steel piles are required to install permanent drilled shafts and build the superstructures of the new bridge. Installation of these temporary piles could result in injury or death of fish, and was considered to be the project's major impact to listed fish. Working closely with regulatory agencies, the project team developed a method for analyzing and reducing hydroacoustic impacts to fish and tested the effectiveness of a "bubble curtain" (walls of air bubbles) to reduce underwater noise levels. Using this innovative technology has significant benefits; the impacts to fish were demonstrated to be low enough, annually and cumulatively, that regulators granted a 12-week extension for in-water work, which will allow construction to be completed several years earlier than it could have otherwise. 

# Transitions



## New NEPA Compliance Officers

### Golden Field Office: Lisa Jorgensen

Lisa Jorgensen, Environmental Policy Advisor for the Golden Field Office, has been designated as a NEPA Compliance Officer (NCO). She will work alongside the Office's other four NCOs. Ms. Jorgensen has more than 20 years of experience at multiple DOE facilities serving as a program manager for waste management, environmental restoration, pollution prevention/energy efficiency, and regulatory compliance. She has participated in DOE NEPA activities for more than 15 years at the Golden and Rocky Flats Field Offices. Ms. Jorgensen can be reached at [lisa.jorgensen@go.doe.gov](mailto:lisa.jorgensen@go.doe.gov) or 720-356-1569.

### Princeton Site Office: Peter Siebach

Peter Siebach, the NCO for the Office of Science Integrated Support Center since 2003, has been given the additional designation of NCO for the Princeton Site Office. He can be reached at [peter.siebach@ch.doe.gov](mailto:peter.siebach@ch.doe.gov) or 630-252-2007.

The Integrated Support Center is a virtual organization comprised of the combined support capabilities of the Chicago Office, where Mr. Siebach is located, and the Oak Ridge Office; together they provide administrative, business, and technical services to the Office of Science.

## Call for NAEP 2013 Conference Abstracts and Environmental Award Nominations



The National Association of Environmental Professionals (NAEP) seeks abstracts for presentations at its 38<sup>th</sup> annual conference, to be held April 1-5, 2013, in Los Angeles. The conference, under the banner of *Walk the Talk*, will cover NEPA and related subjects and is open to environmental professionals in all levels of government, academia, and the private sector. Information on submitting abstracts will be available at [www.naep.org](http://www.naep.org).

NAEP also invites nominations for its annual Environmental Excellence Awards, which recognize outstanding NEPA achievements and exceptional performance in environmental management, stewardship, education, and additional categories. The nominator and nominee need not be members of NAEP, and nominations may include projects or programs recognized by others. The [nomination form](#) is available on the NAEP website. Presentation abstracts and award nominations are due August 15, 2012.

## DOE-Wide NEPA Contracts Update

Resources for potential users of the DOE-wide NEPA contracts, including the contracts' Statement of Work (which can be a model for a task statement of work) and a listing of the contractors' Contracts Program Managers, are available on the DOE NEPA Website at <http://energy.gov/nepa/doe-wide-nepa-contracting>.

### Task Order Awarded

The following Task Order awarded under the current DOE-wide NEPA contracts has not been previously reported in *LLQR*. Prior tasks awarded under these contracts are listed in *LLQR*, [June 2009, page 13](#); [September 2009, page 19](#); [December 2009, page 16](#); [June 2010, page 14](#); and [March 2012, page 8](#).

Description	DOE Contact	Date Awarded	Contract Team
EA: NorthStar Medical Radioisotopes, LLC, Commercial Domestic Production of the Medical Isotope Molybdenum-99	Jeffrey Chamberlin 202-586-1474 <a href="mailto:jeffrey.chamberlin@hq.doe.gov">jeffrey.chamberlin@hq.doe.gov</a>	3/12/2012	Los Alamos Technical Associates

# EAs and EISs Completed January 1 to March 31, 2012

## EAs<sup>1</sup>

**Golden Field Office/Office of Energy Efficiency and Renewable Energy**  
[DOE/EA-1812\\*](#) (1/4/12)  
*Haxtun Wind Energy Project, Logan and Phillips Counties, Colorado*  
 Cost: \$30,000  
 Time: 21 months

[DOE/EA-1916](#) (3/16/12)  
*TidGen Power System Deployment and Testing Project, Cobscook Bay, Maine*  
 EA was adopted; therefore, cost and time data are not applicable. [FERC was the lead agency; DOE was a cooperating agency.]

**National Energy Technology Laboratory/ Office of Fossil Energy**  
[DOE/EA-1885](#) (3/16/12)  
*Boston Architectural College's (BAC) Urban Sustainability Initiative for the Renovation of Public Alley #444, Boston, Massachusetts*  
 Cost: \$18,000  
 Time: 11 months

**Oak Ridge Office/ Office of Environmental Management**  
[DOE/EA-1779](#) (2/13/12)  
*Proposed Changes to the Sanitary Biosolids Land Application Program on the Oak Ridge Reservation, Oak Ridge, Tennessee*  
 Cost: \$75,000  
 Time: 24 months

**Richland Operations Office/Office of Environmental Management**  
[DOE/EA-1728](#) (3/13/12)  
*Integrated Vegetation Management on the Hanford Site, Richland, Washington*  
 Cost: \$185,000  
 Time: 31 months

**Stanford Linear Accelerator Center Site Office/ Office of Science**  
[DOE/EA-1904](#) (3/7/12)  
*Linac Coherent Light Source-II, SLAC National Accelerator Laboratory, Menlo Park, California*  
 Cost: \$120,000  
 Time: 8 months

## EISs

**Bonneville Power Administration**  
[DOE/EIS-0425](#) (77 FR 14360, 3/9/12)  
 (EPA Rating: EC-2)  
*Mid-Columbia Coho Restoration Project, Washington*  
 Cost: EIS was prepared in-house; therefore, cost is not applicable.  
 Time: 31 months

**Office of Loan Programs**  
[DOE/EIS-0476](#) (77 FR 9652, 2/17/12)  
*Vogtle Electric Generating Plant, Units 3 and 4*  
 (EPA Ratings; EC-1 (FEIS); EC-2 (Final Supplemental EIS (FSEIS))  
 DOE adopted the Nuclear Regulatory Commission's FEIS filed 8/15/2008 and FSEIS filed 3/18/2011; therefore, cost and time data are not applicable.

### ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

#### Environmental Impact of the Action

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

#### Adequacy of the EIS

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

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

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

\* Recovery Act project

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

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

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

## Scoping

### What Didn't Work

- *Lack of effective communication.* Even though DOE staff and EA preparation contractors participated in internal scoping, there was a lack of effective communication, which led to differing interpretations of scope, purpose and need, and alternatives.

## Data Collection/Analysis

### What Worked

- *Use of an FTP (File Transfer Protocol) site.* Use of an FTP site to share documents was helpful, because there were several contractors working on the EIS and the files were large due to many pictures and maps.

### What Didn't Work

- *Need for more analyses.* There was a need for more detailed water quality and habitat analyses than was originally anticipated.
- *Ineffective second contractor.* A second contractor was hired to draft the U.S. Fish and Wildlife Service Biological Assessment (BA) since the writer/editor was swamped. This didn't work well because the new contractor had not been involved in the project and there were many details and nuances. The NEPA Document Manager had to basically rewrite the BA.
- *Inappropriate strategies.* The contractor based development of the EA on strategies of other federal agencies and failed to understand DOE's expectations. Thus, alternatives and impact analyses originally included in the EA were not relevant for DOE.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Focused team.* Timely completion was facilitated by a focused and dedicated team.
- *Single EIS author.* There was one writer/editor who received all information and wrote the EIS. This facilitated consistent presentation.

### Factors that Inhibited Timely Completion of Documents

- *Need to re-familiarize staff with project scope.* Additional time was required to re-familiarize the contractor and non-DOE participants with the history and requirements of the program, particularly two previous EAs.
- *Management disinterest.* Lack of management interest did not contribute to initial delays, but may have prevented schedule recovery and more than a one-year delay in completing the EA process.
- *Loss of important team members.* Loss of the NEPA Document Manager at a critical time resulted in several months delay. This was compounded by the loss of another staff member who was working on another EIS. One person had to take on both EISs at critical points, with very similar schedules, which was very stressful and delayed the schedules of both EISs by several months.
- *Lack of knowledge and experience.* The NEPA Document Manager lacked sufficient NEPA knowledge and training, and the site contractor preparing the document lacked sufficient experience preparing an EA.

*(continued on next page)*



# Questionnaire Results

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

- *Poor communication.* DOE provided little direction to the contractor, and the contractor failed to ask questions.
- *Complex project.* The project involved almost 40 different sites, several of which changed during the course of the EIS.
- *EIS schedule difficulties.* It was difficult to define the EIS schedule due to the nature of a regional power and conservation council's review process and the experimental nature of this project.
- *Good tribal relationships.* Developing good working relationships with tribal staff, and following DOE tribal consultation protocols, proved to be critical to the successful interaction between DOE and tribal nations.

### Unsuccessful Aspects of the Public Participation Process

- *Insufficient tribal and public participation.* Tribes and stakeholders were briefed early, but not often enough, resulting in loss of trust. DOE did not adequately explain how its approach was any different than what was done in the past. Additionally, there should have been more involvement of tribes and other key federal agencies in the NEPA process.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Dedicated contractor point-of-contact.* Teamwork was enhanced by maintaining a dedicated NEPA contractor contact throughout the EA development process.
- *Open communication.* Maintaining an effective and open communication line between the contractor and federal NEPA personnel reduced the impact of the time constraints.

### Factors that Inhibited Effective Teamwork

- *Time constraints.* Severe time constraints prevented effective coordination between the contractor's document manager for the EA and DOE.
- *Lack of communication.* Lack of communication between DOE and the site contractor that prepared the EA inhibited effective teamwork.
- *Lack of motivation.* Lack of motivation and indifference resulted in lack of participation by subject matter experts.

## Process

### Successful Aspects of the Public Participation Process

- *Major environmental issue identified.* The public participation process was useful in identifying a major issue regarding habitat and species interactions that DOE was not previously aware of; this helped DOE in the Endangered Species Act consultation process.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Established metrics.* The EIS was key to re-establishing the metrics and operating parameters for this program.
- *Organized processes.* The NEPA process was helpful in organizing the data gathering and permitting processes, as well as getting focused on the details of the project sites and their potential impacts.

## Enhancement/Protection of the Environment

- *Public interactions.* The NEPA process, through public participation, helped identify a potential environmental problem with the overlap of limited habitat for listed fish (steelhead and chinook) with the coho sites, and helped to identify high impact sites to avoid or mitigate.

## Other Issues

### Guidance Needs Identified

- *Tribal interactions.* Guidance is needed on tribal roles and responsibilities in the NEPA process and how to integrate the NEPA and National Historic Preservation Act Section 106 processes.

*(continued on next page)*

## Questionnaire Results

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

#### Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

For the past quarter, in which 4 questionnaire responses were received for 3 EAs and 1 EIS, 3 respondents rated the NEPA process as “effective.” One rated the process “5” and 2 rated the process “4.” One respondent did not rate the NEPA process.

- A respondent who rated the process as “5” stated that the NEPA process protected the environment and

established metrics and operating parameters for the program.

- A respondent who rated the process as “4” stated that at first the NEPA process was thought of as just another hoop, but it was realized later that NEPA was a valuable tool for refining the site selections and for the permitting process.
- A respondent who rated the process as “4” stated that the EA could be an effective tool for similar environmental impact analyses.

## NEPA Document Cost and Time Facts

### EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 5 EAs for which cost data were applicable was \$75,000; the average cost was \$86,000.
- Cumulatively, for the 12 months that ended March 31, 2012, the median cost for the preparation of 39 EAs for which cost data were applicable was \$87,000; the average was \$149,000.
- For this quarter, the median completion time of 5 EAs for which time data were applicable was 21 months; the average was 19 months.
- Cumulatively, for the 12 months that ended March 31, 2012, the median completion time for 54 EAs for which time data were applicable was 11 months; the average was 15 months.

### EIS Cost and Completion Times

- No EISs were completed this quarter for which cost was applicable.
- Cumulatively, for the 12 months that ended March 31, 2012, the median and average costs for the preparation of 2 EISs for which cost data were applicable were \$1.74 million.
- For this quarter, the completion time for 1 EIS for which time data were applicable was 31 months.
- Cumulatively, for the 12 months that ended March 31, 2012, the median completion time for 8 EISs for which time data were applicable was 18 months; the average was 19 months.

# LESSONS LEARNED

September 5, 2012; Issue No. 72

Third Quarter FY 2012

## Secretary Chu: Integrate Project Management with NEPA To Improve Decision Making

“I cannot overstate the importance of integrating the NEPA compliance process with program and project management and of applying best management practices to NEPA compliance in DOE,” said Secretary of Energy Steven Chu in a June 12, 2012, memorandum on *Improved Decision Making through the Integration of Program and Project Management with National Environmental Policy Act Compliance*. He reminded DOE officials that NEPA compliance is a “pre-requisite to successful implementation of DOE programs and projects” and that “the NEPA process is a valuable planning tool and provides an opportunity to improve the quality of DOE’s decisions and build public trust.”

Secretary Chu conveyed the findings of a NEPA Improvement Team established earlier this year by the Department’s Field Management Council. The team included NEPA compliance and program and project

management staff from DOE field and program offices. The memorandum was endorsed by the Field Management Council and DOE’s Chief Operating Officer Board.

The Secretary recognized that “DOE and the Council on Environmental Quality (CEQ) have developed a considerable body of information, guidance and experience on ways to improve the efficiency of the NEPA process.” Among these is CEQ’s March 2012 guidance on *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*. The Secretary’s memorandum highlighted three principles from the CEQ guidance: encouraging concise NEPA reviews, integrating NEPA with project planning and decision making, and developing meaningful and expeditious timelines for environmental reviews. (See *LLQR*, June 2012, page 7.) “CEQ’s latest guidance serves as a reminder that we must strive continuously to strengthen our NEPA compliance efforts,” said Secretary Chu.

The memorandum also highlighted five principles (page 3 of this issue) identified by the NEPA Improvement Team: basic understanding of NEPA requirements and project management practices among program and project management and NEPA staff (mutual competence), headquarters and field organization teaming, schedule integration and information requirements, accountability, and development of a NEPA strategy for projects under DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*. “My expectation is that these principles will be embraced by all levels of DOE management, as well as by program, project management, and NEPA compliance staff, working together to advance the Department’s missions,” said Secretary Chu. [LL](#)



Secretary Chu noted that “timely attention to NEPA compliance is critical to accomplishing our missions.”

Secretary’s Memorandum: Related Articles Pages 3–5

## Inside Lessons Learned

Welcome to the 72<sup>nd</sup> quarterly report on lessons learned in the NEPA process. Secretary Chu has challenged us to make better use of existing tools to improve decision making by integrating program and project management with NEPA compliance. We ask that you provide us examples of your success meeting the Secretary's challenge for future issues of *LLQR*. Thank you for your continued support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

### Secretary's Memorandum

Key Principles .....	3
OLC Training .....	3
Suggestions from NETL .....	4
Effective EIS Management Teams .....	5
EPA Requires Electronic EIS Filing .....	6
2012 DOE NEPA Stakeholders Directory .....	7
DOE-wide NEPA Contracts Update .....	7
GIS Tools for the NEPA Practitioner .....	8
CEQ Cooperating Agency Report.....	10
NEPA Office Summer Interns .....	11
Transitions.....	12
Appeals Court Upholds BELLA EA.....	12
Using Social Media for NEPA .....	13
NNSA Webcast SPD SEIS Hearing .....	13
EAs and EISs Completed This Quarter.....	14
Questionnaire Results .....	15
Cost and Time Facts.....	19

*Carol Sorgetron*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions to *LLQR*

Send suggestions, comments, and draft articles – especially case studies on successful NEPA practices – by November 1, 2012, to Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due November 1, 2012

For NEPA documents completed July 1–September 30, 2012, NEPA Document Managers and NEPA Compliance Officers should submit a [Lessons Learned Questionnaire](#) as soon as possible after document completion but not later than November 1. Other document preparation team members are encouraged to submit a questionnaire, too. Contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov) for more information.

### *LLQR* Online

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

Printed on recycled paper



## 2012 GreenGov Symposium



The Council on Environmental Quality and the Association of Climate Change Officers (who represent private sector companies; international organizations; federal, state, and local governments; and academic institutions) are co-sponsoring the third annual GreenGov Symposium, which will be held in Washington, DC, on September 24-26. The conference focuses on sustainability and other topics related to Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*. Information, including the agenda and registration information, is available at [www.greengov2012.org](http://www.greengov2012.org).

## Training: Collaboration in NEPA



The U.S. Institute for Environmental Conflict Resolution is offering a 2-day course titled *Collaboration in NEPA* on November 27-28 in Washington, DC. According to the course description, “Realistic roleplaying exercises, involving multiple governmental entities and nongovernmental stakeholders, will provide opportunities to practice essential skills needed to design, implement, and participate effectively in collaborative NEPA processes.”

For more details (including fees) or to register, see the Institute's [training schedule](#), which also lists additional courses of potential interest to NEPA practitioners, including *Effective Tribal Consultation* and *Collaboration Skills for Environmental Professionals*. The Institute is a program of the Udall Foundation, an independent federal agency.

*Additional NEPA training opportunities may be located by an online search or by checking the [NEPA Training Compendium](#) on CEQ's [NEPA.gov](#) website.*

## Key Principles from the Secretary's Memorandum

The Secretary's memorandum included five key principles (that were identified by the NEPA Improvement Team) that managers and staff must observe:

**Mutual Competence:** NEPA Compliance Officers (NCOs) and Document Managers (NDMs) should acquire a basic understanding of good project management practice. Similarly, program and project managers should be knowledgeable about CEQ and DOE NEPA compliance requirements.

**Headquarters and Field Organization Teaming:** Field and Headquarters program and project managers, Field and Headquarters NCOs, and the Office of NEPA Policy and Compliance should team up to provide strong support to NDMs, starting early in NEPA document development. Consultation and coordination between the Field and Headquarters elements are particularly important during review of draft and final environmental impact statements, and, in certain important cases, environmental assessments.

**Schedule Integration and Information Requirements:** Program and project managers must work with NCOs and NDMs to identify NEPA compliance requirements as soon as practical after an action or project is proposed and must also incorporate appropriate NEPA activities with realistic durations into project schedules. This should include opportunities for early public involvement, which is essential to identifying issues that need to be addressed

in the NEPA process. Managers must also ensure that data meeting acceptable quality assurance requirements are available for use in NEPA document preparation, consistent with project schedules.

**Accountability:** Program and project managers are to define individual roles on a project team, including NEPA compliance staff, holding members accountable and, where appropriate, reflect those roles in individual performance standards. Project Peer Review teams should assess the NEPA plan, schedule, and progress to ensure that project milestones will be supported and communicate their findings to appropriate managers.

**DOE Order 413.3B:** For projects subject to DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets* (November 29, 2010), the Federal Project Director (FPD) (or the Program Manager or Head of Field Organization prior to appointment of an FPD) is responsible for all phases of project planning and execution, including compliance with NEPA. (See Tables 2.1 and 2.2 of DOE Order 413.3B.) For each project, development of a sound NEPA strategy should commence at Critical Decision-0 (CD-0) for incorporation into the Tailoring Strategy. At CD-1, the preliminary range of reasonable alternatives should be identified, along with provision for critical scheduling, risk management, and Independent Project Review. [LL](#)

## Building Mutual Competence: Project Management Training for NEPA Practitioners

Secretary Chu's June 12, 2012, memorandum on improved decision making through integration of program and project management with NEPA compliance recognized the important of mutual competence – a basic understanding of NEPA requirements and project management practices among program and project management and NEPA staff.

Three basic project management courses available through DOE's Online Learning Center (OLC) may be of interest to NEPA Practitioners:

- **Project Management for Non-Project Manager** provides course exercises to practice project management skills, e.g., leadership, monitoring schedule and quality, problem recognition, and implementing solutions.

- **Project Management Fundamentals** presents the importance of effective project management, objectives and activities, and project roles and responsibilities.
- **Initiating and Planning a Project** teaches the importance of successfully initiating and planning a project, identifying the elements of a project plan, creating a work breakdown structure, and project communications.

DOE employees may take these courses at no cost. DOE contractors must pay a fee. Log into DOE's [OLC](#) (directly or via Employee Self Service, ESS) and type "NEPA" in the Search Catalog box. The courses are listed under "NEPA Practitioner." [LL](#)

## Suggestions for Applying the Secretary's Memorandum

By: Mark L. McKoy, NEPA Compliance Officer, National Energy Technology Laboratory

Close integration of NEPA compliance with project management is fundamental to our work at the National Energy Technology Laboratory. Below are suggestions based on our experience that may be useful to DOE's NEPA Community in implementing Secretary Chu's June 12, 2012, memorandum.

### Mutual Competence

*Awareness facilitates better decision making!* DOE program and project managers can better integrate NEPA compliance if they have more familiarity with NEPA compliance processes and requirements. NEPA "awareness" training should be a requirement for program and project managers.

*Training is no substitute for experience!* DOE's program and project managers can improve their familiarity with NEPA processes and requirements by actively participating in NEPA planning and public meetings, reviewing NEPA documents, and drafting responses to public comments. One or more of these opportunities may fit into a busy manager's schedule. At least one DOE manager with decision making authority for a project should review the NEPA documents for that project.

*Competence commensurate with responsibilities.* Assignments of program and project managers and NEPA Document Managers should be based, in part, on demonstrated understanding of NEPA compliance.

*What is good for program and project managers is also good for NEPA managers!* NEPA Document Managers should be familiar with DOE's program and project management processes and requirements. Program and project management "awareness" training should be a requirement for NEPA Document Managers. Furthermore, NEPA Document Managers should be thoroughly trained in NEPA compliance processes, particularly on document manager roles and responsibilities; more experienced NEPA Document Managers should mentor less experienced staff. NEPA Document Managers should start their NEPA careers with small, simple projects and NEPA processes and work their way up to more complex, difficult assignments.

### Headquarters and Field Teaming

*Tightly integrated, well-focused teams are more efficient!* DOE integrated project teams and NEPA teams that are single-project focused and composed of team members carefully chosen to fill all team needs with the fewest number of people tend to be the most efficient and

effective. Such teams should be assembled at the initiation of the project. To lead effectively, team leaders need to demonstrate a breadth of knowledge (e.g., know the NEPA process steps), including an understanding of how the NEPA process dovetails with project planning. Team members respect (and work harder for) leaders that exercise fairness and wisdom in their management efforts. For large, complex projects, it may also be helpful to form working groups to handle specialized functions (e.g., business/cost evaluations, NEPA scoping). Ex officio members (advisors) should also be identified and assigned at the initiation of the project.

*Public interaction.* NEPA Document Managers, as well as program and project managers, must be competent to speak with the public on behalf of DOE. To this end, training on engaging the public should be required.

### Schedule Integration, Information Needs

*Conflicting views of what constitutes a realistic schedule.* Realistic schedules are based on an understanding of the NEPA process, the drivers and risks, the anticipated level of effort, and applicable laws and regulations. Specifying an unreasonably short schedule is not an effective way to get the NEPA process done as quickly as possible.

*Misunderstanding of information requirements.* Training on sufficiency of EAs and EISs and on quality control would help those involved better understand the level of detail needed to support impact analyses and production of NEPA documents. In addition, a technical understanding of the relevant technologies and facilities would help DOE staff identify issues that should be addressed in NEPA documents for a particular project. Furthermore, with appropriate training and experience they could better answer questions from industrial participants about data needs and direct the preparation of the NEPA document.

### Accountability

*It takes one to know one!* Managers responsible for assembling a project team must have a good understanding of all of the team requirements, including NEPA requirements. The ability to judge performance requires first-hand knowledge and experience. Again, training and experience are valuable for those who supervise the functional teams and hold team members accountable. LL

*The Office of NEPA Policy and Compliance thanks Mark McKoy for his contribution to LLQR and welcomes other recommendations from the DOE NEPA Community for implementing the Secretary's memorandum.*

## Tips for Effective EIS Management Teams

Secretary Chu's June 12, 2012, memorandum on improved decision making through integration of program and project management with NEPA compliance highlighted the importance of headquarters and field organizations working as a team to support NEPA Document Managers, starting early in NEPA document development. Below are recommendations that were developed in coordination with several experienced DOE NEPA Compliance Officers (NCOs) and NEPA Document Managers on involving a management team during EIS preparation. (See also *LLQR*, December 2008, page 4, and June 2009, page 3.)

### Laying the Groundwork/Early Planning

- Identify the role of an EIS team, such as to agree on the appropriate analytical approach, strategy, scope, and level of detail to be used in an EIS.
- Include team members from all affected offices, recognizing that participation may vary throughout the process. The NEPA Document Manager typically leads the team. Participants normally include the project manager for the EIS preparation contractor, the NCO, the project or program manager (or project engineer), the Office of NEPA Policy and Compliance, legal counsel, and key technical reviewers. Teams may also include representatives from cooperating agencies and DOE congressional and public affairs staff.
- Obtain senior management support for the EIS team, including active participation as needed (e.g., to resolve policy or resource issues).
- Establish a consistent schedule for meeting with the EIS team; regular communication facilitates accountability among team members and helps keep the EIS on track. Implement project management tools, including scope definition, schedule integration, and cost performance. For projects subject to DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, the Federal Project Director is responsible for all phases of project

planning and execution – including NEPA compliance – and should provide day-to-day direction to the NEPA team and coordination with senior management.

### Team Management

- Establish a close working relationship between the DOE NEPA Document Manager and the project manager for the EIS preparation contractor.
- Clearly establish roles and responsibilities for key players in the EIS process, including DOE and contractor staff.
- Get agreement early on the EIS approach and a realistic EIS schedule, and involve the team in any changes to the approach and schedule. Keep a detailed list of key decisions and action items.
- Identify points of contact, or dedicated teams, for particular issues.
- Establish guidelines, including agreed-upon schedules, for document reviewers.
- Require the EIS preparation contractor to designate a specific individual responsible for each section of the EIS; doing so creates accountability and fosters a mindset where individuals want to ensure that “their” sections are correct. Every week, the NEPA Document Manager needs to convene a document status meeting with the NCO and the contractor and/or DOE personnel responsible for each section of the EIS. LL

*The Office of NEPA Policy and Compliance appreciates the detailed contributions to this article from Jack Depperschmidt and Drew Grainger, NCOs for the Idaho Operations Office and Savannah River Operations Office, respectively, and welcomes further suggestions on effective EIS management teams, particularly examples or case studies of best practices.*

# EPA To Require Electronic Filing of EISs

Starting October 1, 2012, all federal agencies must file their draft and final EISs electronically, pursuant to amended *EIS Filing System Guidelines* issued by the Environmental Protection Agency (EPA) (77 FR 51530; August 24, 2012). As of October 1, EPA will no longer accept paper copies or CDs of EISs for filing purposes. Electronic filing will eliminate the need to prepare an EIS filing letter and to deliver copies of the EIS to EPA and will enable EPA to host EISs on its website.

The amended guidelines remind agencies of their responsibilities to transmit an EIS to commenting agencies and make it available to the public before filing it with EPA (40 CFR 1506.9). This will ensure that the EIS is received by all interested parties by the time EPA's notice of availability appears in the *Federal Register* and, therefore, that the document is available for the full comment and review period, EPA explains.


## How To File an EIS Electronically

The Office of NEPA Policy and Compliance will continue to file DOE EISs with EPA per Section 5.g(7) of DOE Order 451.1B, *NEPA Compliance Program*. DOE NEPA Document Managers should work with their points of contact in the NEPA Office and provide electronic files and related information no later than Wednesday of the

week when an EIS is to be filed with EPA. This will allow time to ensure the file formatting and information are correct. The NEPA Document Manager should promptly notify the NEPA Office when distribution is complete, so that the EIS may then be filed with EPA.

The EIS files (including appendices) must meet EPA requirements for electronic submission (text box). For an abbreviated final EIS (as described in 40 CFR 1503.4(c)), an agency should include the draft EIS when filing the final EIS.

EPA began testing the new web-based filing system earlier this year (*LLQR*, June 2012, page 3). The NEPA Office filed two DOE EISs during the testing phase and provided feedback to EPA to support improvements to the system. For questions regarding EIS filing, contact Eric Cohen, NEPA Office, at [eric.cohen@hq.doe.gov](mailto:eric.cohen@hq.doe.gov) or 202-586-7684. The NEPA Office will incorporate the new filing procedures into an update to DOE's *EIS Distribution* guidance.

EPA's amended *EIS Filing System Guidelines* also address existing procedures related to adopting an EIS and the withdrawal, delay, or reopening of EIS review periods. For more information, see the guidelines or *LLQR*, March 2011, page 3. 

## Preparing an EIS for Electronic Submission

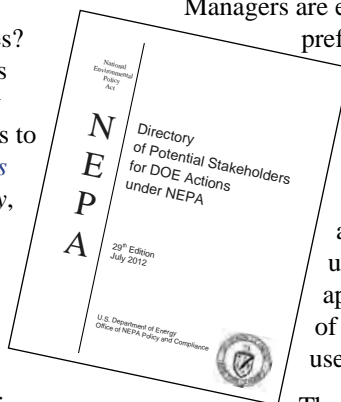
- An EIS must be filed in Adobe Acrobat (pdf) format. An EIS may be divided into multiple files not greater than 50 MB each. Use Acrobat's Reduce File Size option to compress the files.
- Use the EIS title as the file name if submitting the EIS as a single file. Otherwise, name each file using the chapter or subchapter number, followed by its name.
- The files must be searchable. Most Acrobat files, other than scanned documents, are searchable by default. If needed, run optical character recognition.
- Enter metadata into Document Properties for title, subject, author, and keywords. Use the EIS title for both the title and subject fields, and the agency name in the author field. Further instructions are at [http://yosemite.epa.gov/OEI/webguide.nsf/content/pdf\\_metadata](http://yosemite.epa.gov/OEI/webguide.nsf/content/pdf_metadata).
- Bookmark EIS chapters and subchapters, and bookmark view should be displayed upon opening the file.

Based on *Electronic Submittal of Environmental Impact Statements to EPA*, page 3.



# 2012 DOE NEPA Stakeholders Directory Issued

How can I verify contact information before distributing a NEPA document or initiating other NEPA public involvement and consultation activities? For information about federal agencies, states and state government associations, and many nongovernmental organizations, the answer is to check the *Directory of Potential Stakeholders for DOE Actions under NEPA*. This *Directory*, prepared annually by the Office of NEPA Policy and Compliance, is intended to supplement DOE program and field office notification and distribution lists for NEPA documents.



no longer indicates these preferences. NEPA Document Managers are encouraged to determine stakeholder preferences as part of planning for NEPA document distribution. The 2012 *Directory* includes links to detailed information provided online (e.g., state governors, Department of the Interior NEPA document review requirements) and omits information that is rarely used (e.g., fax numbers). The *Directory's* appendices continue to list DOE tribal points of contact and public reading rooms usually used for DOE NEPA documents.

Because stakeholder preferences – for receiving a complete EIS or its summary, and for receiving single or multiple paper copies or disks – may depend on the specific document, the 2012 edition of the *Directory*

The NEPA Office will update the *Directory* posted online as new information becomes available. For additional information, email [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov).

## Reminder: Interior Department Review and Coordination

The Department of the Interior (DOI) in June revised its *Environmental Review Distribution Requirements*, which emphasize its preference for receiving review documents in electronic format. The document URL and a single copy of a draft or final EIS on CD, DVD, or other widely used media should be provided to DOI's Office of Environmental Policy and Compliance. The office will distribute the EIS within DOI, consolidate resulting comments, and respond to the requesting federal agency. The address is: Director, Office of Environmental Policy and Compliance, U.S. Department of the Interior, 1849 C Street, NW (MS 2462), Washington, DC 20240.

DOI encourages coordination through its [Regional Environmental Officers](#) and [Bureau NEPA Contacts](#) on other environmental matters, including scoping, EAs, and matters of a regional nature. DOI also encourages federal agencies to establish working relationships with its field-level offices for project coordination and “to expedite the early resolution of environmental issues that would otherwise surface during the formal review of a project document,” states DOI's distribution requirements memorandum.

## DOE-Wide NEPA Contracts Update

Resources for potential users of the DOE-wide NEPA contracts, including the contracts' Statement of Work (which can be a model for a task statement of work) and a listing of the contractors' Contracts Program Managers, are available on the DOE NEPA Website at <http://energy.gov/nepa/doe-wide-nepa-contracting>.

### Task Order Awarded

The following Task Order was awarded recently under the current DOE-wide NEPA contracts. Prior tasks awarded under these contracts are listed in [LLQR, June 2009](#), page 13; [September 2009](#), page 19; [December 2009](#), page 16; [June 2010](#), page 14; [March 2012](#), page 8; and [June 2012](#), page 12.

Description	DOE Contact	Date Awarded	Contract Team
EA: Conveyance of Approximately 1,641 Acres of Unimproved Land to the Tri-City Development Council	Paula Call 509-376-2048 <a href="mailto:paula.call@rl.doe.gov">paula.call@rl.doe.gov</a>	8/31/2012	Los Alamos Technical Associates

# CEQ Distributes GIS Tools for NEPA Practitioners

Geographic information system (GIS) is a computer-based approach for collecting, storing, analyzing, and displaying spatial data – simply put, it links information to location. GIS can be a powerful tool in the hands of a NEPA practitioner.


In a webinar on August 22, 2012, John Jediny, Deputy Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), demonstrated the utility of applying GIS in the NEPA process. CEQ assembled an inventory of more than 150 government data services that can be used with most GIS software applications. CEQ undertook this effort to help NEPA practitioners get started or improve their GIS capacity and to increase the overall awareness and application of GIS in the NEPA process.

Mr. Jediny demonstrated a range of common tasks: mapping multiple layers of GIS data to visualize various resources in a particular area; identifying linked data for specific features on a map (e.g., using EPA data to identify water quality reports for particular water bodies or facility reports for hazardous waste sites), visualizing changes in development over time both historical and projected; and linking images to locations on a map (e.g., species distributions, zoning maps).

Unlike downloaded data, Mr. Jediny pointed out, when a GIS data service is updated by an agency, a GIS user automatically receives the most up-to-date information from the host server. Mr. Jediny used a free GIS software application, [ArcGIS Explorer Desktop](#), for the webinar

demonstration and provided a list of six other free GIS desktop applications. He distributed the GIS inventory and software information to CEQ’s federal agency NEPA contacts, who in turn were asked to distribute the information to their field and regional staff. The documents were also posted, along with the recorded webinar, on the Office of Management and Budget’s MAX Federal Community website at <https://max.omb.gov/community/x/OwKoJQ>. The recorded webinar is publicly available at <https://vimeo.com/48087279>.



Mr. Jediny, who is serving at CEQ on an interagency detail, will be returning to DOE’s Office of Energy Efficiency and Renewable Energy, Office of Project Management and Evaluation, where he will continue to develop and implement NEPA process improvements and help integrate NEPA considerations with project management. After October 2012, he can be reached at [john.jediny@ee.doe.gov](mailto:john.jediny@ee.doe.gov) or 202-586-4790. (Also see *LLQR*, June 2012, page 8, on governmental GIS resources at [geo.data.gov](http://geo.data.gov) and the Environmental Protection Agency’s [NEPAssist](#) GIS tool.) 

*Have you used GIS in your NEPA review? We would like to feature examples in future issues of LLQR. Please send them to Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).*

## Examples from CEQ’s Inventory of GIS Resources from Federal Agencies

### Environmental Protection Agency (EPA)

- National Hydrology Dataset
- WATERS (Watershed Assessment, Tracking & Environmental ResultS)
- EPA Cleanup Sites

### Federal Emergency Management Agency

- National Flood Hazard Layer

### National Oceanic and Atmospheric Administration

- Habitat Areas of Particular Concern and Critical Habitat Designations
- The Multipurpose Marine Cadastre

### National Park Service

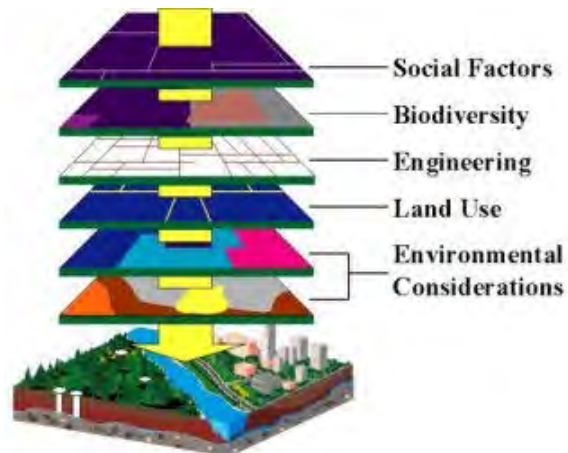
- National Register of Historic Places
- NPScene

### U.S. Fish and Wildlife Service

- National Wetlands Map
- Critical Habitat

### U.S. Geological Survey

- The National Map
- The National Atlas
- Protected Areas Database of the United States
- National Land Cover
- The Historical Natural Hazards Database



# How Can GIS Support the NEPA Process?

By: John Jediny, Deputy Associate Director for NEPA Oversight, CEQ

**Scoping and Screening:** GIS can identify the presence of resources and the potential for significant impacts to those resources. This helps determine the scope of issues to be analyzed and the appropriate level of detail for analysis in an EA or EIS. When determining whether a proposed action fits within a categorical exclusion, this screening can help identify whether any extraordinary circumstances are present.

**Route and Site Alternatives:** By helping locate environmental, socioeconomic, historic, and cultural resources and balancing those with engineering and technical needs for the proposed action (e.g., slope, access to roads, utilities and other infrastructure, access to required resources, allowable land use), GIS can help identify alternative routes and sites. GIS can help in modeling the intensity, duration, and location of potential impacts in areas potentially affected by alternatives. This information can help identify reasonable alternatives that avoid sensitive resources to the degree practicable.

**Public Involvement:** GIS applications provide more interactivity and customization than static maps and can also be used to create presentations, videos, and 3D models. This visual presentation of data can effectively and efficiently communicate the purpose and need for agency action, proposed action, alternatives and potential environmental impacts. GIS can go further, too, allowing exploration of possible alternatives, e.g., by testing “what if” scenarios of changing a route. Also, stakeholders, in their scoping comments, could propose alternatives they identified using GIS. GIS can also serve as a forum for communication, as an agency could publish a map of a proposed action and receive “geotagged” comments (comments tagged to a specific physical location), which can enhance the speed, analysis, and processing of comments. For example, if one particular area or resource may be a point of controversy, that physical area could be highlighted by the number of comments tagged to that location, and the agency may be able to avoid, mitigate, or otherwise address those concerns earlier in the process.

**Situational Awareness and Context:** GIS can provide 360-degree views from a street corner, a bird’s eye view of an area, show relationships between the built and natural environment, and associate social media feeds (e.g., public comments sent through a social media website or application) with a location. This can provide a NEPA

practitioner with a greater understanding of a physical area or community, providing the practitioner with new perspectives on how people in a community interact with their environment.

**Applicable Permits and Reviews:** Often the NEPA process facilitates compliance with other federal, state, tribal, and local permitting and review requirements for the proposed action. GIS can help identify particular resources or features that may trigger the need for review or permitting by another agency. For example, GIS can identify whether the proposed action would occur in or otherwise impact jurisdictional wetlands, floodplains or floodways, places on or eligible for listing on the National Register of Historic Places, prime or unique farmland, airspace or military operations, national parks, wilderness areas, critical habitat, impaired waters, and air quality non-attainment areas, among other resources.

**Mitigation and Monitoring:** GIS can assist agencies in implementing mitigation, including ways to avoid, minimize, rectify, reduce or eliminate, and compensate for an impact (40 CFR 1508.20). GIS applications can model sedimentation, erosion, discharges, and emissions to assist in targeting mitigation and monitoring. GIS can further support a monitoring program by providing the ability to visualize vast amounts of quantitative and qualitative information obtained from field surveys, monitoring stations, and other sources. GIS also allows agencies to visualize and compare the projected impacts in a NEPA analysis with monitoring data to adapt and improve corrective actions, if necessary. Incorporating GIS in monitoring efforts can facilitate continued stakeholder engagement throughout implementation by making monitoring data available in an online map. GIS can also assist in identifying highly valuable or fragile ecosystems that could be protected to compensate for impacts from a proposed action.

**Indirect and Cumulative Impacts:** GIS helps visualize and model both past and future development (e.g., induced development, enabled actions, and demands on supporting infrastructure) to inform the analysis of cumulative and indirect impacts of a proposed action. For example, GIS can assist in analyzing an area’s socioeconomic conditions, the capacity and reliability of local waste, water, energy, and transportation infrastructure to meet present and future demands, and changes in resources or land use over time. LL

# Improving Cooperating Agency Reporting

## What Do the Numbers Mean?



The Council on Environmental Quality (CEQ) considers the participation of cooperating agencies integral to improving agency NEPA implementation, expediting decisionmaking, and resolving environmental conflicts. In a series of [guidance memoranda](#) starting in 1999, CEQ urges broad use of cooperating agency arrangements and recommends looking beyond federal agencies to include regional, state, local, and tribal governmental agencies. The benefits, these CEQ memoranda point out, include disclosure of relevant information early in the analytical process, access to technical expertise and staff support, avoidance of duplicative reviews, and establishing a mechanism for addressing inter- and intra-governmental issues.

---

**DOE reported that on average 66 percent of its EISs involved cooperating agency participation during the reporting period, one of the highest agency-wide levels reported.**

— CEQ Cooperating Agency Report

---

### Progress and Obstacles Reported

In May 2012, CEQ issued a [Report on Cooperating Agency Status FY 2005 – FY 2011](#), which presents agency-specific and government-wide data from 7 years of annual reporting to CEQ on cooperating agency involvement in EISs and EAs.<sup>1</sup> CEQ finds overall improvement in use of cooperating agencies, but notes that “the effort is not yet fully realized.” The Report indicates that:

- Overall during the 7 years, federal agencies involved cooperating agencies in approximately 49 percent of EISs and approximately 6 percent of EAs.
- Lack of capacity or resources (i.e., training, time, personnel) continues to be a major reason that formal cooperating agency status is not established.
- Lead agencies frequently engage other governmental agencies in NEPA reviews without formally establishing cooperating agency status, especially where there are long-standing collaborative relationships.

### Potential Improvements to Reporting Sought

“Merely knowing how many EAs or EISs in a given year used cooperating agency status does not help identify and explain instances where cooperation went particularly well or poorly,” the Report states. The agencies’ annual cooperating agency reports to CEQ “should place a greater emphasis on identifying the challenges faced in establishing cooperating agency status as well as identifying the beneficial outcomes achieved. . . .” The Report requests comments on how to improve the cooperating agency reporting approach.

For additional information on DOE’s cooperating agency reports to CEQ, submitted annually each January, see the March issues of *LLQR* since 2006 or contact Yardena Mansoor, Office of NEPA Policy and Compliance, at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

*The NEPA Office welcomes observations from the DOE NEPA Community on how to work collaboratively with cooperating agencies, and will coordinate DOE’s response to CEQ requests for recommendations to improve the cooperating agency reports.*

### 40 CFR 1508.5

“Cooperating agency” means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A state or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.

<sup>1</sup> CEQ’s May 2012 Report is the second CEQ compilation of federal agencies’ cooperating agency information. The first CEQ cooperating agency report, issued May 2005, summarizes agencies’ semiannual reports from March 2002 through August 2004.

# A Summer Well Spent: Our Time in the NEPA Office

*The NEPA Office was fortunate to have two outstanding interns assisting the staff this past summer. Megan Crowley, a senior at Michigan Technological University, is majoring in Applied Ecology and Environmental Sciences. Sabra Bushey, a junior at the University of Maryland, is majoring in Environmental Science and Policy. Both hope to pursue a career in environmental science and policy. We wish them success in their future endeavors.*

**Sabra Bushey** – When I was applying for summer internship positions, DOE seemed to be an obvious choice that suited my future career interests in the environmental field. However, my first weeks in the Office of NEPA Policy and Compliance were overwhelming to say the least. I had been warned by my professors at school that working in the environmental policy field is like “alphabet soup” in the sense that everything is an acronym. I felt like my coworkers were speaking another language with unknown terms like EAs, RODs, and NOIs. However, as these feelings of confusion began to pass, I started to understand the NEPA process and my uncertainty of what was happening around me in the office quickly dissipated. I had learned some about NEPA in my classes at school, but this internship has provided me with a detailed understanding of the complexities and the importance of this statute.

My main duty as an intern in the NEPA Office was to help review EISs for consistency and accuracy. From reviewing these documents, I gained a better understanding of what information is required to be included in an EIS to comply with NEPA. I also learned how the NEPA process helps ensure that both the environment and the public’s best interests are protected. One of my tasks was to help review public comments on draft EISs to make sure that all concerns were adequately addressed by DOE in the final EIS. In another task, I checked the DOE NEPA Website to ensure that NEPA documents were available to the public.

This summer internship has been a valuable experience and confirmed for me that a career in environmental policy with the federal government is something I definitely want to pursue.

**Megan Crowley** – When I decided to relocate to Washington, DC, this summer to work for the DOE Office of NEPA Policy and Compliance, I wasn’t sure what to expect. I had learned about the NEPA process in an abstract manner at school and understood its basic mechanics, but I was surprised by the real life applications. It is easy to define what “NEPA” is in a text book, but in reality, it is something else to see its implementation that touches the lives of people all across America.

During my time in the NEPA Office, I was able to assist in reviewing several EISs, including responses to public

comments. I also worked on updating the Stakeholders Directory (related article, page 7), which provides DOE NEPA staff with the names and addresses of potential interested parties to be notified of any pertinent NEPA documents being issued. I was impressed by the long list of nonprofit organizations that the directory includes, because it means the potential for greater public participation in the NEPA process. Another project that I worked on was assisting the office with reviewing social media tools that might help disseminate NEPA information to a larger audience and increase public participation (related article, page 13).



*Megan Crowley (left) and Sabra Bushey, summer interns in the Office of NEPA Policy and Compliance, learned about some interesting DOE projects by assisting with, among other things, reviewing EISs. Both returned to college with a much better understanding of NEPA and DOE.*

The coursework required for my major has given me a solid foundation for understanding the scientific side of environmental regulation. I think it is important that NEPA have an interdisciplinary approach, because in addition to scientific factors, such as hydrology or biological resources, there are also cultural and social aspects to be considered. These latter aspects, like tribal affairs and regional economic impacts, give EISs an additional dimension that requires professionals of diverse backgrounds.

Coming into this job, I wasn’t entirely certain of what I wanted to pursue after graduation next May. After seeing the federal government at work, I feel that I’m making the right choice in pursuing a career in environmental regulation. I’m extremely grateful for the opportunity to work in the NEPA Office, and I know that I’ve made connections here that I’ll hold onto for the rest of my career. ◡

# Transitions

## NETL: Richard Hargis Retired

After a 25-year career at DOE's National Energy Technology Laboratory (NETL) and its predecessor energy technology laboratories, Richard (Rich) Hargis retired in August. Rich was the NEPA Document Manager for two EISs prepared for Office for Fossil Energy clean coal projects: the Mesaba Energy Project and the Kemper County Integrated Gasification Combined-Cycle Project. In recent years, he served as NETL's lead NEPA Compliance Officer.

*The NEPA Office, on behalf of the DOE NEPA Community, offers best wishes to Rich on his retirement.*

## NEPA Office: Farewell to Connie Chen

Connie Chen, an Environmental Protection Specialist in the Office of NEPA Policy and Compliance, left this summer to accept a position as a Public Utilities Regulatory Analyst with the California Public Utilities Commission in San Francisco. Connie joined the NEPA Office in 2010 under a limited term appointment funded by the American Recovery and Reinvestment Act of 2009. Previously, she worked as an environmental consultant in California, where she helped prepare environmental documentation pursuant to the California Environmental Quality Act and NEPA. Having grown up in California, she was happy to be returning to her home state.

While at DOE, Connie made valuable contributions to DOE's NEPA rulemaking, the DOE NEPA Stakeholders Directory, and several EISs. Before her departure, the Office of Electricity Delivery and Energy Reliability recognized Connie's "outstanding support of and contribution to the completion of the Energia Sierra Juarez Transmission Line Final EIS."

*The NEPA Office deeply appreciates the contributions Connie made during her time with us, and offers best wishes for her future endeavors.*

## Appeals Court Upholds EA for BELLA Facility at DOE's Berkeley Lab

In 2010, a local citizens' group, Save Strawberry Canyon, challenged the *Environmental Assessment for the Berkeley Lab Laser Accelerator (BELLA) Laser Acquisition, Installation and Use for Research and Development* (DOE/EA-1655, September 2009) and associated Finding of No Significant Impact (FONSI). The U.S. District Court for the Northern District of California granted the government's motion for summary judgment, and the plaintiff appealed. The Ninth Circuit Court of Appeals issued a decision in July 2012 affirming the district court's judgment in DOE's favor. The Ninth Circuit held that DOE took the necessary "hard look" at the potential impacts of the project and that DOE's FONSI was not arbitrary or capricious. (*Save Strawberry Canyon v. DOE*, Case No.: 11-15364)

# Enhanced Public Participation through Social Media

By: Megan Crowley, NEPA Office Intern

Public outreach is an integral element in the NEPA process, and with modern tools it can be made even more effective. Web sites such as Twitter, Facebook, and YouTube are all being utilized by DOE, and they can be used effectively for NEPA projects.

These websites serve different purposes. YouTube is a video-sharing tool, which would be effective in sharing visual information. Facebook allows for picture, video, and text sharing. Twitter allows short-form “tweets” to convey small amounts of text, such as notices of public comment periods, or to provide links to newly published documents.


The National Nuclear Security Administration recently used YouTube to host a [video](#) related to the *Draft Site-Wide EIS for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada* (Nevada SWEIS; DOE/EIS-0426). This 4-minute video offers pertinent information about the SWEIS alternatives, dates of the public comment period, and details about public hearings. The video also includes a brief summary of the NEPA process.

“The video worked very well during our public hearings where it ran on loop throughout the evening. We also posted it on our website and social media sites,” explained Linda Cohn, NEPA Document Manager for the Nevada SWEIS. “The video was prepared in-house by our talented public affairs and outreach team, which kept costs to a minimum.”

Video may reach a different audience than print media, as well as reinforce a message for people who both read about an EIS and watch a video. Further, posting the video on YouTube, in addition to the [SWEIS website](#), creates the potential to reach a wider audience by tapping into YouTube’s user base and internal search capabilities.

DOE has active Facebook, Twitter, and YouTube accounts. These accounts are used to share interesting stories about activities taking place in the Department and to solicit feedback from the general public. For example, DOE and Secretary Chu have Facebook pages; see [www.facebook.com/energygov](http://www.facebook.com/energygov) and [www.facebook.com/stevenchu](http://www.facebook.com/stevenchu).

Currently, the DOE Facebook page has more than 18,000 “fans.” These fans can receive updates when something is posted on the DOE Facebook page. The [DOE Twitter account](#) has more than 67,000 followers, who receive updates when a story is tweeted. The [DOE YouTube page](#) has close to 2,100 subscribers. These numbers indicate an interest in DOE’s activities among users of social media.

By responsibly utilizing available tools, both public participation and transparency in the NEPA process can be increased. Creating additional avenues of information sharing makes it easier for individuals to receive NEPA-related information. This enables information to be disseminated more effectively, especially to the younger generation that routinely uses social media. 

## Example: Using Social Media for an EIS

The Alamo Regional Mobility Authority (RMA) is using Facebook, Flickr (an online portal for sharing photos), Twitter, and YouTube to facilitate public involvement on the Loop 1604 Project EIS – an EIS for 37 miles of proposed improvements to Loop 1604 in San Antonio, Texas, to enhance mobility and improve safety. The Federal Highway Administration, the Texas Department of Transportation, and the Alamo RMA are preparing the EIS. A “[Social Media Disclaimer](#)” posted on the [Loop 1604 EIS website](#) explains that the “social media sites are available for and are intended to encourage public dialogue about the project and are, as such, provided for outreach and informational purposes only.” Below are links to the various pages that were created on social media sites for the Loop 1604 EIS:

- [Facebook](#) is used for general EIS updates.
- [Flickr](#) provides photographs from the public meetings.
- [Twitter](#) provides notifications and updates.
- [YouTube](#) provides informational videos.

## NNSA Webcast Surplus Plutonium Disposition SEIS Public Hearing

The National Nuclear Security Administration (NNSA) provided a live video webcast of its public hearing in North Augusta, South Carolina, on the *Draft Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (DOE/EIS-0283-S2) on September 4, 2012. “We provided the webcast as a convenience for those who could not attend the meetings to spread the information to a larger audience,” said Sachiko McAlhany, NEPA Document Manager. The webcast was not interactive; therefore, comments could not be accepted via the web during the event. NNSA will make a recording of the webcast available on the [Supplemental EIS’s website](#) through the end of the public comment period on October 10.

# EAs and EISs Completed April 1 to June 30, 2012

## EAs<sup>1</sup>

### Bonneville Power Administration

DOE/EA-1855<sup>2</sup> (5/7/12)

*Creston-Bell Transmission Line Rebuild Project*, Spokane and Lincoln Counties, Washington

Cost: \$178,000

Time: 16 months

DOE/EA-1913 (5/3/12)

*Springfield Sockeye Hatchery Program*, Bingham County, Idaho

Cost: \$101,000

Time: 5 months

### Golden Field Office/Office of Energy Efficiency and Renewable Energy

DOE/EA-1887<sup>3</sup> (4/9/12)

*Renewable Fuel Heat Plant Improvements at the National Renewable Energy Laboratory Supplemental Environmental Assessment*, Golden, Colorado

Cost: \$29,000

Time: 11 months

DOE/EA-1809 (4/24/12)

*White Earth Nation Wind Energy Project II*, Mahnomen County, Minnesota, White Earth Indian Reservation, USA

Cost: \$92,000

Time: 31 months

DOE/EA-1897 (4/5/12)

*AltaRock's Newberry Volcano EGS Demonstration*, Bend, Oregon

EA was adopted; therefore cost and time data are not applicable. [The U.S. Department of the Interior, Bureau of Land Management, was the lead agency; DOE was a cooperating agency.]

### Western Area Power Administration

DOE/EA-1896 (4/13/12, FONSI 5/4/12)

*Williston to Stateline Transmission Line Project*, Williams County, North Dakota

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

Time: 10 months

## EISs

### Bonneville Power Administration

DOE/EIS-0457\* (77 FR 25165, 4/27/12)

(Draft EIS EPA Rating: LO)

*Albany-Eugene Rebuild Project*, Lane and Linn Counties, Oregon

Cost: \$711,000

Time: 18 months

### Office of Electricity Delivery and Energy Reliability

DOE/EIS-0414 (77 FR 34041, 6/8/12)

(Draft EIS EPA Rating: EC-2)

*Energia Sierra Juarez U.S. Transmission Line Project*, San Diego County, California

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

Time: 40 months

### Western Area Power Administration

DOE/EIS-0427 (77 FR 34041, 6/8/12)

(Draft EIS EPA Rating: EC-2)

*Grapevine Canyon Wind Project*, Coconino County, Arizona

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

Time: 35 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

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

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

<sup>2</sup> The EA document cover contains a BPA-assigned number – DOE/BP-4406.

<sup>3</sup> The EA document cover contains the number DOE/EA-1573-S1.

\* Recovery Act project



# Questionnaire Results

## What Worked and Didn't Work in the NEPA Process

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

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

### Scoping

#### What Worked

- *Use of existing NEPA documentation.* There was an earlier EA for a similar project at the site, so there was the benefit of utilizing existing documentation for identification and analysis of environmental impacts and reasonable alternatives.
- *Multiple public meetings.* Multiple public meetings were held prior to the initiation of the EA. These public meetings helped to focus public commenting during the EA scoping process.
- *Responsiveness to community sensitivity.* Based upon experience in previous NEPA documents at the site, DOE knew that the local community was sensitive to visual impacts and agency actions impacting that resource. Using readily available data, a viewshed model was constructed to show locations within the viewshed where the proposed project would be visible. This allowed the EA to focus its analysis and select various vantage points throughout the viewshed to demonstrate the potential visual impacts. This also allowed the EA team to analyze the effectiveness of various potential color schemes of the proposed project to make the project blend in with the existing built and natural environment within the viewshed.

### Data Collection/Analysis

#### What Worked

- *Use of electronic files.* Use of electronic files for communication was effective in rapidly communicating proposed edits to the document text.
- *Use of existing data.* The various resource impact analyses presented in this EA did not require data collection beyond existing and readily available data sets, such as traffic densities, vehicle accident rates on specific road corridors, and state-wide greenhouse gas emissions.

#### What Didn't Work

- *Data not easily accessible.* Not all necessary data was readily available from existing site documents and needed to be obtained from other sources. This impacted the time needed to resolve several technical issues. Early identification of areas that may be significant in the analysis of impacts could help ensure timely access to subject matter experts.
- *Delay in receipt of data.* Completion of the final EIS was delayed while DOE waited for some environmental information that the applicant had, but was reluctant to provide due to security concerns. These data needed to be reviewed and cited in order to address potentially significant environmental issues.
- *Additional analyses necessary.* Separate environmental review by the state of other projects in the vicinity raised issues that then also needed to be addressed in this EIS.
- *International data needs.* Some of the most significant environmental issues related to this project were associated with connected actions planned to take place on the other side of an international border. There were challenges in obtaining information – about environmental conditions in the other country and about the connected actions there – without intruding on the sovereignty of the other country. Much of the information that was obtained was in Spanish, so it needed to be translated. Online translation tools were helpful for obtaining quick translations of foreign-language documents in order to assess their relevance to the DOE EIS.
- *Changing staff.* Staff turnover led to some inconsistencies in reporting EA information.

*(continued on next page)*

# Questionnaire Results

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

### Schedule

#### Factors that Facilitated Timely Completion of Documents

- *Early start.* The EA process was started early enough to be completed in a timely manner.
- *Firm schedule.* Firm adherence to deadlines/timelines for EA team members to provide comments on draft documents facilitated timely document completion.
- *Regular scheduled meetings.* Regularly scheduled meetings (face to face) with team members, subcontractor, and subject matter experts to discuss specific language in the document supported timely EA completion.
- *Frequent communication.* Weekly telephone calls between the lead agency, EA contractor, and cooperating agencies facilitated necessary informational exchanges. Close interaction among federal agencies, the EA contractor, and the applicant on a weekly basis helped to facilitate effective communication and realistic expectations.
- *Cooperating agency participation.* Cooperating agencies were much more integrated into the EA process than is often the case. We regularly made our technical experts available for discussions when cooperating agencies needed clarifications.
- *Sharing preliminary drafts.* Very early in the EIS process, the contractor provided preliminary drafts of a few subsections of the document for DOE review. This allowed DOE to give early feedback on document organization and level of detail, which helped reduce the amount of “do-over” work that might otherwise have been needed.
- *Focused team.* Having a focused and dedicated team facilitated timely completion of the EA.
- *Hired consultants.* A couple of independent consulting firms were hired to assist in the preparation of the EA, biological assessment, and cultural resources documents. Having the same group prepare all three documents helped to ensure document consistency and enabled DOE to adhere to the project schedule.

#### Factors that Inhibited Timely Completion of Documents

- *Competing work priorities.* Resources were limited and personnel needed to address specific technical issues were not always available when needed.
- *Underestimated budget.* Initial EA budget did not consider the number of document revisions that were required.
- *Insufficient funds.* On at least one occasion during EIS preparation, there were insufficient funds to continue work on the EIS, resulting in delays while new funding arrangements were made.
- *Project was lower priority.* The EA was started during a period of high American Reinvestment and Recovery Act (ARRA) work. Since this non-ARRA project was a lower priority, the EA was delayed for many months past the requested completion date.
- *Lack of knowledge.* Initially the main technology used by the project was not well understood by cooperating federal agencies. This led to a learning period that was needed before the agencies understood the level of data that was appropriate for the EA impact analyses. Additionally, because the project involved well stimulation, DOE required a specific protocol be followed. This added months to the original schedule that was developed by the lead agency, which did not know of that requirement.
- *Project suspension.* The applicant temporarily suspended the project (and thus DOE's EIS), which created inefficiencies when the EIS started up again. Personnel needed to spend time getting back up to speed and some staff, who were no longer available, had to be replaced.
- *Use of Excel spreadsheets.* During final EIS preparation, using an Excel spreadsheet to provide DOE reviewers with proposed comment responses was less effective than intended because reviewers could not easily associate the responses with the actual comments
- *Multiple parties.* Given the multiple parties involved in the EA process, it took longer than expected to develop a proper Purpose and Need for the proposed action.

*(continued on next page)*

# Questionnaire Results

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

- *Complex project.* The project involved working with multiple sites throughout the state. We changed our NEPA approach half way through the process - starting out as a supplement analysis and finishing as an environmental assessment instead.
- *Endangered Species Act (ESA) consultation.* The ESA consultation process for this project resulted in a change to an on-going program, which delayed the EA process.
- *Differing NEPA experiences.* Differences in team members' NEPA experience was a barrier to productive teamwork. The contractor was not familiar with the ways that DOE addresses impacts and mitigation in its NEPA documents, which is very different from the way these topics are handled in state environmental documents, and it took DOE personnel some time to recognize the differences in approach and clarify expectations.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Single DOE point-of-contact.* Communication between DOE and the management and operations (M&O) contractor was enhanced by having a single point of contact for DOE. The M&O contractor was responsible for managing subcontractor work on the EA.
- *Experienced contractor.* Use of a contractor with extensive experience with state environmental impact documents was sometimes a facilitator to teamwork, as the contractor often was better equipped to communicate effectively with state resources personnel, as well as understand the protocols by which state reference documents were developed.
- *Weekly meetings.* Weekly status meetings throughout the EA process kept the project moving forward and helped track completed tasks, open action items, issues, and discussion points.
- *Open communication.* Maintaining an effective and open communication line between the contractor and the EA personnel reduced the impact of the time constraints.
- *Team members identified early.* Key personnel and subject matter experts were identified early and involved throughout the NEPA process.

### Factors that Inhibited Effective Teamwork

- *Untimely commenting.* Obtaining timely comments from team members on iterative draft versions of documents during specified timelines, while maintaining strict control on draft versions of the document, proved to be more difficult than anticipated due to other work priorities and time constraints of team members.

- *Section 106 consultation.* Consultation pursuant to Section 106 of the National Historic Preservation Act with the State Historic Preservation Officer took longer than anticipated, requiring multiple correspondence and phone calls for concurrence on the Area of Potential Effect and the "affect" determination.
- *Unavailability of EA contractor.* The contractor was regularly out of the office and in the field. This caused issues with contractor's timeliness in response to requests and document changes.
- *Unable to provide direct input to NEPA contractor.* EA contractors were procured by the M&O contractor and DOE could not provide direct input, comments, or guidance to the NEPA contractor. *[Editor's note: DOE is responsible for the content of its NEPA documents.]*

## Process

### Successful Aspects of the Public Participation Process

- *Engaged stakeholders.* The public and media were very engaged with the project and the EA process.
- *Effective comment period.* The comment period on the draft EA was the most valuable aspect of the public participation process because it illuminated some areas of the draft EA that were lacking. Responding to those comments ensured that the final document was much improved.

### Unsuccessful Aspects of the Public Participation Process

- *Limited interest.* There was limited stakeholder/public interest in the project. No comments were received outside of state regulatory agencies and none were specific to the EA process.

*(continued on next page)*

## Questionnaire Results

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

- *Public did not understand the NEPA process.* The public did not fully understand the scope of the EIS process, as indicated by many public comments that dealt with matters outside the scope of the EIS or requested mitigation measures that were beyond DOE's capacity to implement.
- *Public did not provide comments.* DOE went beyond the regulatory requirements to involve the public in the EA process during scoping and making the draft EA available for review. These efforts included notices in various media, such as local newspaper postings, quarterly community newsletters, website, and several thousand postcards. However, we only received scoping and draft EA comments from agencies and nongovernmental organizations.
- *Limited public participation.* Due to the remote location of our project site, only two individuals attended the public scoping meeting. We employed creative ways to contact the public, including posting information at local businesses, but there was not a substantial amount of interest expressed during scoping.
- *Identified potential impacts to historic properties.* The EA process identified some possible indirect visual impacts to historic properties, which resulted in changes in the project's scope.
- *Identified mitigation opportunities.* The EIS process helped agency decision makers understand the impacts of the proposed action. Several mitigation opportunities were identified as a result of the scrutiny provided by the EIS review.
- *Informed decision making.* The EA process allowed the decision makers to make an informed decision regarding the proposed action. They understood the need for the proposed action, the positive impacts of the proposed action as well as the negative impacts, and recognized the steps taken to minimize potential impacts to human health and the environment.
- *Helped organize project.* The EA process was helpful in organizing the data gathering and permitting processes, as well as getting down to focus on the details of the project sites and their impacts. Working through the EA process allowed us to identify the best approach which resulted in a stronger document.

### Usefulness

#### Agency Planning and Decision Making: What Worked

- *Need for monitoring identified.* The EA process focused the site on potential impacts of the project and controls that will require monitoring during the construction phase.
- *Provided awareness of impacts.* The EA process provided a higher level of awareness of potential impacts from the project, rather than merely representing completion of a milestone for achieving approval of a project management milestone, "Critical Decision 2."
- *Provided project education.* The EA process aided considerably, not just in the analysis of potential impacts to resources, but also as an educational tool for decision makers to learn about and understand the project itself and the technologies involved.

### Enhancement/Protection of the Environment

- *Defined safeguards.* The EA process helped to define safeguards for the project that will ultimately lead to environmental protection.
- *Clean Energy.* The NEPA process facilitated the use of clean wind energy for a community.
- *Reduced potential visual impacts.* The environment was largely protected as a consequence of this EA process, which facilitated effective siting of the proposed project as well as helped select measures to reduce potential visual impacts.
- *Protect endangered species.* The NEPA process helped identify impacts on existing populations of federally-listed threatened and endangered (T/E) species. Additionally, with the construction of the proposed project, a federally-listed T/E species will benefit.

*(continued on next page)*

# Questionnaire Results

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

### 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 the past quarter, in which 6 questionnaire responses were received for 5 EAs and 1 EIS, five respondents rated the NEPA process as “effective.” One rated the process as “2.”

- A respondent who rated the process as “5” stated that the NEPA process and the data derived from the process provided the decision makers with enough information to make an informed decision about a project that initially was not well understood by those decision makers.
- A respondent who rated the process as “4” stated that the NEPA process helped refine the permitting process and ensured that the EA was a sound, defensible document. Additionally, the NEPA process led to a better understanding of the environmental implications of the proposed action and helped to identify potential mitigation.
- A respondent who rated the process as “4” stated that the NEPA process helped the decision makers understand positive and negative impacts to various resources, helping them make an informed decision.
- A respondent who rated the process as “3” stated that the NEPA process provided a higher level of awareness of potential impacts from the project, rather than merely representing completion of a project milestone. The NEPA process, however, continues to be viewed by certain project personnel as a check-the-box type requirement that needs to be completed rather than a tool for decision making.
- A respondent who rated the process as “3” stated that the NEPA process helped a little, but basically seemed administrative, since prior EAs in the area had found impacts and public issues to be null.
- A respondent who rated the process as “2” stated that the magnitude of the effort involved in producing a complex EIS for a relatively small project outweighed the benefits.

## NEPA Document Cost and Time Facts

### EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 4 EAs for which cost data were applicable was \$96,000; the average cost was \$100,000.
- Cumulatively, for the 12 months that ended June 30, 2012, the median cost for the preparation of 32 EAs for which cost data were applicable was \$91,000; the average was \$156,000.
- For this quarter, the median completion time of 5 EAs for which time data were applicable was 11 months; the average was 15 months.
- Cumulatively, for the 12 months that ended June 30, 2012, the median completion time for 44 EAs for which time data were applicable was 12 months; the average was 16 months.

### EIS Cost and Completion Times

- The cost of 1 EIS completed this quarter, for which cost data were applicable, was \$711,000.
- Cumulatively, for the 12 months that ended June 30, 2012, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1.74 million; the average was \$2.92 million.
- For this quarter, the median completion time for 3 EISs for which time data were applicable was 35 months; the average was 31 months.
- Cumulatively, for the 12 months that ended June 30, 2012, the median completion time for 10 EISs for which time data were applicable was 25 months; the average was 24 months.

# LESSONS LEARNED

December 3, 2012; Issue No. 73

Fourth Quarter FY 2012

## Quality Assurance Integral to NEPA Implementation

DOE senior leaders have repeatedly emphasized quality assurance as essential to a successful NEPA program. Secretarial Officers and Heads of Field Organizations have the responsibility to ensure the preparation of a NEPA quality assurance plan (DOE O 451.1B, *NEPA Compliance Program*, paragraph 5.a(3)). This provision was added in response to a June 1994 [Secretarial NEPA policy statement](#). This requirement to prepare a plan signifies that a formal approach to quality assurance should be in place at the beginning of a NEPA review.

Most recently, Secretary of Energy Steven Chu's June 2012 [policy memorandum](#) on integrating program and project management with NEPA expressed the principle that data used in a NEPA document must meet appropriate quality assurance standards ([LLQR, September 2012](#), pages 1 and 3).

### Quality Assurance in the NEPA Context

The Council on Environmental Quality NEPA regulations (40 CFR 1500.1(b)) state that the environmental

information contained in a NEPA document "must be of high quality." A quality EA or EIS must be based on accurate data and sound scientific analysis.

[Merriam-Webster](#) defines quality assurance as "a program for the systematic monitoring and evaluation of the various aspects of a project [or] service . . . to ensure that standards of quality are being met." A quality assurance plan, therefore, should lay out the standards for data, analysis, content, and presentation, and then establish procedures, including assignment of responsibilities, for developing a NEPA document that meets these standards.



Quality assurance promotes efficiency by building in quality at all stages of a process – "getting it right the first time." (Quality control is generally the ongoing confirmation that the plan is being followed and a late-stage confirmation that the desired goals have been

*(continued on page 3)*

## DOE NEPA Guidance Improvements Planned for 2013

The Office of NEPA Policy and Compliance is undertaking a broad review of DOE's existing NEPA guidance to identify opportunities to update the guidance. The goals are to better align with current practices and requirements, develop new guidance to fill gaps, and look for better ways to present guidance.

"Core principles in our existing guidance remain sound," said Carol Borgstrom, Director, Office of NEPA Policy and Compliance, "but several guidance documents are more than a decade old. We need to look at whether they can be improved to account for developments such as greater use of the web."

The NEPA Office asked NEPA Compliance Officers (NCOs) and NEPA Document Managers to help with this review via a questionnaire distributed in November. The most frequently used DOE guidance documents, as identified by the respondents, are the [EA](#) and [EIS](#) checklists. These documents could be updated to reflect additional topics, such as greenhouse gas emissions and intentional destructive acts, that are more prominent in NEPA documents now than when the checklists were issued in 1994 and 1997, respectively.

One respondent asked for checklists to be provided in a form that could be filled in online, and another

*(continued on page 4)*

## Inside Lessons Learned

Welcome to the 73<sup>rd</sup> quarterly report on lessons learned in the NEPA process. In this issue, we highlight practices of DOE's NEPA Community that help ensure the quality of our NEPA reviews. Emphasizing quality throughout the NEPA process is essential to meeting schedules and providing useful information to the public and decisionmakers. Thank you for your continued support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

OMB-CEQ Affirm Commitment to ECR .....	5
Canada's New NEPA-Like Law .....	6
Transitions.....	8
John Jediny Joins DOE NEPA Office .....	9
EAs and EISs Completed This Quarter.....	10
Questionnaire Results .....	11
Cost and Time Facts.....	12

*Carol Burstrom*

Director  
Office of NEPA Policy and Compliance

Printed on recycled paper 

## Be Part of Lessons Learned

### We Welcome Your Contributions to LLQR

Send suggestions, comments, and draft articles – especially case studies on successful NEPA practices – by February 1, 2013, to Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).


### Quarterly Questionnaires Due February 1, 2013

For NEPA documents completed October 1–December 31, 2012, NEPA Document Managers and NEPA Compliance Officers should submit a [Lessons Learned Questionnaire](#) as soon as possible after document completion but not later than February 1. Other document preparation team members are encouraged to submit a questionnaire, too. Contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov) for more information.


### LLQR Online

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

## 2013 NAEP Conference: “Walk-the-Talk”

The National Association of Environmental Professionals (NAEP) and the California Association of Environmental Professionals (CAEP) will jointly host their annual conference April 1-4 in Los Angeles. The theme of the 2013 conference is “Walk-the-Talk.” NAEP states that the conference will highlight the best efforts by private- and public-sector environmental professionals in the areas of regulations, analyses, project construction, and project operations. The focus of the conference will be on the work of environmental professionals that achieves the goals of NEPA and the California Environmental Quality Act (CEQA) while balancing economic development, quality of life, and conservation and protection of the environment. Registration and other information, including government rates and early registration incentives, are available at <http://www.n-aep2013.org>. 

## Training: National Environmental Policy Act

The U.S. Environmental Protection Agency, National Enforcement Training Institute (NETI) is offering a free recorded webinar, “National Environmental Policy Act,” through January 1, 2013. This basic NEPA course aims to educate viewers on the purposes, history, key actors, and regulatory framework for implementing NEPA. For more details or to register, see the [NETI website](#). 

# Making Quality Assurance Work

(continued from page 1)

met. Without upfront quality assurance in developing the NEPA document, any deficiencies may be identified during a quality control review of a completed document, with attendant delay and expense that might have been avoided.)

The NEPA Office recently asked NCOs and NEPA Document Managers to share their thoughts on ways to ensure the quality of DOE's EAs and EISs, and received a range of advice on quality assurance approaches.

---

***When embarking on any EIS, the old saying goes, “plan your work and work your plan” with a slight caveat – the plan better be flexible. Good communication is essential, as is flexibility to refine procedures and develop corrective measures.***

**Linda Cohn**  
NCO, Nevada Site Office

---

Some DOE offices have established their NEPA quality assurance plan as a stand-alone document and others as part of a broader, office-specific NEPA procedures document. Some quality assurance plans apply primarily to contractors, while others apply to all parties who prepare and review the NEPA document. Some DOE offices have a broadly applicable quality assurance plan, and others tailor a plan for each NEPA review.

## Office-Specific NEPA Quality Assurance Plans

NCOs and NEPA Document Managers report that a well-developed quality assurance plan promotes the interrelated goals of efficiency and consistency by establishing performance standards and specifying procedures. Several stated that the plan should clarify the responsibilities of all parties who develop the EA or EIS: NEPA Document Manager, NCO, NEPA and project staff, counsel, and management; a NEPA support contractor; if involved, an applicant; any cooperating agencies; and all reviewers.

“Everyone on the team is required to read the plan and document that they have reviewed and understand their responsibilities,” said Mary Beth Burandt, NEPA Document Manager for the *Hanford Tank Closure and Waste Management EIS* (DOE/EIS-0391). “Put the plan in place and follow it. If you have implemented your process correctly you should not have to do anything specific to ‘meet QA’ prior to submittal; this should have been happening all throughout document development.”

The Bonneville Power Administration has developed an agency-specific NEPA handbook, report NCOs Stacy Mason and Kathy Pierce, that outlines the process for preparing a categorical exclusion determination,

an EA, and an EIS. It identifies parties within the agency who help accomplish steps in the NEPA review (e.g., specialists in geographic information systems, public affairs, realty issues, web posting, contracting, and document processing). The handbook includes templates for documents that may be needed during a NEPA review, such as a notice of intent, notice of availability, *Federal Register* publication request, and transmittal letters.

Several NCOs mentioned that a quality assurance plan should include interim quality reviews to help identify, document, and resolve problems early, when corrections may have less impact on schedule and budget than near the end of NEPA document preparation. Susan McCauslin, Carlsbad Field Office NCO, also noted that such interim quality reviews are an opportunity to identify future improvements to quality procedures.

## Contractors and Quality Assurance

DOE offices that direct their contractor to apply a quality assurance plan focus on ensuring data quality, valid analysis, consistency with CEQ and DOE requirements, and editorial quality of the documents (deliverables). Shane Kimbrough, NCO for Western Area Power Administration, explained that a contractor quality assurance plan:

- ensures that the contractor is aware that quality is expected
- requires contractors to commit to quality and explain how they propose to do it
- provides a “hammer” if quality is lacking
- provides an opportunity to discuss quality with the contractor when the issue of quality of submittals arises – especially during preparation of the preliminary draft of an EIS.

In addition to establishing a contractor quality assurance plan, some NEPA document managers provide the contractor with a good example of a past document for a similar type of project.

Most of the respondents affirmed their use of the EA and EIS checklists in reviewing contractor deliverables as part of their quality assurance process, and some ask the contractor to use the checklists before submitting their deliverables to DOE.

## Team Coordination and Communication

A key element of document quality, noted several NCOs, is having the NEPA Document Manager continuously

(continued on page 4)



# DOE NEPA Guidance Planning

(continued from page 1)

recommended expanding the checklist approach to other guidance documents. “I find the checklist or question-and-answer formats most helpful because they help me to think through the steps more carefully,” said an NCO.

Respondents also expressed interest in updates to other DOE NEPA guidance documents, including:

- *Recommendations for the Preparation of EAs and EISs* (“Green Book,” 2nd edition, 2004) to reflect current practices and references, and expand or add topics
- *Categorical Exclusion Determinations* (2008) to reflect the 2011 rulemaking
- *Designating and Supporting NEPA Document Managers* (1998) to emphasize management of the NEPA process and quality assurance
- *Effective Public Participation* (1998) to reflect current practices, including use of the web and social media

Several respondents requested development of new guidance on notices of intent, records of decision, the NEPA process for applicant proposals, the administrative record, and interagency coordination and consultation.

## Guidance Evolves with Agency Practices

Interpretive and procedural guidance, made readily available to DOE’s NEPA practitioners, has long been an important feature of DOE’s NEPA Compliance Program.

## Making Quality Assurance Work


(continued from page 3)

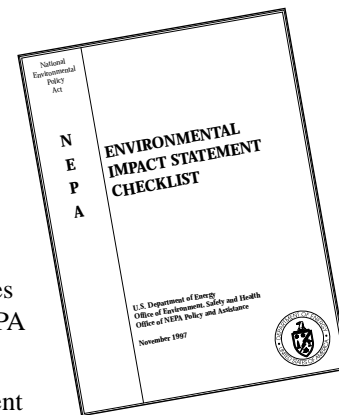
involved in document development. The exchange of information is crucial to keeping the document on the right track and ensuring quality, said Ms. Cohn. A Western Area Power Administration NEPA Document Manager, Tim Snowden, provided additional detailed advice: “Establish consistent lines of communications with your contractors and integrated document team. Set adequate group meetings or teleconferences with contractors and the team to make sure all participants are on the same page in relation to the issues, and document the roadmap forward. Often different perceptions of a procedural problem

Notably, the Department’s NEPA Office first issued a printed multi-volume NEPA Compliance Guide in the 1980s, and a decade later created one of the first websites to provide comprehensive NEPA guidance resources.

Keeping NEPA guidance current requires revisions to recognize evolution in government-wide and DOE NEPA practice. For example, the Environmental Protection Agency’s October 2012 transition to electronic filing of draft and final EISs triggers a need to update DOE’s 2006 *EIS Distribution* guidance.


The usefulness of NEPA guidance can be enhanced by making better use of electronic media. Guidance documents could include hyperlinks to regulatory sources, related guidance, or good examples in completed NEPA documents. “We’re looking at these types of changes, along with substantive updates,” explained Ms. Borgstrom. “We want NEPA practitioners to have easy access to guidance that meets their needs when they need it.”

Please send suggestions to improve existing DOE NEPA guidance and new guidance topics to [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov). 



or issue can be resolved through the ‘collective mind’ approach.”

## Path Forward

Members of the DOE NEPA Community, as well as other readers of *LLQR*, are invited to provide examples of effective quality assurance procedures and approaches, stories of lessons learned, guidance requests, and any additional feedback to [askNEPA@hq.doe.gov](mailto:askNEPA@hq.doe.gov). 

# OMB and CEQ Memo Affirms Commitment to Environmental Collaboration, Conflict Resolution

“Environmental and natural resource conflicts . . . represent serious governance challenges with significant budget, management, and public service implications,” states a recent memorandum issued jointly by the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ). The memorandum urges agencies to address these challenges through environmental collaboration and conflict resolution.

---

*With the magnitude of environmental challenges facing the nation, coupled with the need for careful stewardship of tax dollars and budgets, . . . agencies should leverage all environmental collaboration and conflict management techniques . . .*

*Jeffrey D. Zients, Acting Director, OMB  
Nancy H. Sutley, Chair, CEQ*

---


The September 7, 2012, memorandum builds upon a November 2005 OMB-CEQ memorandum on environmental conflict resolution ([LLQR, March 2006](#), page 13) by explicitly encouraging upfront environmental collaboration to minimize or prevent conflict. The 2012 memorandum encourages federal agencies to use their own staff or outside resources, such as those offered by the U.S. Institute for Environmental Conflict Resolution ([www.ecr.gov](#)), the Department of Justice, and other organizations to help avoid and resolve conflicts.

The memorandum also continues an annual reporting requirement on agency use of third-party assisted negotiation, mediation, and similar processes. [Annual reports](#), including DOE’s, are available on the Institute’s

website. In its annual reports, DOE describes its use of collaborative processes to prevent or resolve environmental

conflicts. In the Fiscal Year 2011 report (issued March 2012), 16 DOE sites and program offices reported a total of 75 environmental conflict resolution cases. Two of these cases involved third-party assistance and 73 did not involve third parties. Four of the reported cases involved NEPA reviews.

The [OMB-CEQ memorandum](#) is posted on the DOE NEPA Website. Attachments to the memorandum include links to relevant guidance, a summary of basic principles, and a list of mechanisms and strategies. Also see [LLQR, June 2007](#), for eight articles on environmental collaboration, and [December 2007](#), page 10, which announced CEQ’s [collaboration handbook](#).

For additional information or assistance, including advice and facilitation services, contact Kathleen Binder ([kathleen.binder@hq.doe.gov](mailto:kathleen.binder@hq.doe.gov) or 202-586-6972) or Wade Boswell ([wade.boswell@hq.doe.gov](mailto:wade.boswell@hq.doe.gov) or 202-586-1484), DOE Office of Conflict Prevention and Resolution. For information on environmental conflict resolution matters generally, including DOE’s environmental conflict resolution annual report, contact Steven Miller, DOE Office of the General Counsel ([steven.miller@hq.doe.gov](mailto:steven.miller@hq.doe.gov), 202-586-2925, or 202-329-4527). 



# Canada's New NEPA-Like Law Addresses Familiar Issues

By: Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance

*Our neighbors to the north have been wrestling with environmental policy and procedural issues very similar to those that we in the United States must address in the NEPA process. A new NEPA-like law in Canada is intended to strengthen environmental protection while making the process more efficient.*



The [Canadian Environmental Assessment Act, 2012](#) (the 2012 Act) became effective on July 6, 2012. It repealed the former law and implementing the Government of Canada plan for Responsible Resource Development “to modernize the regulatory system and allow for resources to be developed in a responsible and timely way for the benefit of all Canadians,” according to the Canadian Environmental Assessment Agency (CEAA) [website](#). Senior officials of CEAA provided an overview of the new law to U.S. federal agency participants in a Canada-U.S. Exchange on Environmental Assessment, hosted by the U.S. Environmental Protection Agency in Washington, DC, in November 2012.

Participants at the Exchange commented that a number of the new law’s provisions are relevant to the NEPA process in the U.S. and to the practice of environmental impact assessment internationally because they focus on widely-shared issues and concerns, and contain measures to address them that have been considered in other nations (e.g., process timelines, enhanced role for applicants/proponents, and mitigation enforcement). The discussion below of select aspects of Canada’s new law is based on the CEAA presentation at the Exchange and information on CEAA’s website, which contains a more complete overview of the 2012 Act.

## Challenges of Prior Law Addressed

CEAA officials explained how the new law balances timeliness with environmental protection, and how aspects of the previous law tended to limit the government’s ability to ensure implementation of environmental protection and resulted in uncertainties for project proponents, who often

did not know what to expect in terms of the time required and the type or level of environmental review.

By way of background, Canada conducts three types of environmental review: screening assessments, comprehensive studies (also referred to as “standard environmental assessments”), and review panels (for the most significant or controversial projects). These are roughly analogous to the three levels of NEPA review in U.S. (categorical exclusion determination, environmental assessment, and environmental impact statement), but there are some differences (refer to CEAA’s website for more information). The term “environmental review” in this article refers to Canada’s federal environmental review process. Following are some of the challenges addressed in the new law.

**Timelines.** In response to proponent concerns about process timeliness under the old law, the new law sets specific timelines for the federal government to complete its work. Timelines include enhanced opportunities for public participation and apply to the three types of environmental review:

- Screening Step (45 days)
- Standard Environmental Assessment (365 days)
- Review Panels (24 months)

The timelines apply to the aggregate total of government time spent working on the environmental review process. The government “clock” does not start until adequate information has been obtained from project proponents and a notice of initiation has been posted on the Internet. The government clock does not necessarily run continuously. It stops if, for example, further information is required from proponents and restarts once the information is received.

If a determination is made that a higher level of review is required, the entire timeline for completing the higher level review would then start (a 24-month period for a review panel would commence if referral occurred at any time during the screening step or standard environmental assessment process).

The 2012 Act also contains provisions for extensions of the timeline. Failure to complete an environmental review within the timelines does not automatically result in a “green light” for the project. A project’s status will

*(continued on page 7)*

**Canada**

### Canadian Environmental Assessment Act Goals:

- Make reviews of resource projects more predictable and timely
- Reduce duplication and regulatory burden
- Strengthen environmental protections
- Enhance consultation with Aboriginal peoples

# Canada's New Environmental Assessment Law

(continued from page 6)

be tracked throughout the environmental review process on CEEA's website, providing an incentive to meet the schedule.

**Trigger.** Under the old law, environmental review requirements were triggered whenever a federal authority was making a decision about a project, and all such project decisions required environmental review unless excluded by regulation. This “fixed trigger” resulted in a concern that too many small, routine projects required detailed review. The 2012 Act responds to this concern by designating through regulations a “project list” defining types of projects that are subject to the environmental review process. For example, regulations under the new law require a standard environmental assessment for: certain projects in a wildlife area or migratory bird sanctuary; a fossil fuel or hydroelectric generating plant with a production capacity of 200 megawatts or more; an electrical transmission line with a voltage of 345 kilovolts or more that is 75 kilometers or more in length on a new right-of-way; certain oil or oil sands processing facilities; oil and gas pipelines more than 75 kilometers in length on a new right-of-way; and many other defined types of projects.

The 2012 Act places considerable onus on proponents to provide CEEA with a project and context description in accordance with prescribed information requirements, and authorizes the Minister of the Environment to designate projects not identified in regulations for analysis via a standard environmental assessment or review panel.


**Enforcement.** Under the old law, enforcement relied on mechanisms in other laws and may not have been consistently applied. The 2012 Act addresses this issue by providing for direct enforcement of monitoring, mitigation, and other related project decisions. At the end of the environmental review process, the Minister of the Environment determines whether a project is likely to

cause significant adverse environmental effects and, if so, whether these effects are justified.

A decision statement sets out conditions with which the proponent must comply. Failure to fulfill the conditions is a violation. Enforcement officers in relevant ministries will verify compliance with mitigation conditions. Violations may result in injunctions and fines ranging from \$100,000 to \$400,000 (Canadian). Unauthorized interim actions (proponent actions that cause adverse environmental effects taken before completion of the environmental review process or not covered under conditions in a decision document) are also violations subject to enforcement under the 2012 Act.

**Regional Studies.** Under the old law, environmental reviews were limited to project-specific reviews, making consideration of cumulative impacts difficult. In response to this issue, the 2012 Act provides for the use of regional studies (analogous to some programmatic and site-wide EISs prepared under NEPA) as a tool to examine cumulative effects of forecasted development scenarios that go beyond the impacts of a particular project.

**Substitution and Equivalency.** Under the old law, project proponents expressed concerns about regulatory burdens and duplicative environmental review processes. The 2012 Act responds to these concerns by enabling the Minister of the Environment to “substitute” (adopt) environmental documents prepared by provinces if they meet substantive requirements of the 2012 Act. Also, the federal Cabinet may exempt a designated project from application of the 2012 Act if there is an equivalent provincial assessment.

Results of implementing the 2012 Act may inform proposals to improve environmental review processes in other nations, but experience so far is limited because the law is relatively new. 

# Transitions: NEPA Compliance Officers

## Portsmouth/Paducah Project Office: Cynthia Zvonar

Cynthia Zvonar now serves as an NCO for the Portsmouth/Paducah Project Office (PPPO) in Lexington, Kentucky, where she joins Kristi Wiehle, PPPO NCO since 2006. In addition to other responsibilities as an Environmental Program Specialist, Ms. Zvonar will assist Ms. Wiehle in overseeing activities at DOE's former uranium enrichment facilities in Portsmouth, Ohio, and Paducah, Kentucky, with an emphasis on the Paducah site.

Ms. Zvonar has been an environmental professional for more than 25 years, initially as a regulator for the State of Texas. As a contractor at DOE's Pantex Plant, she provided environmental compliance oversight, led audits of offsite waste disposal facilities, and assisted in preparing the *Site-wide EIS for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components* (DOE/EIS-0225, 1996). She joined DOE's Carlsbad Field Office to assist the Waste Isolation Pilot Plant (WIPP) in acquiring a Resources Conservation and Recovery Act permit and Environmental Protection Agency certification for the transuranic waste repository, and later served as Manager of the Office of Environmental Compliance, which was responsible for all environmental regulatory programs, including NEPA, at WIPP. Ms. Zvonar can be reached at [cynthia.zvonar@lex.doe.gov](mailto:cynthia.zvonar@lex.doe.gov) or 859-219-4066.

## Energy Efficiency and Renewable Energy and Golden Field Office

The Office of Energy Efficiency and Renewable Energy (EERE) has expanded the roles of its NCOs, listed below, to include actions at both the Golden Field Office and EERE Headquarters:

- Lori Gray ([lori.gray@go.doe.gov](mailto:lori.gray@go.doe.gov) or 720-356-1568)
- Lisa Jorgensen ([lisa.jorgensen@go.doe.gov](mailto:lisa.jorgensen@go.doe.gov) or 720-356-1569) – contact for tribal issues and environmental justice
- Kristin Kerwin ([kristin.kerwin@go.doe.gov](mailto:kristin.kerwin@go.doe.gov) or 720-356-1564)
- Jane Summerson ([jane.summerson@ee.doe.gov](mailto:jane.summerson@ee.doe.gov) or 202-287-6188)
- Robin Sweeney ([robin.sweeney@go.doe.gov](mailto:robin.sweeney@go.doe.gov) or 720-356-1562)

Pete Yerace, who in 2010 was assigned to help EERE and the Golden Field Office with Recovery Act NEPA reviews, resumes his role as the NCO for the Environmental Management Consolidated Business Center in Cincinnati, Ohio.


Othalene Lawrence has concluded her service as EERE's long-term NCO, and will now focus on other EERE responsibilities, working directly for the Acting Chief Operating Officer. She was first designated in 1991, only a year after DOE instituted the NCO position to coordinate program and field office NEPA compliance activities.

*On behalf of the NEPA Community, we express our appreciation for Othalene's many contributions during two decades of service to the DOE NEPA Community. Ms. Lawrence assisted with the 2011 DOE NEPA rulemaking, notably by organizing EERE Building Program documentation to support the establishment of new categorical exclusions. To expedite EERE's Recovery Act NEPA reviews, she recommended an initiative that brought in other NCOs to help with the workload and helped develop a standard review approach for projects involving ground source heat pumps. We offer best wishes for her future endeavors.*

## Hanford Site: Woody Russell to Retire

Woody Russell, NCO since 2006 for the Richland Operations Office and Office of River Protection, has announced his retirement at the end of the year. As NCO, Mr. Russell updated the offices' NEPA compliance procedures and oversaw the completion of several major NEPA reviews, including a successful EA process that required extensive tribal and agency consultation to ensure protection of sensitive cultural and biological resources in the Fitzner/Eberhardt Arid Lands Ecology Reserve at the Hanford Site.


Before coming to Hanford, Mr. Russell served 9 years as the air quality subject matter expert for the Idaho Operations Office and worked for 2 years for the Idaho National Laboratory. He was the air quality lead for several major EISs and contributed substantially to DOE's Spent Nuclear Fuel Programmatic EIS, the Idaho High-Level Waste and Facilities Disposition EIS, and the Advanced Mixed Waste Treatment Project EIS. He also served as the federal coordinator to the Citizens Advisory Board at Idaho.

*On behalf of the NEPA Community, we offer Woody best wishes for his future endeavors and express our appreciation for his many contributions to DOE's NEPA and environmental compliance programs. Woody made substantial contributions to a number of DOE's most complex EISs, notably the Hanford Tank Closure and Waste Management EIS. His efforts in working with the Bureau of Reclamation on the Yakima River Basin Study helped prevent mobilization of contaminated groundwater by a proposed reservoir. In addition, while at Hanford since 2001, he provided support for environmental permitting, compliance, Tri-Party Agreement implementation, and NEPA activities, including the start of Hanford's original Tank Closure EIS.* 

## NEPA Office Welcomes John Jediny



*John Jediny's GIS experience will be put to use in the NEPA Office's review of DOE EISs.*

Oversight from October 2011 through September 2012. While at CEQ, Mr. Jediny established an interagency NEPA Information Technology (IT) Working Group, and created a model framework for using IT to integrate project planning, development, and management with NEPA. He also compiled an inventory of federal geographic datasets with national coverage in an effort to increase the use of geographic information system (GIS) tools in environmental permitting and review processes (*LLQR*, September 2012, page 8). Mr. Jediny joins the Western Energy and Waste Management Unit where he will assist with development of the DOE NEPA Website, among other duties. He can be reached at [john.jediny@hq.doe.gov](mailto:john.jediny@hq.doe.gov) or 202-586-4790. 

John Jediny joined the Office of NEPA Policy and Compliance as an Environmental Protection Specialist in October 2012. He came to the NEPA Office from the Office of Energy Efficiency and Renewable Energy (EERE), where he provided NEPA guidance and support to the 10 EERE program offices. As a member of EERE's "NEPA Swat Team," Mr. Jediny served as the NEPA document manager for many environmental assessments for renewable energy projects funded under the American Recovery and Reinvestment Act of 2009, and was the lead specialist for reviewing hundreds of proposals for ground source heat pump projects. He also created the first DOE-wide electronic form for posting categorical exclusion determinations publicly.

Most recently, Mr. Jediny was detailed to the Council on Environmental Quality (CEQ), where he served as Special Assistant and then Deputy Associate Director for NEPA

# EAs and EISs Completed July 1 to September 30, 2012

## EAs<sup>1</sup>

### Office of Fossil Energy

[DOE/EA-1845](#) (8/7/12)

*Sabine Pass Liquefaction Project*, Cameron Parish, Louisiana

EA was adopted; therefore cost and time data do not apply to DOE. [The Federal Energy Regulatory Commission was the lead agency; DOE was a cooperating agency.]

### Golden Field Office/Office of Energy Efficiency and Renewable Energy

[DOE/EA-1888](#) (9/25/12)

*Old Town Fuel and Fiber Proposed Demonstration-Scale Integrated Biorefinery*, Old Town, Maine

Cost: \$92,000

Time: 16 months

[DOE/EA-1917](#) (8/15/12)

*Wave Energy Test Facility Project*, Newport, Oregon

Cost: \$95,000

Time: 10 months

[DOE/EA-1935](#) (9/18/12)

*To'Hajiilee Solar Project*, Bernalillo County, New Mexico

EA was adopted; therefore cost and time data do not apply to DOE. [The Department of the Interior's Bureau of Indian Affairs was the lead agency.]

### National Nuclear Security Administration

[DOE/EA-1929](#) (8/24/12)

*Environmental Assessment for NorthStar Medical Technologies LLC Commercial Domestic Production of the Medical Isotope Molybdenum-99*, Beloit, Washington

Cost: \$387,000

Time: 7 months

### Sandia Site Office/National Nuclear Security Administration

[DOE/EA-1906](#) (7/11/12)

*Environmental Assessment for the Operations, Consolidation, and Upgrades at the Office of Secure Transportation Western Command Site*, Albuquerque, New Mexico

Cost: \$39,000

Time: 12 months

### Western Area Power Administration

[DOE/EA-1909](#) (8/28/12)

*South Table Wind Project*, Kimball County, Nebraska

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

Time: 11 months

[DOE/EA-1938](#) (9/13/12)

*Grieve Unit CO<sub>2</sub> Enhanced Recovery Project*, Natrona County, Wyoming

EA was adopted; therefore cost and time data do not apply to DOE. [The Department of the Interior's Bureau of Land Management (BLM) was the lead agency; DOE was a cooperating agency.]

## EISs

### Office of Energy Efficiency and Renewable Energy

[DOE/EIS-0403](#) (77 FR 44234, 7/27/12)

(EPA Rating: EO-2)

*Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States*

[BLM and DOE were co-lead agencies. Cost data are not applicable for metrics purposes. DOE provided approximately \$3.9 million in cost-shared funding to complete this document.]

Time: 50 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

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

<sup>1</sup> EA and finding of no significant impact (FONSI) issuance dates are the same unless otherwise indicated.

# Questionnaire Results

## What Worked and Didn't Work in the NEPA Process

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

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

### Scoping

#### What Worked

- *Consolidated objectives.* The scoping process facilitated the consolidation of multiple objectives under a single EA. The scope was modified to assess impacts of land use changes and the proposed transfer of certain land parcels not previously assessed.

### Schedule

#### Factor that Facilitated Timely Completion of Documents

- *Timeliness.* Adherence to deadlines and timelines for EA team members to provide comments on draft documents facilitated timely completion.

#### Factor that Inhibited Timely Completion of Documents

- *Staff change.* There was a small delay due to a change in the technical writer preparing the EA.

### Teamwork

#### Factors that Facilitated Effective Teamwork

- *Good team dynamics.* Good team dynamics were evident as the involved parties worked well together to resolve issues.
- *Good working relationships.* There was a good working relationship between the NCO and the NEPA Document Manager.
- *Team meetings.* Document review meetings with all parties present were helpful to get all questions answered on the spot.
- *Previous working relationship.* Previous working experience among the technical writers and the NCO facilitated effective teamwork due to an understanding of individual capabilities.

### Process

#### Successful Aspects of the Public Participation Process

- *Early public interaction.* An early public information session to describe the scope of the EA was effective in briefing the public and gaining trust in the NEPA process. The public and media were very engaged with the project and the EA process.
- *Electronic EA distribution.* The EA was distributed electronically, which made the document quickly available for public viewing, saved funds, eliminated the use of paper/resources, and reduced waste. [Editor's note: An email was sent to the site's interested stakeholders providing a website link to the document and offering a paper copy if requested.]

### Usefulness

#### Agency Planning and Decisionmaking: What Worked

- *Support for agency actions.* The EA process supported the property title transfer and established land use restrictions in transfer deeds.
- *Proactive measure.* The EA was done as a proactive measure so it was completed with no impact to the schedule of a proposed future construction project.

### Enhancement/Protection of the Environment

- *Reduced impacts.* The environment was largely protected as a consequence of this EA process, which facilitated effective siting of the proposed project as well as helped select measures to reduce potential impacts.

*(continued on next page)*



## Questionnaire Results

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

#### Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decisionmaking.

For the past quarter, in which 2 EA questionnaire responses were received, both respondents rated the NEPA process as “effective.” One rated the process as “4” and one rated the process as “3.”

- The respondent who rated the process as “4” stated that the NEPA process and the data derived from the process provided the decisionmakers with enough information to assess land use impacts for a brownfield redevelopment project.
- The respondent who rated the process as “3” stated that the NEPA process was necessary but very lengthy.

### NEPA Document Cost and Time Facts

#### EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 4 EAs for which cost data were applicable was \$94,000; the average cost was \$153,000.
- Cumulatively, for the 12 months that ended September 30, 2012, the median cost for the preparation of 28 EAs for which cost data were applicable was \$94,000; the average was \$154,000.
- For this quarter, the median and average completion times of 5 EAs for which time data were applicable were 11 months.
- Cumulatively, for the 12 months that ended September 30, 2012, the median completion time for 32 EAs for which time data were applicable was 12 months; the average was 17 months.

#### EIS Cost and Completion Times

- No EISs were completed this quarter for which cost data were applicable.
- Cumulatively, for the 12 months that ended September 30, 2012, the median and average costs for the preparation of 2 EISs for which cost data were applicable were \$4.1 million.
- For this quarter, the completion time for 1 EIS for which time data were applicable was 50 months.
- Cumulatively, for the 12 months that ended September 30, 2012, the median and average completion times for 6 EISs for which time data were applicable were 33 months.