

LESSONS LEARNED

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NEPA Efficiency Essential to Recovery Plan

The Department of Energy (DOE) is responsible for more than \$45 billion of the \$787 billion economic stimulus funding contained in the American Recovery and Reinvestment Act (Recovery Act), which President Barack Obama signed into law on February 17, 2009 (Public Law 111-5). The President and Congress have emphasized urgency in getting this money into the economy in order to create jobs.

Secretary of Energy Steven Chu has set a goal to disburse 70 percent of the funds by the end of 2010. Achieving this goal requires the timely completion of all requirements, including compliance with the National Environmental Policy Act (NEPA).

The DOE Office of NEPA Policy and Compliance and the Office of the Assistant General Counsel for Environment began working with involved Program Offices before the legislation was passed to identify potential approaches to NEPA compliance. That effort is ongoing.

Recovery Act Calls for Expediting Reviews

The issue of NEPA compliance arose during congressional debate on the Recovery Act. There was discussion of setting time limits for environmental reviews or even



Secretary Chu and President Obama discuss plans to create jobs, change the way we produce and use energy, and address the climate crisis prior to the President's talk to DOE employees on February 5, 2009.

waiving NEPA for some activities. However, the final version of the Recovery Act makes no such exceptions; it directs that adequate resources be devoted to ensuring that applicable NEPA reviews are completed on an expeditious basis and that the shortest existing applicable process under NEPA shall be used. (See Section 1609 of the Recovery Act, reprinted on page 4.)

(continued on page 4)

NEPA Opportunities in a New Era of Openness

by Brian Costner, Office of NEPA Policy and Compliance

President Barack Obama began his administration with a call for openness in Government. In his Inaugural Address, the President spoke of the need for public officials to “do our business in the light of day.” He followed this on January 21, 2009, with two memoranda to heads of Federal agencies that challenge public officials to be proactive in incorporating openness into our work. This challenge has particular meaning for DOE’s NEPA Community because openness is one of NEPA’s core principles.

In his memorandum on *Transparency and Open Government*, the President wrote, “My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration” (74 FR 4685; January 26, 2009).

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NEPA Efficiency *(continued from page 1)*

The Recovery Act also requires the President to report to Congress every 90 days until September 30, 2011, on the status and progress of projects funded by the Act with respect to NEPA compliance. The first report is due in May 2009. The Council on Environmental Quality began meeting with Federal agency NEPA contacts in February about this reporting and, more generally, how best to support efficient implementation of the Recovery Act (related article, page 9).

The reports to Congress are expected to address those activities requiring an environmental impact statement (EIS) or environmental assessment (EA), those for which an existing categorical exclusion applies, and those that do not trigger a NEPA review. Information from these reports will be drawn, in part, from program plans to be developed for tracking all Recovery Act funding. The DOE Office of NEPA Policy and Compliance will continue working with NEPA Compliance Officers in each involved Program Office to assist in compiling information as the details of specific projects become available

DOE will expend the majority of its Recovery Act funds to state, local, and tribal government agencies and private industry via grants, contracts, and loan guarantees. For example, DOE would award grants for weatherization assistance and other existing energy efficiency and

conservation programs, and to modernize the electric grid under the Smart Grid initiative. DOE will expend other portions of the funding for projects that it manages, including remediation activities carried out by the Office of Environmental Management. (See text box, page 5, for more details on the Recovery Act funds.)

At this point, it seems likely that a large portion of the funding will be for activities that fit within one or more existing categorical exclusions, unless there are extraordinary circumstances that indicate the need to prepare an EA or EIS. For example, DOE's NEPA regulations include a categorical exclusion for many types of activities to conserve energy, demonstrate potential energy conservation, and promote energy efficiency (10 CFR Part 1021, Subpart D, Appendix B5.1). The Office of Energy Efficiency and Renewable Energy has often applied this categorical exclusion to past grant applications, and it is likely the Office will be able to apply it to many future applications.

In other cases, existing NEPA analysis would apply, such as in the case of the Bonneville Power Administration's decision to use a portion of the borrowing authority contained in the Recovery Act to construct a 500-kilovolt transmission line running primarily along the Columbia River. Potential environmental impacts of the project were
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NEPA and the American Recovery and Reinvestment Act

The following section from the Recovery Act applies to all activities undertaken with recovery funds.

SEC. 1609. (a) FINDINGS.—

- (1) The National Environmental Policy Act protects public health, safety and environmental quality: by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds;
 - (2) When President Nixon signed the National Environmental Policy Act into law on January 1, 1970, he said that the Act provided the “direction” for the country to “regain a productive harmony between man and nature”;
 - (3) The National Environmental Policy Act helps to provide an orderly process for considering federal actions and funding decisions and prevents ligation [sic] and delay that would otherwise be inevitable and existed prior to the establishment of the National Environmental Policy Act.
- (b) Adequate resources within this bill must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized.
- (c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

NEPA Efficiency *(continued from previous page)*

analyzed in the *McNary-John Day Transmission Line Project Environmental Impact Statement* (DOE/EIS-0332, 2002).


Recovery.gov

The President committed to implement the Recovery Act with “an unprecedented level of transparency and accountability.” To allow the public to track implementation, the White House has established a website – recovery.gov – and directed each Federal agency to devote a portion of its existing website to Recovery Act activities.

DOE unveiled the Recovery Act portion of its website on February 27, 2009, at www.energy.gov/recovery. A message from Secretary Chu states that, “The Department of Energy will carry out this economic recovery plan with the highest level of speed, transparency, and accountability.” The website provides information on each of the areas where DOE will invest public funds to “put Americans back to work and begin to transform the way we use energy.” Beginning in early March, the website will contain DOE plans and reports on

implementation of Recovery Act funding and provide links to information on how to apply for funding.

The Office of Management and Budget (OMB) issued “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009” on February 18, 2009 (available at recovery.gov). This guidance reminds agencies that Recovery Act funds are to be distributed in accordance with NEPA and related statutes, “including requirements for plans and projects to be reviewed and documented in accordance with those processes.”

In addition, the OMB guidance directs agencies to report the use of Recovery Act funding. First will be a series of weekly reports beginning on March 3, 2009, and continuing through May 12, 2009, that provide “a breakdown of funding, major actions taken to date, and major planned actions.” Agencies are to begin providing Recovery Program Plans to OMB by May 1 that include a description of the status of compliance with NEPA and related statutes, along with funding and other data. Information from these reports and plans will be provided on the Recovery Act websites. 

Recovery Act Funding by DOE Program

- Energy Efficiency and Renewable Energy – \$16.8 billion, including \$3.2 billion for Energy Efficiency and Conservation Block Grants, \$5 billion for Weatherization Assistance, \$3.1 billion for the State Energy Program, \$2 billion for grants for manufacturing advanced batteries and components (e.g., hybrid electrical systems), and \$3.5 billion for applied research, development, and demonstration and deployment activities (including projects related to biomass and geothermal energy).
- Electricity Delivery and Energy Reliability – \$4.5 billion, principally to modernize the electrical grid (i.e., implement Smart Grid technologies).
- Fossil Energy Research and Development – \$3.4 billion, expected to go principally to applicants for carbon sequestration and clean coal projects.
- Science – \$1.6 billion, expected to be used primarily toward work in existing Office of Science research areas
- Advanced Research Projects Agency – Energy – \$400 million for this new program (created in 2007 but not previously funded) to support transformational energy technology research projects with the goal of enhancing the nation’s economic and energy security.
- Innovative Technology Loan Guarantee Program – \$6 billion creating a temporary loan guarantee program for the rapid deployment of renewable energy and electric power transmission projects that can begin construction by the end of fiscal year 2011.
- Defense Environmental Cleanup – \$5.1 billion, which is expected to be used principally to accelerate implementation of existing plans. Funding also includes almost \$500 million for non-defense environmental cleanup and almost \$400 million for uranium enrichment and decontamination and decommissioning work.
- Power Marketing Administrations – \$3.25 billion in borrowing authority to the Bonneville Power Administration and an equal amount to the Western Area Power Administration. These funds would support expansion and upgrades to electrical transmission systems.

Sutley Brings Breadth of Government Experience to CEQ



Nancy H. Sutley, confirmed by the Senate on January 22, 2009, as the Chair of the Council on Environmental Quality (CEQ), said at her confirmation hearing that to fulfill CEQ's responsibilities under NEPA, she aims to proceed in a "straightforward, organized, and efficient way that assures the public that the Federal government understands its environmental responsibilities as it carries out its activities."

Ms. Sutley's experience working on environmental policy at the Federal, state, and local levels has resulted in an appreciation of the role that each level of government plays in protecting public health and the environment and of the coordinating role played by CEQ. She most recently served as Deputy Mayor for Energy and Environment for the City of Los Angeles, and previously as a Deputy Secretary in the California Environmental Protection Agency; Senior Policy Advisor to the U.S. Environmental Protection Agency (EPA) Regional Administrator in San Francisco; and special assistant to the U.S. EPA Administrator in Washington, DC.

CEQ Confers with Agencies on Recovery Act and NEPA

Two days after the President signed the American Recovery and Reinvestment Act (Recovery Act), Ms. Sutley convened policy level representatives from each Federal department and agency to a meeting on how NEPA will affect projects funded by the Act. "I look forward to working with you," she said in the invitation to the February 19, 2009, meeting, "to ensure that conservation and environmental aspects are considered an integral part of development and oversight of our policies, programs and projects."

Also in the invitation, Ms. Sutley asked agencies to provide contact information for the highest ranking senior environmental advisor and/or NEPA contact in the department or agency and its subordinate offices, and a description of the organization's NEPA capacity in terms of personnel resources and locations. (DOE responded that its current NEPA capacity includes approximately 95 full-time equivalents, representing NEPA activities

carried out by approximately 195 Federal employees.) Ms. Sutley stressed that Federal departments and agencies are required to have the resources necessary to meet their responsibility to comply with NEPA, considering the environmental aspects of their proposed actions *before* deciding whether and how to proceed.

Section 1609 of the Recovery Act (text box, page 4) confirms that NEPA applies, said Ms. Sutley at the February 19 meeting. CEQ is ready and happy to help agencies with their NEPA compliance, she said. It is important to get the stimulus money out the door as quickly as possible, she emphasized, consistent with the Office of Management and Budget guidance and in compliance with NEPA (Recovery.gov, page 5).

Horst Greczmiel, CEQ's Associate Director for NEPA Oversight, suggested several tools to expedite NEPA compliance, including preparing a "focused EA" and a programmatic EA.

He also highlighted the use of "tiering" as a means of accomplishing the NEPA requirements in an efficient manner. Mr. Greczmiel added that CEQ will work with agencies to use categorical exclusions for projects where the agency is not directly taking an action, but funding it.

Edward (Ted) Boling, CEQ General Counsel, outlined the Recovery Act's 90-day reporting requirement on the status and progress of projects with respect to NEPA compliance (related article, page 1). Mr. Greczmiel noted that CEQ will be developing guidance to assist agencies in this reporting effort. Matt Rogers, Senior Advisor to Secretary Chu, noted that DOE will keep a master schedule and track each project's progress on a weekly basis. CEQ held a follow-up meeting with Federal NEPA contacts on February 26 at which the use of "focused EAs" and Recovery Act reporting were discussed in greater detail. LL



As CEQ Chair, Nancy Sutley serves as the principal environmental policy adviser to President Obama.

DOE Advances NEPA Process for Loan Guarantees

Secretary of Energy Steven Chu has announced plans to expedite reviews of loan guarantee applications under the American Recovery and Reinvestment Act (Recovery Act) as well as those under the previous DOE Loan Guarantee Program (Title XVII of the Energy Policy Act of 2005). The Recovery Act adds \$6 billion to DOE's existing authority for loan guarantees, amending the Energy Policy Act of 2005 to create a temporary loan guarantee program for rapid deployment of renewable energy and electric power transmission projects. The goal is "to expedite disbursement of money to begin investments in a new energy economy" (www.energy.gov/news2009/6934.htm; February 19, 2009). Secretary Chu emphasized that "We need to start this work in a matter of months, not years – while insisting on the highest standard of accountability."

NEPA Activities for the 2006 Solicitation

The NEPA process is well underway for several projects that are part of the first loan guarantee solicitation issued in 2006 for which applications were due November 19, 2008 (text box, next page). To date, DOE has completed two EAs and findings of no significant impact (FONSIs), initiated preparation of three other EAs and three EISs, and is participating as a cooperating agency for a fourth EIS.

2008 Loan Guarantee Solicitations

Four additional solicitations were issued in 2008:

- Front-end Nuclear Fuel Cycle Facilities (e.g., uranium enrichment)
- Nuclear Power Facilities
- Renewables (for energy efficiency, renewable energy, and advanced transmission and distribution technologies)
- Fossil Energy (for coal-based power generation and industrial gasification facilities that incorporate carbon capture and sequestration or other beneficial uses of carbon and for advanced coal gasification facilities)

DOE is now reviewing applications for nuclear facilities and certain renewable energy projects. DOE is waiting to receive the second part of applications (due Spring 2009) for the fourth solicitation (fossil energy projects) and also for certain other renewable energy projects (large-scale integration projects).

The Loan Guarantee Program Office continues to work with applicants to ensure that they submit information to enable early determinations regarding the level of NEPA review required and that the information provided will allow DOE to complete any NEPA reviews. An update of each of the Department's 2008 loan guarantee solicitations is outlined below.


Nuclear Solicitations

The application window for the loan guarantee solicitations for both the front-end nuclear and nuclear power facilities closed in December 2008. DOE received two applications for front-end nuclear and 15 applications for nuclear power facilities. For both solicitations, the number of qualified proposals exceeds the amount of loan guarantee resources available, triggering the provisions in DOE NEPA regulations applicable to procurement, financial assistance and joint ventures (10 CFR 1021.216).

For the two front-end nuclear proposals, DOE has completed an Environmental Critique under 10 CFR 1021.216. DOE expects to select one of the two front-end nuclear proposals by approximately late March, after which DOE will file the Environmental Synopsis with the Environmental Protection Agency and make it publicly available. Additional NEPA review will follow the competitive procurement process.

Fossil Energy and Renewables Solicitations

In December 2008, DOE received the first part of applications for eight projects under the fossil energy solicitation. In February 2009, DOE received over 50 applications for projects under the renewables solicitation. Completed applications for fossil energy projects and large-scale integration renewables projects are due March and April, respectively.

For further information about the NEPA process for DOE's Loan Guarantee Program, contact Matt McMillen, NEPA Compliance Officer, Loan Guarantee Program Office, at matthew.mcmillen@hq.doe.gov or 202-586-8336. The solicitations and other information about the Program are available at www.lgprogram.energy.gov. For earlier descriptions of DOE's Loan Guarantee Program, see *LLQR*, September 2008, page 3, and March 2008, page 11. 

Loan Guarantee Office Seeks NEPA Staff

The DOE Loan Guarantee Program Office announces multiple position openings for Environmental Protection Specialists at the GS-13 or GS-14 level (www.usajobs.gov, HQ-09-DE-05-CF open to all U.S. citizens and HQ-09-MP-05-CF open to current DOE Headquarters employees with competitive status, both closing March 25, 2009). Consider applying if you are interested, or help spread the word!

LESSONS LEARNED

DOE NEPA Compliance Officers Share Strategies

“The Department of Energy is both privileged and challenged” by its critical role in implementing the American Recovery and Reinvestment Act, said Matt Rogers, Senior Advisor to the Secretary, to DOE’s NEPA Compliance Officers (NCOs) and NEPA staff from the Office of General Counsel at the NCO meeting in Washington, DC, on April 28–29, 2009. In the keynote address, Mr. Rogers cited DOE’s intense efforts since late February to identify and approve projects for Recovery Act funding and the imminent need to address an expected 5,000 to 7,000 grant applications. “We must demonstrate to the public that the government *can* work for them,” he continued, “to make a material down-payment on the Nation’s energy and environmental future.”

Noting that DOE will be responsible for distributing a level of Recovery Act funding that exceeds the entire DOE annual budget, Mr. Rogers cautioned that “we need to understand existing constraints and find ways of relieving them in the near term and longer.” This demands coordination and collaboration among Departmental elements, he said, and



Keynote speaker Matt Rogers emphasized that efficient NEPA compliance is essential for DOE success in implementing the Recovery Act.



urged the meeting’s participants to propose creative approaches for the Department to accelerate environmental reviews under NEPA.

Meeting Focuses on Working Smarter

“Expediting schedules and improving quality is applicable to all projects, not just to Recovery Act projects,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. “We must do more, better, faster, and cheaper. How do we do this? My answer is to do it smarter,” she explained, “through more concerted work effort, vigorous oversight, and timely support from many offices.”

To advance the goal of faster, high-quality NEPA compliance, NCOs and General Counsel staff discussed how to effectively and efficiently manage environmental impact statements (EISs), environmental assessments (EAs), and categorical exclusion (CX) determinations. New resources to be applied to improving DOE’s NEPA implementation were described, including procedures for contract use and guidance in preparation. Speakers also addressed the relationship between the NEPA process and the Administration’s Freedom of Information Act policies, and between the NEPA process and the Department’s project management system. (The meeting articles that follow are indicated by the meeting logo, *Accelerating a Quality NEPA Process*.)

In a May 15 memorandum to NCO meeting participants, Ms. Borgstrom outlined follow-up actions that the NEPA Office has been working on since the meeting. In particular, she emphasized the need to effectively manage EIS schedules (related article, page 2). [L](#)

Recovery Act Stimulates Significant NEPA Workload

Many DOE NEPA personnel, at Headquarters and in the Field, are busy implementing the American Recovery and Reinvestment Act (Recovery Act), including various reporting requirements. Brian Costner, Recovery Act Point of Contact in the Office of the NEPA Policy and Compliance, provided an update at the NEPA Compliance Officers (NCO) meeting on the increased NEPA workload and efforts to accelerate completion of NEPA reviews while maintaining quality.

Section 1609 of the Recovery Act makes clear that established NEPA processes apply to projects and activities proposed to be undertaken with Recovery Act funds. (See *LLQR*, March 2009, page 1.) This presents a challenge to DOE because of the amount of funding the Department received (almost \$40 billion) and the sense of urgency to move funds quickly into projects that will create jobs and have lasting benefits, Mr. Costner explained. Most Recovery Act funding must be obligated by September 30, 2010. Obligated balances are available for expenses incurred until September 30, 2015, at which point any remaining balance will be cancelled.



Brian Costner, NEPA Office, encouraged NCOs to seek creative solutions to expedite NEPA without sacrificing quality.

Approximately \$26 billion of DOE's funding will be disbursed through grants and other mechanisms to state, local, and tribal governments, universities, and other external parties, for which DOE expects to receive more than 5,000 to 7,000 applications for funding. Based on past experience and the types of projects to be funded, Mr. Costner said, the current expectation is that the large majority of the proposed activities will fit within DOE's existing categorical exclusions (CXs). Nonetheless, the level of effort required to review these applications and make NEPA determinations in a few months is unprecedented. In addition, even if only a small percentage

of proposals require an EA or EIS, DOE's workload of such NEPA reviews would more than double.

Most of the increased workload would be focused in a few offices – Energy Efficiency and Renewable Energy, Electricity Delivery and Energy Reliability, Fossil Energy, Golden Field Office, and the National Energy Technology Laboratory. Last year, DOE made fewer than 2,000 CX determinations. Normally, DOE prepares about 20 to 30 EAs and completes about 10 EISs per year.

Project Reviews and NEPA Reporting

Since passage of the Recovery Act in February, the NEPA Office has been assisting with Recovery Act implementation primarily in two ways. First, DOE Offices proposed approximately 165 Recovery Act "projects" (many with a broad scope involving several discrete actions). Mr. Costner described how the NEPA Office works with NCOs to identify existing NEPA reviews applicable to the proposed actions or develop an initial strategy for completing such reviews. The NEPA Office incorporates this information into comments on the project plans prior to their approval by DOE senior management.

Second, the NEPA Office is preparing reports to the Council on Environmental Quality (CEQ) on the status of NEPA compliance for approved Recovery Act projects. Section 1609(c) of the Recovery Act requires the President to report to Congress on NEPA compliance status every 90 days for activities through September 30, 2010. The NEPA Office provided input to CEQ on reporting guidance. Mr. Costner further explained that the NEPA Office uses information gathered during the review of DOE Recovery Act project plans to prepare the reports to CEQ.

Mr. Costner provided NCOs a draft of DOE's April 30 report to CEQ and received helpful feedback from them during the meeting. DOE and other Federal agencies provided their reports to CEQ on April 30 for inclusion in the first report to Congress on May 18, 2009 (related article, page 24).

Looking ahead to future Section 1609(c) reports, Mr. Costner said that "We are trying to keep the reporting workload simple." DOE's next report to CEQ (for activities through June 30) is due July 15, 2009. The NEPA Office will use the baseline information from the project reviews and routine tracking of EAs and EISs to compile much of the report. The NEPA Office also will need to know the date of the determination, the CX(s) applied, and the number of grants or other actions to which the determination applies.

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When you go through “Gate 2” (CD-2), you’ve made a decision and really cannot go back, said Paul Bosco.

Mr. Daniel stressed that the NEPA review needs to be completed before CD-2 is approved, because its approval allows final (detailed) design to proceed.

Mr. Bosco described CD-2 as the “point of no return.” In the project management process, he indicated that in approving CD-2, the Acquisition Executive approves cost, schedule, and scope of the project, and then notifies Congress. “You can change your mind after approval of CD-1, but unless

the project is cancelled,” Mr. Bosco explained, “you really cannot go back after CD-2 approval.”

A final issue concerning CD-2 approval was raised by Mr. Grainger: “When is NEPA complete, so that CD-2 approval can proceed?” While it was clear from the discussion that an EA/finding of no significant impact or EIS must be issued before approval of CD-2, it was not clear whether issuance of a record of decision (ROD) is required prior to CD-2. “Given that CD-2 approval by the Acquisition Executive is approval of the project’s cost, scope and schedule, it seems reasonable to conclude that a ROD documenting this decision must follow, not precede, CD-2,” Mr. Grainger said. This question will be clarified during the next revision to DOE Order 413.3A, which according to Mr. Bosco will be later this year or early 2010. **LL**

Recovery Act and NEPA (continued from page 8)

Lessons Learned and Recommendations

Mr. Costner thanked the NCOs who helped gather information during the reviews of DOE Recovery Act projects. He noted that in preparing project plans “more often than not, the Program Offices have not engaged NCOs in a discussion of the respective project’s NEPA strategy.” This slowed the review process, Mr. Costner explained. The NEPA Office intends to continue trying to connect NCOs and project or program managers to improve the review process and project implementation, he said.

There is considerable schedule pressure, he emphasized, and DOE senior management, as well as Congress through the CEQ reports, will be notified when NEPA schedules slip and hamper Recovery Act project implementation. There also is a clear signal from CEQ and DOE senior management that the quality of the NEPA process and analyses remain important. In addition, the President has made clear that the Recovery Act is to be implemented with a high degree of transparency.

Mr. Costner reported several findings from reviewing NEPA compliance for Recovery Act projects. Existing NEPA documents for many ongoing activities are more than 5 years old, he said. “If you are relying on an existing NEPA document for a Recovery Act project, then look at it closely, particularly if it is more than 5 years old, and be

confident that the document is appropriate for the newly funded activities,” Mr. Costner advised.

Be extremely mindful of schedule, but also of NEPA values.

– Brian Costner, NEPA Office

Mr. Costner concluded with several recommendations to expedite the NEPA process for Recovery Act projects. Approaches encouraged by CEQ, he said, include grouping similar activities for NEPA review; preparing concise, focused EAs; preparing programmatic EAs; and reviewing other agency NEPA documents for applicable analysis. He also recommended that DOE make more use of Management Councils to bring all interested DOE Offices to the table early in EIS preparation, and prepare the best possible draft (in order to minimize time between draft and final EIS). Also, he suggested the use of “NEPA detailees” to help manage the increased workload as a result of the Recovery Act for some organizations within the Department. For example, an NCO with a lighter workload could assist an NCO with heavy Recovery Act workload on a temporary basis to help distribute the responsibilities and assignments. **LL**




2009 NAEP Conference: Focus on Sustainability

By: Eric Cohen and Carrie Moeller, Office of NEPA Policy and Compliance

Under the theme of *Making Sustainability Happen: Goals, Practices, and Challenges*, more than 200 participants met at the 34th annual conference of the National Association of Environmental Professionals (NAEP) in Scottsdale, Arizona, on May 2–6, 2009. “Sustainability is about improving today’s quality of life without sacrificing tomorrow’s options; it is about finding solutions that seek to balance social, environmental, and economic values; and it is about treating the Earth like we intend to stay,” said keynote speaker, Dr. Jonathan Fink, Director of Arizona State University’s Global Institute of Sustainability.

Participants at the conference had the opportunity to hear from a diverse mix of presenters on topics such as

sustainable systems, air and climate change, energy, and public participation. NEPA implementation was a major topic of discussion. Several sessions addressed ways to make the NEPA process faster and more effective, including a presentation on streamlining the NEPA process for Recovery Act projects. Six panels addressed a range of issues regarding the consideration of climate change in NEPA documents.


Articles on these sessions (identified by the NAE logo), including recommendations by presenters, are on the following pages. The NEPA Office presents the recommendations without endorsement. However, the discussions at the NAEP conference paralleled those at the April NEPA Compliance Officers meeting. 

Many Ways to Streamline the NEPA Process

The NEPA process need not impede the effective, rapid implementation of projects, concluded several presenters, who suggested ways to minimize the time needed to complete EAs and EISs. One presentation focused on streamlining NEPA reviews for Recovery Act projects.

Some Federal agencies have developed proven methods to streamline the EIS process, which will be essential for projects under the Recovery Act, observed Ron Bass, a senior regulatory specialist with ICF Jones & Stokes. Building on those methods, past NEPA streamlining studies, and the experience of his firm, M. Bass and his colleagues developed four specific recommendations for streamlining the EA process, and 15 recommendations for the EIS process (summarized in text boxes; the full paper, *Economic Stimulus and NEPA Compliance – Streamlining the Environmental Review Process*, is at www.icfi.com/transitio under Climate & Energy).

Most of the recommendations are consistent with those discussed at DOE’s NCO meeting in April and include some new ideas as well. In addition, Mr. Bass suggested providing opportunities for public review of all draft EAs, and encouraged review by the Environmental Protection Agency and independent third parties.

In presenting these recommendations, Mr. Bass noted that, given the importance of Recovery Act projects, agencies should be able to complete an EIS in less than 1 year within the existing legal and regulatory framework, rather than the government-wide average of 3.4 years. Mr. Bass also emphasized the importance of the NEPA process to effective decision making, not only for Recovery Act projects, and he cited former Secretary of Energy James Watkins, who said “Thank God for NEPA” after an EIS helped him avoid making a poor decision. 

Recommendations for Streamlining the EA Process from the NAEP Conference

1. Develop checklists to standardize the preliminary project evaluation. Checklists can help eliminate unnecessary topics and can be tailored to meet agency needs.
2. Develop uniform thresholds for determining significance to ensure that conclusions in a finding of no significant impact (FONSI) are well-supported.
3. Design projects to avoid or reduce impacts. Rather than prepare an EIS, appropriate use of a “mitigated FONSI” can streamline the process.
4. Provide supporting documentation for FONSI. Explaining why a proposed action will not have significant impacts in terms of the concepts of “context” and “intensity” will improve legal defensibility.

Ron Bass, ICF

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Recommendations for Streamlining the EIS Process from the NAEP Conference

1. *Obtain senior-level commitment to streamlining.* Agency management should commit to making the NEPA process work better and preparing documents expeditiously. Once management makes this commitment and engages in the EIS process, staff and consultants are likely to follow, and can take advantage of all available tools and resources.
2. *Ensure adequate staffing.* Agencies should assign highly-experienced managers, especially for complex, controversial NEPA documents. Effective EIS management requires a combination of skills, including those of experienced management, technical, legal and communication staffs, as well as consultants. Agencies should also commit sufficient qualified staff to avoid bottlenecks during internal EIS reviews.
3. *Establish and stick to time limits for EIS preparation.* Some agencies have proven track records in following time limitations. Federal agencies should consider modifying their internal procedures to adopt time limits.
4. *Establish and stick to deadlines for internal review.* One of the most widespread causes of EIS delay can be avoided if Federal agencies develop and enforce internal EIS review deadlines, and obtain commitments for timely review from cooperating agencies.
5. *Establish internal steering committees.* Committees that include senior agency management, policy staff, legal counsel, cooperating agencies, and, in some cases, the Department of Justice and the Council on Environmental Quality (CEQ), can reveal major issues and develop solutions throughout the EIS process.
6. *Rely on programmatic EISs and tiering.* Using programmatic EISs in conjunction with tiering, agencies can significantly reduce the need for new, time-consuming studies. This approach would be particularly helpful for Recovery Act projects that can tier from an existing programmatic EIS.
7. *Use scoping to eliminate unnecessary studies.* During scoping, an agency can eliminate a specific issue from the EIS if it determines that the issue is not relevant, saving time and effort.
8. *Prepare concise and readable documents.* Consistent with CEQ regulations, some agencies have prepared “reader-friendly” EISs that minimize technical jargon and acronyms and use easy-to-understand graphics.
9. *Prepare for the writing process in advance.* Determine as much as possible about the content and look of the document in advance. Consider project-specific style guides, choice of terminology (e.g., how to refer to the project), need for graphics and tables, level of detail, and need for appendices and references.
10. *Develop comprehensive strategies for integrating NEPA with other laws.* Identify all permitting and consulting agencies, including roles and review timelines; rely on memoranda of understanding for cooperating agencies; and establish interagency steering committees or resource advisory committees. For particularly complex and important projects, CEQ can have a positive influence on inter-agency interaction, which often is responsible for slowing the EIS process.
11. *Engage in effective collaboration with concerned state and local agencies and stakeholders.* Consider using professional mediators or facilitators on particularly complex or controversial projects. Although collaboration may involve considerable up-front effort, it is the best way to gain acceptance for Federal projects.
12. *Encourage pre-application consultation with regulatory agencies.* Agencies should develop procedures for allowing applicants to engage in pre-application consultation with staff. The Federal Energy Regulatory Commission has developed such procedures, which expedite projects.
13. *Conduct “just-in-time” NEPA training.* The level of NEPA knowledge among parties participating in the EIS process (e.g., technical preparers and reviewers) is not consistent, resulting in delays. During scoping and throughout the EIS process, as needed, internal, on-the-job NEPA training sessions may be beneficial.
14. *Use efficient and expedited contracting approaches.* Use of indefinite quantity contracts under which a consultant is selected in advance to prepare one or more NEPA documents on a retainer basis can avoid potentially lengthy delays from selecting consultants anew each time a project is proposed.
15. *Consider what states can do.* States with “little NEPA” laws can achieve considerable streamlining within their existing framework. When both Federal and state approvals are necessary, most state laws encourage state and local agencies to cooperate with Federal agencies to prepare joint documents to reduce duplication of effort and save cost and time.

Ron Bass, ICF

LESSONS LEARNED

September 1, 2009; Issue No. 60

Third Quarter FY 2009

DOE NCO Volunteers Lend a Hand To Expedite Recovery Act Projects



A BIG TASK, BUT REWARDING

When the Office of Energy Efficiency and Renewable Energy (EERE) issued a call for help in meeting its NEPA responsibilities under the American Recovery and Reinvestment Act of 2009 (Recovery Act) early this summer, many experienced NEPA Compliance Officers (NCOs) offered their services. With the assistance of these “volunteers,” two EERE grant programs – the Energy Efficiency and Conservation Block Grant Program (\$3.2 billion) and the State Energy Program (\$3.1 billion) – have begun distributing funds to accelerate the creation of green jobs across the country, achieve widespread energy savings, and deploy a multitude of mostly small-scale renewable energy projects.

This cadre of 16 NCOs from EERE, the Office of Civilian and Radioactive Waste Management, the Office of Environmental Management, the Office of Fossil Energy, the Office of Electricity Delivery and Energy Reliability, the National Nuclear Security Administration, and various Field Offices, has already reviewed more than 800 Recovery Act funding applications and completed more than 900 categorical exclusion determinations. However, more NEPA work remains to be done, and Matt Rogers, Senior Advisor to the Secretary of Energy for Recovery Act Implementation, recently issued another plea for further assistance through September 30 to meet Departmental goals.

(continued on page 6)

DOE General Counsel Scott Blake Harris Aims To Improve the NEPA Review Process



Scott Blake Harris stated that his goals are to improve the speed, efficacy, and transparency of DOE NEPA reviews (interview, page 5).

In his first month on the job, DOE's new General Counsel, Scott Blake Harris, issued operating principles for NEPA document review by the Office of General Counsel (GC) to reduce the time required for such reviews and avoid multiple rounds of comments, particularly for environmental impact statements (EISs). “We can spend more time on what is important if we spent less time on what is unimportant,” he said about the procedures, which are designed to eliminate unnecessary delays, provide high-quality information to Program Offices, and achieve the environmental assessment envisioned by the National Environmental Policy Act. These process improvements will also encourage Program and Field Offices to take early and active ownership of the quality of their documents, he said.

(continued on page 7)

DOE Grants NEPA Variances for Two Solicitations

To facilitate timely review of applications under two programs funded by the American Recovery and Reinvestment Act (Recovery Act), DOE has granted two variances from certain provisions in its NEPA regulations. DOE explained that granting the variances would expedite the award of funding and “facilitate the nation’s economic recovery by creating and retaining jobs.” One program would accelerate “development and production of electric drive vehicles,” and the other would accelerate “deployment of sustainable energy infrastructure and energy efficient industrial technologies that will reduce energy use.”

The variances were for the Electric Drive Vehicle Battery and Component Manufacturing Initiative (advanced battery solicitation; 74 FR 30558; June 26, 2009), and the Deployment of Combined Heat and Power, District Energy Systems, Waste Energy Recovery Systems, and Efficient Industrial Equipment Initiative (combined heat and power solicitation; 74 FR 41693; August 18, 2009). DOE found that the variances from 10 CFR 1021.216(c) through (h), *Procurement, Financial Assistance, and Joint Ventures*, are “soundly based on the interests of public welfare.” These variances primarily negated the need to prepare an environmental critique and environmental synopsis for the solicitations.

Recovery Act Funds Awarded

The Recovery Act includes \$2 billion for DOE to provide grants to manufacturers of advanced battery systems and vehicle batteries to be produced in the United States. The variance notice explains that DOE views these grants as critical to the development and production of electric-drive vehicle systems that will substantially reduce petroleum consumption, and that DOE expects the grants to result in U.S.-based manufacturing jobs that will meaningfully aid in the Nation’s economic recovery. President Obama announced the awardees selected from more than 80 applications on August 5, 2009. (See DOE news release at www.energy.gov/news2009/7749.htm.)

DOE made \$156 million of Recovery Act funds available through the combined heat and power solicitation. The variance notice explained that the funding is “critical to the deployment of new and replacement systems and equipment that are highly efficient and that make use of energy that would otherwise be wasted.” DOE expects to make selections in September from the more than 225 applications received.

Integrating NEPA and Procurement Processes


10 CFR 1021.216 establishes a process for considering potential environmental impacts within the procurement process for evaluating proposals, including prior to the conditional selection of applications for award. As the

variance notices describe, the central element of this “216 process” is preparation by DOE of a confidential environmental critique containing, among other things, a brief comparative evaluation of the proposed projects’ potential environmental impacts. The environmental critique may contain information provided by the applicant as well as supplemental information developed by DOE. This environmental critique forms the basis for an environmental synopsis, which is made available to the public and is incorporated into any EA or EIS prepared. (See DOE’s NEPA regulations and [LLQR, December 2008, page 14](#), both available on the DOE NEPA Website at www.gc.energy.gov/nepa.)

Variances Requested to Speed Process

For both solicitations, DOE received more applications than it is able to fund and undertook a merit review process in order to select awardees. The merit review criteria for the advanced battery solicitation included consideration of anticipated environmental impacts, among other factors. Although there was no similar merit review criterion for the combined heat and power solicitation, applicants did complete an environmental questionnaire that is being considered in the selection process. DOE’s National Energy Technology Laboratory, which was responsible for application review in both cases, noted that there would be some redundancy between the requirements of the merit review process and the 216 process, and it requested a variance to speed processing of the applications.

In granting the variances from certain requirements of 10 CFR 1021.216, DOE concluded that the process for making the funding awards “will provide the selecting official with sufficient information regarding potential environmental impacts in the Merit Review Report.” The variances do not affect requirements to prepare an EA or EIS for selected proposals. Indeed, any such EA or EIS will describe the relevant environmental factors noted in the Merit Review Report, consistent with the openness provisions of the 216 process (10 CFR 1021.216(h)).

The authority to grant variances is established in DOE’s NEPA regulations at 10 CFR 1021.343. DOE has used the authority in the past to implement alternative arrangements for complying with NEPA in order to take emergency actions (10 CFR 1021.343(a)). (See [LLQR, September 2000, page 1](#); [June 2004, page 8](#); and [March 2006, page 1](#).) However, the two recent variances are the first for which DOE has used the provision for actions that are “soundly based on the interests of national security or the public health, safety, or welfare” (10 CFR 1021.343(c)). The regulation states that such variances must be approved by the Secretary, but the Secretary delegated that authority to the General Counsel in December 2008. 



DOE NCOs Lend a Hand *(continued from page 1)*

2,300 Block Grant Applications Received

The Energy Efficiency and Conservation Block Grant Program (Block Grant Program) has received approximately 2,300 applications from states, territories, Indian tribes, cities, and counties. The purpose of the Block Grant Program is to provide grants to communities to fund programs and projects that reduce energy use and fossil fuel emissions and improve energy efficiency. Block grants may be used to carry out a wide range of activities, including energy efficiency retrofits, bike lane and pedestrian walkways, development of advanced building codes, district heating and cooling systems, and renewable energy projects on or in government buildings.

DOE received the first batch of Block Grant Program applications on June 25 and a second batch of applications on August 10. The first Block Grant awards were made in late July and DOE continues to issue awards each week, with the ultimate goal of delivering funding to 80 percent of the June 25 applicants by September 30.

Several DOE Offices have agreed to process a portion of the applications, including conducting NEPA reviews, to help DOE meet this schedule. **Steve Blazek**, NCO for the Golden Field Office, coordinated with NCOs from other offices to develop an overall process to review applications, and each week EERE hosts a conference call among NCOs to check on progress and discuss any issues that arise during the reviews. The review process includes reading applications and environmental questionnaires, and sometimes seeking additional information from applicants.

The NCOs assisting Mr. Blazek are **Kristin Kerwin**, Golden Field Office; **Jody Barringer**, **David Boron**, and **Othalene Lawrence**, EERE Headquarters; **Pete Yerace**, Environmental Management Consolidated Business Center (EM Business Center); **Gary Hartman**, Oak Ridge Operations Office; **Mary Martin**, National Nuclear Security Administration; and **Jane Summerson** and **Narendra Mathur**, Office of Civilian Radioactive Waste Management. John Hudy, an environmental engineer on a 60-day detail from the Federal Aviation Administration, is also supporting the Block Grant Program.

Although the work has been demanding (most of the “volunteer” NCOs are providing support to EERE in addition to their usual workload), the NCOs report satisfaction in supporting the Recovery Act efforts. Ms. Summerson said her participation has been highly rewarding. “First, I appreciate the opportunity to support

my fellow NCOs, who have been so generous in their support to me. Second, to evaluate such proposed projects is fascinating. I actually know physically many of the counties and cities, and in a number of cases can visualize the buildings or districts they are targeting. Most of these applications are well thought out and will make a very real difference to these communities,” she said.

Big Boost for State Energy Program

DOE received 56 applications from states, the District of Columbia, and U.S. territories for grants and technical assistance under its State Energy Program. The purpose of the Program is to provide funding to promote energy conservation and reduce the growth of energy demand. State energy offices use Program funds to develop state plans that identify opportunities for adopting renewable energy and energy efficiency technologies and implementing programs to improve energy sustainability. Many states also proposed to establish revolving loan funds to finance such opportunities over time.

DOE’s National Energy Technology Laboratory (NETL) has the lead for reviewing grant applications under the State Energy Program. Mr. Blazek helped the NETL NCOs (**Paul Detwiler**, **John Ganz**, and **Roy Spears**) initially to determine the level of NEPA review required. Four NCOs (**Drew Grainger**, Savannah River Operations Office; **Pete Yerace**, EM Business Center; **Brian Mills**, Electricity Delivery and Energy Reliability; and **Stephanie Jennings**, Oakland Projects Office) stepped in to help NETL with follow-up calls to applicants to get clarifying information. Mr. Boron observes a “very congenial, collaborative, and diligent team that is working well with EERE State Energy Program project directors and corresponding state points of contact.”

EERE deeply appreciates the dedication and support from all the NCO volunteers as well as from GC staff. Their efforts are helping to make funds available in communities throughout the country that will create jobs while furthering energy conservation.

– Rita Wells, EERE Executive Director for Field Operations

(continued on next page)

New DOE NEPA Procedures

(continued from page 1)

The new GC NEPA review process is based on six operating principles:

Ad Hoc Delegation – GC will delegate EIS approval to the Program Offices on a project-by-project basis, upon request, when GC concludes that its further involvement is no longer required. Factors affecting delegation will include the EIS experience of the Program Office, the quality of the submitted materials, the complexity and sensitivity of the project, and the potential national impacts of the EIS review.


Coordinated Substantive Comments – GC will provide Program Offices with a single set of comments focused on substantive, rather than stylistic, issues. Comments will differentiate between matters legally required and other suggestions.

Single Coordinator – For each NEPA-related document being reviewed, GC will appoint a single GC coordinator to be the Program Office's point of contact with GC.

Agreed Schedule – GC will begin the process by agreeing with the Program Office on a realistic schedule for all GC work that can be met reliably. Whenever possible, within 5 working days of document receipt, GC will identify any

significant issues that may affect schedule and likely major comments.

Regular Meetings – GC will arrange regular meetings with Program Offices to identify issues and resolve any problems in the EIS process.

Technology – GC will identify and implement modern information technologies to facilitate more efficient review and communication, such as software to facilitate document markup and comment, and videoconferencing to facilitate low-cost collaboration. (See related article, page 14). 

I believe these steps will enhance our ability to meet program needs, particularly in regard to schedule, without sacrificing quality in the NEPA process.

*GC NEPA Review Process Improvements
Memorandum of June 15, 2009*

DOE NCOs Lend a Hand

(continued from previous page)

Now serving an EERE Headquarters detail, Mr. Yerace is working with the other volunteer NCOs to develop approaches for expediting the NEPA process for the State Energy Program to ensure that NEPA review is not a bottleneck.

Reflecting sentiments similar to Ms. Summerson's, Mr. Grainger described his work for the State Energy Program as "very satisfying," noting that he is happy to be contributing to the "sustainable and energy independent future of the United States." "For the first time in 20 years with the Department of Energy, I'm actually working on an energy project, and it's exciting," he said.


A key objective of the DOE Recovery Act money is to help boost the Nation's economy through green jobs and environmentally-friendly energy projects. The NEPA volunteers, through the support and cooperation of their organizations, are helping to make this happen.

*– David Boron, NCO
Energy Efficiency and Renewable Energy*

More Help Needed!

EERE still needs help from NCOs and NEPA Document Managers to fulfill its responsibilities under the Recovery Act. Matt Rogers, Senior Advisor to the Secretary of Energy for Recovery Act Implementation, sent an email to NCOs on August 20 seeking help through September 30 in reviewing block grant applications. NCOs could work from their offices. Travel to Washington, DC, is not required. Mr. Rogers said that interested NCOs should speak to their supervisors and contact Claire Johnson, Energy Efficiency Advisor, Office of the Secretary, for additional information at claire.johnson@hq.doe.gov or 202-586-2887. "We need your help to complete these awards on a timely basis," said Mr. Rogers.

EERE also will need experienced NEPA Document Managers to help prepare any EAs or EISs required for the Block Grant Program, State Energy Program, or any of its other Recovery Act programs.

See "NEPA Efficiency Essential to Recovery Plan" and "Recovery Act Stimulates Significant NEPA Workload" (*LLQR*, March 2009, page 1, and June 2009, page 8, respectively). 





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 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.

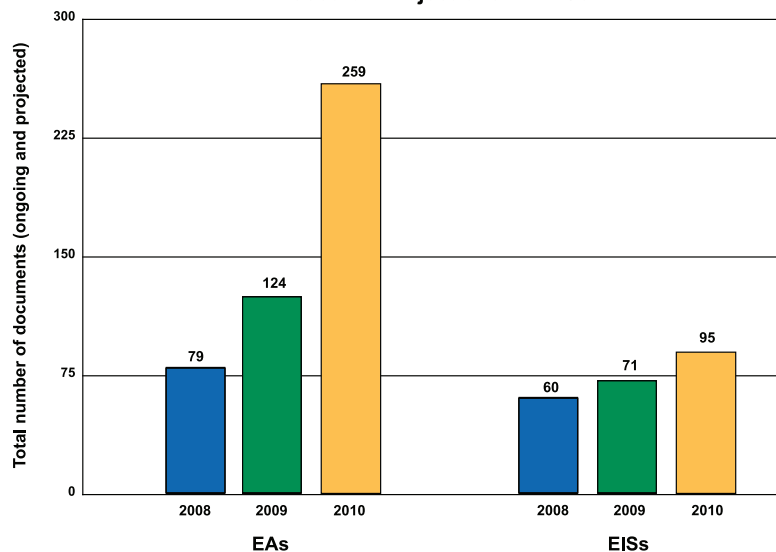
The planning basis for NETL has increased from 5 EAs in 2009 to 49 in 2010, and from 5 EISs to 19 during that period. Potential EAs would address proposals in the areas of industrial carbon capture and sequestration and clean

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

**Growth in DOE NEPA Workload, 2008–2010
Based on Projections in APSs**



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 Agreement¹ (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)

¹ 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.² 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.³ 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. For further information, contact Derek Passarelli, Chief Counsel for DOE's Golden Field Office, at historicpreservation@go.doe.gov. 

² See Section III of the programmatic agreement entitled "State Interagency Agreements."


³ 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. 



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.

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


“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.”

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.

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. For more information, contact Brian Costner, Office of NE A Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924. 

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.”

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

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



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 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.


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.



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 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.

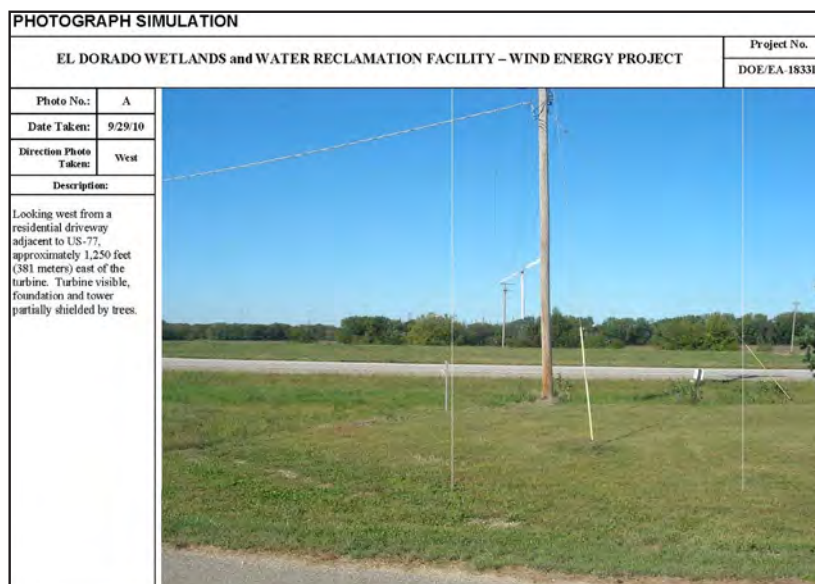
Agency Involvement and Coordination. One of the challenges in completing the EA was coordination among many involved parties: DOE, the Kansas Corporation Commission, City of El Dorado, a DOE contractor, a sub-recipient NEPA contractor, and the sub-recipient’s engineering firm. From the beginning of the 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 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.

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)

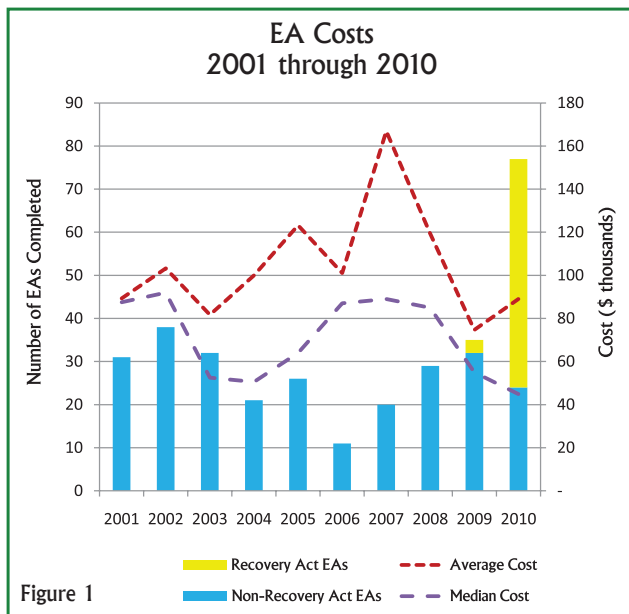


Figure 1

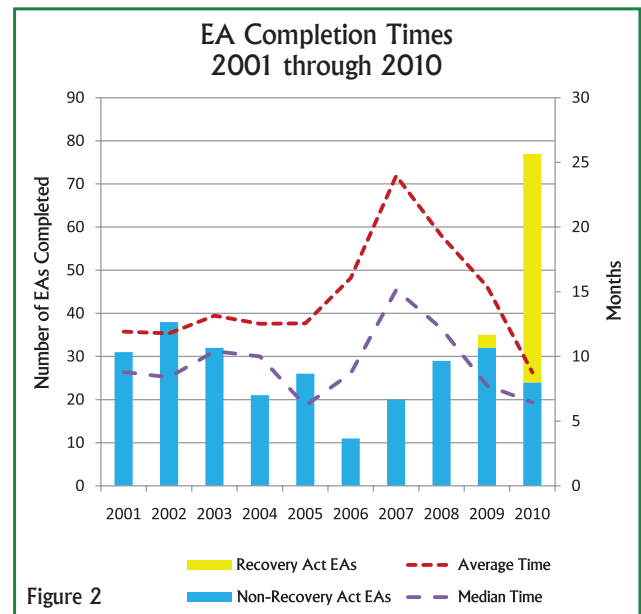


Figure 2

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)

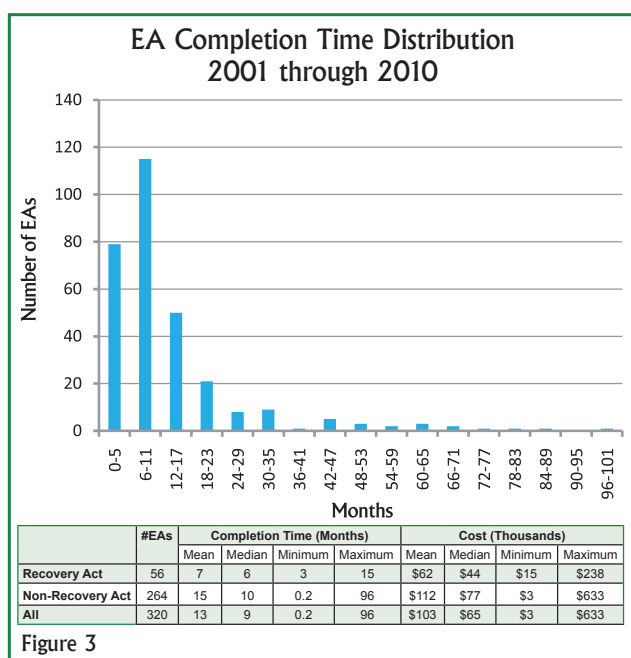


Figure 3

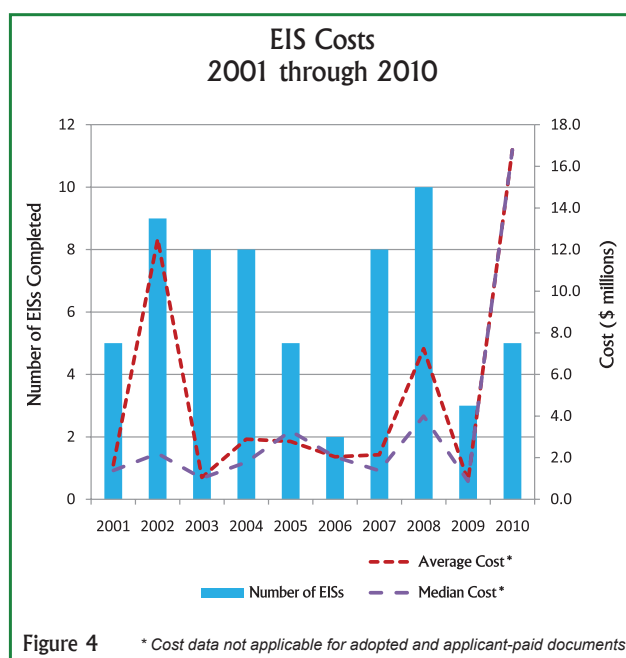


Figure 4 * Cost data not applicable for adopted and applicant-paid documents.

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.

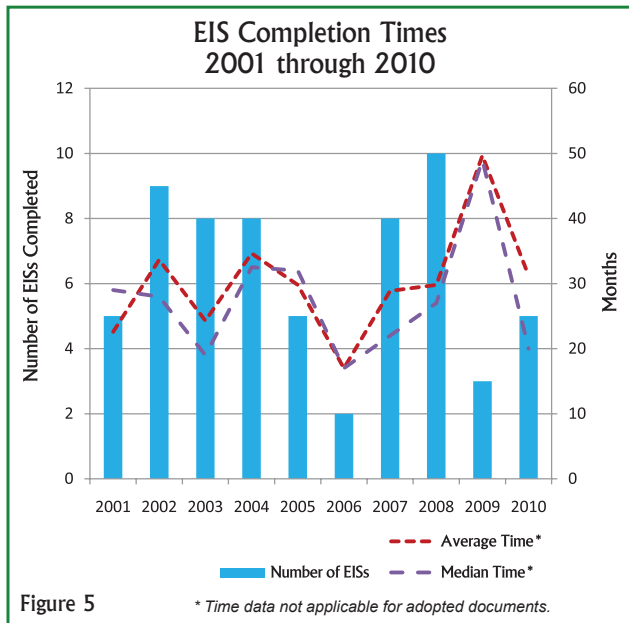
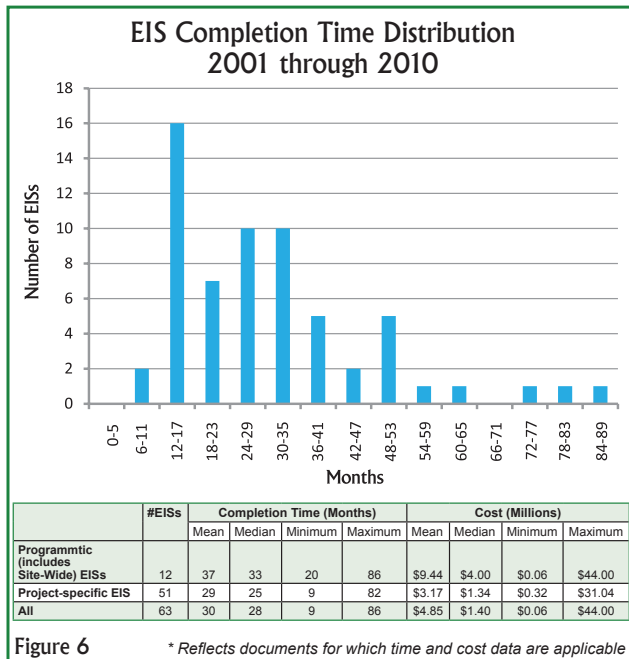


Figure 6 provides more information about the distribution of EIS completion times, indicating that, although some EISs are completed in 3 or more years, the most frequent EIS completion time is between 12 and 17 months, while 15 percent are completed in 15 months or less.

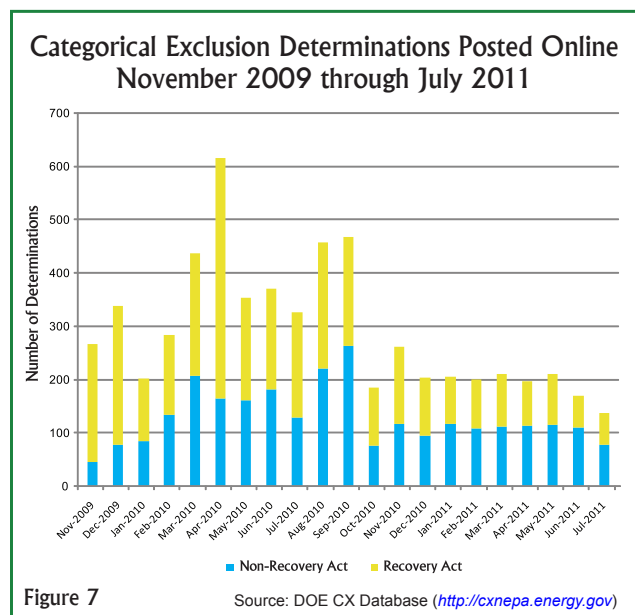
Looking forward, an increasing number of EISs are in preparation for which Document Managers report that completion milestones are “uncertain,” raising concerns about prospects for continued improvement in EIS completion time. The number of EISs tracked on DOE’s Schedule of Key EISs for which completion 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)



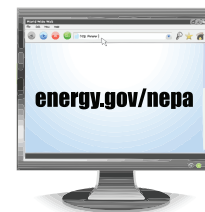
New Design Creates Opportunities for DOE NEPA Website

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.

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. For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at 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 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.





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. For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at brian.costner@hq.doe.gov or 202-586-9924. 

LESSONS LEARNED

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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 or 202-287-5380. 

Historical Perspective

(continued from page 3)

for 9 programmatic/site-wide EISs), a statistically significant improvement¹ (*LLQR*, June 1999, page 19). That improvement likely can be attributed to the policy measures.

The NEPA Office later examined a second cohort (1997 cohort) of 20 EISs started between April 1997 and March 1999. The median completion time for the 1997 cohort was 29 months, which represents a notable slippage from the 1994 cohort, though completion times remained less than those for documents prepared prior to the NEPA Policy Statement.

Since 1999, median completion times remained essentially unchanged, as indicated in the graph (page 3). Time series trends for DOE EIS completion times, such as in the graph, must be interpreted cautiously in view of the relatively few documents completed each year and the wide variation in completion times. Examining groups of EISs over long periods of time confirms the trend. *LLQR* has reported on EISs completed during long time periods, typically 10 years. For example, the median completion time for EISs completed in the most recent 10-year period, from 2003 through 2012, is 29 months.

Reasons for the slippage in median completion time from 21 to 29 months between the 1994 and 1997 cohorts, and the subsequent maintenance of about a 29-month median, are not clear. Information in *LLQR* and feedback from NEPA Compliance Officers and NEPA Document Managers in the 1990s suggest greater senior management attention was paid to EIS schedules immediately after

1994 Secretarial Policy Statement on NEPA


Emphasized the importance of:

- Senior management attention
- Teamwork
- EIS schedules
- Integrating NEPA and project planning

Streamlining measures included, among other things:

- Designation of NEPA Document Managers
- Establishing inter-office document preparation teams
- Conducting early internal scoping
- Reducing document review cycles
- Developing guidance and training

issuance of the NEPA Policy Statement than was paid to documents started later on. Similarly, management attention was identified as a key factor contributing to a notable decrease in time to complete Recovery Act EAs relative to non-Recovery Act EAs (related article, page 1; *LLQR*, September 2011, page 1).

These data show that it may be possible to reduce EIS completion times by focusing on the measures that were implemented successfully for a period of time after issuance of the 1994 NEPA Policy Statement. For further information on NEPA process metrics, contact Eric Cohen, Unit Leader, NEPA Office, at eric.cohen@hq.doe.gov. 

The most important step to reduce NEPA document preparation and review time is to actively involve senior management in the NEPA process; i.e., to obtain the decision maker's commitment and attention. Other useful measures include early planning, internal scoping, aggressive contract management, and use of a team approach.

– Questions and Answers
on the Secretarial Policy Statement on NEPA, 1994

¹ Statistical tests (modified t-test confirmed by nonparametric analysis) provide greater than 95 percent confidence that the 1994 cohort was a faster-completed population than the 15 EISs completed just before the NEPA Policy Statement was issued.

GAO Report

(continued from page 1)

Little Information on Costs

“We found that, with few exceptions, the agencies did not routinely track data on the cost of completing NEPA analyses, and that the cost associated with conducting an EIS or EA can vary considerably, depending on the complexity and scope of the project,” wrote GAO. GAO cites two NEPA-related studies completed by the Forest Service and the Federal Highway Administration that illustrate “how it is difficult to extract NEPA cost data from agency accounting systems.”

“The biggest challenge in determining the costs and benefits of NEPA is separating activities under NEPA from activities under other environmental laws,” GAO noted. According to Department of Transportation (DOT) officials, “the dollar costs for developing a NEPA analysis reported by agencies also includes costs for developing analyses required by a number of other federal laws, executive orders, and state and local laws, which potentially could be a significant part of the cost estimate.”

GAO adds that, “DOE officials told us that they track the funds the agency pays to contractors to prepare NEPA analyses and does not track other costs, such as the time spent by DOE employees.” GAO cites *LLQR* for data on DOE’s median and average cost for preparing EAs and EISs, completion times, and DOE’s NEPA workload.

Some Information on NEPA Time Frames

GAO finds that some government-wide information is available on time frames for completing EISs, but few estimates exist for EAs and CX determinations “because most agencies do not collect information on the number and type of NEPA analyses, and few guidelines exist on time frames for completing environmental analyses.” GAO identifies the National Association of Environmental Professionals (NAEP) annual reports as a source of government-wide information for EIS time frames.

GAO notes that NAEP reported that the 197 final EISs completed in 2012 had an average preparation time of 4.6 years. GAO reports that some agency officials said the time frame measures for EISs may not account for up-front work that occurs before the notice of intent (NOI), which is typically the start date used to calculate EIS completion time. For example, DOT officials told GAO that the start date is unclear in some cases because of the large volume of project development and planning work that occurs before an NOI is issued.

The GAO report cites DOE’s median and average EA completion time for calendar years 2003 through 2012 (9 and 13 months, respectively). For perspective, GAO reports that Interior’s Office of Surface Mining estimated

its EAs take approximately 4 months on average to complete, and the Forest Service reported that its EAs in fiscal year 2012 averaged about 18 months to complete.

For CX determinations, GAO finds that the little government-wide information that is available “shows that they generally take less time to complete than EAs.” DOE and Interior’s Office of Surface Mining told GAO that they usually take 1–2 days to complete. Forest Service, on the other hand, took an average of 177 days to complete CX determinations in fiscal year 2012. GAO explains that the Forest Service documents its CX determinations with decision memos, which are completed after all necessary consultations, reviews, and other determinations associated with a decision to implement a particular proposed project.

NEPA Benefits Are Largely Qualitative

Regarding the benefits of completing NEPA analyses, GAO finds that information is “largely qualitative.” According to studies and agency officials, “some of the qualitative benefits of NEPA include its role as a tool for encouraging transparency and public participation and in discovering and addressing the potential effects of a proposal in the early design stages to avoid problems that could end up taking more time and being more costly in the long run.” DOE officials referred to the public comment component of NEPA as a piece of “good government architecture.” Forest Service officials said that NEPA leads to better decisions on projects because of the environmental information considered in the process. GAO highlights [CEQ’s examples of benefits from the NEPA process for Recovery Act-funded activities](#), the Environmental Law Institute’s *NEPA Success Stories: Celebrating Forty Years of Transparency and Open Government*, and DOE’s NEPA “success stories” as sources for examples.

Most NEPA Reviews Are Not Challenged

Following its investigation into the frequency and outcome of NEPA litigation, GAO finds that “agency data, interviews with agency officials, and available studies indicate that most NEPA analyses do not result in litigation.” In addition, based on information from CEQ and other sources, GAO notes that “the number of lawsuits filed under NEPA has generally remained stable following a decline after the early years of implementation.” GAO also finds that according to data from CEQ and NAEP, and from legal studies, “the federal government prevails in most NEPA litigation.”

The GAO report, with references to DOE highlighted, is available on the [DOE NEPA Website](#). The GAO reports

(continued on page 12)