

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

June 1, 2000; Issue No. 23

For Second Quarter FY 2000

NEPA Compliance Officers Celebrate 10 Years of Progress, Look to Future

Celebrating the 10th anniversary of the establishment of DOE NEPA Compliance Officers (NCOs), the Office of NEPA Policy and Assistance convened a meeting of NCOs in Washington, DC, May 2 and 3, to consider “What Have We Learned?” and “Where Are We Going?” Focused on the theme “Looking Back, Moving Forward,” the NCOs reviewed progress made in the past decade and set goals for further improvements. A large timeline chart was displayed to show DOE NEPA accomplishments, including turning points, key events, guidance, NEPA community meetings, and major programmatic EISs in the past 10 years. (See text box, page 5.)

In welcoming the NCOs, Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, said: “I’m impressed with the NEPA process and its results. Everything DOE does is under scrutiny. Doing NEPA well helps answer questions, keeps DOE out of trouble, and helps DOE do the right thing.” The NCOs deserve thanks, he noted, for their role in strengthening the foundations of DOE decision making.



Headquarters and Field Office NEPA Compliance Officers at the 10th Anniversary Meeting in Washington, DC.

Environmental Excellence Award Announced

Dr. Michaels announced that the DOE NEPA Lessons Learned Program has been selected to receive an Environmental Excellence Award from the National Association of Environmental Professionals and thanked the NCOs for their contribution to this effort. (See related article on page 2.) He also presented Certificates of Recognition to four NCOs who have served for 10 years.

continued on page 4

Los Alamos Site-wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions



A “sign” of the Los Alamos wildfire at Technical Area (TA)-53.

As DOE and the Los Alamos region cope with the effects of last month’s devastating fire, the 1999 Los Alamos National Laboratory (LANL) Site-wide EIS has proved to be a valuable reference document. In fact, the NEPA process had earlier focused DOE attention on the risks of wildfire at LANL and prompted mitigation actions within the past year that reduced the severity of impacts of the fire. Moreover, the analyses in the Site-wide EIS will be useful in planning recovery programs.

The LANL Site-wide EIS (DOE/EIS-0238) included an accident scenario – an extensive wildfire initiated to the southwest of LANL near the border with the Bandelier National Monument – that closely mirrored the actual

continued on page 3

Inside *LESSONS LEARNED*

Welcome to the 23rd quarterly report on lessons learned in the NEPA process. This issue features highlights from the May 2000 NEPA Compliance Officers Meeting. Also featured is an article on NEPA and the wildfire at Los Alamos. This is an unusually long issue, due simply to the abundance of information to be shared. I encourage you to read the report cover to cover and file it for future reference.

NEPA Compliance Officers Celebrate 10 Years of Progress:

Lessons Learned from Seasoned NCOs	7
NEPA and Clean Air Act Conformity Guidance	8
Draft Environmental Justice, Accident Analysis Guidance.....	8
e-NEPA – What's New and What's Next	11
Web Site of Interest: Federal Highway Administration	12
Mini-guidance:	
Adopting Another Agency's EIS or EA	13
An EIS Must Include Contractor Disclosure Statement	14
Mini-guidance Compilation	14
Transitions: An NCO's Retirement Reflections	15
Training Opportunities	16
NAEP Conference in June	16
DOE Litigation Updates	17
Other Agency NEPA Cases	18
Second Quarter FY 2000 Questionnaire Results	21
EAs and EISs Completed This Quarter	22
EA and EIS Metrics	23
Recent EIS Documents and Milestones	27

Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by August 1, 2000. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

Third Quarter Questionnaires Due August 1, 2000

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2000 (April through June, 2000) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

For Questionnaire issues, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov, or phone 202-586-0750.

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback to either of the contacts listed above.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

LLQR Index

A cumulative index of the LLQR is provided in the September issue each year.

Printed on recycled paper




NEPA Lessons Learned Program to Receive NAEP Environmental Excellence Award

Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, proudly announced at the May NCO Meeting that the DOE NEPA Lessons Learned Program had been selected to receive a National Association of Environmental Professionals (NAEP) award. This award, in the category of Excellence in Environmental Education, will recognize DOE's NEPA Lessons Learned Program for "its significant contribution to self examine, share and measure program effectiveness and continuously improve NEPA," said Association President Andrew J. McCusker in a May 1 letter informing Dr. Michaels of the selection.

The NEPA Lessons Learned Program, conducted by the Office of NEPA Policy and Assistance for almost 6 years, aims to reduce the cost and time for NEPA document preparation while maintaining and improving document quality and effectiveness. Largely through this *Lessons*

Learned Quarterly Report, DOE measures performance and distributes guidance and information within the Department and to people who use the DOE NEPA Web.

Dr. Michaels noted that many people contribute to the success of the DOE NEPA Lessons Learned Program and its quarterly report. Most essential is the information provided by the front lines of the DOE NEPA Community – the NCOs and NEPA Document Managers. Without their time and cost metrics, lessons and recommendations, and contributed articles, he said, we could not have a successful NEPA Lessons Learned Program, which the Council on Environmental Quality also has held up as a model to other Federal agencies.

NAEP will present the award plaque to DOE on June 27 at the Association's conference in Portland, Maine. (See related article on page 16.) 

Los Alamos EIS Analyzed Wildfire Impacts (continued from page 1)

Cerro Grande Fire. That fire, ignited as a “prescribed burn” by the National Park Service on May 4, 2000, went out of control and burned about 50,000 acres of forest and residential land, including about 9,000 acres (approximately 30 percent) of the LANL site.

During the fire, DOE relied upon the EIS analyses to answer public inquiries and concerns, particularly regarding the potential adverse effects from the fire burning over contaminated areas. According to Elizabeth Withers, Los Alamos Area Office NEPA Compliance Officer, the EIS was “an extremely valuable tool for public relations credibility in a very emotional and difficult time.” The completeness of the assessment in the EIS, coupled with the onsite air monitoring, “helped to establish early on that there was no imminent danger to people resulting from the fire,” she said.

The detailed accident analysis (Appendix G of the EIS, which is posted on the DOE NEPA Web at tis.eh.doe/nepa/docs/docs.htm) covered the immediate impacts of such a wildfire on workers, the public and the environment. The analysis assumed that about 8,000 acres on LANL would be burned as well as portions of the Los Alamos townsite. “These scenarios are quite credible, in view of the present density and structure of fuel surrounding and within LANL and the townsite, as well as the occurrence of three major fires in the past 21 years,” the EIS stated. In considering the combined probability of fire-favorable conditions, the EIS concluded “that a major fire moving up to the edge of LANL is not only credible, but likely . . .”

Comments Focused Attention on Wildfire

The Draft LANL Site-wide EIS did not analyze a wildfire accident because under the initial screening methodology that scenario had not been considered plausible. However, comments at the public hearing on the Draft EIS from a forester at the nearby Santa Fe National Forest and written comments from the Department of the Interior focused attention on the issue. The commenters referenced a recent Forest Service report about the threat of wildfire. The Final EIS estimated that the frequency of this type of fire is 1 in 10 years.

Based on this high chance of fire identified in the EIS analysis, actions were begun immediately to reduce the wildfire risks at certain key facilities, including TA-54 (waste facility) and TA-16 (Weapons Engineering Tritium Facility). Trees were cut and wooden pallets on which waste drums were stacked were replaced with aluminum pallets.

With the completion of these actions, the Final EIS stated (conservatively) that the population dose from a site-wide fire would be reduced from an estimated 675 person-rem to 50 person-rem, thereby avoiding a potential for approximately 0.3 latent cancer fatalities.

The EIS also addressed the longer-term environmental impacts resulting from a fire, e.g., loss of protective



Wildfire scorched the grounds near Building 326 at Technical Area-46.


cover, runoff, soil erosion and sedimentation, effects on legacy contaminants, effects on biological systems, and effects on cultural resources. As stated in the EIS, “The consequences of a wildfire are diverse, continuing through time and space, and frequently having significant changes in geomorphology and biological communities and processes . . . Loss of vegetative cover will create a setting that can have pronounced effects on flow dynamics, soil erosion and sediment deposition.”

Mitigation Reduces Hazard

In the LANL Site-wide EIS Record of Decision (September 1999), DOE committed to develop by December 1999 a preliminary program plan for comprehensive wildfire mitigation, including construction and maintenance of strategic fire roads and fire breaks, creation of defensible space surrounding key facilities, and active forest management to reduce fuel loadings. The Mitigation Action Plan, October 1999, states that the wildfire hazard at LANL was currently being reduced by thinning trees, maintaining fire roads and fire breaks, and other measures.

The Los Alamos Area Office was about to issue a Wildfire Management Plan Programmatic EA for pre-approval review when the fire forced a change in plans. That EA is now being revised in light of the fire and will be issued shortly.

An interagency Burned Area Emergency Rehabilitation Team is working onsite to address immediate recovery actions. The Team has a NEPA unit, which has initiated an informal consultation with the Council on Environmental Quality regarding emergency NEPA procedures.

According to John Ordaz, Defense Programs project manager for the LANL Site-wide EIS, the NEPA process worked well in this case because the EIS team “was determined from the outset to prepare a useful document.” When the EIS team heard the concerns about wildfire at the public hearing, “we investigated the claims and the science behind the analysis.” Then the team found ways to reduce the fire load for the high risk areas. “It was the dedication of the EIS team that got the mitigations implemented,” Mr. Ordaz said. 

NCOs Celebrate 10 Years (continued from page 1)



Dr. David Michaels (center) with 10-year NCOs (from left) Gary Walker, National Petroleum Technology Office; Raj Sharma, Office of Nuclear Energy, Science and Technology; Paul Dunigan, Richland Operations Office; and Jim Johnson, Fossil Energy.

To set the stage for the ensuing discussions, three veteran NCOs – Drew Grainger, Jim Johnson, and Raj Sharma – shared their sometimes humorous insights about what they have learned from their NEPA experiences. (See page 7.) A presentation on EA and EIS cost, time and effectiveness metrics (related article, page 23) provided the context for assessing the results of recent reforms. Invited guest speakers, including Brian Costner, Senior Policy Advisor to the Secretary for Environment, Safety and Health, and Betty Nolan, Senior Advisor in the Office of Congressional, Intergovernmental, and External Affairs, offered their advice on ways to further improve the DOE NEPA process.

Perspectives “From the Outside In”

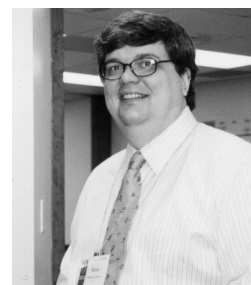
Brian Costner shared his views as an “outsider,” working for DOE watchdog groups, and now as an “insider,” working for Secretary of Energy Bill Richardson. “NEPA is integral to my life,” he said. “It was the process through which I learned about DOE activities, reactor safety, and nuclear energy. It was my vehicle for information availability, and my primary opportunity to influence the decision process.” Mr. Costner noted that the NEPA process provides information to the public in a comprehensible framework. “It’s easy to explain to the public how NEPA works. Alternatives analysis is common sense,” he said.

Mr. Costner offered suggestions for DOE to improve its NEPA process:

- ✓ Ask the right questions. The way a NEPA review is framed can bias the outcome.

- ✓ Use the NEPA process to identify ways to more effectively mitigate adverse impacts.
- ✓ Improve the usefulness of NEPA documents by making them more concise. As a citizen activist, he often needed to reduce a bulky EIS to a few-page fact sheet.
- ✓ Keep aware of changes in DOE policy during the sometimes long period needed to develop a major EIS.
- ✓ Integrate public participation plans when preparing multiple EISs for a site. Regulators and the public need integrated information and appreciate integrated review processes such as joint public meetings.

- ✓ As an alternative to DOE hosting public meetings, go to the regularly scheduled meetings of citizen groups to present information and get feedback.
- ✓ Talk directly with stakeholders rather than relying on moderators and contractors.
- ✓ Use the NEPA process to empower people; for example, invite community contributions on modeling assumptions.



Brian Costner speaks from the “outside in” perspective.

“NEPA prepared me for my participation in DOE. I’m still reading DOE EISs, just sooner than before,” Mr. Costner concluded.

Making the Most of Meeting the Public

Betty Nolan discussed how to achieve the greatest benefits from NEPA public involvement opportunities. She stated that the NEPA process is the only planning process that the public ever sees, so stakeholders usually have very high expectations. They expect the NEPA process to be substantive, responsive, and transparent. Her advice to the NCOs included:

- ✓ Strive for honesty always, as credibility is cumulative. Each NEPA process encounter affects DOE credibility.
- ✓ Keep Federal employees in the forefront of public events. Do not turn meetings over to contractors.

- ✓ Provide information that is as timely and complete as possible.
- ✓ Provide information before meetings, so stakeholders can develop meaningful questions and comments.
- ✓ Study local issues, concerns, standard practices, and procedures before setting up a public meeting. For example, some stakeholder communities prefer formal agendas and structured meetings, while others operate primarily through informal, conversational encounters.
- ✓ Involve the DOE site's Public Affairs staff at meetings and as part of the NEPA team.
- ✓ Alert the Office of Congressional, Intergovernmental, and External Affairs early during the NEPA process for proposals that are highly controversial.

Discussions Examined Issues for EISs, EAs, and CXs

EIS Teamwork: How Is It Working?

Panelists reflected on the results of a 1994 turning point in DOE NEPA practice – the renewed emphasis on teamwork in the Secretarial Policy Statement on NEPA, under the leadership of a NEPA Document Manager and involving participants from all cognizant organizations.

Tony Como, Fossil Energy NEPA Document Manager, credits teamwork for the marked NEPA schedule reduction that applicants to his program have noted. He also views teamwork as an efficient means to educate participants in the NEPA process on project and NEPA goals. Elizabeth Withers, Los Alamos Area Office NCO, expressed concern that teams will be hard to staff adequately if downsizing continues. She added, however, that seasoned NEPA Document Managers, especially those with designated working groups, can still conduct the NEPA process efficiently.

Idaho Operations Office NCO, Roger Twitchell, described his organization's internal NEPA Planning Board, to which each Assistant Manager designates a representative for NEPA planning, coordination, and issue resolution. He stated that the Board's decisions have impact, and expressed concern that issues are often revisited or introduced as documents are reviewed by successive management levels at Headquarters. Steve Ferguson, Deputy Assistant General Counsel for Environment, observed that effective teamwork depends on early interactions, and the most successful NEPA Document Managers have been those willing to discuss

issues early in the process. He stated that although team members cannot commit higher levels of management to any particular action on an EIS, effective teamwork should allow critical issues that arise at any time to be resolved efficiently.

The Office of NEPA Policy and Assistance promised to review concerns expressed about the Headquarters EIS review and approval process.

continued on page 6

Looking Back, Moving Forward

A decade of DOE NEPA accomplishments was represented in a timeline chart that highlighted six turning points:

- ✓ Secretary of Energy Notice 15 in 1990 on reforms and innovations to the DOE NEPA compliance program, which established the system of NCOs and enhanced opportunities for State and Tribal participation in the NEPA process
- ✓ The 1992 replacement of the NEPA Guidelines with the DOE NEPA Regulations (10 CFR Part 1021)
- ✓ The 1994 Secretarial Policy Statement on NEPA, which emphasized teamwork, instituted NEPA Document Managers, assigned EA authorities to Program and Field Offices, and established a continuous improvement program to measure NEPA performance and share lessons learned
- ✓ The 1995 revision of the DOE NEPA Order, which assigned NCOs the authority to apply categorical exclusions
- ✓ The 1996 revision to the DOE NEPA regulations, which added CXs and streamlined the EIS process
- ✓ The 1997 establishment of the DOE-wide NEPA contracts

(The timeline is an attachment to this issue of the Lessons Learned Quarterly Report and available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.)

NCOs Celebrate 10 Years (continued from page 5)

Programmatic and Site-wide Reviews: What Do They Buy Us?

Three NCOs that were involved in one (or more) of the more than 25 programmatic and site-wide EISs that DOE prepared in the past decade were asked to consider to what extent these broadly scoped reviews – which represent major commitments of DOE personnel, time, and money – will save DOE resources in the future.

Paul Dunigan, Richland Operations Office NCO, referred to the recently completed Hanford Comprehensive Land Use Plan EIS process as being the best mechanism they could have had for framing the needed land use decisions, and that regularly updated site characterization reports that supported that EIS (and others) will continue to be used to reduce the size of Hanford EISs.



Janine Sweeney, Office of General Counsel, leads the NCO panel on programmatic and site-wide EISs.

Harold Johnson, Carlsbad Area Office NCO, described the great usefulness of the Waste Management Programmatic EIS in preparing the second Waste Isolation Pilot Plant Supplemental EIS, estimating the savings from not repeating certain analyses at about \$4 million. He observed that well-prepared programmatic and site-wide EISs can support flexibility in program implementation. Many

recent DOE supplement analyses have shown that the broad documents had already anticipated and adequately reviewed proposed actions.

Preparation of a major programmatic EIS and several site-wide reviews has put the Office of Defense Programs in a position to comply with NEPA more efficiently in the future, stated Jay Rose, several times a NEPA Document Manager and now Deputy NCO for that Office. He noted that site-wide EISs are especially helpful when there are multiple project-specific proposals at a site and in resolving questions about NEPA review for continuing operations. He referred specifically to the site-wide EIS in preparation for the Y-12 Plant site at the Oak Ridge Reservation. The Y-12 EIS will tier from the Stockpile

Stewardship and Management Programmatic EIS, which helped decide the Plant's mission, and its scope, in effect, will encompass two project-specific EISs (for storage of highly enriched uranium and a special materials complex).

[Also see the benefits from the Los Alamos National Laboratory Site-wide EIS, described in the article beginning on page 1.]

Managing the EA Process

In a discussion co-facilitated by Jeff Robbins, Albuquerque Operations Office NCO, and Jim Daniel, Office of NEPA Policy and Assistance, NCOs exchanged experiences in preparing EAs for their offices, especially with regard to public participation procedures. As one NCO noted, the DOE NEPA implementing regulations only require DOE to provide a host state or tribe the opportunity to review an EA before approval, so it can be difficult to convince a project manager of the benefits of providing broader public participation opportunities. Nevertheless, NCOs told of various efforts to involve the public, including: public distribution of the Annual NEPA Planning Summary, monthly public roundtable meetings or NEPA status reports, newspaper advertisements and postcards announcing the availability of an EA for review and posting an EA on the Web. Another NCO commented that the opportunity to improve DOE's credibility is a strong justification for involving the public in EAs.

Several NCOs expressed interest in revising their Office's EA management plans for internal scoping, quality assurance, and public participation, which each Office is required to have under DOE Order 451.1. The Office of NEPA Policy and Assistance encouraged NCOs to examine sample plans it had placed on display.

CXs: What Works? What Doesn't Work? Do We Need More?

NCOs revisited some old and considered some new issues regarding their responsibilities to make categorical exclusion (CX) determinations under DOE Order 451.1, in a discussion co-facilitated by Bill White, NCO, Chicago Operations Office, and Carolyn Osborne, Office of NEPA Policy and Assistance. NCOs emphasized that finding the proper balance between using CXs as much as possible to avoid unnecessary paperwork – yet knowing enough about the specific facts of a proposal to judge extraordinary circumstances – continues to be a challenge for them. This dichotomy was emphasized as well in a January 2000 Council on Environmental Quality paper on CXs, provided at the NCO Meeting.

continued on page 10

Lessons that Seasoned NCOs Have Learned...

Compiled from remarks by Drew Grainger, Savannah River Operations Office; Jim Johnson, Fossil Energy; and Raj Sharma, Nuclear Energy, Science and Technology

About the NCO's Job

- ☞ Trust, but verify. Everything. Particularly contractors' assurances that they have made all requested corrections in your document or that they know what EH wants, and project managers' assertions that we already have met NEPA requirements for a proposed activity or that it should be CXed.
- ☞ Successfully completing the NEPA process earns kudos for the project manager, while delaying the project because of environmental inadequacies almost always is blamed on the NEPA Document Manager and the NCO.
- ☞ Review the CEQ and DOE regulations periodically – don't have mini-guidance in the *Lessons Learned Quarterly Report* written just for you. In addition to applying regulations, use common sense.
- ☞ EH and GC are your allies.

About NEPA Documents

- ☞ If you think it's easy to *prepare* an EIS, you're wrong. Preparers have multiple priorities (their own, their supervisors', and other organizations') that only rarely coincide with yours, and they must consider a lot of written and unwritten guidance. No matter how it may seem, though, they really are committed to achieving better decisions.
- ☞ If you think it's easy to *review* an EIS, ditto the above.

About Working with Management

- ☞ NEPA may be the only planning that senior managers in the Department see. The only time your manager hears about a project may be when presented with a FONSI to sign. Make sure you know something about the project, not just the NEPA process.
- ☞ For important projects, involve your senior management from the very start to guide and drive the NEPA process.
- ☞ Project managers may need to be reminded that the NEPA process is as much their responsibility as are other facets of the project.
- ☞ EAs and FONSI are harder to defend than EISs, but it is even harder to convince a project manager that an EIS will save time and money in the long run. You must show why an EIS is needed.

On Public Involvement

- ☞ Prepare for scoping meetings by becoming aware of other important issues at the sites. The public thinks of a DOE site in its entirety, whereas DOE staff tend to compartmentalize a site into projects.
- ☞ Stakeholders may try to use the NEPA process to change DOE policy, not to see that DOE programs are conducted in an environmentally benign manner. Most public comments on an EIS are about policy, not impact analysis; assign Feds to write the responses.
- ☞ Credibility with the public is crucial. Protect your credibility, and DOE's.

On NEPA Costs and Schedules

- ☞ Lower the cost of a site's NEPA reviews by standardizing site descriptions, background sections, regulatory descriptions, and any other sections that may be appropriate.
- ☞ Spending contractor time and money on elaborate schedules and cost reports wastes time and money.

On NEPA Effectiveness

- ☞ Canceling a project (and its NEPA review) for reasons (including weakness of purpose and need) discovered in the course of NEPA review is a NEPA success.
- ☞ Likewise are changes managers make to a proposed action "behind the scenes" in order to minimize the environmental impacts presented to the public. ☐☐



NCO Drew Grainger makes a point.

NEPA and Clean Air Act Conformity Guidance Issued

To facilitate the integration of the Clean Air Act conformity and NEPA processes, the Office of Environment, Safety and Health has issued detailed guidance, consistent with the Environmental Protection Agency (EPA) policy encouraging agencies to couple the two processes.

The final guidance, entitled *Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process*, was issued on April 21, 2000, and discussed at the May NCO Meeting. It provides detailed information to facilitate compliance with EPA regulations at 40 CFR Part 93, Subpart B, pertaining to emissions of criteria air pollutants that affect designated nonattainment or maintenance areas.

In his memorandum transmitting the guidance, Assistant Secretary David Michaels asked Secretarial Officers and Heads of Field Organizations to reassess their general conformity review procedures to ensure that they are consistent with the conformity requirements.

The guidance, circulated to the DOE NEPA and Clean Air Act community for review and comment in November 1999, has three parts. The first part describes how to coordinate the conformity and NEPA processes, including:

- When the conformity determination requirements apply to a Federal action,
- How to address the conformity determination requirements in NEPA documents, and
- How to coordinate the NEPA and conformity public participation processes.

Conformity Review —

A step-wise process for determining whether the conformity regulations apply to an alternative

- ✓ Conduct a conformity review for all proposed actions and alternatives.

Conformity Determination —


A process of demonstrating how an alternative would conform to the applicable air quality implementation plan

- ✓ Normally, conduct a conformity determination, if needed, for only the preferred alternative.

The second part (Appendix I) provides greater detail on:

- The Clean Air Act statutory requirements for general conformity,
- How to conduct a conformity review, and
- How to conduct a conformity determination.

The third part (Appendix II) provides related references.

Copies of this guidance can be obtained through NEPA Compliance Officers. The guidance is also available on DOE's NEPA Web at tis.eh.doe.gov/nepa/. Questions about this guidance should be directed to Mary Greene, Office of NEPA Policy and Assistance, at mary.greene@eh.doe.gov, or phone 202-586-9924. Questions about the general conformity regulations should be directed to Ted Koss, Office of Environmental Policy and Guidance, at ted.koss@eh.doe.gov, or phone 202-586-7964. 

Comments Requested on Draft Environmental Justice, Accident Analysis Guidance

The Office of NEPA Policy and Assistance sent two draft guidance papers to NEPA Compliance Officers on April 21, 2000, to coordinate comments from their Offices. The draft guidance was discussed at the NCO Meeting.

Environmental Justice Considerations and NEPA

A draft paper, "Guidance on Incorporating Environmental Justice Considerations into the Department of Energy's National Environmental Policy Act Process," addresses how to assess environmental impacts on minority and

low-income populations and how to enhance participation of those populations in the NEPA process. The guidance also provides definitions, resources, and other information to apply when identifying minority or low-income populations potentially affected by a particular proposed action.

The guidance would not establish any new requirements under DOE's NEPA implementing regulations (10 CFR Part 1021) but would assist DOE in implementing Executive Order 12898, on Federal actions addressing environmental justice in minority or

Focus on NCO Meeting

low-income populations, and an accompanying Presidential Memorandum (February 11, 1994). The draft guidance replaces previous DOE draft guidance provided in October 1996 and at the NEPA Community Meeting in October 1998. In preparing the final guidance, the Office of NEPA Policy and Assistance will continue to coordinate with Robert Moore, Coordinator of the Environmental Justice Program in DOE's Office of

Economic Impact and Diversity, who briefly shared his perspectives at the NCO Meeting. The NEPA Office also will solicit comments from stakeholders who participated in guidance development. Comments are due through NEPA Compliance Officers by June 29, 2000, to Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone 202-586-4596, or fax 202-586-3071.

Incorporating Environmental Justice Considerations into DOE's NEPA Process

- ✓ The basic assessment principle:
 - Do not merely draw conclusions from an assessment of impacts on the general population, but
 - Specifically consider the environmental impacts of a proposed action and alternatives on minority and low-income populations.
- ✓ Specific consideration for certain impact categories would be appropriate when the populations may be affected differently by an action than the general population (e.g., special exposure pathways, cultural use of natural resources).
- ✓ To conclude that there would be any environmental justice concerns, DOE would need to identify adverse environmental impacts on minority or low-income populations that would be
 - Significant within the meaning of NEPA (that is, "high and adverse," as used in the Executive Order) and
 - Disproportionately so, relative to impacts on the general population.
- ✓ To enhance the participation of minority and low-income populations, DOE should
 - Be sensitive to cultural differences
 - Use a variety of communication methods
 - Consult with potentially affected populations.
- ✓ In addition, where appropriate and if practical, DOE could
 - Translate announcements and documents into a prevalent non-English local language
 - Provide training on the NEPA process and NEPA documents.
- ✓ In all cases – identifying populations, assessing impacts, enhancing participation – use the "sliding scale" approach:
 - Make analytical or outreach efforts commensurate with the potential for significant impacts, unless
 - Substantial interest in or controversy regarding a proposed action, despite relatively insignificant potential environmental impacts, warrants a higher degree of public participation opportunities.

Accident Analysis under NEPA

The revised draft accident analysis guidance, "Analyzing Accidents under NEPA," would clarify and supplement *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements (Recommendations)*, which the Office of Environment, Safety and Health issued in May 1993. The Office of NEPA Policy and Assistance expects to issue final guidance this summer and recommends that the draft guidance be used in the interim.

The draft guidance addresses NEPA policy and requirements, and presumes that accident analysts have the appropriate technical skills. It defines an accident as "an unplanned event or sequence of events that results in undesirable consequences. An accident may be caused by equipment malfunction, human error, or natural phenomena."

While the paper provides general principles to guide the development of accident analyses in NEPA documents, document preparers must apply considerable judgment on

continued on page 10

Accident Analysis (continued from page 9)

a case-by-case basis. Document preparers will need to determine the appropriate range and number of accident scenarios to consider and the level of analytical detail and degree of conservatism that should be applied. In this regard, the draft guidance suggests using the “sliding scale” approach established in *Recommendations*.

Accidents are analyzed in NEPA reviews to inform decision makers and the public about reasonably foreseeable adverse consequences associated with proposed actions and alternatives. Accident analyses are necessary for a reasoned choice among alternatives and for appropriate consideration of mitigation measures.

The draft guidance cautions that bounding analyses may not enable a reasoned choice among alternatives and appropriate consideration of mitigation, because they tend to mask differences among the alternatives. Also, the paper notes that in some circumstances it may be appropriate to consider analyzing an accident scenario in which the public has expressed a keen interest, even when the scenario is unrealistic.

To ensure that accident analyses meet their intended purposes, the guidance discusses the appropriate use of conservatism in addressing uncertainties. Other topics addressed are accident scenarios and associated probabilities/frequencies, accident consequences, and risk. The scope includes analysis of radiological and nonradiological impacts on involved and noninvolved workers, the general public, and ecological systems. A related topic, analysis of acts of sabotage or terrorism, is addressed in an appendix.

The draft accident analysis guidance accommodates comments and several suggestions for additional content that reviewers provided on an earlier draft working paper, which was distributed and discussed at the NEPA Community Meeting held in North Las Vegas, Nevada, October 1998. The current draft guidance is not comprehensive, however, and further guidance on this topic is planned. Accordingly, some earlier suggestions for additional content are not yet addressed.

Comments are due by June 5, 2000, to Eric Cohen at eric.cohen@eh.doe.gov, phone 202-586-7684, or fax 202-586-7031. **LL**

NCOs Celebrate 10 Years (continued from page 6)

Much of the discussion focused on CX B3.6 (in Appendix B to Subpart D of DOE’s NEPA implementing regulations, 10 CFR Part 1021), for indoor bench-scale research, conventional laboratory operations, small-scale research and development projects, and small-scale pilot projects. Some NCOs described restrictions they place on use of the CX, and others told of proposed actions for which application of the CX could be controversial. The Office of NEPA Policy and Assistance requested suggestions for improving the wording of this CX, revising other CXs or other parts of the regulations, and establishing new CXs.

A Path Forward

In the course of the meeting, participants identified needs and opportunities for further improving the DOE NEPA program:

- ✓ Revisions to the DOE NEPA regulations, focusing on additional and revised CXs, particularly B3.6
- ✓ Revision of the DOE Floodplain/Wetlands regulations (10 CFR Part 1022), focusing on public notification requirements and exempt actions
- ✓ Guidance on shortening EISs to make them more useful to decision makers and the public
- ✓ Review of the Headquarters EIS review and approval process.

The DOE Office of NEPA Policy and Assistance will coordinate these efforts and has already begun follow-up actions. Suggestions for revising the DOE NEPA and Floodplain/Wetlands regulations should be forwarded through a NEPA Compliance Officer by June 23, 2000. **LL**

e-NEPA: What's New and What's Next

By: Denise Freeman, Acting DOE NEPA Webmaster, Office of NEPA Policy and Assistance

At the May NCO Meeting, Denise Freeman provided an overview of the history and purpose of the DOE NEPA Web, offered guidelines on effective Web publishing of NEPA documents, and outlined proposed improvements to make the site easier to use. The following is based on her presentation.

The DOE NEPA Web (tis.eh.doe.gov/nepa/), the first Federal agency NEPA Web site, was established in 1993 to provide up-to-date NEPA information to the NEPA Community and to serve as an electronic repository for DOE NEPA-related documents. The site provides announcements of current DOE NEPA activities, including public involvement opportunities and notices of document availability; DOE NEPA documents; relevant regulations, guidance, and orders; information on the DOE NEPA process; and links to NEPA.net and other NEPA sites and to Internet resources.

DOE NEPA Web Publishing Goals

The Office of NEPA Policy and Assistance has three goals for NEPA Web publishing, which are to post:

- Full texts of EISs when the Environmental Protection Agency publishes the Notice of Availability in the *Federal Register*
- Announcements and links to Notices of Availability, Notices of Intent, and Records of Decision on the same day they are published in the *Federal Register*
- EAs and FONISs within a week of receiving electronic files.

Most Frequent Problems in Web Publishing

Ms. Freeman noted the most frequently encountered problems in DOE's NEPA Web publishing experience:

- The electronic file is not submitted for Web publishing, or is submitted late

DOE NEPA Documents Online

As of May 2000, the DOE NEPA Web collection of documents, which is extensive but not yet complete, includes:

- 41 of the 63 EISs issued since 1995, and 16 of the 18 EISs issued since 1998
- 139 of the 243 EAs issued since 1995, and 25 of the 51 EAs issued since 1998
- All Records of Decision and Notices of Intent issued since 1998

The Office of NEPA Policy and Assistance is seeking the missing EAs and EISs, and is adding these documents to the Web site as they arrive.

- The electronic file is incomplete (for example, missing a volume)
- The electronic file is corrupt, password protected, in read-only format, or in a format incompatible with Web publishing
- Inappropriate transmission of e-files (e.g., e-mail transmission of a large electronic file causes server capacity problems)
- A completed DOE NEPA Document Certification and Transmittal Form is not submitted.

What to Do

An important key to avoiding problems is to follow EH's *Electronic Publishing Standards and Guidelines*, available on the Internet at tis.eh.doe.gov/style/index.htm.

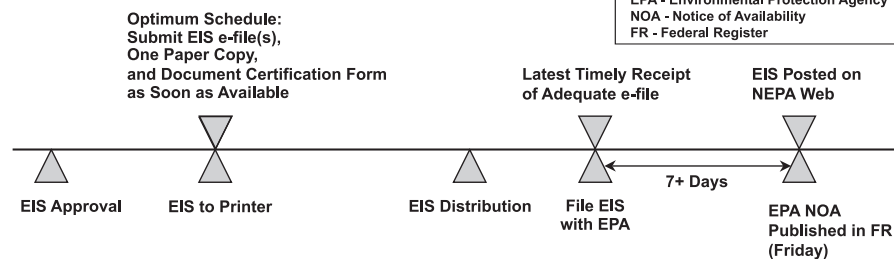
Prepare a document for Web publishing by converting it into an acceptable file format. Problems can be avoided from the beginning of the process if preparers create documents using software such as later versions of

MS Word or Corel WordPerfect, which are easy to convert to Web-compatible file formats.

Preparers should convert the entire document into appropriate Web publishing media such as hypertext markup language (HTML) for document text, graphics

continued on page 12

EIS Web Publishing Timeline



e-NEPA (continued from page 11)


interchange format (GIF) for graphics, or Joint Photographic Experts Group (JPEG) for photos. Or they can convert the entire document to portable document format (PDF), which preserves the exact appearance of the document, while allowing users to select and copy blocks of text.

To expedite Web-publishing, preparers should break a large document file into smaller segments (e.g., chapters or sections) and prepare a logical subdirectory structure in accordance with EH's *Electronic Publishing Standards and Guidelines*. This makes downloading and viewing sections of interest easier for readers lacking high-speed Internet connections.

Plan for Web publishing at the time of the NEPA determination, and consult with the Office of NEPA Policy and Assistance when uncertain how to proceed. Successful and timely Web publishing requires a NEPA Document Manager's active involvement in the process to ensure that the document meets the EIS Web Publishing Timeline. To successfully publish an EIS on the Web on the same day that the Notice of Availability appears in the *Federal Register*, printing and distribution must be well-coordinated with electronic publishing. The e-files should be submitted to EH the same day as to the printer.

Planned Improvements

The NEPA Office is planning a number of improvements to make the DOE NEPA Web site easier to use, including better organization and menu structure, more efficient document search features, more user-friendly navigation features, and a site content map. Suggestions, comments,

and questions should be sent to Acting NEPA Webmaster Denise Freeman at denise.freeman@eh.doe.gov or phone 202-586-7879. Also, users encountering any difficulties with the NEPA Web site (e.g., in locating an EIS or EA) should contact Ms. Freeman so that the problem may be corrected. 

e-file Submittal Procedures

For EISs, after consulting with Office of NEPA Policy and Assistance staff, send the following as soon as available (preferably when the document is sent to the printer) by overnight courier to:

Attn: Ms. Patsy Hosner, NEPA Project Manager
Waste Policy Institute, Suite 1000
2000 Kraft Drive, Blacksburg, VA 24060-6354

- One paper copy of the EIS
- Web-formatted electronic files
- A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/NEPA/docs/docs.htm).

Send four printed copies of the EIS as soon as available to Carol Borgstrom at the Office of NEPA Policy and Assistance.

For EAs and FONSIs, send the following within two weeks of their availability directly to the Office of NEPA Policy and Assistance:

- Five printed copies of the EA and FONSI
- Web-formatted electronic files
- A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/NEPA/docs/docs.htm).


Special Assignment for Lee Jessee

At the request of George T. Frampton, Acting Chair, Council on Environmental Quality, Secretary of Energy Bill Richardson has assigned Lee Jessee as the DOE representative to CEQ's Environmental Technology Task Force. The purpose of this assignment is to link Federal technology programs with key stakeholders in industry, state and local governments, universities, and other organizations. Ms. Jessee created DOE's NEPA Web and served as Webmaster. We wish Lee success in her new assignment, which extends through the end of 2000.

Web Site of Interest: Federal Highway Administration's "Environmental Guidebook"

The Federal Highway Administration's (FHWA) "Environmental Guidebook" is now available both online (www.fhwa.dot.gov/environment/guidebook/contents.htm) and on compact disc (CD). The Guidebook is a multi-volume collection of environmental and project development guidance, policy, and reference information related to NEPA and the transportation decision-making process. While some of the material is specific to FHWA's environmental and transportation programs, much of the material is of general interest to NEPA practitioners.

Visitors to the FHWA Web site may also wish to browse the agency's Environmental page (www.fhwa.dot.gov/environment/genrlev.htm) for offerings on additional topics such as air quality, environmental justice, historic and cultural resources, noise, and public involvement.

The Environmental Guidebook CD is available free while supplies last from Benita Smith, Office of NEPA Facilitation, at benita.smith@igate.fhwa.dot.gov or phone 202-366-2065. For more information on the CD or the Web site, contact Lamar Smith at lamar.smith@fhwa.dot.gov, or phone 202-366-8994. 

Adopting Another Agency's EIS or EA

By: Beverly Stephens, Office of NEPA Policy and Assistance (on detail)

To make the NEPA process efficient, the Council on Environmental Quality (CEQ) encourages agencies to adopt, where appropriate, draft or final EISs (or portions thereof) prepared by other Federal agencies. CEQ recognizes three cases where an EIS prepared by another Federal agency can be adopted (*Memorandum to Agencies Containing Guidance on Agency Implementation of NEPA Regulations*, 48 FR 34263, July 28, 1983*).

Cooperating Agency May Adopt a Lead Agency's EIS

The first case is when a cooperating agency wishes to adopt a final EIS prepared by a lead agency. After independently reviewing the EIS to ensure that its comments have been satisfied and that its proposed action is substantially the same as the action described in the EIS, the cooperating agency may adopt the EIS without recirculating it (40 CFR 1506.3(c)). An agency cannot adopt another agency's record of decision, however, but must prepare its own (or issue one jointly with another agency).

Adopting an EIS When the Proposed Action is Substantially the Same

The second case is when an agency has not participated in the preparation of an EIS as a cooperating agency, but its proposed action is substantially the same as the action described in the original EIS. The adopting agency must perform an independent evaluation of the statement to determine that the EIS satisfies the adopting agency's NEPA procedures, and the agency must recirculate the document (i.e., distribute and file with the Environmental Protection Agency) as a final EIS before issuing a record of decision.

Adopting an EIS When the Proposed Action is Not Substantially the Same

In the third case, an agency's proposed action is not substantially the same as the action described in the original EIS. As in the second case, the adopting agency must perform an independent evaluation, but in this case the adopting agency must recirculate the EIS as a draft (40 CFR 1506.3(b)) before preparing a final EIS and issuing a record of decision.

Other CEQ Provisions for Certain Cases

Finally, CEQ regulations provide that an adopting agency must specify: (1) when the EIS it is adopting is not final within the agency that prepared it, (2) when the statement's adequacy is the subject of pending litigation, or (3) when the action it assesses is the subject of a referral to CEQ under 40 CFR Part 1504 (40 CFR 1506.3(d)).

Adopting an EA

Although CEQ regulations are silent on whether an agency may adopt an EA, CEQ's memorandum encourages agencies to develop procedures for adoption of EAs prepared by other agencies. In response to the question, "May DOE adopt another agency's EA and finding of no significant impact if DOE was not a cooperating agency?," DOE has provided the following guidance (*Frequently Asked Questions on the Department of Energy's National Environmental Policy Act Regulations*, revised August 1998, Question 15*):

Any Federal agency may adopt another Federal or state agency's EA and is encouraged to do so when such adoption would save time or money. In deciding that adoption is the appropriate course of action, DOE (as the adopting agency) must conclude that the EA adequately describes DOE's proposed action and in all other respects is satisfactory for DOE's purposes. Alternatively, DOE may add necessary information by adding a cover sheet. (For example, the originating agency's action may be to issue a permit for a proposed activity, whereas DOE's action may be to fund the activity.)

Once DOE determines that the originating agency's document is adequate for DOE's purposes, possibly after adding information, DOE would assign an EA number and transmit the EA to the states(s), Indian tribes, and, as appropriate, the public for preapproval review and comment, unless the originating agency already has done so equivalently through its public involvement process. In the latter case, it would be prudent to consult with the states and Indian tribes to ensure that they agree that they have been provided an adequate preapproval review opportunity. DOE, after considering all comments received, would issue its own finding of no significant impact, if appropriate.

* Included in the DOE NEPA Compliance Guide and on the DOE NEPA Web.

Adopting Another Agency's EIS or EA

(continued from page 13)

Performing an Independent Evaluation is Key

Because it is each agency's responsibility to comply with NEPA, the adopting agency must perform an independent evaluation of the document to be adopted. For this purpose, the EIS and EA checklists developed by the Office of NEPA Policy and Assistance can serve important functions: the checklists can remind NEPA practitioners of the applicable requirements and provide records of the independent evaluations. Finally, the fact that the adopting agency performed an independent evaluation should be explained in the adopted EIS or EA if it is recirculated, or, if not recirculated, explained in the finding of no significant impact or record of decision. **LL**

Convenient Compilation of Lessons Learned Mini-guidance Prepared

At the May NEPA Compliance Officers Meeting, the Office of NEPA Policy and Assistance distributed a handy compilation of mini-guidance articles selected from past issues of *Lessons Learned Quarterly Reports* (December 1994 through March 2000). Mini-guidance articles in this collection contain procedural interpretations and recommendations developed by the Office of NEPA Policy and Assistance in consultation with the Office of General Counsel and others. The collection will soon be widely distributed to DOE's NEPA Community, after format improvements are completed. For further information, contact Yardena Mansoor, Office of NEPA Policy and Assistance at yardena.mansoor@eh.doe.gov or 202-586-9326.

Keeping back issues of *Lessons Learned* also is a convenient way to refer to information or guidance on a specific topic. The cumulative index is published in the September issue each year to help readers locate articles of interest.

A DOE EIS Must Include Contractor Disclosure Statement

Council on Environmental Quality (CEQ) NEPA regulations require a contractor preparing an EIS to be free of financial or other interest in the outcome of the environmental review and related agency decisions. Contractors must execute a disclosure statement prepared by the lead agency or, where appropriate, a cooperating agency specifying that they have no financial or other interest in the outcome of the project (40 CFR 1506.5(c)).

DOE NEPA implementing regulations require such disclosure statements from EIS contractors and subcontractors, and that the statements be included in a draft and final EIS (10 CFR 1021.310).

Recommendations for Contractor Disclosure Statements

For an EIS prepared by a contractor, the NEPA Document Manager, with assistance from the Contracting Officer as appropriate, should consider these recommendations:

- ✓ Confirm the absence of conflict of interest early in the process, ideally before awarding the EIS task order or contract.
- ✓ Provide the contractor with a sample disclosure statement.
- ✓ Direct the contractor to execute a disclosure statement and to obtain disclosure statements from any subcontractors. Preferably, such direction should be in the statement of work for any contract for NEPA document preparation. Paragraph 5.1 in the statements of work in the DOE-wide NEPA contracts addresses the requirement for disclosure statement(s) and could be used as a model.
- ✓ Include the disclosure statement(s) in the draft and final EIS. Any logical location is acceptable (for example, near the list of EIS preparers or in a labeled appendix).
- ✓ If a long period elapses between first executing the disclosure statement(s) and issuing the final EIS, confirm that the statement(s) remains valid. **LL**

Transitions: An NCO's Retirement Reflections

By: Bert Stevenson, Retired NEPA Compliance Officer, Fissile Materials Disposition

In the past 6 years as a DOE NEPA Compliance Officer and Document Manager, I have found two aspects of my job to be the most interesting, rewarding, and enjoyable.

Working with Technical Managers

Working with the program managers to develop a clear statement of what they have to do (the purpose and need) and ways of doing it (the proposed action and alternatives) has been quite rewarding. However, the process has an inherent tension. As the Document Manager, I needed specific information on which to base impact analysis, while the program and technical managers generally wanted to keep options open as they refined designs and processes. Finding a working balance between specificity and flexibility is necessary but challenging. The reward for achieving that balance is a document that serves both the decision maker and the public.

While preparing a programmatic EIS, I learned that I needed to maintain close working relationships with these managers all the way through the process, until issuing the final document. We tracked all potential changes to the proposed action or the alternatives so that new analyses could be done in time and at the lowest cost. By keeping the proposed action and alternatives very clear, we helped top level managers make timely decisions. Nothing beats having one of these managers thank you when they see the Secretary's signature on that record of decision and they can proceed with their job.

Meeting the Public, not Holding a Meeting

Another rewarding activity is working with the public. This involves translating technical details, including jargon, into something meaningful for the layperson. It also requires careful listening to members of the public, then translating beliefs, emotions, politics, and values in ways understandable to the technical managers, who may believe that decisions should be based only on technical factors.

I could write a book about DOE public meetings, and would call it *"The Good, the Bad, and the Ugly"* if that title were not already taken. The book would illustrate how to prepare for and enjoy public meetings while collecting public comments to improve NEPA documents.

"The good" (and beautiful) would include the Native American woman who danced at a hearing to explain how we should protect the earth, and a courageous commentator who articulated why she opposed our program, although she was probably the only opponent present. At one public meeting a school-age child, brought by a parent to "see democracy in action," asked questions that led to a 15-minute dialogue with the DOE safety expert. This young man's success in obtaining

information left a critic wishing that he had asked those questions, and our expert wanting to do more public participation work!

It was "good" that people who strongly disagree with us treated us civilly. Even when there were exceptions, other people sometimes would intervene to temper the rhetoric.

"The bad" includes a group who planned to dump five tons of manure in front of our meeting room, a tactic they abandoned only on learning that DOE planned not to react. "The bad" also included times when we Federal officials blundered, such as in responding to a woman who blamed DOE for her friend's death from cancer. Our expert tried to prove that radiation from a large DOE site was statistically unlikely to have caused the cancer, which only further upset the speaker and other listeners.

The times a man disrobed at a hearing and a retired teacher called me Hitler incarnate clearly exemplify "the ugly." (I learned not to take personally even such deeply hurtful comments.)

I would also include in the book some stories about "my pixies," those bewildered, whimsical sprites who sometimes have a hard time grasping reality. We have contemplated offers for a nuclear reactor that someone built for \$100 but would sell to the Government for only \$101, and for tritium by the bucket from a farmer who makes it in his barn. We have been asked to hold a public meeting for the extraterrestrials, to dispose of plutonium in truncated granite pyramids, and to store plutonium in tethered balloons several hundred feet above the earth. Then there are people who come to public meetings dressed to make a point: as Uncle Sam, in gas masks, or in a pig costume (because our project was just more Government pork).

All of my NEPA experiences have taught me that "the good" greatly outweighs "the bad" and "the ugly." My only regret is that I could not have worked as a NEPA Compliance Officer and a NEPA Document Manager for a longer part of my career. To the NEPA practitioners who have helped me through the years, I say thank you. Continue to help this Department comply with one of the best laws on the books.

God's richest blessings on you all.

Bert Stevenson retired from DOE at the end of April 2000. On that occasion, Bert was given a Certificate of Appreciation from the Deputy Assistant Secretary for Environment for his "leadership and significant contributions" to DOE's NEPA Compliance Program. The Office of NEPA Policy and Assistance offers him best wishes for the next chapter of his life.

NAEP to Celebrate NEPA's 30th Anniversary

The Annual Conference of the National Association of Environmental Professionals (NAEP), will be held June 25 to 29, in Portland, Maine.

The conference theme is "Overcoming Barriers to Environmental Improvement." As in previous years, much of the conference will focus on NEPA.

A symposium, "Making NEPA More Effective," will explore NEPA topics such as new regulatory guidance, case studies, current legal issues, integration with ISO 14000, environmental document streamlining, Native American issues, transportation analysis, and assessment techniques. The conference will celebrate NEPA's 30th anniversary with a special session on perspectives on NEPA practice and management in the new century.

Several short courses associated with the conference will be offered on June 29. "NEPA Legal Issues" addresses

ways to minimize litigation risk. "NEPA: Advanced Tools for Powerful Planning" offers techniques for determining the scope of a review, integrating the NEPA process with environmental management systems, and analyzing cumulative impacts. A course on "NEPA for Managers and New Practitioners" also is offered.

NAEP is a multidisciplinary, professional association with 17 affiliated state and regional chapters and 20 university chapters. The organization publishes a quarterly research journal, *Environmental Practice*, and administers an environmental professional certification program.

For more information, including a registration form, visit the NAEP conference Web site at www.naep.org/Conference/Portland.html, call 877-679-3913, or send an e-mail to conference@naep.org. Abstracts of conference papers are available at www.ornl.gov/ceea/NAEP_Conference_Abstracts/.

Training Opportunities

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

How to Manage the NEPA Process and Write Effective NEPA Documents

San Diego, CA: June 20-23, 2000
Jacksonville, FL: July 11-14, 2000
Las Vegas, NV: October 24-27, 2000
Fee: \$995

Overview of the NEPA Process

Ft. Walton Beach, FL: August 22, 2000
Fee: \$195

Reviewing NEPA Documents

Ft. Walton Beach, FL: August 23-25, 2000
Dayton, OH: September 12-14, 2000
Las Vegas, NV: December 12-14, 2000
Fee: \$795

The Shipley Group, Inc.
Phone: 888-270-2157 or
801-298-7800
E-mail: shipley@shipleygroup.com
Internet: www.shipleygroup.com

Environmental Laws and Regulations

Aiken, SC: June 13-15
Oakland, CA: August 16-18
Fee: \$545

An Overview of Environmental Laws and Regulations for Managers

Richland, WA: June 26, 27, & 28
Oakland, CA: July 19
Fee: \$335

DOE National Environmental Training Office
Phone: 803-725-7153
E-mail: neto@srs.gov
Internet: www.em.doe.gov/neto

Introduction to Section 106 Review

Memphis, TN: June 20-21
Phoenix, AZ: July 11-12
Washington, DC: July 25-26
Portland, OR: August 1-2
Minneapolis/St. Paul, MN: August 8-9
Fee: \$425

*Advisory Council on Historic Preservation
(with the University of Nevada, Reno)*
Phone: 775-784-4046 or 800-233-8928
E-mail: crystalm@unr.edu
Internet: www.achp.gov/

Environmental Impact Assessment

Irving, TX: July 26-28, 2000
Fee: \$695

Cumulative Effects Assessment

Irving, TX: November 1-3, 2000
Fee: \$695

*Environmental Impact Training
Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas*
Phone: 830-596-8804
E-mail: info@eiatraining.com
Internet: www.eiatraining.com

Implementation of NEPA on Federal Lands and Facilities

Durham, NC: October 30 – November 3, 2000
Fee: \$960

*Nicholas School of the Environment
Duke University*
Phone: 919-613-8082
E-mail: britt@duke.edu
Internet: www.env.duke.edu/



DOE Litigation Updates

DOE Settles Lawsuit on Advanced Mixed Waste Treatment Project

In September 1999, Keep Yellowstone Nuclear Free and the Environmental Defense Institute (later joined by the Sierra Club, the Snake River Alliance, and the Jackson Hole Conservation Alliance) filed a lawsuit challenging the adequacy of DOE's EIS for construction of the Advanced Mixed Waste Treatment Project (AMWTP) at Idaho National Engineering and Environmental Laboratory (INEEL). The U.S. District Court for the District of Wyoming has now issued an order dismissing the lawsuit pursuant to the parties' settlement agreement.

As part of the AMWTP, DOE contracted with a private company to treat and prepare for shipment and disposal 65,000 cubic meters of DOE transuranic waste, alpha-contaminated low-level mixed waste, and low-level mixed waste currently stored at INEEL, and up to 120,000 cubic meters of additional waste from INEEL or other DOE sites. Several processes were to be used to treat this waste, including incineration. DOE and its contractor, BNFL Inc., have applied to the State of Idaho and the U.S. Environmental Protection Agency (EPA) for three regulatory permits needed to begin construction.

Key Elements of the Settlement Agreement

Under the settlement agreement, DOE and BNFL will ask the State and EPA to postpone the permit processes for the incinerator and evaporator units of the AMWTP.

However, DOE and BNFL have asked the State and EPA to proceed with regulatory approvals for all other units of the AMWTP. (In the event that the State and EPA issue regulatory approvals for the entire AMWTP, including the incinerator and the evaporator units, plaintiffs may refile their original claims.)

To explore technological alternatives to incineration that may be used DOE-wide, DOE will set up a panel of independent scientific experts appointed by the Secretary. The plaintiffs will nominate one scientific expert panel member, and the panel's conclusions will be made public. *[This panel has since been established.]* DOE cannot resume the regulatory process for the incinerator and evaporator units until after (1) the panel issues its recommendations and (2) DOE has decided based on discussions with regulatory authorities that there are no regulatory or technological alternatives to incineration.

The plaintiffs agreed not to challenge any AMWTP regulatory approvals unless and until DOE decides to resume the permit process for the incinerator and evaporator units. In this case, the plaintiffs' appeal would be limited to the incinerator and evaporators. The settlement also calls for DOE to pay plaintiffs \$150,000 in attorneys and expert witness fees. (See *Lessons Learned Quarterly Report*, December 1999, page 18.)

Update: CX Claim Dropped from Challenge to DOE Radioactive Waste Management Order

In January, the Natural Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the Ninth Circuit to review and to set aside as arbitrary, capricious, and contrary to law both the Radioactive Waste Management Order (DOE O 435.1) and the application of the categorical exclusion used in issuing

the order. In its brief of May 22, 2000, however, the plaintiff stated its decision not to proceed with the NEPA claim raised in its Petition for Review. The Government's reply is due June 19. (See *Lessons Learned Quarterly Report*, March 2000, page 16).

continued on page 18

Litigation Updates (continued from page 17)

NEPA Review for Vortec Project Challenged Again

The Regional Association of Concerned Environmentalists, Mark Donham, and Ronald Lamb sued DOE in the U.S. District Court for the Western District of Kentucky on April 17, 2000. The plaintiffs are challenging an EA and Finding of No Significant Impact issued for DOE's proposed Vortec demonstration project for the treatment of wastes at the Paducah Gaseous Diffusion Plant. Mark Donham sued DOE in 1997 regarding DOE's use of a categorical exclusion for the Vortec project. DOE settled that lawsuit by agreeing to prepare an EA.

The plaintiffs allege that NEPA has been violated because the proposed Vortec project involves an incinerator and is a major Federal action significantly impacting the environment, for which an EIS is required. They also allege that the Paducah site is a large, multiple-facility site for which DOE's NEPA regulations require a site-wide EIS to be prepared. (See *Lessons Learned Quarterly Reports*, September 1997, page 13, and June 1997, page 8.) **LL**

Other Agency NEPA Cases

Disagreement over Scientific Opinions and Conclusions Does Not Constitute a NEPA Violation

Department of the Interior EIS Upheld on Appeal

The U.S. Court of Appeals for the Tenth Circuit upheld Department of the Interior (DOI) final rules governing the reintroduction of a nonessential experimental population¹ of gray wolves in Yellowstone National Park and central Idaho, finding that DOI's final rules are consistent with the Endangered Species Act. The Appeals Court also found that NEPA had not been violated. A District Court had ruled that DOI had violated the Endangered Species Act, but had not violated NEPA.

DOI and its agencies the Fish and Wildlife Service and the National Park Service, and the Department of Agriculture and its agency the Forest Service (hereafter the "Agencies") prepared an EIS that analyzed environmental impacts associated with five wolf recovery alternatives. Subject to certain mitigation measures identified during the public review process, the Secretary

of the Interior decided on an annual reintroduction of 15 wolves into two nonessential experimental population areas (Yellowstone National Park and central Idaho).

The plaintiffs argued on appeal that the District Court had erred by rejecting their contention that the Agencies inadequately analyzed the impacts of reintroducing an experimental wolf population into a naturally occurring wolf population. The plaintiffs also argued that the Agencies did not investigate the need for additional research.

NEPA Prescribes the Necessary Process, Requires a "Hard Look"

The Appeals Court noted that courts have long acknowledged that NEPA "prescribes the necessary process, but does not mandate particular results." The court also said that it will not second guess the Agencies' decision or their conclusions regarding whether

¹ Section 10 (j) of the Endangered Species Act, 16 U.S.C. § 1539 (j) provides that:

- (1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.
- (2) (A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or

individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species [emphasis added].

Other Agency NEPA Cases (continued)

additional research is needed, so long as they took the necessary “hard look” at the environmental consequences of their actions on naturally occurring wolf populations or subspecies.

In reviewing the administrative record, the Appeals Court found that the Agencies did take the requisite “hard look.” The Agencies analyzed the alleged existence of naturally occurring wolf populations in the experimental population areas, analyzed the arguments on subspecies identification, and documented the studies they used in their analysis. Because the Agencies found no wolf pack activity in Yellowstone and central Idaho and the scientific evidence suggested a reduction in the number of recognized subspecies, the Agencies did no further analysis of these issues in the draft or the final EIS. The Agencies also determined that these issues would not be significantly affected under any of the reintroduction alternatives because these alternatives would not prevent further study of wolf activity. The conclusions reached by the Agencies were based on the data they gathered and the reasoned opinions of agency experts.

The plaintiffs disagreed with the Agencies’ conclusions concerning the existence of naturally occurring wolf populations, the existence of an alleged subspecies of wolf unique to Yellowstone National Park, and the significance of any effect the wolf reintroduction program would have on naturally occurring wolves. The plaintiffs also cited evidence in the administrative record to support their position. Finding that this case amounted to a disagreement over scientific opinions and conclusions, the Appeals Court held that “the mere presence of contradictory evidence does not invalidate the Agencies’ actions or decisions.” The plaintiffs failed to show that the Agencies’ decision was not supported by the evidence in the record, nor did they prove that the EIS was inadequate to inform the public or decision makers. *Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224 (10th Cir. January 13, 2000).

Courts Defer to Agency’s Interpretation of Categorical Exclusion – Unless Incorrect or Inconsistent

Federal Highway Administration Case Reversed and Remanded

The U.S. Court of Appeals for the Ninth Circuit reversed and remanded a District Court ruling that upheld the Federal Highway Administration’s (FHWA) decision to categorically exclude a two-stage highway interchange project from review under NEPA.

Question of Mootness Dismissed

First, the FHWA argued that this appeal should be dismissed as moot because stage 1 of the interchange had been completed and was carrying traffic. In assessing this argument, the Appeals Court cited a 1981 Ninth Circuit NEPA case (*Columbia Basin Land Protection Ass’n. v. Schlesinger*) and concluded that “the question is whether there can be any effective relief.” The court reasoned that stage 2 has not yet begun and that, upon a finding that the FHWA failed to comply with NEPA, the appropriate NEPA review could be ordered and the remedy could include closing or tearing down the interchange. Despite the fact that stage 1 of the interchange was complete and carrying traffic, the case was not moot.

FHWA’s Use of “Documented Categorical Exclusion” Questioned

The plaintiff argued that the FHWA should have prepared an EA or an EIS instead of proceeding with the interchange project under a categorical exclusion. The FHWA regulations identify two types of categorical exclusions. The first type consists of a list of 20 actions that meet the criteria for a categorical exclusion and generally do not require further NEPA documentation. The second type is referred to as a documented categorical exclusion (DCE) and requires documentation demonstrating compliance with the categorical exclusion criteria. The FHWA regulations provide a list of examples for which a DCE may be appropriate. The FHWA argued that the project fits most appropriately under the DCE example, “Approvals for changes in access control” (23 CFR 771(d)(7)), because the FHWA was required to approve the new interchange in advance of construction.

continued on page 20

Other Agency NEPA Cases (continued from page 19)

Courts May Defer to Agency's Interpretation – But Not in This Case

The Appeals Court applied the test of giving deference to an agency's interpretation of the meaning of its own categorical exclusion regulations unless its interpretation is incorrect or inconsistent with the terms used in the regulations. Because the FHWA regulations, legislative history, or case law did not provide a definition of "Approvals for changes in access control," the Appeals Court analyzed the examples identified in the FHWA regulations for DCEs, as well as the list of 20 categorically excluded actions.

Based on its review of these lists, the Appeals Court found that the types of projects found in these lists are of a lesser magnitude than an entirely new \$18.6 million four-lane interchange built over a former Superfund site. The Appeals Court further explained that use of a DCE was inappropriate because FHWA's regulations prohibit a categorical exclusion for projects that will have "significant impacts on travel patterns." This interchange was intended to have significant (albeit beneficial) impacts on travel patterns.

Case Remanded; Further NEPA Review Required

With respect to the remedy applied in this case, the court reasoned that ordering the interchange to be torn down would not have any beneficial environmental effect, but

this does not render a thorough environmental review pointless. An environmental review may identify ways to mitigate impacts that may have been identified if an environmental review had been done before the start of stage 1. Therefore, the Appeals Court remanded the case back to the District Court, directing that it order the requisite review for stage 1.

The Appeals Court found that stages 1 and 2 are independent projects requiring independent environmental review. The Appeals Court also found that it was inappropriate for the FHWA to use a DCE for both stage 1 and stage 2, especially since the parameters of stage 2 are not yet defined. Reiterating its holding that use of a DCE is inappropriate for a highway interchange project, the Appeals Court found that the type of environmental review required for stage 2 cannot be determined until stage 2 is more defined. *West v. Secretary of the DOT*, No. 97-36118 (9th Cir. March 20, 2000).

The lesson is that although the court gives deference to an agency's interpretation of a categorical exclusion, it will not uphold an agency's use of a categorical exclusion if the agency's interpretation is inconsistent or incorrect. LL

New Leadership at EPA Office of Federal Activities

Anne N. Miller now serves as the Acting Director of the Environmental Protection Agency's Office of Federal Activities. The previous director, Richard Sanderson, retired in April.

Joseph C. Montgomery is the new Director of the NEPA Compliance Division of the Office of Federal Activities, replacing William Dickerson, who also retired.

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 2000. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Data Collection/Analysis

- Data from a recent EIS for a project located close by were used for this EA, saving several weeks of data collection time.

Factors that Facilitated Timely Completion of Documents

- High level management's attention helped to complete the EA on schedule.
- A motivated review team pitched in and solved, rather than just raised, issues.
- The document manager worked side-by-side daily with the support contractor, particularly in the final stages of EIS preparation and incorporation of concurrence comments.

Factors that Inhibited Timely Completion of Documents

- A change in NEPA document managers, as well as a need to transfer funds from one DOE prime contractor to another, lengthened the schedule.
- The scope of this EA was revised after the first round of public comments. After this revision, a second public comment period occurred, which was extended to 60 days at the request of a member of the public.

Factors that Facilitated Effective Teamwork

- Staff from various DOE offices had all worked together previously.
- Excessive conservatism was discovered in some of the accident analyses late in the concurrence process for the Final EIS. The document manager worked with management and operating contractor staff, DOE site staff, and the preparers of another EIS to reevaluate assumptions and make the analysis more realistic.

Factors that Inhibited Effective Teamwork

- Substantial distances between the EA writers, the site, the review and approval team, and DOE headquarters.
- Transfer of the original DOE document manager to another DOE site.

Successful Aspects of the Public Participation Process

- A large number of public reactions were obtained, both for and against the project.
- Notices in the local paper, individual scoping letters to affected landowners, and the option to respond via e-mail were all effective.

Unsuccessful Aspects of the Public Participation Process

- Newspaper advertisements and letters describing the project and the EA did not elicit any comments.
- One group used the NEPA process to stall, delay, and attempt to cancel the project, through the exacting nature of the public participation process.

Agency Planning and Decision Making — Usefulness

- The NEPA process helped management decide that the project could be performed with no significant impacts. This was definitely not known before the EA was prepared.
- As a result of the NEPA process, a project alternative was selected that had fewer environmental impacts and lower cost than other initially identified approaches.
- Without an EIS, I do not believe the Department would have made a commitment to a non-reprocessing technology for the spent nuclear fuel.

continued on next page


What Worked and Didn't Work (continued)

Enhancement/Protection of the Environment

- The proposed action was defined in a manner to mitigate potential environmental effects.

Effectiveness of the NEPA Process

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

- For this quarter, in which questionnaire responses were received for 3 EAs and 1 EIS, 3 of the 5 respondents rated the NEPA process as "effective."
- One respondent who rated the process as "4" stated that "As a result of the NEPA process, a project alternative was selected that had fewer environmental impacts and cost less than other project alternatives initially identified."
- One respondent who rated the process as "1" explained that the NEPA process started too late to truly be considered a planning document. 

EAs and EISs Completed January 1 – March 31, 2000

EAs

Albuquerque Operations Office/ Defense Programs

DOE/EA-1332 (2/16/2000)

Leasing Land for the Siting, Construction, and Operation of a Commercial AM Radio Antenna at Los Alamos National Laboratory, New Mexico

Cost: \$18,500

Time: 2 months

Idaho Operations Office/ Environmental Management

DOE/EA-1310 (3/9/2000)

Decommissioning and Dismantlement of the Advanced Reactivity Measurement Facility and Coupled Fast Reactivity Measurements Facility at the Idaho National Engineering and Environmental Laboratory, Idaho

Cost: \$46,000

Time: 12 months

Naval Petroleum Reserve in California/ Fossil Energy

DOE/EA-1288 (12/17/1999)

Waste Remediation Activities at Elk Hills (Former Naval Petroleum Reserve No. 1), Kern County, California

Cost: \$100,000

Time: 12 months

(Note: Not previously reported in Lessons Learned.)

Oak Ridge Operations Office/ Environmental Management

DOE/EA-1230 (3/8/2000)

Proposed Demonstration of the Vortec Vitrification System for Treatment of Mixed Wastes at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky

Cost: \$225,000

Time: 29 months

Western Area Power Administration

DOE/EA-1287 (03/20/2000)

Curecanti-Lost Canyon 230 kV Transmission Line Reroute Project, Montrose County, Colorado

Cost: \$73,000

Time: 14 months

EISs

Savannah River Operations Office/ Environmental Management

DOE/EIS-0279 (EPA Rating: EC-2*)

Management of Spent Nuclear Fuel at the Savannah River Site, Aiken, South Carolina
March 2000 (65 FR 20155; 4/14/2000)

Cost: \$1.6 million

Time: 39 months

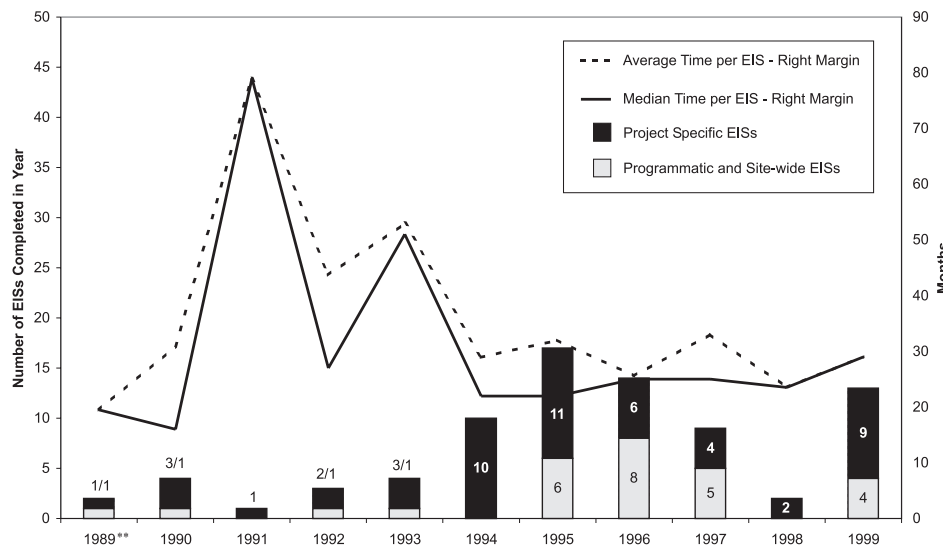
* See the March 1997 Lessons Learned Quarterly Report for an explanation of the EPA ratings.

EA and EIS Metrics

By: Hitesh Nigam and Eric Cohen, Office of NEPA Policy and Assistance

The Department started to collect NEPA process data – including EA and EIS cost, preparation time, and measures of effectiveness – in 1994. To foster continuing improvement in the Department’s NEPA process, the Office of NEPA Policy and Assistance analyzes and reports on these metrics from time to time in the *Lessons Learned Quarterly Report*.

In keeping with the theme of the May 2000 NEPA Compliance Officers Meeting of “Looking Back, Moving Forward,” the Office of NEPA Policy and Assistance examined the available data on DOE NEPA process performance from 1989 through 1999. During this 11-year period, DOE completed 80 EISs and 585 EAs (excluding documents that DOE adopted and those for which DOE was a cooperating agency). Following are excerpts from a summary of the data presented at the NEPA Compliance Officers Meeting. For a complete set of the charts and figures presented, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov or phone 202-586-0750.



	Number of Completed EISs 1989-1999	Average Time (months)	Median Time (months)	Min / Max (months)
Project Specific EISs	52	30	21	6 / 86
Programmatic and Site-wide EISs	27	33	29	9 / 85
Overall	79	32	26	6 / 86

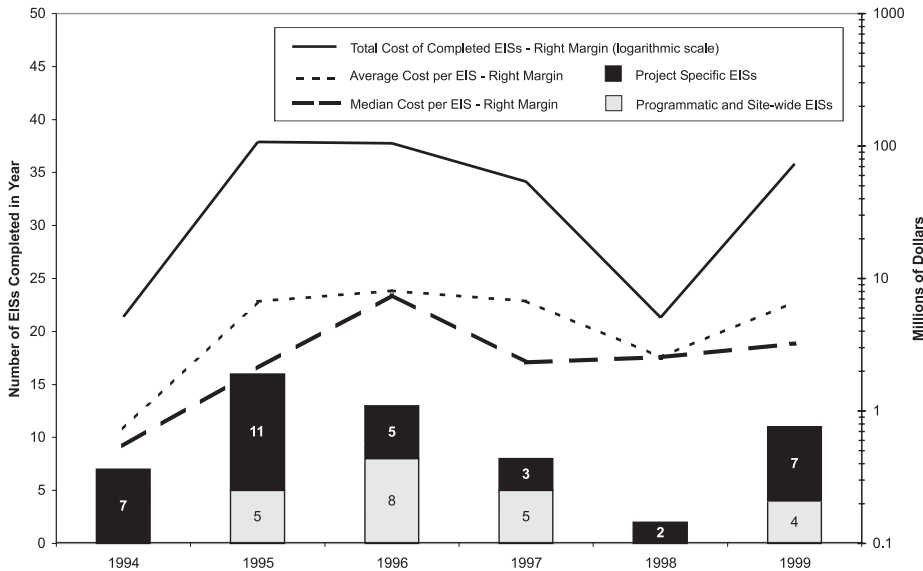
*Does not include adopted or cooperating agency EISs.
 ** Time data not available for a third EIS that was completed in 1989.

EIS Completion Times*

- During the five years from 1989 through 1993, DOE completed relatively few (one to three) EISs per year. In contrast, from 1994 through 1999, the average EIS completion rate was about 10 per year.
- Median completion times for EISs decreased from about 33 months for the first half of the period to about 24 months for the second half. Programmatic/site-wide EISs differ from project-specific EISs with respect to median completion times – about 21 months for 52 project-specific EISs and 29 months for 27 programmatic/site-wide documents.
- For 1995 through 1999, DOE completed 23 programmatic and site-wide EISs, a rate of almost five per year.

Note: A median is less sensitive to outlier results than an average.

EA and EIS Metrics (continued from page 23)



	Number of Completed EISs 1994-1999	Average Cost (\$M)	Median Cost (\$M)	Min / Max (\$M)
Project Specific EISs	35	1.7	1.3	0.02 / 4.7
Programmatic and Site-wide EISs	22	12.7	10.1	0.2 / 48
Overall	57	6.1	2.4	0.02 / 48

*Does not include adopted or cooperating agency EISs or 8 EISs for which costs were paid for by applicants.

EIS Costs*

- The total cost of EISs completed in a given year depends on the number of documents completed and the cost per document.
- Increased cost per EIS since 1994 reflects an increased proportion of programmatic and site-wide EISs.

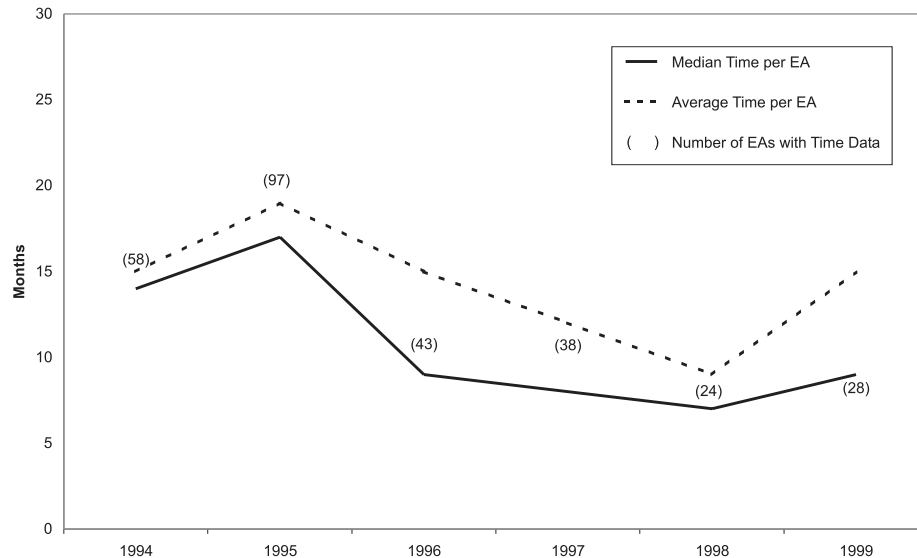
Program	Number of EISs with Time Data	Median Number of Months	Average Number of Months	Number of EISs with Cost Data**	Median Cost (\$M)	Average Cost (\$M)
BPA	19	26.0	30	15	0.3	0.8
DP	11	24.0	23	11	10.1	9.9
EM	18	20.0	28	18	4.0	8.6
FE	4	24.5	36	4	0.9	1.2
MD	3	29.0	24	3	12.2	13.5
NE	2	24.0	24	2	4.5	4.5
SC	1	21.0	21	1	2.1	2.1
WAPA	7	48.0	42	3	4.9	5.3
Total	65			57		

*Does not include adopted or cooperating agency EISs.
 ** Does not include 8 EISs for which costs were paid for by applicants.

EIS Time and Cost by Program*

- From 1994 through 1999, median EIS completion times were similar for all DOE programs except WAPA.
- Costs were typically highest for EISs associated with the Department's nuclear facilities (e.g., documents prepared by Defense Programs and Fissile Materials Disposition).

EA and EIS Metrics (continued from page 24)

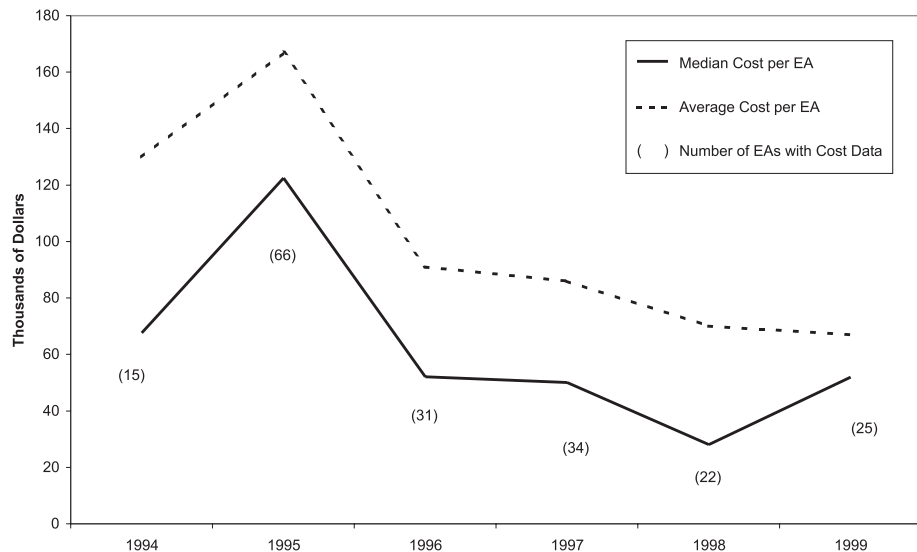


Median Time (Months)	Average Time (Months)	Min / Max (Months)	Total Number of EAs With Time Data
11	16	1 / 87	288

*Does not include adopted or cooperating agency EAs or 20 EAs for which time information is unavailable.

EA Completion Times*

- Completion times peaked for EAs completed in 1995.
- For 288 EAs completed during 1994 through 1999, the median completion time was 11 months and the average time 16 months; the minimum and maximum completion times were 1 and 87 months.



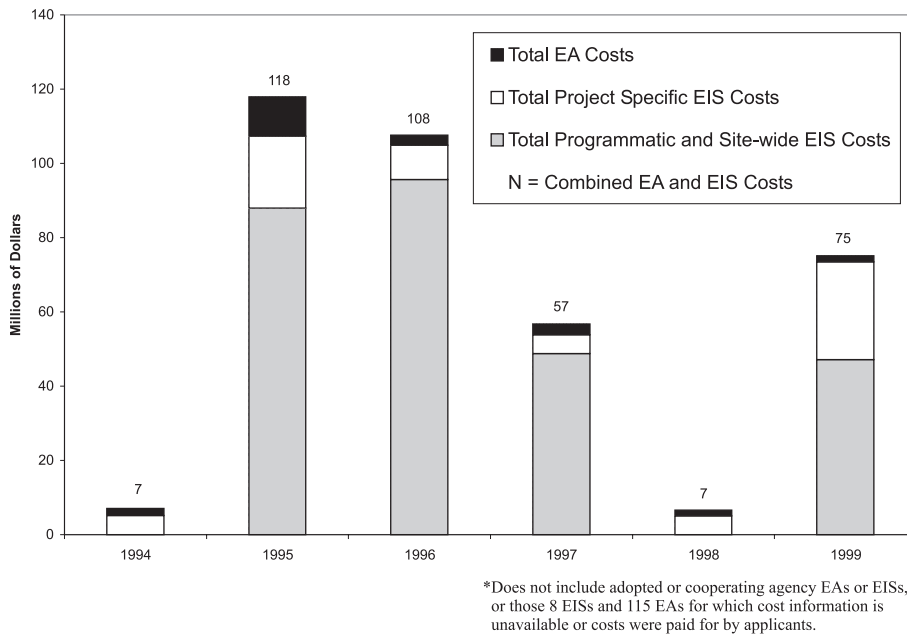
Median Cost (\$)	Average Cost (\$)	Min / Max Cost (\$)	Total Number of EAs With Cost Data	Total Cost (\$)
56,000	112,000	5,000 / 908,000	193	21,616,000

*Does not include adopted or cooperating agency EAs or 115 EAs for which cost data are unavailable.

EA Costs*

- Cost per EA peaked in 1995.
- Since 1995, the median cost per EA has decreased to between \$30,000 and \$50,000, and the average cost has decreased to between \$70,000 and \$90,000.

EA and EIS Metrics (continued from page 25)



Total Cost of EAs and EISs*

- For 193 EAs and 57 EISs completed from 1994 to 1999, document costs totaled \$372 million (\$22 million for EAs and \$350 million for EISs).
- Programmatic and site-wide EISs cost 77 percent of the total (\$285 million).
- The average annual cost of NEPA documents completed during this period is \$62 million.

Looking forward, we expect that the Department's annual total EIS preparation costs should decrease substantially because many relatively costly programmatic and sitewide EISs have been completed. Future project EISs will likely be less costly and should benefit by tiering from the many broader scope documents that have been completed in recent years.

Other EA and EIS Metrics

In addition to data on EA and EIS times and costs, the Office of NEPA Policy and Assistance tracks EIS information on "effectiveness," EPA ratings, comment periods and extensions, and supplement analyses.

In Lessons Learned Questionnaires, respondents are asked to rate the effectiveness of the NEPA process on a scale of 0 to 5, where 0 means "not effective at all" and 5 means "highly effective." During the period December 1994 to March 2000, more than 60 percent of questionnaire respondents rated the NEPA process as "effective" (rating of 3 or higher).

For Draft EISs issued from 1990 through 1999, EPA rated 67 percent of the Department's EISs as "EC-2" and 19 percent as "LO." The Department's ratings are similar to the ratings that other Federal agencies receive. (See *Lessons Learned Quarterly Report*, March 1997, page 7.)

Based on the information that the Office of NEPA Policy and Assistance has collected on comment periods, it appears generally that the shorter the initial comment period, the longer any extension that DOE grants.

From 1994 through April 2000, 72 draft EISs had an average original comment period of 58 days. Eighteen draft EISs (25 percent) were extended by an average extension of 30 days, bringing the average total comment period up to 65 days. The 26 programmatic and sitewide draft EISs had higher original comment periods (69 days) and higher average extension periods (32 days), bringing the total average comment period for this group of EISs to 82 days.

Supplement analyses (SAs) are being prepared in ever-increasing numbers on an annual basis, as might be expected in light of the many site-wide and programmatic EISs that DOE has issued in recent years. Based on the best available data, DOE has completed 85 SAs since 1985, 16 from 1985 through 1995, and 69 from 1996 through April 2000 [including 25 prepared by BPA for the Watershed Management Program EIS (DOE/EIS-0165)]. For all but two, DOE concluded that no further NEPA review was required. The exceptions are: in March 1995, DOE decided based on an SA that a supplement was needed for DOE/EIS-0147, *Continued Operation of the K-, L-, and P- Reactors at the Savannah River Site* [based on this SA, DOE completed an EIS for the Shutdown of the River Water System at the Savannah River Site (DOE-EIS-0268), April 1999]; and, in November 1998, DOE decided to supplement DOE/EIS-0082S, *Defense Waste Processing Facility at Savannah River Site* [based on the SA, DOE is preparing an EIS for Salt Disposition Alternatives, Supplemental, Savannah River Site, (DOE/EIS-0082S2)].

Recent EIS-related Milestones (March 1 – May 31, 2000)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0317

Environmental Impact Statement for the Kangley-Echo Lake Transmission Line, King County, Washington
3/17/2000 (65 FR 16380; 3/28/2000)

Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0318

Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, Kentucky (Clark County)
4/10/2000 (65 FR 20142; 4/14/2000)

National Nuclear Security Administration/Defense Programs

DOE/EIS-0319

Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions, Los Alamos, New Mexico
4/26/2000 (65 FR 25472; 5/2/2000)

Western Area Power Administration

DOE/EIS-0305

Proposed Big Sandy Project, Arizona
4/06/2000 (65 FR 20811; 4/18/2000)

Draft EIS

Environmental Management/ Oak Ridge Operations Office

DOE/EIS-0287

Treating Transuranic/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, Tennessee
March 2000 (65 FR 11575; 03/03/2000)

Records of Decision

National Nuclear Security Administration/ Defense Programs

DOE/EIS-0293

Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico
3/08/2000 (65 FR 14952; 3/20/2000)

Supplement Analyses

Bonneville Power Administration

DOE/EIS-0169-SA-03

Yakima Fisheries Project—Natural Spawning Channels, Increased On-site Housing, and Upgrades to the Prosser Hatchery, Washington
(Decision: No further NEPA review required) March 2000

Environmental Management/ Richland Operations Office

DOE/EIS-0244-SA-03

Environmental Effects of Project W-460 and Related Changes to the Plutonium Finishing Plant Plutonium Stabilization and Packaging System, 200 West Area, Hanford Site, Richland, Washington
(Decision: No further NEPA review required) March 2000

Science/Oak Ridge Operations Office

DOE/EIS-0247-SA-01¹

Supplement Analysis for the Proposed Superconducting Linear Accelerator at the Spallation Neutron Source, Oak Ridge, Tennessee
(Decision: No further NEPA review required)
February 2000

Western Area Power Administration

DOE/EIS-0308-SA-02¹

Southpoint Power Project, Kingman County, Arizona
(Decision: No further NEPA review required) January 2000

DOE/EIS-0182-SA-01

Proposed Revisions to Western's Integrated Resource Planning Program (Decision: Amended ROD, 3/28/2000 (65 FR 16389)) March 2000

¹ Not previously reported in Lessons Learned



Office of NEPA Policy and Assistance, EH-42
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0119