

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

March 1, 2000; Issue No. 22

For First Quarter FY 2000

Hanford Comprehensive Land-Use Plan EIS Helps DOE Preserve Unique Resources

By: Thomas W. Ferns, NEPA Document Manager, *Richland Operations Office*,
and Yardena Mansoor, *Office of NEPA Policy and Assistance*

A 50-year land-use plan for the Hanford Site? Some said it couldn't be done. Too many factions, they said, with irreconcilably different visions for the future. Would NEPA be a help or a hindrance in developing such a land-use plan?

It turns out that the Hanford Comprehensive Land-Use Plan EIS Record of Decision (ROD) (64 FR 61615; November 12, 1999) marks the end of a successful, albeit long and arduous planning process. It was a process that many stakeholders – whose diverse views could not all be accommodated – acknowledged was open and fair. Importantly, the EIS allowed DOE to make decisions immediately to preserve uniquely valuable natural

resources at the Site – notably expanding a National Wildlife Refuge on the Wahluke Slope, on the northern shore of the Columbia River within the Hanford Site. Over a longer term, the Record of Decision seeks to balance the Department's continuing land-use needs at the Hanford Site with its desire to preserve important ecological and cultural values of the Site and allow for economic development in the area.

Mapping out a long-term comprehensive blueprint for the 586-square-mile Hanford Site in southeastern Washington was no easy task. The experience demonstrates the versatility and usefulness of the NEPA review process in land-use decision making, and the importance of a robust stakeholder involvement process.

This article examines the relationship between Hanford's remedial action and land-use decision making, describes the stakeholder involvement approaches (first with a stakeholder working group and then with cooperating agencies), and describes the environmental benefits from this NEPA process.

Initial EIS Scope: Remediation and Land Uses for Contaminated Areas

Early in 1989, DOE negotiated a Federal Facility Agreement with the U.S. Environmental Protection Agency (EPA) and the Washington State Department of Ecology (Ecology) that established decision-making responsibilities and an enforceable schedule for remediation of the Hanford Site.



The White Bluffs of the Wahluke Slope rise above the Hanford Reach of the Columbia River.

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Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by April 26, 2000. To propose an article for a future issue, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, or phone 202-586-9326.

Second Quarter Questionnaires Due May 1, 2000

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2000 (January 1 to March 31, 2000) should be submitted as soon as possible after document completion, but no later than May 1, 2000. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Process Information.

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

Feedback on LLQR

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

LLQR Online

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

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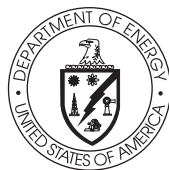
A cumulative index of the LLQR is provided in the September issue each year.

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NEPA Compliance Officers to Meet in May

The Office of NEPA Policy and Assistance is planning to convene a meeting of the NEPA Compliance Officers in Washington, DC, May 2 and 3, 2000. Speakers at the meeting will include Brian Costner, Senior Policy Advisor to the Secretary for Environment, Safety and Health. (See related article, page 9.) Members of the DOE NEPA Community are encouraged to provide input for meeting discussions through their NEPA Compliance Officers.



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DOE Inspector General Report Questions

Application of a Categorical Exclusion

A recent DOE Inspector General report highlights the importance of using the most appropriate categorically excluded class of action for a proposed action and, more fundamentally, considering the full scope of a proposed action when determining the level of NEPA review.

The report, *Inspection of Selected Issues of the Chem-Bio Facility at the Oak Ridge National Laboratory* (INS-O-00-1, November 1999), is available at the DOE Inspector General Web site at www.ig.doe.gov/oig_public_documents.htm.

Issues Include Choice of Categorical Exclusion and Scope of Action

In 1996, the Oak Ridge Operations Office entered into an interagency agreement with the Department of the Army to design, build, and demonstrate instruments for detecting and identifying chemical and biological warfare agents. The agreement stated that the work would be restricted to simulants and killed biological agents; work with live agents would not be performed.


The proposed action that the Oak Ridge Operations Office categorically excluded was to modify an existing facility by installing material and equipment that would result in a Biosafety Level-3 facility (for research and development on instruments to detect chemical and biological warfare agents). The Office applied categorical exclusion B3.6 of the DOE NEPA regulations, 10 CFR Part 1021, Appendix B – facilities for bench-scale research, conventional laboratory operations, small-scale research and development, and pilot projects.

As the Inspector General Report noted (Appendix B, Management Alert on “Inspection of the Chem-Bio Facility at ORNL;” June 30, 1999), another categorical exclusion more specifically addresses the proposed action – B3.12 – for microbiological and biomedical facilities. Under B3.12, however, facilities with Biosafety Level-3

or -4 containment are *excluded*, a restriction that should have been identified by DOE program and environmental staff. (The higher containment levels accommodate work requiring greater health protection, such as research on live biological warfare agents.)

In addition, the Inspector General report indicated that reasonably foreseeable activities at the Chem-Bio Facility appeared to be broader than the scope of the interagency agreement, which did not include work with live agents. The report concludes that “should future projects for the facility include live agents and...a favorable determination for live agents could not be reached through an environmental assessment [and FONSI], then the taxpayers would have been better served if alternatives and future plans for the facility had been fully evaluated, in the spirit of NEPA compliance, prior to the expense of procurement and installation of the facility.”

Recommendations for NEPA Practitioners

- ✓ Several categorical exclusions may need to be considered to determine which best matches the scope of a proposed action and thus ensure that a categorical exclusion is the appropriate level of NEPA review. Pay particular attention to the requirements for applying categorical exclusions at 10 CFR 1021.410, as well as the integral elements for classes of actions in Appendix B to DOE’s NEPA regulations. Consider not just what is allowed under a categorical exclusion, but also what is disallowed.
- ✓ Accurately defining the scope of a proposed action is essential to determining the appropriate level of NEPA review, including a categorical exclusion. For example, the NEPA review for the construction and operation of a facility must be based on its anticipated uses over the reasonably foreseeable future, not just initial uses. 

Consider Which Categorical Exclusion Applies

There may be other instances where similar categorical exclusions will need to be thoughtfully considered to best match the scope of a proposed action to a categorical exclusion. For example, categorical exclusion:

- A7 applies to the transfer, lease, disposition, or acquisition of property when the property use would remain unchanged; that is, the types and magnitude of impacts would remain essentially the same.
- B1.24 applies to the transfer, lease, disposition, or acquisition of uncontaminated structures and the land needed to transfer the structures when the use would be different but the impacts would remain virtually the same as before the action.
- B1.25 applies to the transfer, lease, disposition, or acquisition of uncontaminated land for habitat preservation or wildlife management and only associated buildings that support these purposes.

Hanford Comprehensive Land-Use Plan EIS (continued from page 1)

The cleanup negotiators soon realized that a plan for land uses could facilitate remediation planning. Otherwise, specific land-use decisions would have to be made on a project-by-project basis, using EPA's default cleanup goal – residential use – in areas where many were advocating a less costly environmental preservation goal. For some parts of the Hanford Site, such as the 200-Area waste management facilities, a residential use goal would be technically infeasible or economically prohibitive, and could cause more environmental injury and human health risks than it would avoid.

In August 1992, DOE published a Notice of Intent to prepare an EIS on cleanup strategies to meet alternative objectives for contaminated areas of the Hanford Site. These alternatives included unrestricted uses (including residential and agricultural); uses with limitations, such as on groundwater use; and exclusive future use by DOE (for waste management and buffer zones).

Working Group Established Common Ground

EPA, Ecology, and DOE organized a process to involve stakeholders in developing a vision for the future uses of the Hanford Site. The agencies established the Hanford Future Site Uses Working Group, with representatives of labor, environmental, governmental, agricultural, economic development, and citizen interest groups, and of Tribal governments. The Working Group was charged with establishing the common ground from which priorities and preferences could be debated. In December 1992, the Working Group submitted its final report, *The Future for Hanford: Uses and Cleanup*, to DOE as EIS scoping input, thus framing the key elements of the EIS:

- dividing the Site into sub-areas,
- identifying reasonable alternative uses for each sub-area, and
- stating a set of group values to be respected in the land-use planning process.

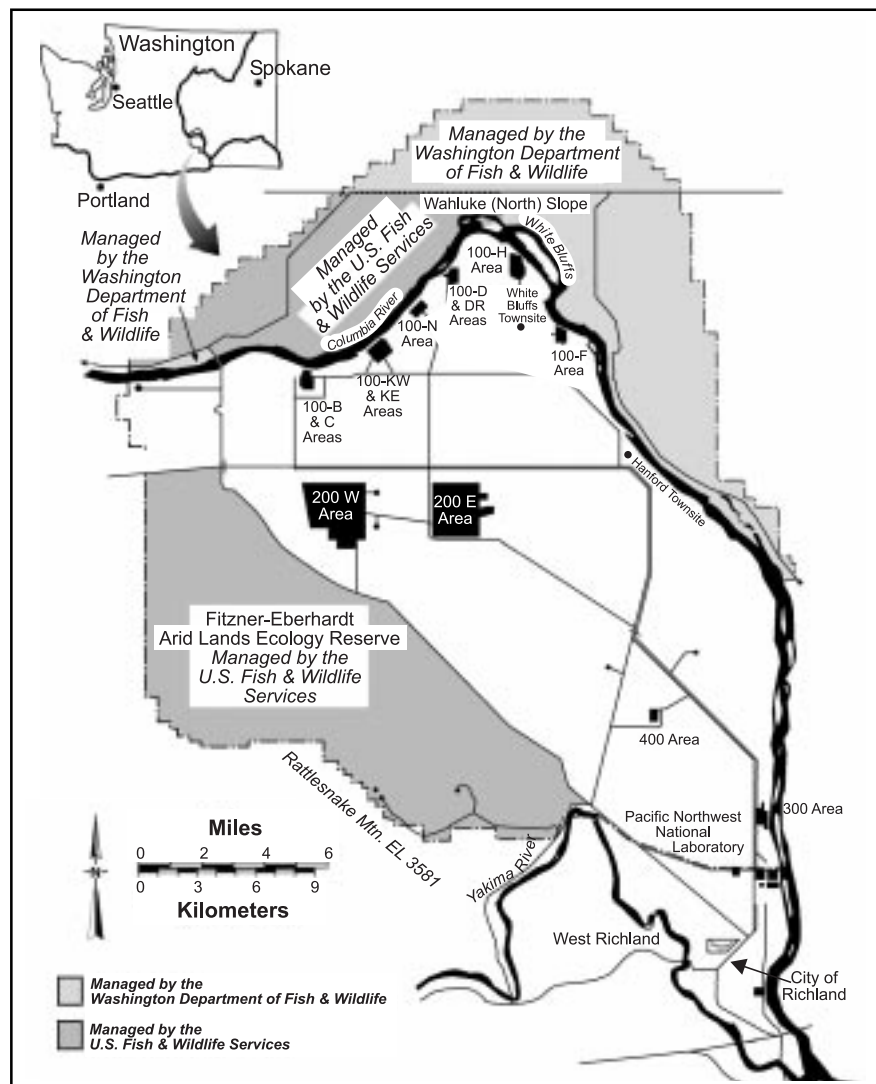
Building on the Working Group's report, DOE issued a Draft Hanford Remedial Action EIS (August 1996) that assessed the potential environmental impacts of attaining the cleanup conditions needed for alternative land uses and the impacts of the uses themselves.

Changed EIS Focus: Land Uses for Entire Site

Based on comments on the 1996 Draft EIS, DOE decided to refocus the EIS on a proposed Comprehensive Land-Use Plan because remediation decisions would be made by EPA and Ecology, as lead regulatory agencies, and DOE as an implementing agency.

With the scope of the EIS limited to land-use issues, DOE also decided to consider the entire Site (not just contaminated areas). Because of this change, DOE decided to prepare a Revised Draft EIS,

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Hanford Comprehensive Land-Use Plan EIS (continued from previous page)

and also to expand stakeholder participation by involving agencies and Tribes with land-use interests.

Agencies and Tribes: Full NEPA Partners with Irreconcilable Interests

Nine parties responded to DOE's invitation to participate as either a cooperating agency or, in the case of the Tribal Nations, a consulting government: the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service within the U.S. Department of the Interior; the City of Richland and Benton, Franklin, and Grant Counties; the Department of Environmental Restoration and Waste Management of the Nez Perce Tribe; and the Confederated Tribes of the Umatilla Indian Reservation. Together they reached substantial agreement on the land-use category definitions, a framework for the environmental analyses, and the Comprehensive Land-Use Plan's policies and implementing procedures.

However, some of the cooperating agencies and consulting Tribal governments strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To provide fair voices for competing interests, cooperating agencies and consulting Tribes developed their own alternatives for consideration in the revised Draft EIS, using guidelines and a common outline to yield technically parallel information. The EIS presented these alternatives as written by these parties. Although this collaborative process required time, it ultimately saved time by enabling preparation of an EIS that adequately considered the full range of reasonable alternatives.

DOE and the cooperating agencies created six land-use alternatives, each consisting of a map that designated allowable uses for sub-areas within the Site. Except for



These elk are part of a herd that migrates through the Hanford Site. The EIS considered how to manage large portions of the Site to preserve biological resources.

Hanford's Unique Resources

- The Hanford Site contains a large tract of rare and unfragmented shrub-steppe habitat and rare animal and plant species.
- Along the north and east of the Hanford Site runs the last free flowing stretch of the Columbia River, known as the Hanford Reach, valued for its recreational uses and as prime salmon spawning habitat. The Reach's northern shore, known as the Wahluke Slope, rises in a chalk bluff formation whose stability has been threatened by agricultural irrigation.

No Action (continuing current land uses, land management processes, and intergovernmental relationships), each alternative represents one or more Tribe, Federal, or local agency preferred alternative.

DOE's preferred alternative in the Revised Draft EIS would consolidate waste management operations in the Central Plateau of the Site, allow industrial development in the eastern and southern portions of Hanford, increase recreational access to the Columbia River, expand an existing Saddle Mountain National Wildlife Refuge on the north side of the Site to include all of the Wahluke Slope, and allow limited commercial grazing on the Site.

The Department of the Interior agencies' alternative would increase Federal stewardship of Hanford's natural resources. The local governments' alternative would allow agricultural and grazing activities on the Hanford Site and increase industrial development. Two Tribal alternatives called for increasing traditional Tribal uses while preserving natural and cultural resources. The Tribes and DOE "agreed to disagree" on the interpretation of treaty rights in the interest of moving the EIS forward.

NEPA Process Enhanced Environmental Values

Public comments on the Revised Draft EIS primarily addressed environmental issues such as Hanford's unique shrub-steppe habitat, the importance of protecting the Hanford Reach to preserve salmon spawning sites, the proposed Congressional designation of the Hanford Reach as a Wild and Scenic River, and the historic significance of the Hanford Site's first nuclear reactor. Comments overwhelmingly favored a more environmentally protective alternative – with no cattle grazing, less gravel mining for remediation activities, and more preservation of wildlife and habitat than DOE's Revised Draft preferred alternative.

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DOE Decides Disposition of Surplus Plutonium After Complex NEPA Process

On January 4, 2000, the Department announced its decision to dispose of up to 50 metric tons of surplus weapons-usable plutonium by immobilizing approximately one-third of it and using the remainder to fabricate mixed oxide (MOX) fuel, which will be irradiated in existing commercial nuclear reactors to make the plutonium inaccessible and unattractive for weapons use. Three new facilities will be constructed and operated at the Savannah River Site for pit disassembly, plutonium immobilization, and MOX fuel fabrication, the latter facility to be licensed by the U.S. Nuclear Regulatory Commission.

This major decision, the culmination of a complex NEPA process that began with a programmatic EIS initiated six years ago, was based on a tiered project-specific EIS that included a supplement to the draft EIS. (In a parallel procurement process, DOE also prepared an environmental critique and synopsis under Section 216 of the DOE NEPA regulations.)

In the project-specific Surplus Plutonium Disposition EIS (DOE/EIS-0283), DOE evaluated 15 action alternatives involving seven DOE sites and three commercial reactor sites. Planning and executing an appropriate NEPA compliance strategy required extensive discussions among numerous affected Program and Field Offices, and the Offices of General Counsel and NEPA Policy and Assistance.

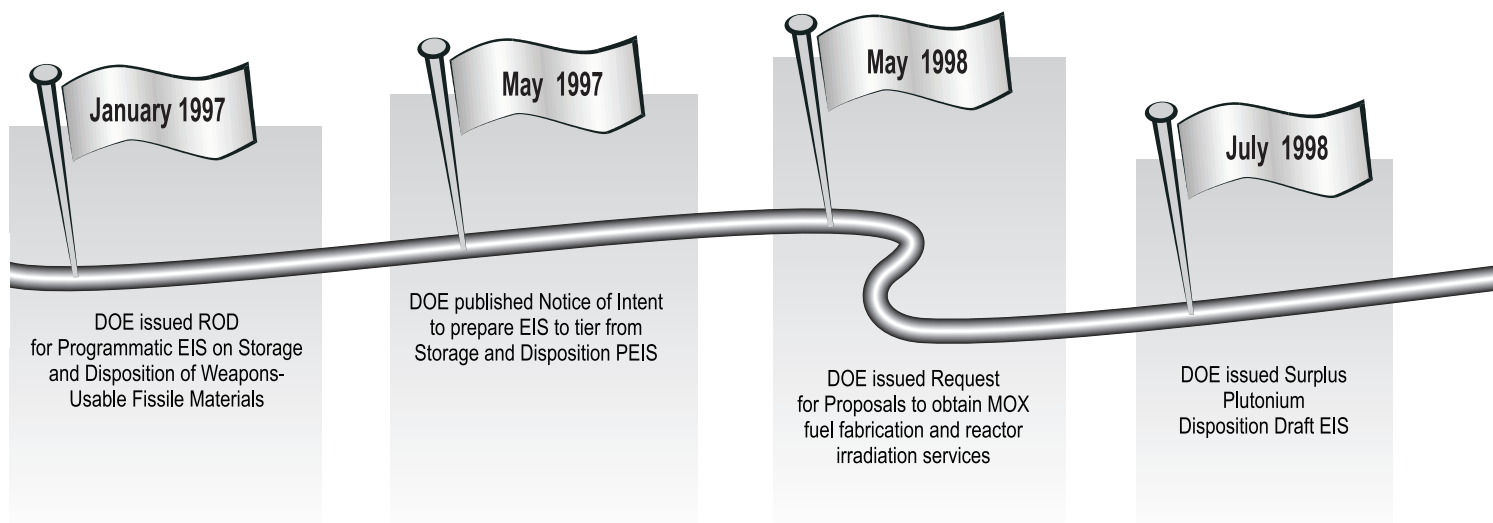
In preparing this EIS and the resulting Record of Decision (ROD) (65 FR 1608; January 11, 2000), the Office of Fissile Materials Disposition discovered that its EIS affected, or was affected by, many other DOE EISs and EAs. These interrelationships required close

coordination between that Office and other involved Program and Field Offices to ensure that the EIS used current information. According to Bert Stevenson, the Materials Disposition NEPA Compliance Officer and NEPA Document Manager, "Close coordination was especially important in preparing the cumulative impact analysis. A total of 35 NEPA documents contributed to it. We had to cope with several moving targets and tie them all together into a credible analysis. I was in almost daily contact with my counterparts in Defense Programs, Environmental Management, and the Field Offices."

Tiering and an Amended Programmatic ROD

The Surplus Plutonium Disposition EIS was tiered from the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic EIS (DOE/EIS-0229). In the Programmatic ROD (62 FR 3014; January 21, 1997), DOE selected strategies for storage of weapons-usable fissile materials and disposition of surplus plutonium; the strategy included consolidating part of DOE's weapons-usable plutonium storage at the Savannah River Site. The Programmatic ROD made moving plutonium to the Savannah River Site for storage contingent on completing a new storage facility and selecting Savannah River as the site for immobilizing plutonium in the subsequent Surplus Plutonium Disposition ROD. However, when Environmental Management identified possible difficulties in meeting the closure schedule for the Rocky Flats Environmental Technology Site, DOE amended the programmatic ROD (63 FR 43386; August 13, 1998) to allow for earlier shipment of plutonium from Rocky Flats by upgrading existing storage facilities at the Savannah River Site.

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“216 Process” and a Supplemental Draft EIS

While preparing the Surplus Plutonium Disposition Draft EIS, DOE initiated a procurement consistent with DOE’s NEPA regulations at 10 CFR 1021.216 (the “216 process”) to obtain MOX fuel fabrication and reactor irradiation services under a privatization approach.

(Section 216 establishes an environmental review process within the procurement process for evaluating proposals. DOE uses the 216 process when it needs to meet significant acquisition objectives before the NEPA process can be completed, as often is inherent to a privatization approach. See *Lessons Learned Quarterly Report*, September 1997, page 8.)

The May 1998 Request for Proposals for this work defined limited activities that could be performed before a Surplus Plutonium Disposition EIS ROD. Per the 216 process, DOE requested that each offeror provide, as part of its proposal, information on facility design for MOX fuel fabrication and on commercial reactors proposed for irradiation services. This information was used in the procurement process to identify potential environmental impacts of the proposals and was documented in an environmental critique. In addition, an environmental synopsis, based on the environmental critique, was provided to the U.S. Environmental Protection Agency and made available to the public. In March 1999, DOE awarded a contract (contingent on DOE selecting the contractor’s approach after completing NEPA review) for fuel fabrication and reactor irradiation services. The award decision was based, in part, on the analysis documented in the environmental critique.


Meanwhile, DOE issued the Surplus Plutonium Disposition Draft EIS in July 1998, which generically assessed the potential environmental impacts of using MOX fuel in commercial nuclear reactors. In April 1999, DOE issued a Supplement to the Surplus Plutonium Disposition Draft EIS that incorporated the synopsis and analyzed the potential environmental impacts of using

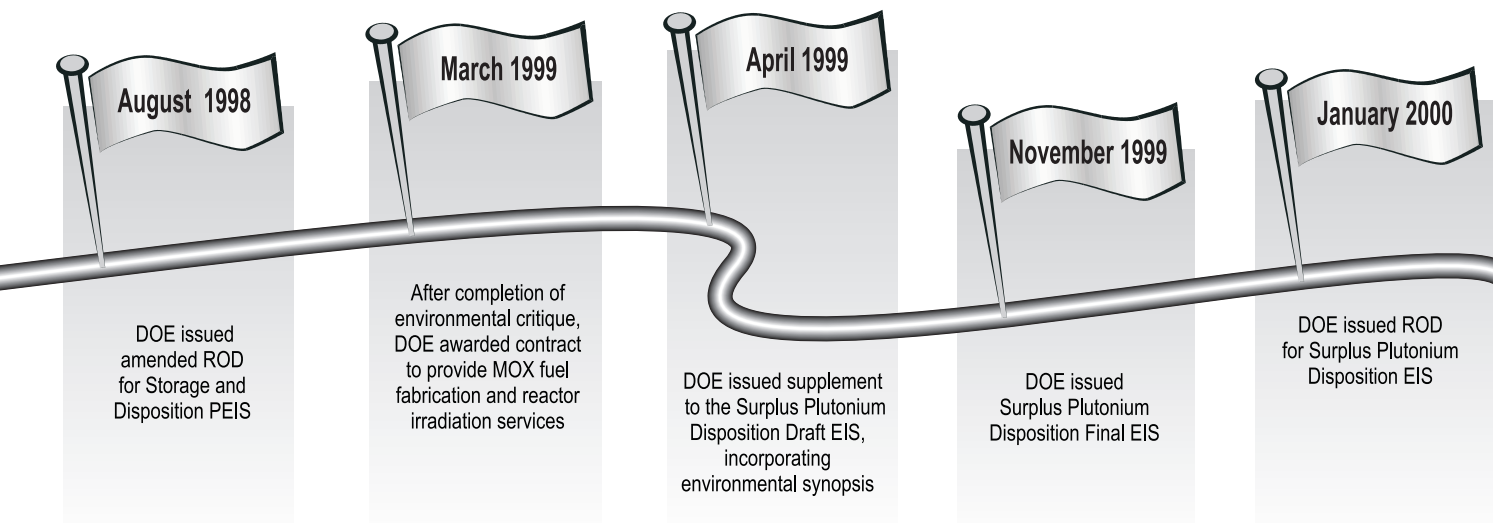
MOX fuel in the specific commercial reactors. “This approach helped save us some time in that we issued the Draft EIS, followed by a Supplement to the Draft EIS, a Final EIS, and a ROD,” said Mr. Stevenson.

Meeting Milestones Through Teamwork

As the Office of Fissile Materials Disposition was preparing the Final EIS and identifying Los Alamos National Laboratory as the preferred alternative for fabrication of test MOX fuel rods, Defense Programs raised questions about the Laboratory’s capability to support this activity in addition to its existing mission requirements. Materials Disposition, however, was concerned that delays in the Surplus Plutonium Disposition EIS would affect its overall program schedule, which included Environmental Management’s commitments to the State of Colorado regarding the shipment of Rocky Flats surplus plutonium to the Savannah River Site.

After much internal discussion, the matter was resolved by compromise: DOE selected Los Alamos National Laboratory for the manufacture of the test fuel rods, but deferred deciding which facility at the Laboratory will be used for the final stages of the test assembly work. Materials Disposition and Defense Programs established a process, which may involve further NEPA review, to resolve the longer-term issues.

Timely publication of the Surplus Plutonium Disposition Final EIS and ROD could not have been accomplished without extraordinary teamwork among many offices. Mr. Stevenson advises NEPA Document Managers to identify possible linkages to other proposals and NEPA reviews early in the internal scoping process: “When numerous sites and programs are involved in a NEPA review, coordinating data calls and project milestones is the only way to avoid potential conflicts and inefficiencies.” 



Lessons Learned Talks with Horst Greczmiel

New NEPA Director at CEQ Requests DOE Input

Horst G. Greczmiel is the Associate Director for NEPA at the Council on Environmental Quality (CEQ). Lessons Learned recently interviewed Mr. Greczmiel on his vision for NEPA and CEQ.

Q: As NEPA reaches its 30th anniversary, what opportunities do you see for further improvements under NEPA?

A: The fact that NEPA has remained virtually unchanged for 30 years testifies to its enduring purpose and goals. The NEPA process, an environmental impact analysis and the documentation of that analysis, enables us to meet the responsibilities set out in NEPA Section 101. The opportunities that lie ahead are for continued refinements to ensure that the environmental impact analysis process is efficient and effective. Our challenge is to increasingly focus on the environmental issues of concern and produce analyses that are truly useful to decision makers, their agencies, and the public.

Q: What are your priorities for NEPA initiatives at the Council on Environmental Quality?

A: To a significant extent, the people who prepare and use the NEPA analyses drive my priorities. I convened a meeting of Federal agency NEPA Liaisons early in my time at CEQ, and I recognized the value of working with them to address the needs and concerns they and their agencies face. There are few situations where one approach will serve all. Accordingly, I intend to work with NEPA Liaisons to reassess the needs and concerns of those who prepare NEPA analyses and help them get the tools they need to do their work. Many times other agencies have such tools and solutions, and establishing a forum for exchanging lessons learned and best practices is one of my primary goals. For example, our first NEPA Liaison meeting began providing useful exchanges regarding categorical exclusions.

I also will focus on several Administration initiatives, from the specific – applying NEPA to the problem of invasive species – to the more general – seeking ways to reduce regulatory burdens while maintaining environmental protection. Finally, integrating the NEPA process with agency decision making and other environmental processes is an area that continues to change and require our attention. By using my position to help strengthen the NEPA process (a fundamental step in addressing the environmental component of any decision), the broader environmental initiatives designed to make communities more livable and to address preservation of habitat and biological diversity will continue to move forward.

Q: Do you see a need to refocus Federal agencies' overall vision and approach to environmental impact analysis?

A: Not generally, but sometimes a specific agency may not understand the need for, or appreciate the value of, the NEPA process. In any agency, occasionally new senior leaders arrive who are unfamiliar with the NEPA process – and especially the need for their leadership in agency NEPA efforts. I intend to continue CEQ's tradition of helping those leaders focus on meeting their NEPA responsibilities in a way that makes sense, supports their missions, and adds value to their decision making.

Q: How did your experience color your vision of the NEPA process and the environmental benefits it could bring about?

A: My experience in the Coast Guard, the Army, and the private sector helped shape my views of NEPA's value. As a young attorney, I learned the value of proactive or preventive advice. Being in situations where lack of planning, time, or knowledge prevented achieving NEPA's full potential drove home the value of using NEPA early in decision making. Using NEPA to identify environmental concerns and integrate economic, operational, and environmental considerations is a proactive approach that results in environmental benefits.

Q: Do you have any specific advice for NEPA practitioners in the Department of Energy?

A: Rather than offering specific advice, I have a request. As you continue doing NEPA work, please find the time to identify and pass on to Carol Borgstrom (DOE's NEPA Liaison) and her staff the challenges, successes, and "bumps in the road" that you encounter. I want to bring the *Lessons Learned Quarterly Report* and the self-examination you have undertaken to improve DOE's NEPA process to the attention of the entire Federal NEPA community. I thank Carol for agreeing to make a presentation to the Federal NEPA Liaisons on your program in the coming year. My goal is to work with Carol and the other NEPA Liaisons to identify those issues that need attention and to find ways to help the NEPA practitioners. Together, we can make NEPA's next 30 years successful and rewarding, both for the environment and the people we serve.

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Horst G. Greczmiel joined CEQ in December 1999 as its Associate Director for NEPA. He is responsible for overseeing and implementing NEPA and CEQ mandates to ensure that Federal agencies integrate environmental values into decision making.

Previously, in the Office of Environmental Law at U.S. Coast Guard Headquarters in Washington, DC, he was responsible for all facets of environmental planning, including policy development and defensive litigation arising from compliance responsibilities under NEPA, the Endangered Species Act, and the National Historic Preservation Act. While at the Coast Guard, he received the Commandant's Award for Superior Achievement and a Department of Justice Commendation for his work on environmental planning and species protection litigation.

Earlier, Mr. Greczmiel had practiced law in the New Jersey Public Defender's Office (Camden, NJ), in a private firm, and for the U.S. Army. His service in the Army included tours with the Office of the Judge Advocate General's Environmental Law Division and as environmental advisor to the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health.


Mr. Greczmiel received his B.A. from Lafayette College, a J.D. from Rutgers-Camden School of Law, and a L.L.M. in environmental law from George Washington University.

Transitions

Costner Named Secretary's Advisor for Environment, Safety and Health


Brian Costner has been named as Senior Policy Advisor for Environment, Safety and Health to advise the Secretary of Energy in a wide range of areas affecting environmental policy, worker health and safety, and public health. Mr. Costner's perspectives on DOE ES&H activities come from his longstanding public-sector involvement in the Department's major environmental impact statements. "NEPA compliance is important to the Department's effective management of many projects and programs," he observed, "as well as to relations with people interested in the Department's activities."

Most recently, Mr. Costner served as a consultant to the Institute for Energy and Environmental Research. Previously, he had been the Director of the Energy

Research Foundation, a nonprofit environmental organization in Columbia, South Carolina, that addressed site-specific and national DOE issues. He also has served on advisory and working committees of DOE, the National Research Council, Consortium for Risk Evaluation with Stakeholder Participation, Aspen Institute, Medical University of South Carolina, South Carolina Research Authority, and Risk Assessment Corporation. From 1994 until 1999, he served as a member of DOE's Environmental Management Advisory Board and its Worker Health and Safety Committee. Mr. Costner has a Master of Arts degree from Antioch University's Environment and Community Program in Seattle, Washington. 

Gearo to Lead Environmental Services at Dugway Site

Joe Gearo, who has served in DOE's Office of NEPA Policy and Assistance since 1989, left DOE in late January to become Environmental Services Division Director for the U.S. Army's Dugway Proving Ground in Utah. Mr. Gearo will be responsible for developing and managing the Proving Ground's environmental

compliance program, including actions taken to enhance the environment. Mr. Gearo will be applying NEPA lessons learned in a very practical and challenging context. The Office of NEPA Policy and Assistance wishes him well. 

DOE Issues Decisions for Low-level and Mixed Low-level Waste

Last Planned Decisions for the Waste Management Programmatic EIS


On February 25, 2000, DOE published a Record of Decision for the Department's Waste Management Program: Treatment and Disposal of Low-level Waste (LLW) and Mixed Low-level Waste (MLLW) (65 FR 10061). The decisions enable DOE to integrate waste management activities among sites to promote expeditious, compliant, and cost-effective cleanup.

In brief, for the management of LLW analyzed in the Final Waste Management Programmatic EIS (DOE/EIS-0200), DOE decided to perform minimum treatment at LLW generator sites. In addition, the Hanford Site in Washington and the Nevada Test Site will be made available to all DOE sites for LLW disposal and, to the extent practicable, some other LLW disposal operations at DOE sites will continue as specified in the Record of Decision.

For the management of MLLW analyzed in the Waste Management Programmatic EIS, the Department decided

to treat MLLW at the Hanford Site, Idaho National Engineering and Environmental Laboratory, Oak Ridge Reservation, and Savannah River Site, and to dispose of MLLW at the Hanford Site and the Nevada Test Site. In the same *Federal Register* notice, DOE amended the December 1996 Record of Decision for the Nevada Site-wide EIS (DOE/EIS-0243) to accord with these decisions regarding Nevada.

This is the last planned Record of Decision under the Waste Management Programmatic EIS issued May 1997. The previous Records of Decision for DOE's Waste Management Program were:


- Treatment and Storage of Transuranic Waste (63 FR 3629; January 23, 1998);
- Treatment of Non-wastewater Hazardous Waste (63 FR 41810; August 5, 1998); and
- Storage of High-level Radioactive Waste (64 FR 46661; August 26, 1999). 

Hanford Comprehensive Land-Use Plan EIS (continued from page 5)

Influenced by this public preference, DOE ultimately decided to increase environmental protection of parts of the Site. Accordingly, the Washington Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and DOE modified their management agreements to allow expansion of the Saddle Mountain National Wildlife Refuge to the entire Wahluke Slope. The Record of Decision, which adopts the Comprehensive Land-Use Plan, "creates a roadmap for planning appropriate industrial development in the eastern and southern parts of Hanford while defining areas of the site where waste management will be handled," said Assistant Secretary for Environmental Management Dr. Carolyn L. Huntoon.

Plan Includes Implementation Procedures

To help ensure that future decisions are consistent with the Comprehensive Land-Use Plan and that appropriate NEPA review takes place for future land-use proposals, the EIS includes an unusual chapter on implementation procedures. Under these procedures, adopted in the Record of Decision, proposals for new facilities and activities on the Site, whether from private or government proponents, will be evaluated by DOE's Realty Officer and NEPA Compliance Officer, jointly with a Site Planning Advisory Board that includes representatives from the cooperating agencies and affected Tribal governments.

For more information on the Hanford Comprehensive Land-Use Plan EIS, contact Tom Ferns at thomas_w_ferns@rl.gov or call 509-372-0649. 

Sandia Book Tells 25-Year History of Waste Isolation Pilot Plant

DOE's NEPA Experience Grew as Project Took Shape

It was 1975 when the Energy Research and Development Agency (a DOE predecessor agency) first assigned Sandia National Laboratories major responsibility for the scientific investigations related to a proposed radioactive waste repository in southeastern New Mexico. The first shipment of waste arrived in 1999. The 25-year history of the Waste Isolation Pilot Plant (WIPP) is now detailed in *Sandia and the Waste Isolation Pilot Plant, 1974 – 1999*, by Carl J. Mora, a historian at Sandia National Laboratories. The Department's three EISs for WIPP (DOE/EIS-0026 and supplements) and their associated Records of Decision are part of this history.

This book tells a multi-faceted story (generously illustrated with historic photographs and newspaper cartoons) – of shifting missions, high public interest, political infighting, scientific controversy, technical challenges, and naivete replaced with hard-won experience – and of Sandia's role in helping to develop the nation's first geological repository for the permanent disposal of transuranic radioactive waste. It also tells of DOE's growing sophistication in performing complex NEPA reviews.

Dr. Mora describes how an initial test site seven miles northwest of the eventual WIPP site had to be abandoned because unexpected subsurface conditions were discovered in the form of steeply dipping salt beds and a brine reservoir under artesian pressure (which nearly



WIPP Project Manager Wendell Weart, dressed in his official Sultan of Salt uniform, wields a scimitar at a gathering in April 1997 to honor his 35th anniversary at Sandia and being named a Sandia Fellow.


killed one of the Sandia staff during exploratory drilling). Even as the search ensued for a new site, background work was beginning for an EIS. At first, there were only three members of the EIS preparation team, and as one of them recalled 20 years later, "people were still trying to learn what an EIS means." (People still thought an EIS could be about a dozen pages.) After several iterations, a draft EIS was finally issued in 1979. Subsequently, the EIS was extensively supplemented in 1990 and 1997.

The book chronicles how opposition to WIPP grew as construction proceeded. Disagreements raged among proponents and opponents at all levels – from activists arrested at the construction site, to disputes between Presidents and

Congress. Some early opponents later became proponents. Among the many personalities in the book is Bill Richardson who, as a former Congressman from the host state of New Mexico, stressed that WIPP should be required to meet Environmental Protection Agency (EPA) standards for waste disposal.

Congress eventually enacted requirements setting out a new role for EPA, and, in 1998, EPA certified that WIPP met the agency's disposal standards. The facility began waste disposal operations in March 1999 under the leadership of Bill Richardson as Secretary of Energy.

Over the 25 years of facility development, five U.S. Presidents held office, the Energy Research and Development Agency evolved into DOE (with many changes in leadership), and Congress debated WIPP's funding and future numerous times. Among the few constants over time were some of the initial Sandia players, including the project manager, Wendell Weart, nicknamed "The Sultan of Salt" by former Secretary of Energy Hazel O'Leary. Dr. Weart himself writes in the book's forward that, although WIPP took a 25-year trip that had many potholes and detours, the fact that it finally came to fruition "provides a positive signal to the world that radioactive waste disposal is not too difficult a problem to overcome."

Sandia and the Waste Isolation Pilot Plant, 1974 – 1999, publication SAND99-1482, is available from the National Atomic Museum Store at 505-284-3242. 

At first, there were only three members of the EIS team. As one recalled 20 years later, "people were still trying to learn what an EIS means." (People still thought an EIS could be about a dozen pages.)

Considering Essential Fish Habitat in NEPA Reviews

Avoiding adverse impacts to environmentally sensitive resources is a consideration in project planning, so these resources receive special attention – often including interagency consultation – in the NEPA process. Lessons Learned Quarterly Report recently described regulations for considering historic properties (June 1999, page 3) and national natural landmarks (December 1999, page 12) in NEPA reviews. This article highlights requirements for considering another environmentally sensitive resource: essential fish habitat.

The 1996 Amendments to the Magnuson Fishery Conservation and Management Act require the National Marine Fisheries Service (NMFS) to designate “essential fish habitat” for species covered by a Federal fisheries management plan. The renamed Magnuson-Stevens Act (16 U.S.C. 1801, et seq.) defines these habitats as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” These habitats are in marine and estuarine areas as well as rivers that support Federally managed anadromous fish (that is, species that return from the sea to breed in rivers).

Under the Act, Federal agencies must consult with NMFS regarding any authorized, funded, undertaken, or proposed actions that may adversely affect essential fish habitat. Although the concept of essential fish habitat is similar to “critical habitat” under the Endangered Species Act, measures recommended by the NMFS are advisory, not prescriptive. If a project would have adverse effects, NMFS must develop recommendations to avoid or offset the effects. Federal agencies have 30 days to respond in writing to those recommendations.

NMFS interim final implementing regulations 50 CFR 600, Subparts J and K, effective January 20, 1998 (62 FR 66531; December 19, 1997), specify that consultations on essential fish habitat should be incorporated into environmental review procedures already established, including those for NEPA. If a proposal has potential impacts on essential fish habitat, a draft EIS or an EA prepared for pre-approval review should contain the required provisions of an essential fish habitat assessment:

- A description of the proposed action;
- An analysis of the effects of the proposed action (and alternatives, when appropriate) on essential fish habitat and associated species;
- The agency’s views regarding those effects; and
- Proposed mitigation, if applicable.

An essential fish habitat assessment should appear under its own heading in an EIS or EA, and may incorporate by reference any relevant information contained elsewhere in the document.


Essential Fish Habitat Assessment Prepared for DOE EIS

In response to NMFS comments on a draft EIS for a proposed Clean Coal project in Florida, DOE prepared and will incorporate an essential fish habitat assessment into the final EIS for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS-0289).

Recommendations for DOE NEPA Practitioners

NEPA practitioners should include essential fish habitat among the environmentally sensitive resources to be considered when assessing environmental impacts of a proposed action.

- ✓ In applying a categorical exclusion, ensure that the proposed action meets the requirements of DOE NEPA regulations, which specify that environmentally sensitive resources must not be adversely affected (Appendix B.(4)).
- ✓ If a proposed action could adversely affect the habitat of a marine or anadromous fish, consult with NMFS early during preparation of an EA or EIS.
- ✓ Distribute a draft and final EIS, or an EA for pre-approval review, to the appropriate NMFS Regional Coordinator if the document addresses a proposal with potential impacts on essential fish habitat.

For more information and for links to Regional Fishery Management Council Web sites, see the NMFS Office of Habitat Conservation Web site at www.nmfs.gov/habitat. 

NMFS Essential Fish Habitat Regional Coordinators

Northeast Region: Lou Chiarella, 978-281-9277
Southeast Region: Ric Ruebsamen, 727-570-5317
Southwest Region: Mark Helvey, 707-575-6078
Pacific Islands: John Naughton, 808-973-2935
Northwest Region: Nora Berwick, 503-231-6887
Alaska Region: Jeanne Hanson, 907-271-3029

NEPA Guidance Updates

The following documents were recently distributed by the Office of NEPA Policy and Assistance.

Directory of Potential Stakeholders for DOE Actions under NEPA

(13th edition; January 31, 2000)

Office of NEPA Policy and Assistance

Available at tis.eh.doe.gov/nepa/ under DOE NEPA Tools

Katherine Nakata

202-586-0801

katherine.nakata@eh.doe.gov

EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews

(EPA 315-B-99-001; July 1999)

Environmental Protection Agency

Office of Federal Activities

(DOE contact: Carolyn Osborne, 202-586-4596)

carolyn.osborne@eh.doe.gov

Web Site of Interest: www.ehsfreeware.com

For a “virtual library” of environmental, health, and safety information, take a look at www.ehsfreeware.com. This informative and entertaining Web site provides links to more than 600 online databases, assorted government and non-government Web sites, and downloadable software (“freeware”). Information is organized in categories such as:

- Information/Data (including analytical methods, emergency response, energy conservation, nature/wildlife, pollution, and waste management)
- Tools for Environmental Responsibility, Compliance Assistance (including links to sites on environmental laws and regulations)
- Investigation/Cleanup Assistance, Education/Training, and “Neat Stuff” (including collections of photographs and maps)

The site, online since July 1999, was created by Donley Technology, a publisher of environmental software and a clearinghouse for environmental software information.

DOE-wide NEPA Contracts Update

Based on the performance evaluations provided by NEPA Document Managers and Ordering Contracting Officers, DOE plans to exercise the first option period on its contracts with Tetra Tech, Inc., and Science Applications International Corporation for DOE-wide NEPA document preparation services. The contracts, issued in June 1997, cover a basic period of three years and two one-year options. (A contract with Battelle Memorial Institute was awarded in March 1998, and a decision on exercising an option will be due in early 2001.) For questions or comments on the DOE-wide contracts, contact David Gallegos at dagallegos@doeal.gov or phone 505-845-5849.

The following tasks have been awarded under the DOE-wide contracts; for previously reported tasks, see *Lessons Learned Quarterly Report*, September 1999, page 10.

Task Description	DOE Contact	Date Awarded	Contract Team
Environmental Studies	Federal Energy Regulatory Commission	8/3/99	Tetra Tech, Inc.
EA for Transfer of DOE Grand Junction Office to non-DOE Ownership	Tracy Plessinger 970-248-6197 tplessinger@doegjpo.com	8/13/99	Tetra Tech, Inc.
Nuclear Infrastructure Programmatic EIS	Colette Brown, NE 301-903-6924 colette.brown@hq.doe.gov	12/21/99	SAIC

NEPA Training Opportunities

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

National Environmental Policy Act

May 23-25, 2000

Fee: Free to Federal employees

*National Advocacy Center
Office of Legal Education
Executive Office for United States Attorneys
Department of Justice
Columbia, SC
Phone: 803-544-5100
Fax: 803-544-5110
Internet: www.usdoj.gov/usao/eousa/ole.html*

Environmental Planning –

National Environmental Policy Act

(Offered through a General Services Administration Environmental Advisory Services contract. Location and date by arrangement with vendor.)

Fee: \$8,740 (Minimum class of 10 students)
\$960 (Each additional student)

*Marc Enviro Services L.L.C.
Contact: Mark E. Schafer
Phone: 402-492-8025
E-mail: marcsvc@uswest.net
Internet: www.marcservices.com*

National Environmental Policy Act and Related Requirements

Washington, DC: April 27-28, 2000

Fee: \$695

*American Law Institute – American Bar Association
Dinah Bear, William M. Cohen, David Paget
Phone: 800-CLE-NEWS
Fax: 215-243-1664
Internet: www.ali-aba.org*

Cumulative Effects Assessment in the NEPA Process

Levine Science Research Center, Duke University
Durham, NC: May 31-June 2, 2000 (Register by April 12)
Fee: \$595

*The Nicholas School of the Environment
Duke University
Phone: 919-613-8063
E-mail: cee@env.duke.edu
Internet: www.env.duke.edu/alternative.html*

Advanced Topics in Environmental Impact Assessment

Irving, TX: March 15-17, 2000

Fee: \$695

Cumulative Effects Assessment

Irving, TX: May 10-12, 2000

Fee: \$695

Environmental Impact Assessment

Irving, TX: July 26-28, 2000

Fee: \$695

*Environmental Impact Training
Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Phone: 405-321-2730
E-mail: info@eiatraining.com
Internet: www.eiatraining.com*

Clear Writing for NEPA Specialists

San Antonio, TX: March 15-17, 2000

Fee: \$795

Cultural and Natural Resource Management

Reno, NV: April 5-6, 2000

Salt Lake City, UT: June 7-8, 2000

Fee: \$595

Clear Writing for NEPA Specialists/Reviewing NEPA Documents (Advanced)

Denver, CO: May 1-5, 2000

Fee: \$1,289

Reviewing NEPA Documents

Albuquerque, NM: May 9-11, 2000

Fee: \$795

Risk Communication: Strategies and Implementation

Phoenix, AZ: May 16-18, 2000

Fee: \$795

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

The NEPA Toolbox: Essentials for NEPA Practitioners

Denver, CO: June 5-6, 2000

Fee: \$650 (Early Bird \$595)

The NEPA Toolbox: Assessing Cumulative Impacts

Denver, CO: June 7, 2000

Fee: \$425 (Early Bird \$395)

The NEPA Toolbox: EAs with FOCUS

Denver, CO: June 8-9, 2000

Fee: \$650 (Early Bird \$595)

*Environmental Training and Consulting
International, Inc.
Phone: 720-859-0380
Fax: 720-859-0381
Internet: www.envirotrain.com*

Related Training Opportunities

Introduction to Section 106 Review

Kansas City, MO: March 14-15, 2000
Riverside, CA: March 21-22
Riverside, CA: March 23-24
Philadelphia, PA: April 9-11
Anchorage, AK: May 2-3
Chicago, IL: May 16-17
Dallas, TX: June 6-7
Memphis, TN: June 20-21
Phoenix, AZ: July 11-12
Washington, DC: July 25-26
Portland, OR: August 1-2
Minneapolis/St. Paul, MN: August 8-9
Fee: \$425

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

Section 106: An Advanced Seminar

Austin, TX: March 13-15, 2000
Madison, WI: March 21-23
Fee: \$475

Consultation with Indian Tribes on Cultural Resource Issues

Riverside, CA: April 18-19, 2000
Fee: \$325

Section 106: Working with the Revised Regulations

Honolulu, HI: April 25-26, 2000
Sacramento, CA: May 1-2
Fee: \$325

National Preservation Institute
Phone: 703-765-0100
E-mail: info@npi.org
Internet: www.npi.org

Environmental Laws and Regulations

Chicago, IL: March 21-23, 2000
Aiken, SC: May 9-11
Fee: \$950

An Overview of Environmental Laws and Regulations for Managers

Richland, WA: June 14, 2000
Fee: \$250

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



DOE Litigation Updates

Court Allows DOE Shipment of Test Fuel to Canada

On December 6, 1999, several Michigan residents and the Citizens for Alternatives to Chemical Contamination sued DOE in the U.S. District Court for the Western District of Michigan, alleging several NEPA violations in DOE's environmental assessment (DOE/EA-1216) for the Parallax Project. This project is a test that will fuel a research nuclear reactor in Ontario, Canada, with mixed oxide (MOX) fuel (consisting of uranium oxide and weapons-grade plutonium oxide) fabricated in the United States and Russia. The plaintiffs requested a preliminary injunction, which would have prevented the DOE MOX shipment to Canada until the merits of the case could be heard and decided.

On December 17, the court declined to issue a preliminary injunction but concluded that some of the plaintiffs' NEPA claims may have merit. On January 15, 2000, the DOE MOX shipment arrived in Canada without incident. Nevertheless, the lawsuit is still active; *Lessons Learned Quarterly Report* will report on future developments. *Hirt v. Richardson*, Case No. 1:99-CV-933; December 17, 1999. **LL**

DOE Radioactive Waste Management Order and Categorical Exclusion Challenged

In issuing the Radioactive Waste Management Order (DOE O 435.1) in July 1999, replacing a previous such Order, DOE applied categorical exclusion A5 of the DOE NEPA Regulations, "Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended." On January 3, 2000, the Natural Resources Defense Council and the Snake River Alliance petitioned the U.S. Court of Appeals for the Ninth Circuit to review and to set aside as arbitrary, capricious, and contrary to law – both the Order and the application of the categorical exclusion.

The Natural Resources Defense Council's brief is due to the court on March 27, 2000, and DOE's responding brief is due on April 24. *Lessons Learned Quarterly Report* will report on future developments in this case. **LL**

Appeals Court Upholds Decision Not to Stop International Nuclear Waste Shipments; Rationale is NEPA, Not Mootness

On February 3, 1998, a British-flag freighter carrying vitrified high-level radioactive waste passed through the Mona Passage (between the islands of Puerto Rico and Hispaniola) bound from France to Japan by way of the Panama Canal. A day earlier, a group of fishermen and environmental organizations from Puerto Rico, fearing an accident or maritime disaster, sued DOE, the Department of State, the Coast Guard, and the companies involved in the treatment and transport of the waste. The plaintiffs requested an injunction to stop the shipment until the U.S. prepared an EIS. The District Court dismissed the action as moot because the shipment had already left U.S. waters. (See Lessons Learned Quarterly Report, March 1998, page 14.) The plaintiffs appealed.

On December 20, 1999, the United States Court of Appeals for the First Circuit found that this case was not moot – because shipments of vitrified high-level waste through the Mona Passage continue – but also found that the shipments do not constitute a major Federal action subject to NEPA.

Nuclear Waste Shipments a Federal Action?

In the appeal, the plaintiffs argued that because the United States plays some role in the transport of this waste under various international agreements and

international law, the shipments constitute a "major Federal action" under NEPA. The United States responded that the "action" is the waste shipment, which is being carried out by private parties.

The Council on Environmental Quality (CEQ) NEPA regulations state that actions by non-Federal actors "with effects that may be major and which are potentially subject to Federal control and responsibility" can be major Federal actions (40 CFR 1508.18). Under CEQ regulations, these "actions" include "projects and

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Litigation Updates (continued from previous page)

programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies.” The Appeals panel found that the shipments are not Federal actions because the U.S. performs none of these activities with respect to the waste shipments.

Is Failure to Regulate the Shipments a Federal Action?

Under CEQ regulations, an agency’s failure to act is an “action” within the meaning of NEPA only when the failure to act is reviewable by the courts under the Administrative Procedure Act or other applicable law (40 C.F.R. §1508.18). The plaintiffs argued that the U.S. Government’s failure to regulate shipments of nuclear waste through its Exclusive Economic Zone waters (which extend 200 nautical miles offshore) falls within this provision of the regulations.

In general, foreign ships do not require U.S. permission to pass through its Exclusive Economic Zone, but the

plaintiffs argued that the U.S. granted or was required to grant specific authorization for these shipments under the U.S.-EURATOM Agreement (Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community, H.R. Doc. No. 104-138). The Government successfully responded that the U.S. authorities under this Agreement end when nuclear material becomes “practically irrecoverable” through vitrification. The Appeals Court concluded that “the United States has chosen not to regulate shipments of nuclear waste through its [Exclusive Economic Zone] – there is no requirement that it do so, nor is it evident that it would have that authority if it so chose. Under these circumstances, there is no major Federal action.” *Mayaguezanos por la Salud y el Ambiente v. United States*, 38 F. Supp. 2d 168, 178 (D.P.R. 1999) and No. 99-1412, 1999 U.S. App. LEXIS 33416 (1st Cir. December 20, 1999). 

Other Agency NEPA Cases

Appeals Court Reverses Wilson Bridge NEPA Decision


The U.S. Court of Appeals for the District of Columbia Circuit on December 17, 1999, reversed a District Court ruling on the adequacy of a Federal Highway Administration (FHWA) EIS for replacing the Woodrow Wilson Bridge across the Potomac River, finding that the EIS satisfied the requirements of NEPA, the National Historic Preservation Act, and the Department of Transportation Act. (See *Lessons Learned Quarterly Report*, September 1999, page 12.)

The District Court had concluded that the FHWA violated NEPA in failing to consider a ten-lane bridge as a “reasonable alternative.” The Appeals Court, stating that “reasonable alternatives” must be viewed in light of the action’s objective, found that the FHWA reasonably identified its objective as addressing traffic needs in 20 years and correctly concluded that the ten-lane bridge alternative would not provide sufficient capacity for 2020 traffic projections.

The District Court, in finding the ten-lane bridge a reasonable alternative, had noted that the FHWA’s Clean Air Act conformity analysis was conducted for a ten-lane alternative. The Appeals Court disagreed with this reasoning, stating that “the Clean Air Act and NEPA inquiries have different time horizons; while a project

must show conformity with the Clean Air Act at the time it is approved, see 42 U.S.C. § 7506(c)(1) (1995), the consideration of reasonable alternatives under NEPA requires an assessment of traffic needs in 2020.”

The District Court also had found the EIS’s treatment of the temporary construction impacts inadequately brief and general, and – in postponing identification of construction staging sites – in violation of section 106 of the National Historic Preservation Act and section 4(f) of the Department of Transportation Act. Criticizing the District Court’s assessment as “too harsh,” the Appeals Court found that the EIS did address a number of construction impacts and the brevity of the discussion was justified by FHWA’s practice of identifying construction staging sites (an “ancillary activity”) after detailed design. The Appeals Court further found that the FHWA is not prohibited from completing its section 106 analyses and certain requirements of section 4(f) during final design of the project. *City of Alexandria v. Slater*, 46 F. Supp.2d 35 (D.D.C. 1999)

Although the Appeals Court decision would allow construction to proceed, the FHWA has issued a draft supplemental EIS that addresses design changes and new information on resource needs and impacts. 

EAs and EISs Completed October 1 – December 31, 1999

EAs

Environment, Safety and Health

DOE/EA-1249 (11/03/99)
10 CFR 850 Chronic Beryllium Disease Prevention Program

Cost: \$200,000

Time: 32 months

National Energy Technology Center

DOE/EA-1306 (10/12/99)
Cedar Lane Farms Atmospheric Fluidized Bed Combustor System, Wooster, Wayne Co., Ohio

Cost: \$27,000

Time: 4 months

Oakland Operations Office/Defense Programs

DOE/EA-1305 (10/29/99)
Terascale Simulation Facility, Lawrence Livermore National Laboratory, California

Cost: \$50,000

Time: 7 months

Savannah River Operations Office/Environmental Management

DOE/EA-1302 (12/08/99)
Interim Measures for the Mixed Waste Management Facility Groundwater at the Burial Ground Complex at the Savannah River Site, Aiken, South Carolina

Cost: \$36,000

Time: 6 months

EISs

Defense Programs/Albuquerque Operations Office

DOE/EIS-0281 (EPA Rating: LO)
Sandia National Laboratories, Albuquerque, New Mexico, Site-wide

October 1999 (64 FR 58404; 10/29/99)

Cost: \$10.1 million

Time: 29 months

DOE/EIS-0293 (EPA Rating: EC-2)
Proposed Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico

October 1999 (65 FR 5635; 2/04/2000)

Cost: \$2.0 million

Time: 18 months

Fissile Materials Disposition

DOE/EIS-0283 (EPA Rating: EC-2)

Surplus Plutonium Disposition

November 1999 (64 FR 63313; 11/19/99)

Cost: \$12.2 million

Time: 29 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

LO– Lack of Objections

EC– Environmental Concerns

EO– Environmental Objections

EU– Environmentally Unsatisfactory

Adequacy of the EIS

Category 1 – Adequate

Category 2 – Insufficient Information

Category 3 – Inadequate

(See the March 1997 *Lessons Learned Quarterly Report* for a full explanation of these definitions.)

First Quarter FY 2000 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of NEPA Policy and Assistance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 1999. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- *Meetings with stakeholder groups.* By meeting with various non-government organizations (including proponent and opposing organizations), DOE was able to anticipate the type and content of comments we could expect on the draft.
- *Cost-free methods to submit comments.* The public liked the use of toll-free telephone numbers to provide spoken and faxed comments. They also used the Program's Web site to submit comments.

Data Collection/Analysis

What Worked

- *Early calls for data.* Data collection was expedited by issuing data calls on the alternatives to labs and sites before the Notice of Intent was issued.

Schedule

Factors that Facilitated Timely Completion of Documents

- *An aggressive schedule.* A schedule was established that was aggressive for both the contractor and DOE, yet allowed adequate DOE review time.
- *Use of a template.* A template for the EA was provided to the members of the team for use in preparing and incorporating their analyses.
- *Electronic communications.* All document communications were electronic, so individual sections could be easily transmitted for review, adjusted as necessary, and imported into a draft EA.

- *Offsite reviews.* Offsite meetings brought together reviewers from headquarters, sites, and labs. Many issues were resolved at these meetings, where everyone could devote full time to reviewing the EIS.
- *Stable contracting and budget situation.* Although costs increased due to program changes, a stable support contract situation and contingency budget kept the document preparation on track.

Factors that Inhibited Timely Completion of Documents

- *Preparation of the EA during the design phase.* Because of design changes, the EA underwent several unanticipated revisions before approval.
- *Extra comment review periods.* The EA underwent several rounds of comments even after the advertised public review period closed.
- *Delays caused by the approval process.* The DOE approval process caused EA schedule delays. The process needs to be streamlined. This could be achieved by obtaining multiple reviewer concurrences on a single draft rather than revise the EA for each new reviewer in the step-wise concurrence process.
- *Multiple comment response.* We provided changes to the EA in response to one stakeholder's comments several times, allowing this individual to essentially "control" the NEPA process and the completion schedule.
- *Unforeseen development of supplemental materials.* The NEPA process was started on time. A major portion of the draft had to be supplemented, however, taking many months and adding significant cost.

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What Worked and Didn't Work (continued from page 19)

- *Late submission of applicant data.* If NEPA review had been conducted earlier, there would have been more time for construction and placement of components before winter. NEPA review was started as soon as possible; however, the applicant did not submit the required Environmental Questionnaire in a timely manner as had been requested.

Factors that Facilitated Effective Teamwork

- *Positive historical relationship between DOE and contractor.* The relationship that existed between DOE and the contractor personnel who participated in the NEPA process facilitated teamwork.
- *Periodic conference calls.* Periodic conference calls were held, with an agenda distributed beforehand. In addition, all persons needed on the conference calls were included.

Factors that Inhibited Effective Teamwork

- *Insufficient time availability by some team members.* Some team members were expected to take on this assignment as an addition to their ongoing work, although they had insufficient time availability. This created difficulties for the team as a whole.
- *Lack of familiarity with NEPA process.* The project team was unfamiliar with the NEPA process; this was the first EA the team prepared.
- *Insufficient availability of DOE project manager.* Better accessibility of the DOE project manager during the development of the NEPA document would have made the process more efficient.

Process

Successful Aspects of the Public Participation Process

- *Face-to-face meetings with municipal officials.* Face-to-face meetings with municipal officials helped us provide them advanced notice of and information on the proposed action, and helped them to establish their interest in and prepare for review of the draft document.

- *Floodplain and wetland involvement.* The *Federal Register* floodplain and wetland involvement notification helped the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *Lack of public understanding about the NEPA process.* The public thought that the project was good for the environment and could not understand why an EA was needed. The public thought the project should have been categorically excluded.
- *Insufficient newspaper publicity.* We missed placing a notice about the EA in one of the local papers. Consequently, a group requested and was granted more time to comment because they did not learn of the EA until later in the comment period.

Usefulness

What Worked

- *A better understanding of the project by stakeholders and regulators.* Preparation of the EA and the Finding of No Significant Impact was an effective planning tool; stakeholders and regulators better understood the overall objective and benefit of the proposed action.
- *A shift in the basis for project decision making using the results of the environmental impact analysis.* The process was useful in that it showed that there was not a great amount of environmental difference between the alternatives and, therefore, other considerations (non-proliferation, costs, etc.) could become deciding factors.

What Didn't Work

- *Compliance with NEPA was viewed only as a regulatory requirement.* The EA was not used as a planning tool; it was a process required by regulations.

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


- *Conflict between NEPA decision making and CERCLA/RCRA decision making.* NEPA review was completed early – perhaps too early to be effective in the final action. Agencies that drive CERCLA/RCRA decisions do not really care about NEPA and do not want NEPA messing up their RCRA decisions.
- *Project decision making preceded NEPA compliance.* Management had made a decision to implement the proposed action as approved by regulators and the NEPA process was used to justify that action.

Enhancement/Protection of the Environment

- *Increased awareness of environmental protection by participant.* DOE's decision to prepare an EA imparted to the participant an awareness of the seriousness of environmental concern regarding the proposed action. The participant maintained an interest in the potential environmental effects of the proposed action on a level equal to his interest in the economic benefits.
- *Protection of wetlands.* Wetlands will be better protected, and potential impacts to wetlands will be better understood.
- *NEPA compliance validated environmental analysis.* The environment was protected because the NEPA process required technical personnel and decision makers to ensure that the lack of major differences in the environmental consequences of the alternatives was real and not just a result of the analysis process.

Effectiveness of the NEPA Process

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

- For this quarter, in which questionnaire responses were received for 3 EAs and 1 EIS, 5 of the 9 respondents rated the NEPA process as "effective."
- A respondent who rated the process as "5" stated that, "Without the NEPA process, potential impacts to sensitive species may not have been identified until later in the project, which could have affected the project schedule and timely completion."
- A respondent who rated the process as "not effective at all" explained that, "Stakeholders thought it was very evident that this project, which would have put out of service an old, inefficient stoker boiler, should not have undergone this [NEPA] process and should have been given a categorical exclusion." 

NEPA Document Cost Facts

EISs

- Three EISs were completed this quarter. The median cost for the three EISs was \$10.1 million, and the average cost was \$8.1 million.
- Cumulatively, for the 12 months that ended December 31, 1999, the median cost for the preparation of 10 EISs was \$3.2 million; the average cost was \$6.6 million. Three other EISs were paid for by applicants.

EAs

- For this quarter, the median cost of four EAs was \$43,000; the average was \$78,250.
- Cumulatively, for the 12 months that ended December 31, 1999, the median cost for the preparation of 25 EAs was \$52,000; the average cost was \$67,000. Three other EAs were paid for by applicants.

NEPA Document Completion Time Facts

EISs

- For this quarter, the average and median completion times of three EISs were 25 and 29 months, respectively.
- Cumulatively, for the 12 months that ended December 31, 1999, the median completion time for the preparation of 13 EISs was 29 months; the average was also 29 months.

EAs

- For this quarter, the median completion time of four EAs was seven months; the average was 12 months.
- Cumulatively, for the 12 months that ended December 31, 1999, the median completion time for preparation of 28 EAs was nine months; the average was 15 months.

Other EIS Documents and Milestones

(December 1, 1999 – February 29, 2000)

Draft EIS

Idaho Operations Office

DOE/EIS-0287

Idaho High-Level Waste and Facilities Disposition
December 1999 (65 FR 3448; 1/21/2000)

Records of Decision

Defense Programs/Sandia National Laboratories

DOE/EIS-0281

Sandia National Laboratories, Albuquerque, New Mexico, Site-wide
12/06/1999 (64 FR 69996; 12/15/1999)

Environmental Management

DOE/EIS-0200 and DOE/EIS-0243

Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment of the Record of Decision for the Nevada Test Site
02/18/2000 (65 FR 10061; 2/25/2000)

Fissile Materials Disposition

DOE/EIS-0283

Surplus Plutonium Disposition
01/04/2000 (65 FR 1608; 1/11/2000)