

National Environmental Policy Act
**LESSONS
 LEARNED**

U.S. DEPARTMENT OF ENERGY

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NEPA Community Meeting Addresses Reform Initiatives

Challenged to “Reform and Re-energize NEPA Implementation,” more than 150 members of the DOE NEPA Community convened in Washington, DC, on July 16 and 17, 2002, at the annual meeting sponsored by the Office of NEPA Policy and Compliance. Highlights



James Connaughton, CEQ Chair, urged linking NEPA with EMS.

of the meeting included presentations by James Connaughton, Chair, Council on Environmental Quality (CEQ), and the senior environmental advisor to the President; and Robert Card, Under Secretary for Energy, Science and Environment.

Mr. Connaughton observed that 30 years ago NEPA was ahead of its time by incorporating the environment into the workings of government. “Now we must envision NEPA as a tool to get us to the next generation of environmental protection – better environmental stewardship at lower cost to society.” A new challenge in this regard, he noted, is to link NEPA with Environmental Management Systems (EMS).

In brief remarks, Under Secretary Card told DOE’s NEPA practitioners, “I can’t overemphasize how important the NEPA process is to what we get done, positively and negatively. It affects everything we do.”

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Mr. Card focused on the original intent of NEPA: to make better decisions and protect the environment in an open public process. He advocated structuring the NEPA process to maximize flexibility in making decisions, accelerate risk reduction, and lower costs of implementing those decisions.

Citing some of his early experiences with NEPA at DOE, Mr. Card noted DOE’s “A+” defense record in NEPA litigation, but expressed frustration regarding overly long NEPA processes and documents filled with unnecessary detail. Raymond Berube, Deputy Assistant Secretary for Environment, responded that when EISs are prepared early in the planning process and with senior program managers involved, both problems can be avoided and project implementation need not be delayed. Mr. Card agreed that management plays a key role. (See box, page 12.)

Mr. Berube delivered the keynote address on behalf of Beverly Cook, Assistant Secretary for Environment, Safety and Health (EH). Her prepared remarks addressed the need for flexibility, consistency, accountability, and good communication in the NEPA process.

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Under Secretary Robert Card told the DOE NEPA community, “Your job is not easy.”

Inside *LESSONS LEARNED*

Welcome to the 32nd quarterly report on lessons learned in the NEPA process. Much of this issue is devoted to reporting on the July DOE NEPA Community Meeting. Also featured is new NEPA-related guidance. Please note the Cumulative Index beginning on page 29. We thank you for your continuing support of the *Lessons Learned* program.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by November 1, 2002. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2002

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2002 (July 1 through September 30, 2002) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at tis.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

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. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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27th NAEP Conference – Detroit 2002

“Environmental Stewardship: Rebuilding and Maintaining America’s Resources” was the theme of the annual conference of the National Association of Environmental Professionals (NAEP) held in Detroit in June. The conference focused on the issue of brownfield redevelopment – bringing abandoned and often contaminated industrial sites back into productive economic use and environmentally acceptable condition.

As is customary for the NAEP conference, the meeting also included many NEPA-focused sessions, such as those on NEPA tools and techniques, public participation, coordinating and integrating NEPA with other regulatory programs, and current legal perspectives. There was particular emphasis this year on the integration of NEPA with Environmental Management Systems (EMS). Jon Loney of the Tennessee Valley Authority spoke about integrating NEPA and EMS at the corporate level. Charles Eccleston, Environmental Planning and NEPA Services Corporation, and Judith Lee, Environmental

Planning Strategies, held workshops on general NEPA/EMS integration, and John Irving, Idaho National Engineering and Environmental Laboratory, presented a case study of how this integration is implemented there. Diana Webb, Los Alamos National Laboratory, spoke on “The Silent ‘E’ – Environment in Integrated Safety Management.” Abstracts for most sessions are available at the NAEP Web site (www.naep.org) and proceedings can be ordered by NAEP members.

Next Conference: San Antonio in June 2003

NAEP will hold its 28th annual conference June 22-25, 2003, in San Antonio, Texas. Abstracts for papers to be presented are due to NAEP by October 15, 2002, and may be submitted online at www.naep.org. This site will soon provide additional information on the 2003 NAEP Conference, including nomination forms for the NAEP Environmental Excellence Awards. 

NEPA Meeting Addresses Reform (continued from page 1)

Ms. Cook's remarks emphasized the value of guidance – a major theme of the meeting – in promoting both flexibility and consistency. Use the guidance developed

“DOE must do a better job of serving the needs of decisionmakers, while still doing a good job of protecting the environment,” said Assistant Secretary Cook.

by EH, she advised, but apply the sliding scale and use good judgment. (See related article, page 13.)

To ensure that NEPA documents serve decisionmakers, programs must take ownership of the NEPA

process and not isolate document preparers from decisionmakers, according to Ms. Cook. Consistent with this goal, EH has endorsed the NEPA recommendations of the Top-to-Bottom Review of the Environmental Management (EM) program and aims to apply them to all of DOE.

Presentations by Mr. Connaughton, Horst Greczmiel, CEQ Associate Director for NEPA Oversight, and Jessie Roberson, DOE Assistant Secretary for EM, as well as case studies by DOE managers, NEPA Compliance Officers (NCOs), and Document Managers shared common themes: making NEPA documents more flexible and useful, adopting an adaptive management approach that focuses on outcomes, and integrating environmental planning with implementation.



Carol Borgstrom, Director, Office of NEPA Policy and Compliance, welcomed “the very best and brightest” NEPA people to the meeting.

CEQ Chair Promotes Management Approach for the Environment

Mr. Connaughton noted that Executive Order 13148, *Greening the Government Through Leadership in Environmental Management*, mandates EMS implementation across the Federal government, and he challenged NEPA practitioners to get involved in the systems approach. “Think about how to take a NEPA document and turn it into a management program. Identify legal requirements and management plans, put in place operational controls, monitor your projects, and improve on goals as you learn.... Management deals with financial



Ray Berube, Deputy Assistant Secretary for Environment, related NEPA experiences from his 24 years at DOE, including former Secretary Watkins's declaration: “Thank God for NEPA.”

planning and human resources management in this way – we should do it for the environment, too.” (See “EMS at DOE,” page 8.)

Follow-up monitoring and EMS:

Mr. Connaughton recommended increased agency commitment to follow-up monitoring, suggesting that an agency could monitor some environmental effects of a project

during implementation, instead of making all impact determinations before the project begins. “If monitoring indicates a problem, you can revise the action later. . . You can justify a decision based on today's knowledge if you commit to revisit the decision in the future based on new data,” he said.

Cooperation and Collaboration: The initiative to foster cooperating agencies in the NEPA process is a priority for CEQ. (See “CEQ Encourages Agency Cooperation,” *LLQR*, March 2002, page 1.) Mr. Connaughton noted that investing up-front in cooperation “can be a royal pain in the neck,” but it pays off in the long run. “When people know that they can be involved, they will have a higher level of trust in Federal agencies, regardless of whether they avail themselves of the opportunity,” he said.

With regard to collaboration among Federal agencies, he said agencies should avoid adversarial relationships and use cooperative planning processes to achieve smart decisionmaking. “Expect your partner agencies to work with you in the planning process,” Mr. Connaughton said.

In encouraging state and local governments to be cooperating agencies, he said the Federal government should emphasize the building of environmental expertise at the state and local level. “We need to create the expectation that state and local agencies will have a civil service that understands and is sensitive to environmental decisionmaking,” he said. “Provide

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Focus on July 2002 NEPA Community Meeting

information to people who need information, but expect accountability from them in return.”

Mr. Connaughton said that public involvement is important, too, but advised NEPA practitioners to dedicate their energy to the public that has a real interest in the project, in some cases local communities instead of national interests. “Consider the environmental aspects of each proposal and who will be affected,” he advised.

Energy-project streamlining task force: When the Administration recently requested information from both the private sector and government agencies on energy projects that had run into obstacles, it learned of about 40 projects, only three of which were identified by sources inside the government. He said, “That’s not good. No one inside the government was saying things needed

operational management attention. When we looked at it, people started acting, and an energy project streamlining task force was set up at DOE.”

NEPA process improvement: Mr. Connaughton said he is a big fan of process improvement but not the long time it requires, noting that he sees the CEQ NEPA Task Force (below) as an important step in NEPA process improvement. “There may be a NEPA Task Force Two,” he observed, but he does not want an ongoing process. Thus, he cautioned, “Don’t look for a grand effort over three years to totally revamp NEPA. A good chunk of what we can do in NEPA is just old-fashioned management improvement and does not need new regulations.”

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CEQ’s NEPA Task Force Moving Forward

The Council on Environmental Quality (CEQ) is soliciting input from Federal agencies and the public on the proposed nature and scope of its NEPA Task Force activities, and particularly seeks examples of effective NEPA implementation practices for a publication of case studies (including examples of best practices). (See 67 FR 45510, July 9, 2002; also see *LLQR*, June 2002, page 11, and March 2002, page 17.)

At the request of interested parties, CEQ has extended the public comment period on its NEPA Task Force activities to September 23, 2002 (67 FR 53931, August 20, 2002). CEQ will publish all comments received on the Task Force Web site (<http://ceq.eh.doe.gov/ntf>). In response to CEQ’s solicitation, DOE’s NEPA Office will consolidate case studies from DOE’s NEPA Compliance Officers and requests submissions in the format developed by CEQ by September 17, 2002, to Carl Sykes, at carl.sykes@eh.doe.gov, call 202-586-9924, or fax 202-586-7031.

The NEPA Task Force is headed by Horst Greczmiel, CEQ’s Associate Director for NEPA Oversight. Anne Norton Miller, Director, Environmental Protection Agency (EPA) Office of Federal Activities, is a part-time agency representative serving as Deputy Director. Rhey Solomon, Assistant Director for Ecosystem Management Coordination, U.S. Forest Service, is the Assistant Director.

Other agency representatives to the Task Force include: Mark Colosimo, U.S. Army Corps of Engineers; Mary Gary and Patricia E. Haman, EPA; Lee Jessee, DOE; Matthew McMillen, Federal Aviation Administration; Michele McRae, U.S. Geological

Survey; Jordon Pope, Bureau of Land Management; and Ramona Schreiber, National Oceanic and Atmospheric Administration.

The NEPA Task Force is focusing on five key areas: technology and information management; interagency and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; agency procedures and documentation for promulgating categorical exclusions; and adaptive management. Representatives recently interviewed staff from DOE’s Office of NEPA Policy and Compliance about DOE’s experience with both programmatic EISs and categorical exclusions.



Cooperating Agency Reporting System

Lee Jessee reported at the NEPA Community Meeting that CEQ will soon begin operating a Web-based, government-wide data collection system for information on cooperating agency activity and related NEPA process information. She has been working with CEQ to develop a flexible intranet Cooperating Agency Reporting System (CARS).

CARS supports the semiannual Federal cooperating agency reports, described in the January 30, 2002, CEQ Memorandum for Heads of Federal Agencies, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,” and due to CEQ on October 31, 2002. Later this month, the DOE NEPA Office will advise NCOs on how to provide information for this report.

Focus on July 2002 NEPA Community Meeting

CEQ NEPA Modernization Task Force Focuses on Process Improvements

Mr. Greczmiel presented an overview of issues that CEQ's NEPA Modernization Task Force is addressing. (See box, page 4, and related article, *LLQR*, March 2002, page 17.) He emphasized that the operative word for the Task Force is "improvement," not "streamlining." The Task Force began its work in May and plans to present its recommendations in November.

Adaptive management and monitoring: Monitoring is a focus of the Task Force because CEQ has observed that agencies rarely follow up to find out whether impacts predicted in a NEPA analysis were borne out by experience. Mr. Greczmiel noted that monitoring project impacts can improve the NEPA process by identifying predictive approaches that need to be changed to produce more accurate results. He added that, as a result of monitoring, an agency would have the opportunity to reduce adverse impacts by adjusting an action or undertaking additional mitigation.

Programmatic analyses: Mr. Greczmiel observed that programmatic assessments and tiering can enhance efficiency, noting, however, that these terms mean different things in different agencies. He stated that CEQ is concerned that agencies not overlook impacts of individual projects when using programmatic approaches to environmental impact assessment.

Categorical exclusions: Agencies have reported to CEQ that having more categorical exclusions would make their NEPA compliance more efficient and have wanted to "borrow" other agencies' categorical exclusions. Mr. Greczmiel cautioned that categorical exclusions must be agency-specific – an agency must have data to support a category for exclusion and must establish the exclusion as its own. He advised, however, that if another agency is doing the same type of activities it may be possible to use that other agency's data to help support establishing a categorical exclusion.

Federal and intergovernmental collaboration: In referring to its guidance on cooperating agencies, Mr. Greczmiel said that CEQ's motivation was repeated complaints from agencies about being excluded from a NEPA process. Now there are fewer complaints about being left out, but there is a need to explore how agencies, particularly non-Federal ones, can cooperate effectively. To encourage and track interagency and intergovernmental collaboration, CEQ has established a Web-based system for reporting cooperating agency information.

Technology and information management: Mr. Greczmiel said, "We need to consider better ways of accessing, processing, and using information," including geospatial data. A related issue is how to use technology (e.g., CD-ROM) to reduce the costs of distributing and storing large documents.

Science-based decisionmaking: Specific issues include model validation and ensuring that uncertainty is acknowledged appropriately.

Environmental Management's Response to the Top-to-Bottom Review

Assistant Secretary Roberson shared her enthusiasm and vision for an improved NEPA process throughout EM. Ms. Roberson emphasized that she did not want to change any NEPA requirements, but she wants to make EM's NEPA processes more effective. "NEPA should be a part of the decisionmaking process," she said, "not a stand-alone activity or an excuse not to take action."

She believes that NEPA can add value to solving



Jessie Roberson, EM Assistant Secretary, made a surprise visit to the NEPA Community Meeting.

problems, but management needs to become involved in the NEPA process early and stay engaged. She emphasized that a NEPA analysis "should contain information needed to establish fairly rigid boundary conditions,"

within which there will be flexibility to adapt to evolving technology and other changes over time.

Ms. Roberson looks forward to working with DOE's NEPA Community, telling the audience, "Of all the initiatives in the Top-to-Bottom Review, EM will truly carry out the NEPA initiative in partnership with Environment, Safety and Health and General Counsel."

Ms. Roberson was accompanied by Patty Bubar, EM's Associate Deputy Assistant Secretary for Integration and Disposition, who summarized the findings of the Top-to-Bottom Review (see "DOE Embraces Further NEPA Improvements," *LLQR*, March 2002, page 1) and described steps that EM is taking to effect the recommended changes in its NEPA program.

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Ms. Bubar noted that the NEPA recommendations from the Top-to-Bottom Review are aimed at providing the decisionmaker with better background analyses to support decisions. The Review identified a systemic problem with the way DOE was conducting environmental management activities in general – managing risk instead of reducing it. A change in EM’s approach to its NEPA process could support risk-reduction decisions. While EIS

preparers typically base identification of the preferred alternative on acceptability to the public and regulators, Ms. Bubar recommended that the EIS provide good information on technical risks and issues and let the decisionmakers make the political judgments.

Ms. Bubar described some EM initiatives to test the implementation of the NEPA recommendations from the

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Do-It-Yourself NEPA:

Writing a Programmatic EIS with a Federal Team

Suzanne Rudzinski spoke as Director of EM’s Office of Technical Program Integration and head of an EM team that is piloting a “Federal” approach to EM NEPA. (Ms. Rudzinski recently accepted a position at the Environmental Protection Agency.) This approach is being used to respond to recommendations in the Top-to-Bottom Review that EM senior management should become more involved in EISs. The Review also criticized the original planned Programmatic EIS as being too narrowly scoped.

A small team of Federal staff from EM, EH, and GC is preparing this EIS, which now has a broader scope than initially envisioned. Contractor support is limited to computer modeling and other areas where specialized technical expertise is needed.

Ms. Rudzinski expected substantial cost savings from the Federal approach. The original budget for contractor work on the project was \$4 million, but use of Federal staff as preparers has trimmed the contractor cost estimate to \$800,000, including costs for work completed before the Federal approach was adopted. (Costs for the Federal preparers are not yet determined.)

Because DOE staff will have closer control over both the analysis and the document content, the team aims to produce a 150-page EIS, in contrast with the 150-page outline that had been provided by a contractor. The team expects advantages in scheduling. Disadvantages to the approach identified to date include a lack of both hands-on experience and specialized technical expertise on the Federal team.

BPA’s NEPA Management Approach

Alexandra Smith, Bonneville Power Administration (BPA) Vice President for Environment, Fish and Wildlife, described some elements of BPA’s NEPA compliance program that have saved time and money while serving BPA’s needs and meeting the objectives of NEPA:

- ✓ NEPA review is done primarily by in-house environmental staff with only occasional, focused technical support by contractors. Ms. Smith believes that the availability of highly qualified, experienced staff is a key to success.
- ✓ Centralization of BPA’s environmental staff increases management involvement, enhances staff flexibility to respond to organization needs, and allows the environmental staff to work in closer cooperation with their clients.
- ✓ A suite of programmatic EISs has helped to control the NEPA workload, enabling BPA to issue numerous tiered supplement analyses and RODs for individual follow-on actions.
- ✓ Management recognition of the value of the NEPA process has been vital for success. The tiering approach required management support for “thinking outside the box.” Management recognizes that NEPA helps decisionmaking and does not delay projects and programs. For example, the programmatic EIS on the BPA business plan was ready before the plan itself was done.
- ✓ “Assume nothing” about the science literacy of a NEPA document reader. BPA uses simple visuals in an EIS to summarize impacts and tell whether they are small, medium, or large, relying on appendices for detailed information. BPA finds that the simple graphics developed for NEPA documents are useful to managers and for public relations activities.

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Top-to-Bottom Review. EM is treating two ongoing EISs – Hanford Solid Waste Program and Idaho High-Level Waste and Facilities Disposition – as pilot projects for technical analysts to provide flexibility to decisionmakers and for managers to stay involved throughout the process. A third, a programmatic EIS, is being prepared at DOE headquarters (see box, page 6). Looking toward the future, she reported that EM is considering how sites can implement results of the Top-to-Bottom Review and how NEPA can be used to help DOE do a better job in its decisionmaking.

NEPA and Security Post-9/11

The terrorist attacks of September 11, 2001, affected many areas of public activity, including NEPA. Eric Cohen, Office of NEPA Policy and Compliance, led a panel discussion on ways to manage nonclassified, sensitive information to meet the objectives and requirements of NEPA without jeopardizing homeland security. Panelists reviewed current policy direction regarding security-sensitive information and discussed approaches used in two recent DOE EISs.

For background, panelists referred to memoranda through which the Administration has been guiding agency action in light of heightened security concerns. Namely, memoranda from Attorney General Ashcroft (October 12, 2001) and former DOE Deputy Secretary Blake (October 26, 2001) (*LLQR*, December 2001, page 1) and, most recently, from White House Chief of Staff Andrew Card (March 19, 2002) directed close scrutiny of information made available to the public. Mr. Cohen noted that DOE's NEPA Community has responded by restricting electronic access to most NEPA documents and removing sensitive information from NEPA documents that were nearing completion. Early post-9/11



Drew Grainger, Savannah River NCO, poses a question at the NEPA Community Meeting, attended by NCOs, NEPA document managers, environmental attorneys, program managers, and contractors.

measures were largely based on independent determinations by Program and Field Offices that have not always been consistent, he said.

DOE is now working to define and implement consistent policy for managing sensitive information in a "post-9/11 world." Raymond Holmer, Office of Safeguards and



Ray Holmer, Office of Safeguards and Security Policy, stated that DOE must "find a balance between informing and protecting the public."

Security Policy, reported that a draft DOE directive on handling sensitive but unclassified information, DOE 471.X, "Identifying and Protecting Official Use Only Information," was in internal review at the time of the meeting. He also noted that a new Executive Order in preparation would address information handling requirements.

Mr. Holmer pointed out that DOE's knowledge on how to protect information comes from

its long experience with classified information, but the new category of sensitive-but-unclassified information presents new challenges. The conflict between openness and secrecy has been a continuing theme in the Department's history. Since September 11, some information that was previously public is being withheld.

Ethan Weiner, Office of the Chief Information Officer, said his office is drafting a new policy for publicly accessible Web sites that will address the particular challenges created by electronic information. Many of DOE's pre-publication review processes for printed material can be applied to publishing on the Web, but this has not been done consistently. The pending policy promotes the use of internal review processes to address security concerns. Mr. Weiner noted that once information is released on the Web, it is difficult to pull it back as the information can be "mirrored" by non-DOE sites around the world.

Panelists Steve Gomberg, Office of Civilian Radioactive Waste Management, and Drew Grainger, Savannah River NCO, shared their experiences with team reviews of sensitive information in the final EISs for the Yucca Mountain geologic repository and Savannah River Site (SRS) high-level waste tank closure, respectively.

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Mr. Gomberg explained that, for the Yucca Mountain EIS, a review team segregated sensitive information into a separate volume marked “Additional Information,” which will not be made available electronically or circulated with the rest of the EIS. The Program, however, plans to provide copies to people upon written request. Mr. Grainger described how the review team for the SRS EIS settled upon a similar approach for sensitive information. They designated the separate volume “Official Use Only” with the intent of distributing it in printed form only upon request.

Panelists had several recommendations:

Use a team to evaluate sensitive information for release. Include NEPA and Freedom of Information Act staff, and representatives from the Program, Security, General Counsel, and other affected offices in EA and EIS reviews. Mr. Holmer commented that NEPA staff know what information needs to be communicated. Security people need to ensure that this information will not damage security interests.

Ask whether potentially sensitive information is needed at all. Both Mr. Grainger and Mr. Gomberg said their EIS review teams found that some potentially sensitive information originally intended to be included in the EIS, actually was not needed for an adequate NEPA analysis. Mr. Grainger noted, however, that some sensitive information, such as facility locations relative to receptors and water tables, did need to be in the EIS for adequate disclosure. Mr. Gomberg pointed out that information about typical design features usually can be disclosed because it is not inherently sensitive.

Consider issuing some documents only as paper copies. Mr. Holmer recommended providing local public access through paper copies while preventing access by anonymous Internet users around the globe. A member of



Yardena Mansoor, Vivian Bowie, Steve Woodbury, Jim Sanderson, and Lee Jessee (l-r) covered a variety of topics, including information quality, NEPA metrics, EMS, the NAEP conference, and cooperating agency reporting.

the audience added that eliminating electronic access to information can slow down potential terrorists and make it more costly for them to obtain the information they seek.

Many concerns still need to be resolved. Meeting participants asked for guidance on several topics, including how to: document an accident analysis without releasing sensitive information; determine whether certain environmental information (such as wind roses) needs to be protected; and determine how much information about existing facilities and vulnerabilities to disclose.

Environmental Management Systems Developing at DOE

Referring to Mr. Connaughton’s earlier remarks, DOE Office of Environment speakers told how DOE is developing a systems approach to environmental protection and how NEPA can be linked to the EMS approach.

Steve Woodbury, Office of Environmental Policy and Guidance, and Jim Sanderson, NEPA Policy and Compliance, described how NEPA, EMS, and DOE’s Integrated Safety Management System (ISMS) can work together. They explained that ISMS combines all the basic requirements that apply to DOE facilities, including Federal, state, and local laws, regulations, and agreements; DOE orders and notices; and contractor policies and requirements on health, safety, and environment.

ISMS and EMS have the same core functions, they noted, essentially a “plan-do-improve” cycle. The three stages of planning in ISMS and EMS – defining the work scope, analyzing the hazards, and developing and implementing hazard controls – parallel the NEPA process. In ISMS, EMS, or NEPA, planning begins with an identified need, and then follows an iterative process that includes analyzing alternatives and developing ways to prevent identified hazards. If hazards cannot be avoided, possible mitigation measures are explored.

After reviewing several examples of how ISMS, EMS, and NEPA elements are being integrated within the DOE complex through use of environmental checklists, job hazard analysis, and other mechanisms, Mr. Woodbury and Mr. Sanderson invited the community to provide additional examples and also help define what guidance is needed on linking the environmental systems approaches. They noted that the *EMS Primer for Federal Facilities* is available on the Environmental Policy and Guidance Web site (<http://tis.eh.doe.gov/oepa>).

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For EAs, One Size/Shape Does Not Fit All

Three DOE NEPA practitioners shared recent experiences in meeting diverse challenges in preparing environmental assessments (EAs) for a site cleanup, transboundary transmission lines, and a land transfer. The discussion illustrated that one “size and shape” does not fit all EA situations.

Janet Neville, Oakland NCO, described an extensive public participation process for an EA being prepared for radiological cleanup and closure of the Energy Technology Engineering Center in Southern California. Anticipating controversy, DOE invited the public to help in EA scoping and extended the public review period on the draft EA from 45 days to 105 days in response to requests. The interested parties include EPA, several state agencies, the City of Los Angeles, Federal elected officials, and several local and national interest groups, as well as private citizens.

She explained that the proposed DOE cleanup is simple technically, but decisionmaking is complicated because it raises policy issues of “how clean is clean.” She described the alternatives in the EA, which are based on three cleanup endpoints for soil. DOE’s preferred alternative would result in an increased cancer risk of about 3×10^{-4} for a maximally exposed person, a level consistent with EPA’s policy under the Comprehensive Environmental Response, Compensation, and Liability Act for protecting human health. Another alternative would result in a lower increased cancer risk (1×10^{-6}) for the maximally exposed individual, but would cause increased traffic fatalities and community disruption from the larger number of truck trips required. The no action alternative would necessitate restrictions on site access.

Ms. Neville expects that DOE’s decision on cleanup levels will be controversial, but emphasized that document preparers should remember that, although political issues are important to decisionmakers, such issues are peripheral to a NEPA document. It is important to promote open dialogue on controversial issues during the public participation process, she said.

Tony Como, Deputy Director, Electric Power Regulation, Office of Fossil Energy, described experiences with an EA for proposed electric transmission lines that would bring power from Mexican plants across the U.S. border into California. He said that experience with similar projects indicated that there would be no potential for significant environmental impacts from the action, but issues that looked simple at first turned out to be difficult and controversial. Mr. Como concludes that “there is no way to bullet proof” an EA, but also believes that DOE should not prepare an EIS just because of controversy.

Mr. Como explained that potential air and water impacts in the United States from the Mexican power plants were of particular interest to stakeholders in California. Although analysis showed that impacts would not be significant, Mr. Como said that stakeholders wanted DOE to require mitigations on the Mexican plants, which DOE has no authority to do.

In addition, Mr. Como related that stakeholders also wanted DOE to prepare an EIS on a new pipeline that would supply natural gas from the United States to the Mexican power plants and to other Mexican and U.S. facilities. He explained that although the gas pipeline was related and complementary to the transmission line proposal, the pipeline was not “connected” to it in the NEPA sense (that is, the lines would serve a distinct function and could proceed separately from the pipeline). DOE issued a finding of no significant impact (FONSI) and permitted the transmission lines, but has since been sued. The case is before the U.S. District Court for the Southern District of California (*LLQR*, June 2002, page 13).

David Allen, Oak Ridge NCO, described an ongoing NEPA review for a proposal to transfer DOE land to a private group for industrial development. The group has partially developed the land under a lease for which DOE had prepared an EA and issued a mitigated FONSI in 1996. At that time, DOE considered transfer of the property an unreasonable alternative. Mr. Allen explained how changing circumstances have made land transfer a reasonable alternative and how stakeholders’ concerns about mitigations are contributing to DOE decisionmaking.

The private group leasing the land, he said, has found businesses hesitant to invest in the infrastructure needed for full development. A rule issued since the original EA was prepared – 10 CFR Part 770, *Transfer of Real Property*

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Janet Neville, Oakland NCO; Tony Como, Fossil Energy; and David Allen, Oak Ridge NCO, share experiences in preparing environmental assessments.

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at Defense Nuclear Facilities for Economic Development – now makes transfer of the land a reasonable alternative.

He explained that the potential environmental impacts of transfer of the property were not expected to differ from impacts for lease of the property because mitigations the leaseholder and DOE had committed to implement would be transferred to the new owners. The mitigated FONSI had excluded from development certain natural areas on the land (for example, floodplains, bottomland hardwood habitat, and historic sites) and had required monitoring before, during, and after development.

DOE needed to update information presented in the 1996 EA to account for land development so far, and to include monitoring results. The limited scope of updated information made an EA addendum an appropriate NEPA strategy, Mr. Allen said, and facilitated stakeholder input. Stakeholders' continuing concerns regarding protection of the natural areas has influenced DOE to change its proposed action from transfer of the entire land parcel to transfer of only the developable portions, so that DOE would retain control of the natural areas.

Mr. Allen stated, "This is a good example of DOE listening to stakeholder input and making changes that helped build consensus between business development and environmental conservation."

Lessons Learned from the Yucca Mountain EIS

Preparing an EIS for a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain has been challenging in many respects. The EIS addressed unprecedented issues, evaluated complex technical matters, involved many states and tribes, and elicited significant public controversy. Although several aspects of the EIS process were unique, many lessons learned can be applied to other NEPA reviews, noted Document Manager Jane Summerson. Ms. Summerson, who is now also the NCO, Yucca Mountain Site

Characterization Office (YMSCO), reviewed the project status, and with a panel of DOE staff and contractors who prepared the EIS, shared lessons learned with meeting participants.

The Final EIS was approved by the Secretary, accompanied his recommendation of the site to the President, and was made available to the public on the Internet in February 2002. Since approval of the site by the President in July, the Final EIS is in printing, to be distributed to the public and filed with EPA by October.

EIS preparation contractor Joe Rivers, Jason Associates Corporation, and Robin Sweeney, YMSCO, described several innovative uses of information technology in producing the EIS. A "virtual office" allowed efficient collaborations among geographically-dispersed technical analysts, EIS writers, and reviewers. A Web-based database was an effective tool for managing responses to more than 13,000 comments on the draft EIS and supplement.

Dave Lechel, a consultant with Lechel, Inc., described the internal process used to develop this challenging EIS and offered some observations on what helps different elements of the agency work together effectively. He recommended establishing and following some basic ground rules for interactions, but avoiding formal working agreements between internal organizations unless needed to ensure that offices allocate adequate resources to the project. Mr. Lechel, Ms. Sweeney, and Ms. Summerson urged project managers and document preparers to think of participants from DOE headquarters organizations as resources or "sounding boards," not as "internal regulators." Open discussions of issues among representatives of different DOE organizations often results in better solutions, Mr. Lechel noted. He recommended early establishment of "personal-professional" relationships to foster effective teamwork.

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Jane Summerson, Dave Lechel, Joe Rivers, Robin Sweeney, and Lee Morton (l-r) discussed lessons learned from the Yucca Mountain EIS that can be applied to other DOE NEPA reviews.

Focus on July 2002 NEPA Community Meeting

Lee Morton, Bechtel SAIC Company, LLC, the management and operating (M&O) contractor for the Yucca Mountain Project, recounted some interactions between his organization and the EIS team. He noted that the M&O technical personnel were unfamiliar with the NEPA process, and when they were asked for information, they typically supplied far too much technical material. To promote more efficient interactions between EIS preparers and technical resource people, Mr. Morton recommended using a “sliding scale” approach to avoid gathering too much information. He advised developing EIS planning documents that clearly indicate the desired scope of each analysis. He also emphasized the need to maintain rigorous control of last minute changes and document distribution lists.

Ms. Sweeney outlined several lessons learned from the comment-response process, including things she would do differently next time for an EIS receiving so many comments. One such lesson learned is to use skilled writers with a good understanding of the NEPA process to prepare early draft responses, then use technical people to advise and review as needed. This would temper, she felt, the tendency of technical experts to sometimes delve into more detail than necessary.

A measure that she said worked particularly well was development of “issue papers.” The issue papers presented carefully considered discussions of topics that were known to be key issues. “Approved” language from the issue papers was used to prepare responses to comments, saving time and ensuring consistency. Ms. Sweeney noted that issue papers are most effective when developed early in the comment-response process.

Perspectives on NEPA Legal Matters

Attorneys from the Office of General Counsel provided an up-to-the-minute report on DOE NEPA litigation and answered questions on legal topics. Assistant General Counsel for Environment William Dennison chaired the discussion.

Steve Ferguson, Deputy Assistant General Counsel for Environment, discussed the recent U.S. District Court ruling on South Carolina Governor Jim Hodges’ challenge to plutonium shipments into his state. The Hodges case showed that a programmatic EIS can serve as the basis for a site-specific decision if there is enough information in the programmatic EIS for that decision, Mr. Ferguson said. (See related article, page 19.)

Dan Ruge, also Deputy Assistant General Counsel for Environment, outlined the NEPA issues that the State of Nevada had raised to date in its legal challenges to the designation of the Yucca Mountain site for a geologic

repository for spent nuclear fuel and high-level radioactive waste. (See *LLQR*, March 2002, page 19.)

Janet Masters, trial attorney in the office of the Assistant General Counsel for Federal Litigation, discussed the U.S. District Court ruling in the case brought by the Regional Association of Concerned Environmentalists (RACE) seeking to require the Department to prepare a site-wide EIS for the Paducah Gaseous Diffusion Plant. (See *LLQR*, September 2001, page 19.)

“In NEPA litigation, it helps to have good facts to defend,” meaning good NEPA documents, Janet Masters told the audience.

Ms. Masters also outlined the current status of ongoing litigation in the Sierra Club

challenge to gravel mining at the Rocky Flats Environmental Technology Site (*LLQR*, June 2002, page 14) and the Tri-Valley CARES challenge of DOE’s plans to ship plutonium composite parts from the Rocky Flats site to the Lawrence Livermore National Laboratory (*LLQR*, March 2002, page 19).

When asked to provide a metric regarding a percentage of NEPA documents in litigation that would indicate that DOE was taking the right amount of risk in its pursuit of innovative NEPA strategies, Mr. Dennison responded that percentages of documents in litigation are not a good metric. “It’s a free country,” he said. “Anyone can challenge anything.” He said the best metric regarding NEPA litigation is a rate of winning in court that is as near as possible to 100 percent.

Mr. Ferguson added that DOE should not be taking the types of risks that could compromise the adequacy of a document. He reminded the audience that, “Innovative

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A panel from the Office of General Counsel – Bill Dennison, Steve Ferguson, Dan Ruge, and Janet Masters (l-r) – provided litigation updates and addressed legal questions from the audience.

Focus on July 2002 NEPA Community Meeting

approaches to assessment should not require you to violate the law.”

In response to a question about the importance of the administrative record in successfully defending an EIS, Mr. Ferguson stated that a good administrative record is very important, as few judges will probe outside the record to evaluate the adequacy of DOE’s impact assessments. Mr. Dennison agreed, but observed that a good record helps “only if you did a good NEPA review in the first place.”

When asked for advice on addressing the potential impacts of malevolent acts, Mr. Dennison pointed out that NEPA documents are supposed to disclose reasonably foreseeable events and their potential impacts. He observed that in the aftermath of September 11, 2001, “We can no longer deny that these acts are reasonably foreseeable.” He urged the DOE NEPA Community to

“take initiative to decide how to most responsibly address issues that people are going to demand be addressed.” If appropriate analyses of terrorism and sabotage are already included in existing safety documents, he suggested that the NEPA document could incorporate the existing analyses by reference.

Concluding Remarks

Carol Borgstrom ended the meeting by encouraging participants to take advantage of the flexibility inherent in NEPA and its implementing regulations. “Stretch NEPA, but don’t break it,” she said. She asked participants to report on their best practices (as both CEQ officials and Under Secretary Card had asked for good examples to be shared). She reminded participants to continue to communicate their needs and ideas for additional guidance. **LL**

Under Secretary Card Praises Efforts to Improve NEPA Implementation

Following the DOE NEPA Community Meeting, Under Secretary Robert Card sent a note to Beverly Cook and Ray Berube, thanking them for “making a serious effort to improve our NEPA process.” Referring to his comments at the meeting, Mr. Card wrote:

“...our goal is to maintain our stellar defense record while coming closer to what I think was the spirit of the original legislation – that is to maximize environmental benefits and an open public process. When much of our work is to reduce existing hazard ...speed is of the essence... It is also important to bound reasonable permutations and combinations of remedies to give the public a broad perspective on what may happen and give the implementers freedom to accelerate risk reduction and reduce cost during the project delivery phase.”

New Guidance Issued, More Underway

Guidance that facilitates consistency in DOE NEPA compliance – while preserving appropriate flexibility to respond effectively to differing circumstances – is a priority for the Office of Environment, Safety and Health (EH) and was a dominant theme of the July NEPA Community Meeting.

Eric Cohen and Carolyn Osborne, Office of NEPA Policy and Compliance, described new guidance on Accident Analysis and CERCLA/RCRA/NEPA policies, issued by Assistant Secretary Beverly Cook in early July, and the status of several ongoing guidance efforts. In addition, meeting participants suggested topics for future guidance, such as how to address responsible opposing views and how to prepare comment-response documents.



Carolyn Osborne discusses July 2002 memorandum on CERCLA/RCRA/NEPA policies and other guidance activities at NEPA Community Meeting.

The NEPA Office is evaluating these suggestions and will be pursuing further guidance.

In a similar vein, Under Secretary Card and CEQ Chair Connaughton solicited case studies highlighting what worked and didn't work in the NEPA process so that the NEPA community can benefit from the experiences of others. Such examples can provide the basis for future guidance.

The Accident Analysis guidance, described in more detail on page 16, clarifies and supplements *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements*, which EH issued in 1993. The guidance is the result of extensive coordination within the DOE NEPA Community.

The CERCLA/RCRA/NEPA guidance memorandum, prepared in response to Environmental Management's recent Top-to-Bottom Review recommendations, reiterates and clarifies existing policies for streamlining environmental review of actions to be taken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). In brief, CERCLA actions and RCRA corrective actions generally do not require a separate NEPA analysis.

Under DOE's 1994 CERCLA/NEPA Policy, DOE relies on the CERCLA process for review of actions to be taken

under CERCLA – there is ordinarily no separate NEPA document or process. DOE's policy is based on a Department of Justice determination that there is a statutory conflict between the two Acts: NEPA allows judicial review before an agency takes action, while CERCLA seeks to achieve expeditious cleanups and generally bars such "pre-enforcement" review.

In contrast, DOE's approach to NEPA review for RCRA corrective actions is project-specific. The Department of Justice has not identified any conflict between RCRA and NEPA, so DOE cannot establish a broad RCRA/NEPA policy that parallels the DOE CERCLA/NEPA policy. Most RCRA corrective actions, however, qualify for categorical exclusion; in the rare instance where a proposed corrective action does not qualify for categorical exclusion, DOE may be able to rely on the CERCLA process if a compliance agreement for a site on the CERCLA National Priorities List integrates the requirements of RCRA and CERCLA such that the requirements are largely inseparable in a practical sense.

DOE's CERCLA/NEPA and RCRA/NEPA policies are not based on the concept of "functional equivalence," a phrase coined by the District of Columbia Circuit Court concerning the Environmental Protection Agency's role under NEPA and based on that agency's mission of environmental protection.

The guidance is available on DOE's NEPA Web at tis.eh.doe.gov/nepa under Guidance, Other.

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Ongoing Guidance Efforts

Proposed Revisions to DOE Floodplain and Wetland Regulations

The NEPA Office expects to publish proposed revisions to 10 CFR Part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements*, for public comment in early Fall 2002. DOE has completed consultations with CEQ and the Federal Emergency Management Agency. The Office of Management and Budget has concurred with DOE's determination that the proposed regulatory action is non-significant and non-major. All Secretarial Officers and Heads of Field Organizations have concurred in the proposed revisions, which are now undergoing review by General Counsel (GC).

The proposed revisions, based on experience in implementing existing DOE regulations enacted in 1979, would streamline existing procedures and add no new requirements. For example, certain actions would be

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New Guidance (continued from page 13)

exempt from assessment – site characterization, environmental monitoring, ecological research activities, and facility modifications to improve safety or environmental conditions. Under this revision, about half of the floodplain and wetland assessments prepared by DOE since 1994 would not have been required.

Several other proposed revisions are also notable. Public notice procedures would be simplified by emphasizing local media instead of the *Federal Register* for actions with effects of primarily local concern. The review process under CERCLA would be an alternative mechanism to the NEPA process for complying with the floodplain and wetland requirements. Immediate action could be taken in an emergency. In addition, a conforming change to the DOE NEPA regulations (10 CFR Part 1021) is proposed to allow for issuance of a floodplain statement of findings within a final EIS or separately.

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Interim Actions

Interim actions are actions within the scope of an EIS taken before the record of decision is issued. Interim actions should be pursued if risks or program costs would be reduced or adverse impacts mitigated. The NEPA Office is developing interim action guidance to assist DOE in determining whether an action that is within the scope of an ongoing EIS may proceed before the NEPA review is completed.

The NEPA Office circulated draft guidance on March 1, 2002, to NEPA Compliance Officers (NCOs) for review and comment. (See related article, *LLQR*, March 2002, page 6.) NEPA Office staff have been discussing NCO comments with them and expect to recommend that the Assistant Secretary for Environment, Safety and Health issue the guidance this Fall.

The guidance reviews the CEQ criteria for interim actions, discusses the application of these criteria to DOE actions covered by project-specific or programmatic (including site-wide) EISs, provides case studies, and discusses procedures for making an interim action determination. In general, interim actions of relatively limited scope or scale that have only local utility can be taken before a record of decision.

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“216” Process

The “216” process refers to DOE procedures under 10 CFR 1021.216 of its NEPA implementing regulations, “Procurement, financial assistance, and joint ventures.” This section of the regulations provides for consideration of environmental factors in the early stages of competitive selections (awards), before an EA or EIS is prepared. The “216” process is not a substitute for the NEPA process.

Draft guidance, which the NEPA Office staff is preparing with GC staff, in coordination with Procurement staff, acknowledges and addresses challenges to full and timely NEPA compliance in situations involving proprietary information, reliance on the private sector to propose alternatives, and fair competition requirements. The draft guidance addresses what environmental information should be submitted in competitive proposals, how DOE prepares a confidential “environmental critique” to compare potential environmental impacts among offerors’ proposals, and how DOE makes environmental information publicly available in an “environmental synopsis” and subsequent NEPA review.

The NEPA Office is now addressing comments from DOE’s NEPA Community on earlier (1997 and 1998) drafts of the guidance and plans to provide a preliminary final document for a quick turn-around review by DOE’s NEPA Community later this Fall.

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Alternatives Analysis

The NEPA Office is consolidating and augmenting mini-guidance articles on analyzing alternatives from *Lessons Learned Quarterly Reports*. The objective is to help DOE prepare NEPA documents that better meet the Department’s needs for flexible decisionmaking in light of technology and policy changes. The EM Top-to-Bottom Review found that initial alternatives analyzed in its NEPA documents may not be adequate to support DOE decisionmaking goals, requiring reanalysis.

The alternatives guidance will build on CEQ’s regulations and guidance concerning alternatives analysis, focusing on what is a “reasonable alternative” – that is, an alternative that is practical or feasible from a technical and economic standpoint and using common sense (“Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” amended, 51 FR 15618, April 25, 1986; available on DOE’s NEPA Web at tis.eh.doe.gov/nepa, under Guidance, Compliance Guide).

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New Guidance (continued from page 14)

The guidance will then draw on DOE experience to illustrate practical applications. For example, previous *LLQR* articles have shown how changed circumstances can make practical what seemed impractical (*LLQR*, March 2001) and how unauthorized alternatives can be reasonable and provide needed flexibility in decisionmaking (*LLQR*, March 2002). Also, the guidance will address the use of conservative assumptions and analytical methods to bound – that is, capture the upper and lower range of – potential environmental impacts. This approach may be appropriate and necessary in some circumstances, but should not be so broad as to prevent comparison of the impacts of alternatives or consideration of mitigation (*LLQR*, June 1996).

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Compliance Guide

The NEPA Office plans to update the 1998 DOE NEPA Compliance Guide, a two-volume compendium of DOE NEPA guidance and NEPA-related resources from other agencies, including CEQ and the Environmental Protection Agency (EPA). (The 1998 Guide is available on the DOE NEPA Web at tis.eh.doe.gov/nepa under Guidance, Compliance Guide.)

The NEPA Office will be asking NCOs for their preferences and advice on how to accomplish an update in a way that is most useful and cost-effective and for assistance in developing distribution plans. The Office expects to add about 25 items issued since 1998, including Executive Orders and NEPA-related guidance documents from CEQ, EPA, and DOE. The Office is considering issuing the revised Compliance Guide on CD-ROM and providing paper updates to those with hard copies of the 1998 guidance notebooks.

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Supplement Analyses

The NEPA Office is developing guidance for documenting supplement analyses. Such guidance is especially important in light of the increased use of supplement analyses. (See related article, page 27.)

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Guidance Topics Being Considered

The NEPA Office always welcomes suggestions on topics for additional guidance that would well serve the DOE NEPA Community and an indication of what issues the guidance should address. Participants at the July DOE NEPA Community meeting had several such suggestions, which the NEPA Office is now considering. These include how to:

- address operational security and sensitive information in NEPA documents (including sabotage and terrorism issues)
- address responsible opposing views
- prepare comment-response documents
- link EMS and NEPA
- build and maintain a good administrative record
- address environmental justice issues, and
- determine when issues or environmental impacts are of national significance.

Activity toward developing guidance on these or other topics will be covered in future issues of *Lessons Learned Quarterly Report*. **LL**

18th Edition of Stakeholders Directory Issued

The Office of NEPA Policy and Compliance issued the 18th edition of the *Directory of Potential Stakeholders for DOE Actions under NEPA* in July 2002. In addition to contact and address updates, this semiannual directory includes information provided by government agencies and nongovernmental organizations on which subjects are of interest to them, the number of copies of NEPA documents requested for review, and preferences regarding receipt of paper, electronic, or CD-ROM document formats. NEPA Document Managers should use the most recent *Directory*, which is available online at tis.eh.doe.gov/nepa under Guidance, Public Participation, to supplement lists of local stakeholders compiled for specific programs, projects, or facilities. For questions or copies, contact Katherine Nakata, katherine.nakata@eh.doe.gov or 202-586-0801.

Analyze Maximum Reasonably Foreseeable Accidents in Comparing Alternatives

The Assistant Secretary for Environment, Safety and Health issued final guidance entitled *Recommendations for Analyzing Accidents under the National Environmental Policy Act* on July 10, 2002. The Office of NEPA Policy and Compliance developed this guidance to



Eric Cohen, Office of NEPA Policy and Compliance, said the guidance provides “a great deal of flexibility for document preparers who “will need to make judgments.”

foster consistency among NEPA documents while providing document preparers with substantial flexibility in approach. As a supplement to *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements*

(*Recommendations*, May 1993), the accident analysis guidance provides a general policy framework and clarifies past issues on the topic. It is not intended to serve as a technical manual

for analysts, but rather as a guide for NEPA Compliance Officers and Document Managers.

Accident analyses under NEPA are often necessary for a reasoned choice among alternatives and appropriate consideration of mitigation measures. Document preparers must exercise considerable judgment to determine the scope of accident analyses. In this regard, the guidance provides examples and references to help NEPA document preparers make appropriate judgments. It encourages use of the sliding-scale principle (as described in *Recommendations*) in determining the appropriate range and number of accident scenarios to consider, level of analytical detail, and degree of conservatism. (See box.)

A key recommendation is to analyze a sufficient range of reasonably foreseeable accident scenarios to adequately inform about the risks of a proposed action and alternatives. NEPA documents should analyze *maximum reasonably foreseeable accidents* (i.e., accidents with the most severe consequences that can reasonably be expected to occur, typically with very low probabilities of occurrence) and other accidents that contribute importantly to risk. Scenarios with frequencies of 10^{-6} to 10^{-7} per year should be considered if the consequences may be very large; scenarios with frequencies less than 10^{-7} rarely need to be examined. The guidance further recommends that document preparers consider analyzing accident scenarios in which the public

has expressed interest, even if the scenario is not reasonably foreseeable. Do not analyze impossible scenarios, however, and always explain why a scenario of interest to the public was not analyzed.

Another key recommendation is to present separately accident consequences and probabilities – both factors are needed for an informative analysis; the product of these factors, referred to as “risk,” may also be presented. The probability that adverse consequences will occur during the lifetime of a proposed action and alternatives should be presented rather than only the annual frequency of initiating events (e.g., earthquakes, floods).

Key factors to consider in applying the sliding-scale principle to accident analyses

- probability that accidents will occur
- severity of potential consequences
- context of the proposed action and alternatives
- degree of uncertainty of the accidents
- level of technical controversy.

The guidance recommends analyzing radiological and non-radiological impacts, commensurate with significance, on human health and the environment. As with any analysis of human health impacts, accident analyses should consider potential impacts to maximally exposed individuals and the collective population for three categories of people – involved workers, non-involved workers, and members of the public. The guidance recommends using appropriate current radiological dose-to-risk conversion factors that have been adopted by cognizant health and environmental protection agencies. (See box, page 17.) The environment includes biota and environmental media such as land and water.

Using information from existing safety documents can help streamline the NEPA process and foster consistency. To encourage the use of safety documentation, the guidance explores the different purposes for accident analyses in NEPA and safety documents, and it provides recommendations to ensure appropriate use of safety information in NEPA documents.

An attachment to the guidance discusses a related issue: intentional destructive acts (i.e., terrorism and sabotage). Although such acts are not accidents, DOE has experience evaluating them in NEPA documents, and the guidance provides examples of useful approaches. One

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Revised Radiological Dose-to-Risk Conversion Factors Available

Estimation of the potential risk from low levels of ionizing radiation requires application of dose-to-risk conversion factors to an estimate of the dose. The Interagency Steering Committee on Radiation Standards (ISCORS) recently issued guidance on calculating radiation risk estimates from dose ("A Method for Estimating Radiation Risk from TEDE," ISCORS Technical Report No. 1, July 2002; available at www.iscors.org).

The guidance provides dose-to-risk conversion factors applicable where doses are estimated using total effective dose equivalent (TEDE). The Office of Environmental Policy and Guidance (OEPG) issued an information brief (DOE/EH-412/0015/0802, August 2002) that supports the cautious use of the recommendations in the ISCORS guidance, and notes that the new risk factors are principally suited for comparative analyses (e.g., comparing risk among alternative actions, such as in NEPA documents), where it would be cost prohibitive to calculate risk using the radionuclide-specific risk coefficients in the Environmental Protection Agency Federal Guidance Report No. 13, "Cancer Risk Coefficients for Environmental Exposure to Radionuclides" (EPA 402-R-99-001, September 1999).

Relevant reference materials are available on the OEPG Web site at www.eh.doe.gov/oeпа in the "focus areas" under "Dose and Risk Assessment." The OEPG contact for this guidance is Hal Peterson (Harold.Peterson@eh.doe.gov).

The ISCORS guidance recommends using a conversion factor of 6×10^{-4} fatal cancers per TEDE rem for the general population. Estimates should not be stated with more than one significant figure.

The Office of NEPA Policy and Compliance recommends using these new dose-to-risk conversion factors in new NEPA documents.

For documents in the late stage of preparation, we do not recommend that calculations necessarily need to be revised, because the small changes in environmental impacts are unlikely to be significant. Rather, we recommend that such documents note the new factors and, as appropriate, explain the presumably small differences in impacts that would result from using the new factors. It is not anticipated that existing completed NEPA documents will require supplementation.

Accident Analyses (continued from page 16)

significant difference between intentional destructive acts and accidents is that it is not possible to credibly estimate the likelihood of a malevolent act. The consequences of such acts, however, would be similar to those resulting from accidents. The guidance recommends that when intentional destructive acts are reasonably foreseeable, a qualitative or semi-quantitative discussion of the potential consequences of such acts could be included in an accident analysis.

The accident analysis guidance is available on the DOE NEPA Web at tis.eh.doe.gov/nepa under Guidance, Document Preparation. For additional information or requests for paper copies, contact Eric Cohen at eric.cohen@eh.doe.gov or 202-586-7684. **LL**

Agencies Discuss Indian Sacred Sites

The Advisory Council on Historic Preservation (ACHP) and the Department of the Interior, Office of American Indian Trust, sponsored a meeting on August 14, 2002, of the American Indian/Alaskan Native Task Force, which is part of the Federal Interagency Working Group on Environmental Justice. About 70 agency representatives discussed the roles and responsibilities of Federal agencies in protecting Indian tribal sacred sites. The Task Force will determine next steps based on input from the meeting.

Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, said that the NEPA process can provide a mechanism for integrating the activities of Historic Preservation Officers, cultural resources coordinators, and Indian tribal liaisons. Referring to CEQ's January 30, 2002, guidance memorandum on cooperating agencies in the NEPA process, he emphasized that CEQ encourages Federal agencies to reach out to States and Indian tribes as cooperating agencies in NEPA document preparation.

Daniel Gogal, EPA's Office of Environmental Justice, said that EPA will assist agencies in addressing environmental justice issues in the NEPA process and is working with the ACHP on training opportunities. **LL**

e-NEPA: Security Certification Needed

The DOE NEPA Web Site now contains a revised DOE NEPA Document Certification and Transmittal Form (*tis.eh.doe.gov/nepa*, under Guidance, Electronic Publishing) for use by NEPA Compliance Officers or NEPA Document Managers when transmitting the



Denise Freeman, Office of NEPA Policy and Compliance, introduced the new NEPA Web site and explained new security review procedures for Web publication.

electronic files of a completed EIS, EA, or other NEPA document for posting on the Web Site. The Certification Form now includes a section labeled *Security Review*, which states: "This document has been approved by appropriate security officials and authorized for web publication in

its entirety or in part (specify in 'Comments' below)."

This certification allows the DOE NEPA Webmaster to establish the level of accessibility, because at this time the general public does not have access to all of the NEPA documents on the DOE NEPA Web Site. If the NEPA Document has been determined to contain no security-sensitive information, then the document would be made available to the general public on the Web. If the completed certification indicates that the document should not be available to the general public on the Web due to security issues, then it will only be accessible to DOE personnel or DOE NEPA contractors with a User ID and password. For further information, contact DOE NEPA Webmaster Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879. **LL**

NEPA Detailee Sought

The U.S. Institute for Environmental Conflict Resolution seeks an experienced NEPA professional for a 12-18 month detail, beginning in October 2002, as NEPA Program Coordinator. The coordinator will develop a national program seeking out collaborative opportunities for NEPA implementation.

The Institute, located in Tucson, Arizona, was created by Congress as part of the Morris K. Udall Foundation. Information is available on the Web at www.ecr.gov. (See also *LLQR*, September 2001, page 8.)

DOE Issues Draft Information Quality Guidelines

DOE's Chief Information Officer has issued draft "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public by the Department of Energy" (67 FR 47777; July 22, 2002) – a topic discussed at the July NEPA meeting. The DOE draft guidelines were prepared pursuant to Office of Management and Budget information quality guidelines (67 FR 8452; February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

DOE's draft guidelines would apply to a wide variety of information disseminated to the public in hard copy or through the Internet, including NEPA documents. The draft guidelines provide procedures by which a member of the public may request correction of information DOE has disseminated.

Of particular interest to NEPA practitioners, the draft guidelines state that, "With respect to information set forth or referenced in ... a final Environmental Impact Statement (and related Record of Decision), a member of the public may only file a request for correction of information in the form of ... a petition for a supplemental (EIS) under 10 CFR Part 1021."

In addition, under the draft guidelines, if DOE has made information available for public comment *through a notice in the Federal Register*, then a member of the public must request correction within the designated comment period and follow procedures specified in the guidelines.

According to the draft guidelines, the DOE Information Quality Guidelines will become effective on October 1, 2002. For further information, contact Ms. Deborah Henderson, Office of the Chief Information Officer, at cio.webmaster@hq.doe.gov. **LL**

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Litigation Updates

Appeals Court Upholds DOE in South Carolina Plutonium Disposition Challenge

The U.S. Court of Appeals for the Fourth Circuit on August 6, 2002, upheld a lower court decision in support of DOE's plans to implement its plutonium disposition program. South Carolina Governor Jim Hodges had appealed a district court ruling in his lawsuit challenging the adequacy of the Department's NEPA compliance in regard to the shipment of plutonium from the Rocky Flats Environmental Technology Site in Colorado to the Savannah River Site (SRS) in South Carolina. Governor Hodges claimed changes to the surplus plutonium disposition record of decision (ROD) announced by DOE in April had not undergone sufficient NEPA review. (See "South Carolina Sues to Stop Plutonium Shipments to Savannah River Site," *LLQR*, June 2002, page 13.)

The central DOE action at issue was the change from a proposal to construct a new plutonium packaging and storage facility at SRS to modifying one of the closed reactor buildings at the Site. The proposed new facility had been reviewed under NEPA for its ability to safely store plutonium for 50 years. Governor Hodges challenged whether DOE had adequately considered the risks of long-term storage in the modified facility. The Appeals Court's analysis focused on whether DOE's

proposed changes to its ROD raised the potential for any significant impact that had not been adequately addressed in a previous NEPA review. The court determined that DOE's February 2002 *Supplement Analysis for Storage of Surplus Plutonium Materials in the K-Area Material Storage Facility at the Savannah River Site*, with its reference to previous NEPA documents, was in fact sufficient.¹

This Appeals Court decision supports the ongoing shipment of plutonium from Rocky Flats to SRS and underscores the validity of DOE's procedures for using tiered NEPA reviews and supplement analyses. The positive outcome demonstrates the potential flexibility afforded by NEPA when analysis in an environmental impact statement is sufficiently well-structured and comprehensive to address changing circumstances.

¹ A supplement analysis is a DOE document used to determine whether a supplement to an existing EIS should be prepared pursuant to 40 CFR 1502.9(c) or to support a decision to prepare a new EIS. DOE procedures for a supplement analysis are found at 10 CFR 1021.314(c) in DOE's NEPA implementing regulations. **LL**

Plaintiffs Ask DOE to Defer Implementation of Savannah River Tanks ROD

Plaintiffs in a lawsuit challenging DOE Order 435.1, Radioactive Waste Management, requested in an August 22, 2002, letter that the Department provide them a schedule for implementing the record of decision (ROD) for the *Savannah River Site High-Level Waste Tank Closure Final EIS* (DOE/EIS-0303) and that DOE agree not to implement the ROD until the U.S. District Court for the District of Idaho has an opportunity to decide the merits of their case. The Natural Resources Defense Council wrote the letter on behalf of the Snake River Alliance, the Confederated Tribes and Bands of the Yakama Nation, and the Shoshone-Bannock Tribe following an August 9, 2002, decision in which the Idaho

court denied DOE's motion to dismiss, thus allowing plaintiffs' challenge to the waste incidental to reprocessing (WIR) provisions of the DOE Order to proceed.

The ROD calls for a continuation of DOE's plans for tank closure that would involve determining whether waste remaining in the HLW tanks meets the WIR technical and cost-effectiveness criteria. If so, the tanks would be filled with grout and closed in place. (See "CX Claim Dropped from Challenge to DOE Radioactive Waste Management Order," *LLQR*, June 2000, page 17.) **LL**

continued on next page

Litigation Updates (continued from page 19)

Lawsuit Challenges Proposed LANL Biosafety Lab

On August 29, Nuclear Watch of New Mexico and two citizens filed a lawsuit against DOE claiming violations of NEPA and asking the court to grant an injunction preventing the National Nuclear Security Administration (NNSA) from initiating construction for the proposed biosafety level 3 (BSL-3) laboratory at the Los Alamos National Laboratory (LANL). The complaint also requests that the court order DOE to withdraw its finding of no significant impact (FONSI) for the EA for *The Proposed Construction and Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EA-1364) and require that DOE prepare an EIS for the laboratory and its associated program, NNSA's Chemical and Biological National Security Program (CBNP).

The BSL-3 laboratory would allow NNSA to expand its research activities at LANL on biological warfare agents, such as anthrax. Currently, LANL has a BSL-2 laboratory,

in which research is limited to work on dead organisms. The BSL-3 laboratory would allow for research on certain live biological agents under carefully controlled conditions. Typical research activities would include work on identifying and tracking strains of biological warfare agents and developing equipment to detect biological warfare agents.

NNSA issued the draft EA for the BSL-3 laboratory on October 30, 2001. The original comment period ended on November 19, 2001, but an additional comment period was provided between December 17, 2001 and January 15, 2002, due to public interest in the EA. A final EA and FONSI were issued on February 26, 2002. The EA concluded, in part, that the CBNP "consists of projects too diverse and discrete" to require a programmatic analysis. Design of the project has already commenced and construction could begin as early as the end of September. **LL**

DOE-wide NEPA Contracts Update

By: David A. Gallegos, *DOE-Wide NEPA Contract Administrator*

At the July NEPA Community Meeting, I presented key metrics associated with use of the current DOE-wide NEPA contracts. Updated through August, these metrics include:

Number of task orders issued:	103	Number of task orders competed:	72
Total value of task orders:	\$57 million	Value of task orders competed:	\$52 million
Number of issuing offices:	24	Performance evaluations received:	32
Average procurement lead time:	24 days	Overall contractor rating:	4.1 (Excellent)

Meanwhile, the Department continues working toward issuance of the new DOE-wide NEPA contracts. The DOE-wide NEPA contracts with Tetra Tech, Inc., and Science Applications International Corporation were extended to September 30, 2002, and another extension may be needed if the new contracts are not awarded by then. The current contract with Battelle Memorial Institute is available until March 12, 2003. Each of these three contracts can still be used to acquire contractor NEPA document support.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For previously reported tasks, see March 2002, page 13, and the cumulative index (under "Contracting, NEPA") beginning on page 29 of this issue of *Lessons Learned Quarterly Report* or on the DOE NEPA Web at tis.eh.doe.gov/nepa. For questions, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849.

Task Description	DOE Contact	Date Awarded	Contract Team
NREL South Table Mountain Site-wide EA	Maureen Jordan 303-275-3248 maureen_jordan@nrel.gov	3/18/02	SAIC
Supplement Analysis of the Y-12 SWEIS	Scott Cannon 865-574-2942	5/8/02	Tetra Tech, Inc.
EIS for the Proposed Chemistry and Metallurgy Research Building Replacement Project at LANL	Elizabeth Withers 505-667-8690 ewithers@doeal.gov	5/23/02	SAIC
SNL Center for Integrated Nanotechnologies EA	Mark Sifuentes 505-845-5175 msifuentes@doeal.gov	6/5/02	Tetra Tech, Inc.
SNL Test Capabilities Revitalization EA	Mark Sifuentes 505-845-5175 msifuentes@doeal.gov	6/5/02	Tetra Tech, Inc.
Site-wide EIS for NNSA at LLNL	Tom Grim 925-422-0704 tom.grim@oak.doe.gov	6/27/02	Tetra Tech, Inc.
Modern Pit Facility Siting EIS	Jay Rose 202-586-5484 james.rose@ns.doe.gov	8/20/02	Tetra Tech, Inc.

Training Opportunities

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

- **Overview of the NEPA Process**
Portland, OR: September 17
Fee: \$195
- **Reviewing NEPA Documents**
Portland, OR: September 18-20
Fee: \$795
- **Cumulative Impacts Analysis and Documentation**
Las Vegas, NV: September 18-19
Portland, OR: November 13-14
Fee: \$595
- **Overview of the Endangered Species Act and Section 106 of the National Historic Preservation Act**
Phoenix, AZ: September 26
Las Vegas, NV: December 5
Fee: \$245
- **How to Manage the NEPA Process and Write Effective NEPA Documents**
Las Vegas, NV: October 8-11
Jacksonville, FL: December 10-13
Billings, MT: December 10-13
Las Vegas, NV: January 14-17, 2003
Boise, ID: February 25-28, 2003
Fee: \$995
- **Project Management for NEPA Specialists**
San Francisco, CA: October 21-22
Las Vegas, NV: February 10-11, 2003
Fee: \$495
- **Clear Writing for NEPA Specialists**
San Francisco, CA: October 23-25
Las Vegas, NV: February 12-14, 2003
Fee: \$795

The Shipley Group
Phone: 888-270-2157 or 801-298-7800
ben@shipleygroup.com
www.shipleygroup.com
- **The Law and NEPA**
Durham, NC: September 25-27
Fee: \$750
- **Socioeconomic Impact Analysis under NEPA**
Durham, NC: October 9-11
Fee: \$670 (\$750 after September 9)
- **Implementation of NEPA on Federal Lands and Facilities**
Durham, NC: October 28 – November 1
Fee: \$990 (\$1,090 after September 30)
- **Accounting for Cumulative Effects in the NEPA Process**
Durham, NC: February 5-7, 2003
Fee: \$670 (\$750 after January 6)

Nicholas School of the Environment and Earth Sciences
Levine Science Research Center
Duke University
919-613-8063
sea3@duke.edu
www.env.duke.edu/cee/execed.html
- **NEPA Toolbox™ Training**
Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including from other agencies. Services are available to Federal agencies through GSA Contract No. GS-10F-0163L (899-3).

Environmental Training & Consulting International Inc.
Phone: 720-859-0380
info@envirotrain.com
www.envirotrain.com

EAs and EISs Completed, April 1 to June 30, 2002

EAs

Albuquerque Operations Office

DOE/EA-1407 (4/23/02)

Proposed TA-16 Engineering Complex Refurbishment and Consolidation at Los Alamos National Laboratory, Los Alamos, New Mexico

Cost: \$105,000

Time: 8 months

Carlsbad Field Office

DOE/EA-1404 (6/19/02)

Actinide Chemistry Laboratory for the Waste Isolation Pilot Plant, Carlsbad, New Mexico

Cost: \$116,000

Time: 11 months

Golden Field Office

DOE/EA-1378 (5/31/02)

The National Renewable Energy Laboratory's National Wind Technology Center, Golden, Colorado

Cost: \$137,000

Time: 16 months

National Energy Technology Laboratory

DOE/EA-1417 (5/13/02)

Gas-to-Liquids Fuel Production and Demonstration Project, Rogers County, Oklahoma

Cost: \$40,000

Time: 5 months

EIS

Savannah River Operations Office/ Environmental Management

DOE/EIS-0303 (67 FR 38199, 3/31/02)

(EPA Rating: EC-2)

Savannah River Site High-Level Waste Tank Closure, Aiken, South Carolina

Cost: \$689,000

Time: 41 months

NEPA Document Cost and Time Facts

EA Cost and Completion Times

- For this quarter, the median cost of 4 EAs was \$105,000; the average was \$94,000.
- Cumulatively, for the 12 months that ended June 30, 2002, the median cost for the preparation of 22 EAs was \$80,000; the average was \$75,000.
- For this quarter, the median and average completion time of 4 EAs was 10 months.
- Cumulatively, for the 12 months that ended June 30, 2002, the median completion time for 22 EAs was 10 months; the average was 12 months.

EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended June 30, 2002, the median cost for the preparation of 6 EISs for which cost data were applicable was \$1.0 million. The average cost was \$1.5 million.
- Cumulatively, for the 12 months that ended June 30, 2002, the median completion time for 6 EISs was 30 months; the average was 35 months.

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

(For a full explanation of these definitions, see the EPAWeb site at:
www.epa.gov/Compliance/nepa/comments/ratings.html.)

Recent EIS-Related Milestones (June 1 to August 31, 2002)

Notices of Intent

Albuquerque Operations Office/National Nuclear Security Administration – Defense Programs
DOE/EIS-0350
Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico
July 2002 (67 FR 48160, 7/23/02)

Bonneville Power Administration
DOE/EIS-0349
Cherry Point Cogeneration Project
July 2002 (67 FR 45961, 7/11/02)

Oakland Operations Office/National Nuclear Security Administration – Defense Programs
DOE/EIS-0348
Site-Wide Environmental Impact Statement for Lawrence Livermore National Laboratory
June 2002 (67 FR 41224, 6/17/02)

Richland Operations Office/Environmental Management
DOE/EIS-0189-S1
Supplemental Environmental Impact Statement for Disposal of Immobilized Low-Activity Wastes from Hanford Tank Waste Processing
July 2002 (67 FR 45104, 7/8/02)

Draft EIS

Bonneville Power Administration
DOE/EIS-0344
Grand Coulee-Bell 500-kV Transmission Line Project
August 2002 (67 FR 51849, 8/9/02)

Final EIS

Bonneville Power Administration
DOE/EIS-0330
Wallula Power Project, Walla Walla County, WA
August 2002 (67 FR 53581, 8/16/02)

Records of Decision

Albuquerque Operations Office/National Nuclear Security Administration – Defense Programs
DOE/EIS-0293
Amended Record of Decision, 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
July 2002 (67 FR 45495, 7/9/02)

Savannah River Operations Office/Environmental Management
DOE/EIS-0220
Supplemental Record of Decision, Interim Management of Nuclear Materials, Savannah River Site, Aiken, South Carolina
July 2002 (67 FR 45710, 7/10/02)

DOE/EIS-0303
Savannah River Site High-Level Waste Tank Closure, Aiken, South Carolina
August 2002 (67 FR 53784, 8/19/02)

Supplement Analyses

Bonneville Power Administration

System Operation Review (DOE/EIS-0170)

DOE/EIS-0170/SA-1
Non-Treaty Storage Agreement Contract Extension
(Decision: No further NEPA review required)
June 2002

Wildlife Mitigation Program (DOE/EIS-0246)

DOE/EIS-0246/SA-25
Purchase of Fisher River Conservation Easement Years 2002-2004, Lincoln County, Montana
(Decision: No further NEPA review required)
June 2002

continued on next page

Recent EIS-Related Milestones (June 1 to August 31, 2002) (continued from page 24)

Supplement Analyses (continued)

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

DOE/EIS-0285/SA-44

Morrow County Noxious Weed Management Along BPA Rights-of-Way
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-47

Garfield County Noxious Weed Management Along BPA Rights-of-Way
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-48

Umatilla County Noxious Weed Management Along BPA Rights-of-Way
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-49

Vegetation Management for 56 Substations and Nonelectric Facilities in the Eugene Region
(Decision: No further NEPA review required)
April 2002*

DOE/EIS-0285/SA-50

Vegetation Management along the Grizzly-Summerlake (Structures 102 to 104/2) and Grizzly-Captain Jack (Structures 103/1 to 140/4) Transmission Line Corridors
(Decision: No further NEPA review required)
March 2002*

DOE/EIS-0285/SA-67

Vegetation Management on Sections of the Walla Walla – North Lewiston Transmission Line Right-of-Way
(Decision: No further NEPA review required)
May 2002*

DOE/EIS-0285/SA-76

Toledo-Wendson #1 Access Road and Structure Clearing
(Decision: No further NEPA review required)
June 2002

DOE/EIS-0285/SA-79

Portions of the Paul-Olympia, Paul Satsop, Olympia-White River, and Olympia-Grand Coulee Transmission Lines
(Decision: No further NEPA review required)
June 2002

DOE/EIS-0285/SA-80

Rangeland Drill/Watershed Restoration and Enhancement in the Grande Ronde Basin
(Decision: No further NEPA review required)
June 2002

*Not previously reported in LLQR

DOE Cancels Nevada Wind Farm EIS

DOE's National Nuclear Security Administration has accepted an Air Force recommendation that no wind farm be constructed at the Nevada Test Site (NTS). The Air Force expressed concerns that the proposed wind turbines would be incompatible with unique missions of their nearby Nevada Test and Training Range. As a result, DOE cancelled the *Wind Farm at the Nevada Test Site EIS* (DOE/EIS-0335) (Notice of Intent: 66 FR 38648; July 25, 2001).

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 2002.

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

What Worked

- *Help from laboratory personnel.* Good participation from laboratory personnel helped to identify issues to be analyzed in the EA.

Schedule

Factors that Facilitated Timely Completion of Documents

- *A committed team.* A committed team facilitated timely completion of the EA.
- *Good communication with contractors.* Good communication with contractors about their schedule concerns, and changes in their scheduling needs, facilitated timely completion of the document.

Factors that Inhibited Timely Completion

- *New issues identified during the process.* New issues identified during the NEPA process required additional time for analysis in the EA.
- *Changes in the proposed action.* Changes in the definition of the proposed action made it necessary to rewrite portions of the EA.
- *Document length.* The large size of the EA inhibited timely completion.
- *Starting the process late.* The total time that the EA process required was reasonable, but it started too late for timely completion.

Teamwork

Factors that Facilitated Effective Teamwork

- *Electronic communication.* Teleconferences and exchange of information via electronic mail facilitated effective DOE teamwork on the EA.
- *Cross-organizational meetings.* Launching the NEPA process with cross-organizational meetings helped establish open communications.
- *An effective NEPA Compliance Officer.* Extremely competent work by the NCO ensured a timely EA review process.
- *Honest and early communication.* Honest and early communication from the NCO about NEPA process requirements and contractor schedule concerns facilitated effective teamwork.

Process

Successful Aspects of the Public Participation Process

- *Public meeting at the project site.* A public meeting on the proposed project site allowed the public to see the proposed location in relation to their homes.
- *Meetings and tours.* Public interest in the project focused on commercial activities located adjacent to the project site; meetings and tours of the site provided forums for open communication.

continued on next page

What Worked and Didn't Work in the NEPA Process

(continued from previous page)

Usefulness

Agency Planning and Decisionmaking – What Worked

- *Stimulating thinking about future needs.* The NEPA process helped stimulate thinking about the kinds of experiments that may be needed.
- *Enhancing awareness and future planning.* The NEPA process enhanced environmental awareness of the project site and will improve future site planning and development.
- *Contributing to comprehensive site planning.* The project was proposed in the context of a comprehensive review of facility operations. This assisted the contractor in completing site plans and will ensure coordination of comprehensive site planning and the NEPA process.
- *Focusing and defining the project.* The NEPA process helped define the proposed project.

Enhancement/Protection of the Environment

- *Protecting endangered species.* The NEPA process helped DOE and its M&O contractor plan the project and protect potential habitat of endangered species.

- *Not necessarily direct, but indirect enhancement and protection.* The environment was little affected directly by the particular document, but the overall NEPA process will protect the environment.

Other Issues

- *Amending DOE's NEPA implementing regulations.* It would be useful to examine trends in the actions analyzed in EAs and determine how this information could be used to amend DOE's NEPA regulations, particularly the lists of categorical exclusions.

Effectiveness of the NEPA Process

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

- For this quarter, in which there were 4 EAs and 1 EIS, 3 out of 4 respondents rated the NEPA process as "effective."
- A respondent who rated the process as "1" stated the NEPA process will likely play very little role in the decisionmaking process, because the impacts of all the alternatives are similar.
- One respondent who rated the process as "5" stated that the NEPA document will serve as a planning tool for future site development. **LL**

Supplement Analyses on the Rise

The Department has completed 218 Supplement Analyses (SAs) in the last six years, up sharply from the decade prior (1985-1995) when DOE completed only 15 SAs. Bonneville Power Administration (BPA) leads the way with its 184 SAs, but NEPA document managers throughout DOE increasingly are turning to SAs to determine whether to prepare a supplemental EIS or a new EIS.

Many of BPA's SAs are linked to one of two programmatic EISs. Over 60 SAs were done as follow-up reviews to the *Watershed Management Program in Oregon, Idaho, Washington and Montana EIS* (DOE/EIS-0265); over 40 are associated with the

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

For all but two of the 233 SAs completed since 1985, the Department concluded that an EIS was not required. Both exceptions involved activities at the Savannah River Site – one SA for reactor operations and the other for waste disposition. (See related article, page 19.)

SAs by DOE Program Office (1985 - June 2002)					
BPA	EM	NNSA (DP/MD)	NE	SC (ER)	WAPA
184	20	14	6	5	4

Food for Thought: Are DOE EISs Overweight?

Have you ever thought that DOE's EISs are too big? Sure, DOE EISs deal with technically complex matters and controversial issues, but do they really need to be so long?

Data compiled by EPA's Office of Federal Activities (OFA) for draft and final EISs issued by selected Federal agencies in 1996 show that DOE was the leader in terms of the size of its EISs. Indeed, DOE stood way above the other agencies in this regard. (See chart below.)

For all agencies measured, the average draft EIS page length was 198 (range 55 to 1,622 pages). The corresponding average page length for final EISs was 204 (range 12 to 1,638 pages). Yes, that is correct – only 12 pages of text (59 total pages, counting correspondence) for the *Pecos National Historical Management Plan and Development Concept Plan Final EIS*, prepared by the National Park Service (NPS). (OFA counted only text pages. Cover sheets, tables of contents, and correspondence were not counted.)

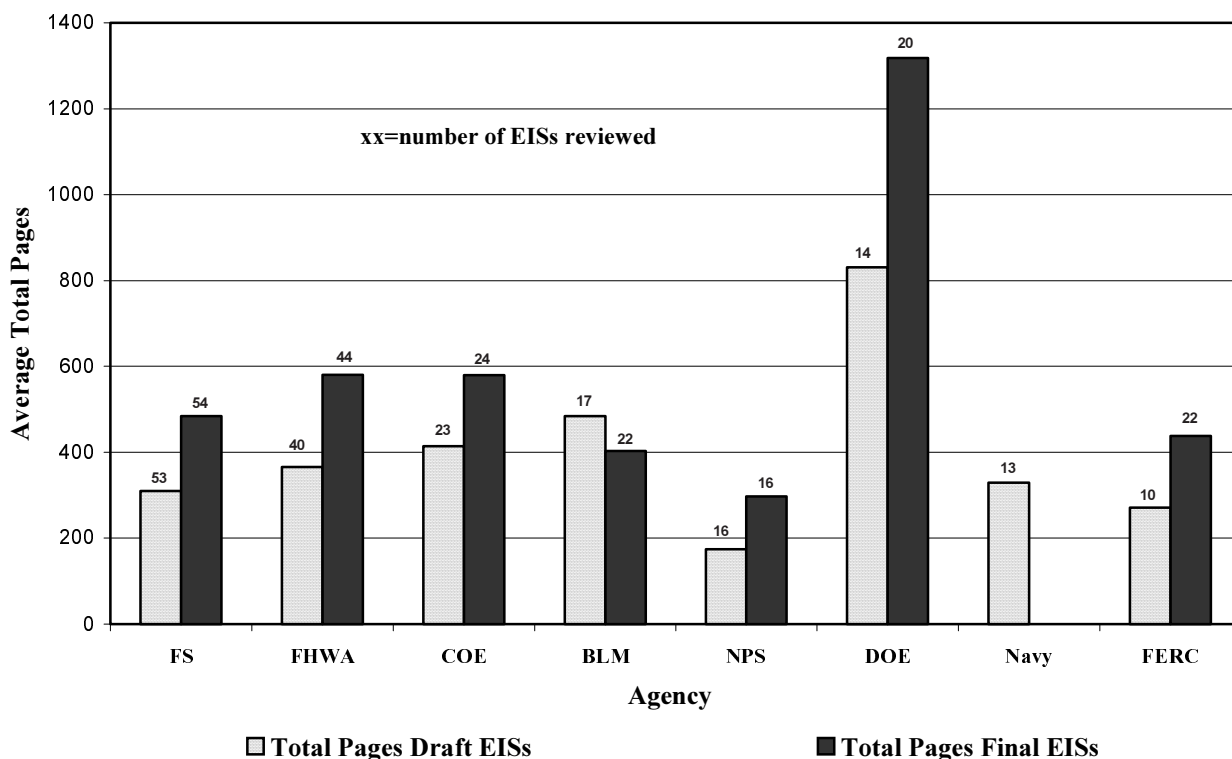
According to OFA, for DOE, the average length of draft EISs filed with EPA in 1996 was about 800 pages; the average length of final EISs was about 1,300 pages. That's twice as long as those of any other individual agency in the survey, and for final EISs, six times the collective average.

The data shown in the graph below reflect 1996 documents from selected agencies having issued a large number of EISs. These agencies include the Forest Service (FS), Federal Highway Administration (FHWA), Corps of Engineers (COE), Bureau of Land Management (BLM), NPS, Navy, Federal Energy Regulatory Commission (FERC), and DOE. (The overall survey covered 31 agencies.)

One reason why DOE EISs were lengthy is that more than one-half of the DOE EISs completed during the reporting period were major programmatic (e.g., Stockpile Stewardship, Weapons-Usable Fissile Materials Disposition, Highly-Enriched Uranium Disposition, Foreign Research Reactor Policy) and site-wide (e.g., Pantex and Nevada Test Site) documents. These documents addressed highly complex and controversial issues; several programmatic documents addressed multiple DOE sites.

Although many DOE EISs need to be substantially longer than those of other agencies, these data suggest that there may be opportunities to shorten our documents. We plan to review more recent documents and report on our findings. **LL**

EIS Page Length (1996 Data, Selected Agencies)



Source: EPA

Cumulative Topical Index to Quarterly Reports on Lessons Learned in the NEPA Process

KEY
Primary Topic
secondary topic
Month Year/page number(s)

A

Accident Analyses

Sep 95/12; Dec 95/15; Sep 97/7;
Sep 98/7; Dec 98/5; Jun 00/3, 8
guidance released for preparation of
Sep 02/16

Administrative Record

also see: *Legal Issues*

Mar 97/13; Sep 97/7; Jun 98/7; Dec 98/4

Advisory Council on Historic Preservation

also see: *National Historic Preservation Act*
Dec 98/11; Jun 99/3; Sep 99/2; Dec 00/6;
Jun 01/8; Dec 01/6; Sep 02/17

Affected Environment

Sep 95/12; Dec 98/7

Alternative Dispute Resolution

see: *Dispute Resolution*

Alternatives

also see: *Legal Issues (alternatives)*

elimination of unreasonable

Mar 96/4, 5

guidance

Sep 02/14

no action

Mar 96/6; Dec 97/16; Sep 00/8

reasonable

Dec 96/6; Jun 98/13; Mar 01/6

proposed by stakeholders

Sep 01/10

unauthorized

Mar 02/7

Amphibian Population Declines

Dec 00/4

Annual NEPA Planning Summaries

Jun 97/9; Dec 97/14; Mar 98/9;
Dec 98/14; Mar 01/12; Mar 02/8

Archive, DOE NEPA Document

Sep 96/11

Awards

Sep 96/10; Jun 00/2; Sep 00/3;
Jun 01/2; Dec 01/2

B

Beneficial Landscaping Practices

Dec 97/11

Bioremediation

Mar 01/1

Biota, DOE Technical Standard for Evaluating Radiation Doses to

Sep 00/7

Book Reviews

*Communicating Risk in a Changing
World*

Sep 98/8

*Effective EAs: How to Manage and
Prepare NEPA EAs*

Jun 02/9

Environmental Assessment

Dec 01/11

Environmental Policy and NEPA

Sep 98/5

Environmental Impact Assessment

Sep 96/12

Environmental Impact Statements

Sep 00/11

NEPA Effectiveness—Managing the Process

Sep 98/5

NEPA: An Agenda for the Future

Jun 99/10; Sep 00/11

NEPA: Judicial Misconstruction, Legislative Indifference, and Executive Neglect

Jun 02/9

NEPA Planning Process—A

Comprehensive Guide

Jun 99/10

NEPA Reference Guide

Dec 99/15

Prediction: Science, Decision Making, and the Future of Nature

Dec 01/11

The NEPA Book: A Step-by-Step Guide...

Dec 01/11

Toward Environmental Justice

Jun 99/11

Bounding Analyses

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Bureau of Land Management Ideas

Worksheet (EIS scoping tool)

Mar 01/9

C

Categorical Exclusions, Application of

also see: *Legal Issues*

Mar 97/11; Jun 97/8; Sep 97/9;

Jun 98/4; Mar 00/3

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Clean Air Act (CAA)

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Dec 99/9, 11; Jun 00/8

Clean Water Act (CWA)

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Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

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Connected Actions

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Jun 98/6; Sep 98/7; Dec 98/4;

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Jun 02/14; Sep 02/21

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(tasks awarded)

Jun 98/6; Sep 98/7; Mar 99/9;

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Jun 01/10; Sep 01/17; Dec 01/9;

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reform of Contracting Reform initiative

Dec 96/3; Jun 96/1, 5; Dec 99/14

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Dec 99/1

Chairman

Dec 98/11; Jun 99/13;

Jun 01/12; Dec 01/1

Cumulative Effects Handbook

Dec 96/3; Mar 97/3; Jun 98/11

emergency NEPA provisions

Sep 00/1; Sep 01/3, 4; Dec 01/6

Environmental Justice, guidance on

Jun 97/4

Environmental Management Systems

Jun 02/11; Sep 02/1

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Mar 01/10

Global Climate Change, guidance on

Dec 97/12

NEPA Director at

Mar 00/8; Sep 01/1; Dec 01/3

NEPA Effectiveness Study

Dec 96/5; Mar 97/1; Jun 97/3

NEPA Liaisons, Federal Agency

Dec 00/1; Sep 01/16; Mar 02/17;

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NEPA Reinvention Initiative

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Mar 02/17; Jun 02/11; Sep 02/4

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Lessons Learned Cumulative Topical Index

D

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Jun 96/7; Jun 98/9; Jun 01/9; Sep 01/8

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