

# LESSONS LEARNED

June 2, 1997, Issue No. 11

For Second Quarter FY 1997

## DOE-wide NEPA Contracts Will Be Ready to Use Soon!

### *Training Offered at June Workshop*

By: Dawn Knepper, Contracting Officer,  
Albuquerque Operations Office

Do you need an environmental assessment, environmental impact statement, environmental report or a portion of one? Would you like to begin work within a few weeks? Would you like to use the best, most experienced contractors at unbeatable prices? Do you want to fully control your NEPA contracting locally? We will soon have contracts that will let you do all this and more!

This may sound too good to be true, but the hard work of the DOE-wide NEPA Contract Source Evaluation Panel (and many others in the NEPA contract reform initiative) have made this dream a reality. The Panel, chaired by Roger Twitchell, NEPA Compliance Officer, Idaho Operations Office, has implemented ideas first discussed at the NEPA Contracting Reform Workshop in March 1996 and later by the follow-on Acquisition Planning Team. In addition to Roger and me, Panel members are Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office, and William (Skip) Harrell, Operations Program Manager, Albuquerque Operations Office.

Having these Department-wide multiple award contracts in place will allow you and your local Contracting Officer (called the Ordering Contracting Officer) to place a Task Order for your NEPA work. Together, you define the work,



*"My piles of paper now will save you time and paperwork later," says Dawn Knepper, Contracting Officer for DOE-wide NEPA Contracts.*

establish selection criteria, select the winning contractor, and fund and administer all the work locally. Because most of the contract requirements have been completed for you in advance, you can begin work very quickly: within two weeks for simple tasks, within four weeks for more complicated work.

These contracts will offer you maximum flexibility. Define the task to suit your program. Issue NEPA document preparation orders as one task or several. Prepare your own NEPA document, but use a Task Order for a specific analysis. Use different pricing arrangements for different parts of the document. You decide. The NEPA Document Manager can provide technical direction directly to the contractor by being designated as the Ordering Contracting Officer's Representative. Issuing a Task Order will be easy. You can compete your task among the contractors (in limited circumstances, you need not compete your task). Tasks can be firm-fixed price (Wow!), cost-plus-fixed-fee,

*continued next page*

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# Albuquerque NEPA Meeting to Focus on Effectiveness, Efficiency

Mark your calendars! On June 24 and June 25, 1997, the Office of NEPA Policy and Assistance is sponsoring a meeting of the DOE NEPA Community at the Energy Training Complex in Albuquerque, New Mexico. A half-day contracting workshop follows on June 26, 1997. The Albuquerque Operations Office and Kirtland Area Office will co-host these important events, which are designed to promote continuous improvement in our community's performance of its NEPA responsibilities.


Featuring a varied and comprehensive agenda, the meeting will focus on the

theme of "Effectiveness and Efficiency in the Department's NEPA Program." Scheduled presentations include: Council on Environmental Quality initiatives, DOE NEPA guidance developments, categorical exclusion determinations, legal issues and litigation, and managing contractor support of complex EISs.

## Contracting Workshop

The follow-on contracting workshop will provide practical instruction in preparing and managing task orders under the new Department-wide multiple NEPA contracts due to be issued shortly by the Albuquerque

Operations Office. This workshop is sure to be an invaluable hands-on learning experience, and NEPA Compliance Officers are strongly encouraged to participate. Interested NEPA Document Managers and NEPA Contacts also are invited to attend.

For information about the meeting and workshop, please contact Stephen Simpson at [stephen.simpson@eh.doe.gov](mailto:stephen.simpson@eh.doe.gov) or (202) 586-0125; or Yardena Mansoor at [yardena.mansoor@eh.doe.gov](mailto:yardena.mansoor@eh.doe.gov) or (202) 586-9326. 

## Inside *LESSONS LEARNED*

Welcome again to the Quarterly Report on Lessons Learned in the NEPA process. This report includes:

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*Carol Borgstrom*


Director  
Office of NEPA Policy and Assistance

## DOE-wide NEPA Contracts (continued from page 1)

cost-plus-incentive fee or any combination. You may want to set a fixed price for simple, well-defined tasks, such as certain environmental assessments or specific analyses. In this approach, you know exactly what you will pay and when you will receive your document. Pay the contractor when the acceptable document is delivered. For major jobs, we recommend issuing tasks on a cost-plus-incentive fee basis. This encourages contractors to give you their best price in order to win the task, but ensures that the price proposed is realistic and achievable because the incentive fee is based on cost and performance.

Detailed guidance on preparing and issuing a Task Order will be the subject of a workshop after the June 1997 NEPA meeting (see related article above). Bring your work, and go home with a Task Order ready for your Ordering Contracting Officer to issue.

You will get top quality contractors, at outstanding prices, starting work very quickly. You issue and administer your task locally, completely within your control and direction. Get the benefit of Department-wide contractors with the latest experience and best practices working on your task. Issuing a Task Order under these contracts does not require public notice in the Commerce Business Daily and is not subject to protest. Do you have to use these contracts? No. But why wouldn't you?

Better quality, faster, cheaper NEPA documents will soon be a reality in DOE! Awards are planned for June 1997. For more information, contact Dawn Knepper at [dknepper@doeal.gov](mailto:dknepper@doeal.gov), phone (505) 845-6215, or fax (505) 845-5181. 

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# CEQ Initiative: Reinventing NEPA Implementation

By: Ray Clark, Associate Director of NEPA Oversight, Council on Environmental Quality

Based on its January 1997 report, “The National Environmental Policy Act: A Study of its Effectiveness After Twenty-five Years,” the Council on Environmental Quality (CEQ) is now engaged in a significant effort to reinvent the way Federal agencies implement NEPA. We have begun a multi-year effort to reinvent the NEPA process and focus agencies on the underlying goals of NEPA, cutting procedural delay, saving time and money, improving accountability to communities, and making NEPA count for more in agency decision making.

As the last issue of the LLQR (March 1997) presented the conclusions of the CEQ effectiveness study, I will not elaborate on the five elements that CEQ identified as critical to streamlining implementation of the NEPA process:

- **Strategic planning**, to integrate NEPA’s goals into agency internal planning at an early stage;
- **Public information and input**, to take into account the views of the public during planning and decision making;
- **Interagency coordination**, to share information and integrate planning responsibilities and multiple statutory requirements;
- **Interdisciplinary “place-based” approach** to decision making, to focus the knowledge and values from a variety of sources on a specific place;
- **Science-based and flexible management approaches**, to deal with the uncertainties of environmental impact prediction.

Agencies should take a new approach to NEPA implementation: one that takes the standard NEPA paradigm of “predict, mitigate, implement” and incorporates monitoring and adaptation to make NEPA management more efficient and effective. This adaptive environmental management approach takes into account surprises of nature or human actions that could negate any environmental protections envisioned in the original analysis. An agency can analyze and approve a project with some uncertainty, monitor project implementation, and adapt the project or mitigation plan to ensure that significant environmental effects do not occur. In this way, agencies can use their NEPA analyses to move beyond mere documentation to using NEPA as a dynamic management tool.

With our objectives of improving the decision making process and making better decisions, we are approaching

the NEPA Reinvention Project in phases. Phase I, now underway, is focusing on three sectors that are critically affected by agency implementation of NEPA: timber, grazing, and oil and gas. Teams representing all Federal agencies that have a role in planning and permit approvals in those sectors are assessing agency programs and identifying opportunities to cut bureaucracy, improve customer service, and improve decision making.

***Agencies should take a new approach – one that takes the standard NEPA paradigm of “predict, mitigate, implement” and incorporates monitoring and adaptation to make NEPA management more efficient and effective.***

In Phase II, our effort will be broadened to include all Federal agencies, and interagency teams will focus on resolving crosscutting issues identified in the effectiveness study.

Phase III will develop incentives for agencies to integrate environmental, social, and economic factors into agency decision making. Measuring the effectiveness of changes that are adopted under the reinvention initiative will require improving agency accounting of the time and costs of NEPA reviews and their usefulness to decision makers, stakeholders, and the interested public.

The Department of Energy has demonstrated leadership in its efforts to make NEPA work better. Your recent revision of the DOE NEPA implementing regulations has furthered your streamlining efforts. Adding new categorical exclusions serves to reduce paperwork and free resources to review actions with potential for environmentally significant effects—to focus on environmental issues that really count. Eliminating the requirement for a published implementation plan does not lessen the Department’s responsibility to track and address public scoping comments but increases management flexibility in determining how best to do so. The Council on Environmental Quality is looking to the Department of Energy for continued leadership in the reinvention initiative.

The Council is seeking innovative approaches that agencies can take. The Council is interested in agencies identifying obstacles to innovation so that NEPA can serve as a real planning tool that is used by decision makers. CEQ will help overcome these obstacles. **LL**

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# DOE Comments Seek Clarification, Consistency Regarding CEQ's Environmental Justice Guidance

The Department of Energy has submitted comments on the Council on Environmental Quality's (CEQ's) "Draft Guidance for Considering Environmental Justice under the National Environmental Policy Act (March 1997)." DOE's comments (dated April 16, 1997) were directed at resolving inconsistencies between the draft Guidance, CEQ Regulations, and the Executive Order/Presidential Memorandum on environmental justice.

The Department asked CEQ to clarify and expand the portions of the Guidance on conducting environmental justice analysis. Specifically, DOE asked that factors to consider be based on the definitions of "disproportionately high and adverse human health effects" and "disproportionately high and adverse environmental effects," once those definitions are made consistent. In addition, DOE asked CEQ to clarify when socioeconomic and environmental justice analyses are needed in environmental assessments. DOE also asked for guidance on the extent to which minority or low-income populations should be considered in determining whether a proposed action may be categorically excluded from further NEPA review.

## Contents of the Draft Guidance

After discussing the general tenets of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and its relationship to the NEPA process, the CEQ Guidance presents general principles for considering environmental justice under NEPA:

- The Executive Order does not change existing NEPA thresholds for significance, but specific consideration of impacts on low-income or minority populations may identify significant impacts that would otherwise be overlooked.
- Identifying a disproportionately high and adverse effect on a low-income or minority population does not preclude an agency from taking a proposed action, nor does it compel a conclusion that the action is environmentally unsatisfactory.
- Analysis of environmental justice concerns should be integrated with the rest of the NEPA review.

CEQ then presents guidance on considering environmental justice in specific phases of the NEPA process:

- Agencies should determine the presence or absence of low-income or minority populations before the scoping process, and use enhanced

communication strategies to reach and inform such populations.

- Agencies may need to employ adaptive or innovative logistical approaches to overcome cultural or other barriers to participation of low-income or minority populations in the NEPA process.
- In determining the affected environment, low-income or minority populations should be identified using various tools.
- Potentially affected low-income or minority communities should be consulted concerning reasonable alternatives and possible mitigation measures.
- The NEPA document should state whether there would be a disproportionately high and adverse impact on low-income or minority populations, supported by a concise analysis that is easily understandable to the public.

## Status of the Guidance

CEQ hopes to issue its Guidance in June. The Office of NEPA Policy and Assistance will then review its own draft environmental justice guidance (October 1996 draft, as revised after NEPA Compliance Officer comments) to determine whether changes are needed. [LL](#)

## NEPA Order DOE 451.1 to Be Reissued with Conforming Changes

The Office of NEPA Policy and Assistance has prepared a modification to the NEPA Order, DOE O 451.1, to make changes that conform to the July 1996 amendments to the DOE NEPA Regulations (10 CFR Part 1021).

Because the amended regulations make an environmental impact statement implementation plan optional, the Order will no longer assign responsibilities associated with implementation plans. Subparagraphs that mentioned implementation plans will be deleted, but their designations will be reserved to avoid renumbering subsequent subparagraphs.

The Office of Human Resources and Administration will issue the Order in the near future as DOE O 451.1A. [LL](#)

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# DOE Sued on Stockpile Stewardship and Waste Management PEISs

By: Stephen Simpson, Office of NEPA Policy and Assistance

On May 2, 1997, the Natural Resources Defense Council (NRDC) and 38 other organizations (including several members of the Military Production Network) filed a complaint in the U.S. District Court for the District of Columbia challenging the adequacy of the recent programmatic environmental impact statement (PEIS) for Stockpile Stewardship and Management (SSM) and the Department's lack of a PEIS for Environmental Restoration and Waste Management. This lawsuit could have far-reaching implications for the Department and bears close monitoring.

## Plaintiffs Want New PEISs

The organizations allege that the SSM PEIS is inadequate because it fails to include DOE's entire proposed SSM Program Plan and all reasonable alternatives, or to adequately analyze the Plan's environmental impacts. According to the complaint, the SSM PEIS defines the scope of the Department's proposal too narrowly (by not considering all proposed facilities from the SSM Program Plan) and the No Action Alternative too broadly (by including major new and upgraded facilities, including some not yet under construction).


Furthermore, in the plaintiffs' view, the Department did not consider the full range of reasonable alternatives (by analyzing only one alternative in addition to No Action) and took action prejudicing the selection of alternatives before the Record of Decision (by submitting a budget request for construction, transferring property and responsibility, and funding detailed design). The complaint also alleges that the SSM PEIS fails to adequately analyze the environmental impacts of the management of wastes from the SSM program.

The organizations seek to enforce the Stipulation and Order of Dismissal in Natural Resources Defense Council v. Watkins, No. 89-1835 SS (D.D.C. Oct. 22, 1990). The plaintiffs allege that the Department has violated the Stipulation by failing to issue a PEIS on Environmental Restoration and Waste Management,<sup>1</sup> and that such a PEIS is required before implementation of Environmental Management's Ten-Year Plan (now known as Accelerating Cleanup: Focus on 2006).

The organizations request that the court (1) declare that the SSM PEIS does not comply with NEPA and that the Department has violated the Stipulation; (2) require that the Department prepare a new adequate SSM PEIS and a PEIS on Environmental Restoration and Waste Management; and (3) prohibit the Department from


implementing the SSM Program Plan and the Ten-Year Plan unless and until the above PEISs are complete.

## Preliminary Injunction Requested

The plaintiffs have filed a motion for a preliminary injunction, pending trial on the merits, prohibiting DOE from expending any funds and taking any action in furtherance of the design and/or construction of new projects or major upgrades in mission capability for certain SSM facilities and programs, including the National Ignition Facility (NIF) and Contained Firing Facility at Lawrence Livermore National Laboratory; the Atlas Facility and upgrades to the Chemical and Metallurgy Research Building, Nuclear Materials Storage Facility, and Los Alamos Neutron Science Center at Los Alamos National Laboratory; the X-1 Advanced Radiation Source and Process and Environmental Technology Laboratory at Sandia National Laboratory; and the High Explosives Pulsed Power and Low-Yield Nuclear Explosives Facilities at the Nevada Test Site. Oral argument on the organizations' motion is scheduled for mid-June. 

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<sup>1</sup> The Stipulation included a clause stating that the Department "will, in a timely fashion, prepare, circulate for comment, make available to the public, and consider in its decision-making process," PEISs for Reconfiguration of the Nuclear Weapons Complex and Environmental Restoration and Waste Management. The Department published a Notice of Intent for an Environmental Restoration and Waste Management PEIS on October 22, 1990 (55 FR 42633). After public notice and opportunity to comment (60 FR 4608, Jan. 24, 1995), the Department narrowed the scope and subsequently issued the Draft Waste Management PEIS in August 1995. (NRDC was the only commentator on the public notice of the change in scope, and opposed the change in scope for both legal and policy reasons.)

**Update:** At a status conference with Judge Stanley Sporkin on May 9, the court established the schedule for briefing and hearing the motion for preliminary injunction. DOE filed the Administrative Record on May 19, and the court modified the briefing schedule at a hearing on May 27. As requested by Judge Sporkin, DOE filed the Final Waste Management PEIS with the Environmental Protection Agency on May 30. DOE's Opposition to the Preliminary Injunction is now due June 9, and oral argument is scheduled for June 17. DOE has agreed to delay excavation activities for NIF and "subcritical tests" at the Nevada Test Site until June 27. Judge Sporkin has asked DOE to explain why it has not yet published an EIS with respect to environmental restoration. 

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# Effective NEPA Hearings: Learning from WIPP Experience

By: Harold Johnson, DOE Carlsbad Area Office  
Mike Antiporda, CTAC-Jacobs Engineering

Public hearings can be extremely challenging when a project has stakeholders nationwide. The U.S. Department of Energy's Carlsbad Area Office met this challenge in conducting public hearings on the *Waste Isolation Pilot Plant (WIPP) Disposal Phase Draft Supplemental Environmental Impact Statement (SEIS-II)*. Our experience with eight hearings held in cities across the country may provide some useful lessons learned.

## Plan for a Hearing

- Provide a draft public involvement plan for stakeholder input. We announced the availability of a draft plan in our stakeholder newsletter and made appropriate changes based on comments from stakeholders.
- Determine locations for public hearings based on familiarity and accessibility to the public.
- Identify opportunities for public comment, to the extent possible, in the draft NEPA document.
- Brief the communications media in advance so that they can provide clear and consistent information to the public.
- Provide comment procedures in advance and make them available in writing at the meeting.
- Print informational materials "just in time." Circumstances can change right before the final deadline. Ensure that technical staff review for accuracy to prevent costly reprinting. Allow the printer enough time to print everything on schedule and error-free.

## Design a User-Friendly Approach


- Provide furnishings that organizations or individuals with alternative points of view may use to display and make their informational materials available to the public.
- Route visitors through the display area on their way to the hearing room. People will likely pick up information, read it, and engage staff under these circumstances. Our informational materials addressed specific aspects of the SEIS-II, but also offered information about the WIPP project and the National Environmental Policy Act.

## Provide a Positive Environment

- Hold hearings in-the-round. The hearing officer, technical support staff, commentators, and court reporter should all be seated at a table located in the center of the room. Arrange attendee seats on all sides of the center table and use a public address system to enable everyone to hear.
- Hold an on-the-record question-and-answer session 30 minutes before each comment session to generally assess stakeholder concerns and clarification needed in the NEPA document.
- Use flexible procedures to avoid unnecessary debate about rules and fairness.
- Announce the names of the upcoming commentators frequently, so that people can anticipate their opportunity to speak and remain to listen to other commentators.
- Open the floor to those who want to comment, if no one is signed up to follow a speaker.
- Schedule breaks for the court reporter, especially if the number of commentators is high. Discomfort can reduce the reporter's concentration; comfort can improve overall quality of his/her work.

## Maintain Team Communication

- Hold an end-of-the-day debriefing for DOE and contractor staff as a useful coordination tool when conducting multiple hearings or single hearings that last multiple days. Close communication among hearing staff can promote successful practices and can prevent mistakes from being repeated.

Copies of the *Waste Isolation Pilot Plant (WIPP) Disposal Phase Draft Supplemental Environmental Impact Statement (SEIS-II)* can be obtained directly through the Internet ([www.wipp.carlsbad.nm.us](http://www.wipp.carlsbad.nm.us)). If you have any questions or need further information, please contact Harold Johnson, Carlsbad Area Office, at (505) 234-7349 or Dennis Hurr, Carlsbad Area Office, at (505) 234-7327. 

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# NEPA's Bob Strickler and Linda Thurston Retire

At a March 18th retirement party in their honor, Bob Strickler and Linda Thurston, members of the Office of NEPA Policy and Assistance, each ceremoniously ended more than 20 years of Federal service. The party allowed friends, family, and co-workers to pay tribute to two dedicated and respected individuals. Each was presented a retirement plaque and a gift from their co-workers. Bob and Linda wish to extend a special thanks to all who contributed.

Bob was the Director of the Project Activities Division in DOE's Office of NEPA Policy and Assistance. He served his entire civilian government career as an environmental protection specialist with the Department of Energy, after four years in the U.S. Air Force. In heartfelt tribute, many colleagues acknowledged Bob's contributions. In a letter read at the luncheon, Dr. Victor Reis, Assistant Secretary for Defense Programs, praised Bob's "leadership overseeing NEPA [which] has been the key to our achieving goals...." Bob's friendly and expert assistance will be missed throughout the Department.

Linda served in the NEPA Office for seven years. Her Federal career also included service with the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Land Management, Minerals Management Service, and Fish and Wildlife Service. Linda worked with the Offices of Fossil Energy and Efficiency and Renewable Energy and as the NEPA training coordinator. After a vacation in Europe, she will retire in Alaska close to her two sons and their families.

We wish both Bob and Linda health and happiness as they enjoy retirement. LL



*At the March 18 luncheon, Carol Borgstrom, Director, Office of NEPA Policy and Assistance, congratulates Bob Strickler, Director, Project Activities Division, on his retirement as Jim Daniel, Unit Leader, looks on.*

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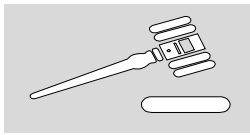
## Reminder: Let People Know What DOE is Doing

Some stakeholders have expressed concern that they have found out about notices and assessments of DOE floodplain and wetlands actions too late to comment, especially when notices were published only in the *Federal Register*. DOE personnel responsible for notifying the public of its opportunity to comment on DOE actions should ensure that, in addition to the required publication in the *Federal Register*, notice is sent to persons and organizations that are likely to be interested and also is published in communications media the public is likely to use. This effort is especially important for actions with short public comment periods.

The latest edition (currently January 1997) of the *Directory of Potential Stakeholders for Department of Energy Actions Under the National Environmental Policy Act* (the "yellow book") may be helpful in identifying interested organizations. The list of media in the CEQ Regulations, 40 CFR 1506(b)(3), and DOE's *Effective Public Participation Under the National Environmental Policy Act* (the "gold book") may assist in defining suitable opportunities for notification in addition to the *Federal Register*. LL

### WE'VE MOVED!

The Office of NEPA Policy and Assistance has recently been consolidated into a single location in Room 3E-094 in the Forrestal Building. The fax number for the entire office is 202-586-7031. Individual phone numbers remain unchanged. LL



# Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

## DOE Sued on Application of Categorical Exclusions, Settles Nevada Suit; Other Cases of Interest

Two new NEPA lawsuits have been filed recently against the Department concerning application of categorical exclusions and a proposed mining operation at Rocky Flats Environmental Technology Site. The Department did, however, settle one NEPA case (although the NEPA issues have been moot for a while).

### Challenge to NEPA Regulations and Application of Categorical Exclusions

On February 21, 1997, the Department was sued in the U.S. District Court for the District of Kentucky by Mr. Mark Donham (a resident downwind of Paducah and the co-chair of the Paducah Site-Specific Advisory Board) concerning the NEPA reviews for the Department's NEPA regulations and the proposed Vortec Corporation Vitrification Demonstration at the Paducah Gaseous Diffusion Plant. Mr. Donham alleges that the Department's establishment of the categorical exclusions in the 1992 DOE NEPA regulations and 1996 amendments should have been the subject of an environmental assessment or an environmental impact statement. He further alleges that the Vortec project should not have been categorically excluded as a pilot-scale waste treatment facility under Appendix B6.2 to 10 CFR Part 1021, Subpart D, in that the proposed action does not comply with the procedures for application of a categorical exclusion in 10 CFR 1021.410 and 10 CFR 1021.211. The Court has directed the parties to attempt mediation, which will begin this month.

### Challenge to Lack of NEPA Review for Rocky Flats Site Mining

The Sierra Club has sued the Department concerning NEPA review for a mining operation in the Buffer Zone at the Rocky Flats Environmental Technology Site. The Club alleges in the lawsuit, filed March 17, 1997, in the U.S. District Court for the District of Colorado, that the Department's "decision to relinquish its rights as a surface owner" of the mining claim is a major Federal action that requires preparation of an environmental impact statement. The Club alleges as evidence of this "decision" that the Department (1) actively negotiated with the mining

company and the county concerning the rezoning and the conditional permit for extension of the strip mining site; (2) granted an easement for an access road to the proposed mining site; and (3) issued a license to allow the mining company to install air quality monitoring stations on the proposed mining site. As of this writing, the Department's answer to the complaint has not yet been filed.

### Settlement in Nevada

The Department and the State of Nevada filed a Joint Stipulation for Dismissal of State of Nevada v. Peña (the lawsuit concerning disposal of off-site waste at the Nevada Test Site and the need for a site-wide EIS for the Test Site) on April 15, 1997, in the U.S. District Court for the District of Nevada. The Joint Stipulation is based on a Settlement Agreement that commits the Department to certain actions involving the performance assessment for Area 3 of the Test Site, the existing land withdrawal orders for the Test Site, and the Federal Facility Agreement and Consent Order for the Test Site. The issuance of the Final Site-wide EIS for the Test Site and the associated ROD rendered the remaining NEPA counts in the lawsuit moot, so those counts are not addressed in the Settlement Agreement.

### Other NEPA Cases of Interest

Recent decisions involving the Coast Guard and the Federal Highway Administration are instructive. In the first case, the Coast Guard's issuance of an environmental assessment and finding of no significant impact for the proposed closure of its Support Center on Governors Island in New York Harbor was found not arbitrary and capricious. While closure of the Support Center would be a condition precedent to any disposal of Governors Island, the court found that the proposed closure would have sufficient independent utility to be considered separately because the proposed closure would meet the Coast Guard's purpose and need by itself, the proposed closure would not commit the Coast Guard to dispose of the Island, and further NEPA review would be prepared for any disposal. Furthermore, the court held that plaintiffs had failed to prove that the Coast Guard had not considered certain feasible alternatives within the

*continued on page 17*



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# New Executive Order Addresses Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 of April 21, 1997, Protection of Children from Environmental Health Risks and Safety Risks, instructs Federal agencies to place high priority on identifying and assessing environmental health risks and safety risks that may disproportionately affect children. Agencies are further directed to ensure that their policies, programs, activities, and standards address such risks. The Offices of NEPA Policy and Assistance and General Counsel are considering what implications, if any, this Order may present for the NEPA process.

The Executive Order recognizes that children may suffer disproportionately from “environmental health risks and safety risks,” which are defined as risks to health or to safety that are attributable to products or substances that a

child is likely to come in contact with or ingest (such as air, food, water, soil, and manufactured or processed products). These risks arise because, among other reasons, children’s bodily systems are still developing, and they eat, drink, and breathe more in proportion to their body weight than adults.

Among other provisions, the Executive Order also establishes a Task Force on environmental health and safety risks to children that will biennially issue protection strategies. The Secretary of Energy is a member of the Task Force.

Executive Order 13045 was published in the *Federal Register* on April 23, 1997 (62 FR 19085-8). LL

## Annual NEPA Planning Summaries

The great majority of the Department’s NEPA documents actually prepared had been forecast in the Annual NEPA Planning Summaries, according to a review of the 1995 and 1996 Planning Summaries conducted by the Office of NEPA Policy and Assistance. The review found overall that approximately 75 percent of the environmental impact statements (EISs) and 85 percent of the environmental assessments (EAs) that were ultimately prepared had been predicted DOE-wide.

NEPA Planning Summaries are prepared annually by each DOE Program Office and Field Office. The summaries, which are required by DOE Order 451.1 (NEPA Compliance Program), describe ongoing and predicted NEPA documents for each organization over the subsequent 12-month (EA) or 24-month (EIS) period. The summaries also include information on planned cost and schedule for each of the NEPA documents. The Annual NEPA Planning Summary is intended to help the Offices allocate required resources to meet upcoming NEPA requirements and assist the public in planning for its participation in the NEPA process.

The preparation of Annual NEPA Planning Summaries has been underway for just three years, but during that period, consistent trends are evident, as follows:

- The 1995 and 1996 combined Summaries predicted approximately 85 percent of the Department’s EAs and 75 percent of the EISs. This is an important result, because it shows that Offices are indeed planning for the NEPA documents they need to prepare.
- Fewer than one-third of the predicted NEPA documents are not prepared. This figure suggests that Offices are not planning a great many more NEPA documents than they actually will need. [The estimate is uncertain because planned NEPA documents sometimes are combined or deferred, so it is not always clear that a forecast document has not been undertaken.]

Overall, the study’s results indicate that NEPA Planning Summaries have been sufficiently accurate to serve their NEPA resource allocation and public information purposes. For answers to questions or more information on the study, please contact Jim Daniel at jim.daniel@eh.doe.gov or (202) 586-9760. LL

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# What's New with Electronic NEPA

## NEPA Web Resources Demonstrated at IAIA Annual Meeting

Representing the Office of NEPA Policy and Assistance, Lee Jessee demonstrated the Council on Environmental Quality (CEQ) NEPAnet and DOE NEPA Web to the International Association for Impact Assessment (IAIA) meeting in New Orleans, Louisiana, on May 28, 1997. IAIA is a professional society dedicated to developing approaches for comprehensive impact assessment, promoting training and public understanding, and sharing information networks.

CEQ has linked national and international NEPA resources into a single Web site to serve as a broad-based repository of environmental information. NEPAnet helps reduce costs by avoiding duplication of resources and efficiently delivering relevant data to Federal environmental analysts and decision makers, Congress, and others worldwide. NEPAnet enables searching CEQ guidance, studies, and annual reports; bibliographic, training, and professional association information; international environmental datasets and analyses; resources on pollution prevention, threatened and endangered species, and wetlands; and state and regional geophysical, meteorologic, and hydrologic data. CEQ intends to expand this NEPA dataset to better support analysis of environmental impacts and issues.

Recent enhancements to the DOE NEPA Web also have expanded access to environmental information. In the last six months, the DOE NEPA Web has added records of decisions and mitigation action plans, as well as more DOE environmental assessments and impact statements, to its collection of full text searchable NEPA documents. Recent guidance, Annual NEPA Planning Summaries, and fact sheets on DOE weapons complex NEPA reviews also have been added to the DOE NEPA Web.

## Lessons Learned in Web Publication of DOE NEPA Documents


Some DOE offices are interested in publishing draft NEPA documents electronically as a means of making the documents available to the public for review and comment. To assist in preparing documents for efficient

Web publication, the Environment, Safety and Health Office of Information Management prepared Electronic Publishing Standards and Guidelines (Working Document, Version 2, January 1997). These guidelines provide document creators with cost and time saving tools and instructions. While avoiding undue constraints on document production, the guidelines encourage that documents be prepared in a Web-compatible format. In addition, staff of the NEPA Office and the Office of Information Management now provide technical outreach, contacting NEPA Document Managers to offer assistance in preparing Web-publishable NEPA documents.

NEPA Document Managers and NEPA Compliance Officers wishing to provide a draft NEPA document electronically are encouraged to discuss with the Office of NEPA Policy and Assistance whether to publish it on the DOE NEPA Web and provide a link to it from their Program or Operations Office Web site. This approach promotes economy by loading each document once and provides access to all DOE NEPA documents at a single location.

The Office of NEPA Policy and Assistance recognizes that electronic publishing of draft NEPA documents is an evolving technique that needs to be considered more fully, including such perspectives as document preparation, contracting, information management, public participation, and legal counsel. The Office intends to further examine these issues with the assistance of the DOE NEPA Community.

The Uniform Resource Locator (URL) address for the DOE NEPA Web Site is <http://tis-nt.eh.doe.gov/nepa/>, and includes the DOE Office of Environment, Safety and Health Electronic Publishing Standards and Guidelines (see <http://tis-nt.eh.doe.gov/nepa/tools/tools.htm>). The URL for NEPAnet is <http://ceq.eh.doe.gov/nepa/nepanet.htm>. For more information on the International Association of Impact Assessment, access its Web site via NEPAnet.

If you have any questions on the DOE NEPA Web or electronic publication standards, or wish to link a Program or Operations Office Web site to the DOE NEPA Web site, please contact Lee Jessee, DOE NEPA Webmaster, at [lee.jessee@eh.doe.gov](mailto:lee.jessee@eh.doe.gov) or (202) 586-7600. 

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

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1 requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 1997. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

**Editor's Note:** Some of the material presented reflects the personal views of individual questionnaire respondents, which (appropriately) may be inconsistent. Unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.

## Scoping

- We teamed with the laboratory and the county to scope the EA and this approach worked well. It was the first time we'd invited an "outside" party to participate and we were pleased with the results.
- Contractor attendance and participation at the scoping meeting would have enhanced the NEPA process.
- DOE determined that an EA was the appropriate level of documentation, and considered the proposed upgrades to be primarily for ES&H purposes, but stakeholders viewed the upgrades as a change/increase in mission that required an EIS.
- Line management was unable to define the purpose and need for agency action, resulting in weak project definition and frequent changes in scope that contributed to delays in completing the EA.
- An internal scoping meeting that involved all document preparation team members ensured that scoping was effectively used to identify all reasonable alternatives and issues to be addressed. Public input added another dimension to defining the range of reasonable alternatives.

## Data Collection/Analysis

- Open communication among all involved parties at the beginning of the NEPA process reduced time needed for data collection.
- Constant scope changes were a problem for data collection.

## Schedule

### Factors that Facilitated Timely Completion of Documents:

- The EA was completed on schedule because it was tiered from the Programmatic EIS.
- Effective application of a management and review team, a hands-on NCO, and a NEPA Document Manager who was proactive and easy to work with helped to keep the EA on schedule.
- The Site-wide EIS Advisory Council considered the proposal to ensure that it was appropriate to complete an EA while the Site-wide EIS was being prepared. Also, good coordination between the Field and Program Offices was critical.

### Factors that Inhibited Timely Completion of Documents:

- Changing the contract and contractor made timely completion of the EA difficult.
- The applicant changed the preferred action twice after the process began, causing delays.
- We had to extend the pre-approval review process because the EA did not reach the appropriate personnel within the Bureau of Reclamation. Confirmation of receipt should be required for all pre-approval review parties.
- The schedule was delayed by six weeks due to a last minute change in the preferred alternative. (The new alternative saved \$2 million and will have fewer environmental impacts.)

*continued next page*

# Second Quarter FY 1997 Questionnaire Results

## NEPA Process *(continued)*

### Factors that Facilitated Effective Teamwork:

- The recent implementation of a performance-based task order contract promoted effective teaming.
- The DOE NEPA specialist attended project status meetings and provided input to the discussions regarding project concept.
- DOE guidance facilitated the project. However, an initial lack of NEPA understanding impeded progress and direction. We corrected this by providing NEPA training to the project team.

### Factors that Inhibited Effective Teamwork:

- The project manager did not inform the NEPA specialist many times when the design of the proposed facility was changed or when the entire concept was changed.
- The contractor NEPA specialist participated in project status meetings but was “out of the loop” regarding changes in the project, which inhibited effective teamwork in preparing the EA.

## Public Participation Process

### Successful Aspects of the Public Participation Process:

- The EA process was improved by working with the Tribe that proposed the project. The Tribe wanted to see the NEPA process successfully concluded and was cooperative in providing information.
- Providing broad public outreach early in the process enhanced our ability to identify interested parties and obtain early input into scope and analysis. Having a public participation plan provided a clear “roadmap” that the whole team could follow.

### Unsuccessful Aspects of the Public Participation Process:

- There was an inability to separate NEPA issues from other issues involved with the proposed land transfer. Further, stakeholders used NEPA as their forum for expressing views not related to human health or environment.

### Public Reactions to the NEPA Process:

- Stakeholders seem to view the NEPA process as a way to learn what the laboratory is doing.
- Stakeholders appeared to appreciate the detailed and well-planned public participation process.

## Further Guidance Needs Identified

- I was able to get help from the NEPA Compliance Officers who had written or drafted EAs for similar projects. It would be a big help if updated NEPA documents for the DOE complex were all on the World Wide Web. [*Editor’s Note: The Office of NEPA Policy and Assistance has made significant progress in placing NEPA documents on the DOE NEPA Web. See related article on page 10.*]
- Additional guidance on accident analysis is needed, as well as further guidance on when and how many public meetings to hold. [*Editor’s Note: See Effective Public Participation Under the National Environmental Policy Act, available from NEPA Compliance Officers or the Office of NEPA Policy and Assistance.*]
- Further guidance is needed for determining whether an EA or an EIS is an appropriate level of NEPA documentation.

## Usefulness

### Agency Planning and Decision Making:

- The NEPA process supported planning and decision making by ensuring that the appropriate people were involved up front, and that all reasonable scenarios were considered.
- The EA was helpful in determining what deed restrictions should be placed on ownership transfer documents.
- The NEPA process helped to clarify a project that was initially ill-defined.
- The NEPA process was not used well at all. The project was driven by political pressure on DOE.
- The proposed action was limited to a decision of either approval or disapproval, with mitigation required if approved. The NEPA process provided a sound basis for decisions both by DOE and BLM.

*continued next page*

# Second Quarter FY 1997 Questionnaire Results

## NEPA Process (continued)

- The NEPA process was not used as a planning tool. The specific project was identified and then the NEPA documentation developed to address what was proposed.

### Enhancement/Protection of the Environment:

- The NEPA process facilitated informed and sound decision making by allowing DOE, at the last minute, to select a new preferred alternative that changed the proposed water pipeline route to partially overlap an already disturbed area. This saved over \$2 million and will have less impact on the environment.
- The environment was protected by the NEPA process and an action plan will ensure that the land transfer documents contain needed deed restrictions.
- The NEPA process protected the environment. About two acres of priority "old growth" shrub steppe habitat was saved from destruction by choosing a new alternative.
- The NEPA process protected the environment. This project will provide an additional fishery in the Duck Valley Reservation to mitigate for the loss of anadromous fish. While disturbing some common vegetation and habitat types, it will increase the diversity of habitat in this arid area.

### What Worked and Didn't Work:


- Initial strong involvement by a NEPA person at the area office would have prevented a lot of the problems. This has since been rectified by delegation of EA approval authority and hiring of FTEs at the area office.

## NEPA Cost Savings/Budget Exceedances

- Having Federal staff more involved in the process can help save money.
- Lack of draft review by all panel members resulted in last minute modifications that substantially increased EA preparation costs.

## Effectiveness of the NEPA Process


[Note: Questionnaire respondents were asked to rate the effectiveness of the NEPA process in terms of its usefulness to decision makers. For the purposes of this report, "effective" means 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 "highly effective."]

- For this quarter, 13 of 24 respondents for EAs rated the NEPA process as "effective." The two EIS respondents rated the NEPA process as "effective."
- Eleven respondents rated the effectiveness of the NEPA process as low because the NEPA process did not enhance the ultimate decision.
- One respondent noted that the decision to accept a late developing alternative as the "preferred alternative" led to cost savings and benefits to the environment. Another respondent stated that "NEPA was a critical process for making the decision." 

## Reminder:

Lessons Learned Questionnaires for all NEPA documents completed during the third quarter of FY 1997 (April 1, 1997 to June 30, 1997) should be submitted as soon as possible after document completion, but no later than July 1, 1997 (fax: 202-586-7031 or Internet: [hitesh.nigam@eh.doe.gov](mailto:hitesh.nigam@eh.doe.gov)).

Please contact Hitesh Nigam, EH-42 staff (telephone 202-586-0750) for Lessons Learned Questionnaire issues or Yardena Mansoor, EH-42 staff contact for articles, guidance, and editorial matters (same fax; Internet: [yardena.mansoor@eh.doe.gov](mailto:yardena.mansoor@eh.doe.gov); telephone 202-586-9326).

The Lessons Learned Questionnaire is now available interactively on the DOE NEPA Web [<http://tis-nt.eh.doe.gov/nepa>] on the Internet. Look for it under NEPA Process Information. 

# Second Quarter FY 1997 Questionnaire Results

## EIS Cost and Completion Time Data

### Cost Facts

- The total NEPA process cost for EIS #1 represented 2.1% of the total project cost; for EIS #2, "total project cost" does not apply.
- Cumulatively, for the 12 months ended March 31, 1997, the median cost for the preparation of 12 EISs for which cost data were reported was \$6.2 million; the average cost was \$8.3 million.
- Seven of these 12 EISs were programmatic or site-wide, with median and average costs of \$14.6 million and \$12.3 million, respectively. The 5 project-specific EISs with cost data had median and average costs of \$3.0 million and \$2.6 million, respectively.

### Completion Time Facts

- Cumulatively, for the 12 months ended March 31, 1997, the median completion time for 13 EISs was 26 months; the average completion time was 25 months.
- The 7 of these 13 EISs that are programmatic or site-wide have median and average completion times of 29 months. The 6 project-specific EISs have median and average completion times of 17 and 21 months, respectively.

## EISs

### Environmental Management/Office of Naval Reactors

1=Disposal of the S1C Prototype Reactor Plant EIS, Hanford Site, Richland, Washington  
DOE/EIS-0275  
EPA Rating: EC-2  
**Cost:** \$1.1M Federal, no contractor used  
**Time:** 13 months

### Western Area Power Administration

2=2004 Power Marketing Program EIS (Sierra Nevada Region)  
DOE/EIS-0232  
EPA Rating: EC-2  
**Cost:** \$1.3M Federal, \$3.6 contractor  
**Time:** 43 months

## ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action	Adequacy of the EIS
LO - Lack of Objections	Category 1 - Adequate
EC - Environmental Concerns	Category 2 - Insufficient Information
EO - Environmental Objections	Category 3 - Inadequate
EU - Environmentally Unsatisfactory	

## Other EIS-Related Documents Completed Between January 1 and March 31, 1997

Records of Decision	DOE/EIS- #	Date
Disposal of the S1C Prototype Reactor Plant, Hanford Site, Richland, Washington	0275	1/6/97 (62 FR 741)
Storage and Disposition of Weapons-Usable Fissile Materials-PEIS	0229	1/21/97 (62 FR 3014)
Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapons Components, Amarillo, Texas	0225	1/27/97 (62 FR 3880)
Tank Waste Remediation System at the Hanford Site, Richland, Washington	0189	2/26/97 (62 FR 8693)
<b>Supplement Analysis</b>		
Plutonium Finishing Plant Stabilization at the Hanford Site, Richland, Washington	0244	Approved 3/28/97 (no SEIS required)

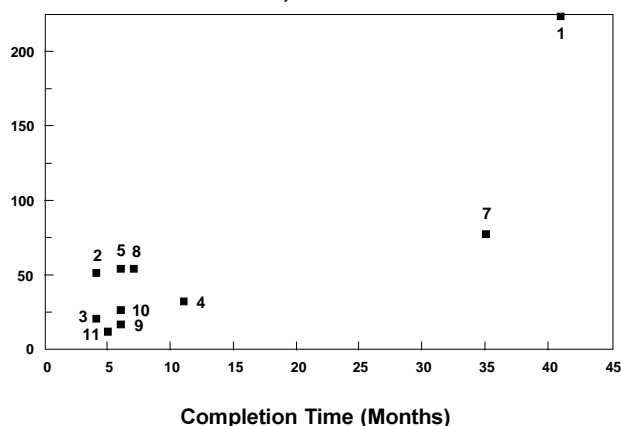
**NOTE:** No Draft EISs were issued during this period.

# Second Quarter FY 1997 Questionnaire Results

## EA Cost and Completion Time Data

Figure 1. EA Costs and Completion Times

Total NEPA Cost (Thousands of Dollars)  
(Contractor Cost + Federal Staff Cost)



### Cost Facts

- Total NEPA process cost data were reported for 9 of the 11 EAs completed during the second quarter of FY 1997. (DOE did not prepare two of the EAs.) The median cost was \$33,000; the average cost was \$58,000.
- Cumulatively, for the 12 months ended March 31, 1997, the median cost for the preparation of 32 EAs was \$51,000; the average cost was \$88,000.

### Completion Time Facts

- The median completion time for the 11 EAs completed during the second quarter of FY 1997 was 6 months (range: 4 to 41 months); the average time was 13 months.
- Only 3 EAs were completed on schedule during the second quarter of FY 1997.
- Cumulatively, for the 12 months ended March 31, 1997, the median completion time for 45 EAs was 7 months; the average completion time was 13 months.

### EAs

#### Albuquerque Operations Office/ Defense Programs

**1**=Proposed Chemistry and Metallurgy Research (CMR) Building Upgrades at LANL, Los Alamos, New Mexico  
DOE/EA-1101  
**Cost:** \$59,800 Federal, \$164,300 contractor;  
**Time:** 41 months

**2**=Transfer of the DP Road Tract to the County of Los Alamos, Los Alamos, New Mexico  
DOE/EA-1184  
**Cost:** \$14,000 Federal, \$37,300 contractor;  
**Time:** 4 months

**Albuquerque Operations Office/  
Environmental Management**  
**3**=Groundwater Compliance Activities at the Uranium Mills Site, Spook, Wyoming  
DOE/EA-1155  
**Cost:** \$800 Federal, \$20,000 contractor;  
**Time:** 4 months

**Bonneville Power Administration**  
**4**=Billy Shaw Dam and Reservoir  
DOE/EA-1167  
**Cost:** \$32,500 Federal, no contractor used;  
**Time:** 11 months

#### Fossil Energy

**5**=Presidential Permit to Construct and Operate the Wild Horse 69 kV Transmission Line, Montana  
DOE/EA-1192  
**Time:** 5 months  
*[Editor's note: The costs of this EA were paid for by the applicant; therefore, cost information does not apply to DOE.]*

#### Naval Petroleum Reserves in California/Fossil Energy

**6**=Mid-Valley 3-D Seismic Survey on NPR-2, Buena Vista, California  
DOE/EA-1188  
*[Editor's note: DOE was a cooperating agency to BLM; therefore, cost and time information do not apply to DOE.]*

#### Nevada Operations Office/ Environmental Management

**7**=Liquid Waste Treatment, Area 6, Nevada Test Site, Nye County, Nevada  
DOE/EA-1115  
**Cost:** \$19,000 Federal, \$59,000 contractor;  
**Time:** 35 months

#### Richland Operations Office/ Environmental Management

**8**=300 Area Steam Replacement, Hanford Site, Richland, Washington,  
DOE/EA-1178  
**Cost:** \$5,000 Federal, \$49,200 contractor;  
**Time:** 7 months

#### Richland Operations Office/ Environmental Management

**9**=200 Area Emergency Facilities Campus, Richland, Washington  
DOE/EA-1182  
**Cost:** \$3,000 Federal, \$13,500 contractor;  
**Time:** 6 months

#### Richland Operations Office/ Environmental Management

**10**=Storage of Non-Defense Spent Nuclear Fuel, Hanford Site, Richland, Washington  
DOE/EA-1185  
**Cost:** \$6,500 Federal, \$19,800 contractor;  
**Time:** 6 months

#### Savannah River Site/ Environmental Management

**11**=Central Shop Borrow Pit Project, Savannah River Site, Aiken, South Carolina  
DOE/EA-1194  
**Cost:** \$3,000 Federal, \$8,700 contractor;  
**Time:** 5 months

# EIS and EA Trend Analysis

As a follow-up to the trends analysis reported in the June 3, 1996, Lessons Learned Quarterly Report, the Office of NEPA Policy and Assistance further examined the trends in NEPA document costs and completion times to take account of the most recent data and to study the effects of the Secretary's NEPA Policy Statement issued in June 1994. Costs and completion times were examined for three groups of EISs and EAs: (1) those completed before July 1, 1994; (2) those started before July 1, 1994, and completed after that date; and (3) those started and completed after July 1, 1994 (Tables 1, 2 and 3).

## EIS Trend Analysis

### EIS Completion Times:

As discussed below, the Department appears to be making progress in meeting the 15-month median completion time goal of the Secretary's NEPA Policy. In view of the wide variation in EIS completion times (note, for example, the ranges in Table 1), however, too few data are available to support definitive conclusions regarding trends, and no clear trend is apparent in Figure 2.

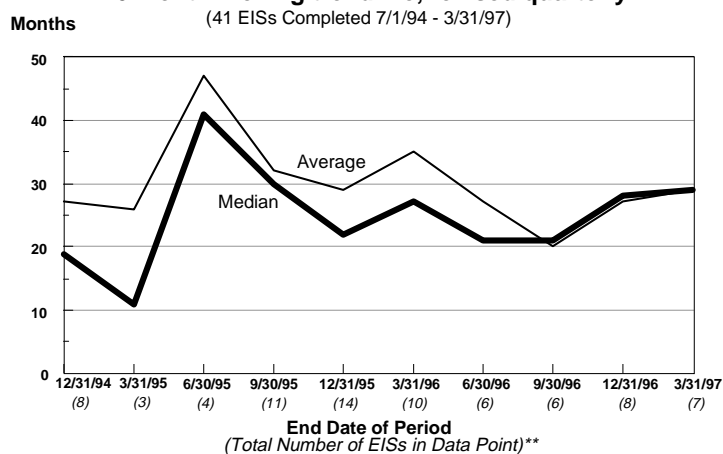
**Table 1. EIS Completion Times**

Time Period	No. of EISs	Completion Times (Months)		
		Median	Average	Range
Completed Before 7/1/94*	15	33	41	6 to 85
Started Before and Completed After 7/1/94	32	30	34	7 to 77
Started and Completed After 7/1/94	9	13**	14**	9 to 26**

\* Based on DOE Office of NEPA Policy and Assistance data on EISs completed within the period 1989 to 1993

\*\* These data may underestimate completion times for the 24 EISs started after 7/1/94 because they reflect only the 9 that have been completed through 3/31/97 (see discussion below).

**Figure 2. EIS Completion Times**  
6 month moving trendline, revised quarterly\*



\* For Figure 2, each data point represents the EISs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.

\*\* EISs are counted in two data points, except perhaps the first and last.

Data in Table 1 indicate that the median completion time for EISs completed before July 1, 1994, was 33 months, and the median completion time for EISs started before and completed after July 1, 1994, was 30 months.

Examining EISs started after July 1, 1994, gives more information about the Department's progress in meeting the goals of the NEPA Policy. As of March 31, 1997, DOE had started 24 and completed 9 such EISs; the median time to complete the 9 EISs was 13 months. This figure, reported in Table 1, should be interpreted cautiously, however, because these 9 completed EISs may not represent the completion times for the remaining 15 EISs that were started after July 1, 1994, and are still in process.

continued on page 17




### EIS Trend Analysis (continued)

These ongoing EISs have process times-to-date (i.e., time from Notice of Intent to March 31, 1997) ranging from 3 to 23 months. Based on Program and Field Office estimates of the time to complete these ongoing EISs, the overall median completion time for the 24 EISs started after July 1, 1994, would be about 15 months. This suggests that the Department is on target to meet the NEPA Policy goal.

**EIS Preparation Costs:** The data for total EIS costs contains two clearly different subsets—programmatic/site-wide EISs and project-specific EISs. Of the 35 EISs completed between July 1, 1994, and March 31, 1997,

for which cost data are available, 11 were programmatic or site-wide EISs and 24 were project-specific. The median and average costs to prepare the programmatic documents were \$14.6 million and \$14.4 million, respectively. This is significantly greater than the median and average costs for project-specific documents; i.e., \$1.0 million and \$1.6 million, respectively.


No clear EIS cost trend over time is apparent for either programmatic or project-specific EISs. We expect that future DOE EIS preparation costs will decrease as a result of DOE having completed several major programmatic/site-wide EISs. 

### Litigation Updates

(continued from page 8)

reasonable range of alternatives because it considered and rejected alternatives similar to those suggested by plaintiffs. Finally, the court ruled that, because the Coast Guard's environmental assessment did not find a significant impact on the natural environment, the court could not consider a challenge to its analysis of socioeconomic impacts. Knowles v. U.S. Coast Guard, 96 Civ. 1018 (JFK) (S.D.N.Y. March 31, 1997).

The Federal Highway Administration's (FHWA's) EIS for a proposed tollroad in northeastern Illinois was found inadequate. FHWA failed to justify the future or current need for the proposed tollroad, and, as a result, the EIS did not provide enough information to make a reasoned decision as to possible alternatives. The analysis of future transportation needs in all the

alternatives (including No Action) was based on a socioeconomic forecast that assumed the construction of a highway similar to the proposed tollroad; therefore, only the tollroad could adequately satisfy the forecasted needs. FHWA argued that a study that did not assume the existence of the highway similar to the proposed tollroad was impossible. The court noted, however, that the EIS did not state that essential information (the "impossible" study) was missing or that obtaining the information was infeasible or exorbitantly expensive (citing 40 CFR 1502.22). FHWA also argued that the range of alternatives was also based on current needs that did not depend on the challenged socioeconomic forecast. The court found, however, that FHWA did not have any support for the current needs either. The court directed FHWA to conduct additional studies or explain why the studies were not possible. Sierra Club v. U.S. Department of Transportation, No. 96 C 4768 (N.D. Ill. Jan. 27, 1997). 

# EIS and EA Trend Analysis

## EA Trend Analysis

**EA Completion Times:** EA completion times have decreased steadily during the last two years (see Table 2 and Figure 3).

**Table 2. EA Completion Times**

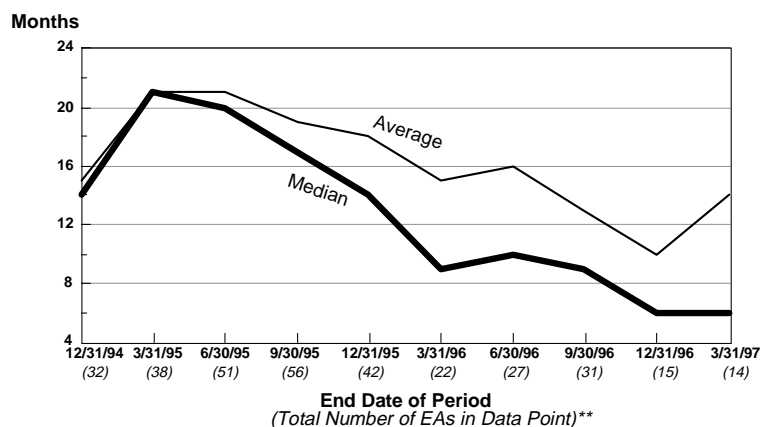
Time Period	No. of EAs	Completion Times (Months)		
		Median	Average	Range
Completed Before 7/1/94*	52	14	16	2 to 56
Started Before and Completed After 7/1/94	98	23	24	3 to 88
Started and Completed After 7/1/94	74	6**	7**	2 to 20**

\* Based on DOE Office of NEPA Policy and Assistance data on EAs completed within the period 1/93 to 6/94.

\*\* The EAs started after 7/1/94 and not yet completed pose only a small potential to increase the times shown.

**Figure 3. EA Completion Times**  
6 month moving trendline, revised quarterly\*

(177 EAs Completed 7/1/94-3/31/97)



\* Each data point represents EAs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.

\*\* EAs are counted in two data points, except perhaps the first and last.

The median completion time for 52 EAs completed within the 18 months before the NEPA Policy Statement (January 1, 1993 to June 30, 1994) was 14 months, compared with 6 months for 74 EAs started and completed afterwards. The 98 EAs started before but completed after the Policy Statement had a median completion time of 23 months, which is significantly higher than the median completion time for either of the other time periods. Potential reasons for this difference were discussed in the June 1996 Lessons Learned Quarterly Report. Figure 3 shows that EA preparation times have declined recently to a median of 6 months.

# EIS and EA Trend Analysis

## EA Trend Analysis (continued)

EA Costs: Table 3 and Figure 4 show that EA costs also have declined steadily during the last two years.

**Table 3. EA Costs**

Time Period	No. of EAs	Costs (Thousands of Dollars)		
		Median	Average	Range
Completed Before 7/1/94	*	*	*	*
Started Before and Completed After 7/1/94	56	73	149	8 to 893
Started and Completed After 7/1/94	51	54	120	5 to 908

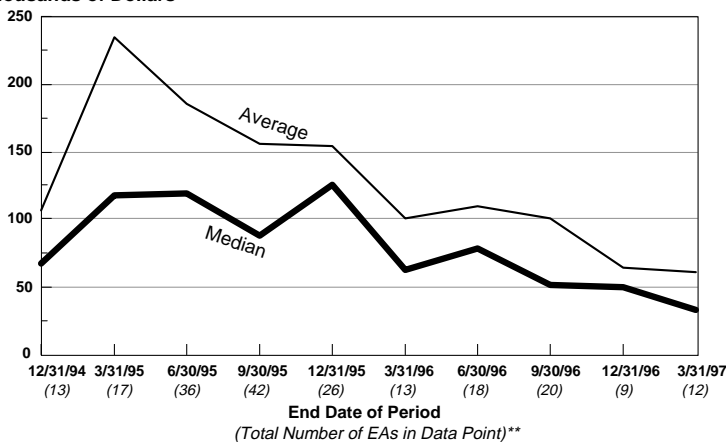
\* Insufficient data

**Figure 4. Total EA Costs**

6 month moving trendline, revised quarterly\*

(177 EAs Completed 7/1/94 - 3/31/97 - Data shown are for 111 EAs with total cost reported)

Thousands of Dollars



EA costs have decreased from a median of \$73,000 for 56 EAs started before but completed after July 1, 1994, to \$54,000 for 51 EAs both started and completed after July 1, 1994. Consistent with observations in previous Lessons Learned Quarterly Reports (e.g., June, September, and December 1996), EA cost and completion times seem uncorrelated overall. LL

\* Each data point represents EAs completed within the 6-month period ending on the indicated date. This technique tends to smooth out quarterly changes.

\*\* EAs are counted in two data points, except perhaps the first and the last.

Please submit feedback on the Lessons Learned Quarterly Report to:

Hitesh Nigam  
email: hitesh.nigam@eh.doe.gov

Or mail your suggestions to:  
Office of NEPA Policy and Assistance, EH-42  
Attn: Hitesh Nigam  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585-0119

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## Evaluation Form

### How are we doing?

Does the format of *Lessons Learned* help you understand the information? Do you have any suggestions for improvements?

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Which sections do you consider to be the most helpful? The least helpful? \_\_\_\_\_

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What should be added to the report to make it more useful? \_\_\_\_\_

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Please offer any other suggestions on how we may improve the *Lessons Learned Quarterly Report*.

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Your name (optional) \_\_\_\_\_