N E P A

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

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NEPA Review Adds Value to Proposed Sale of Naval Petroleum Reserve

DOE recently completed a Supplemental EIS/Program Environmental Impact Report (SEIS/PEIR) on the sale of Naval Petroleum Reserve (NPR) No. 1 (Elk Hills), a Federally owned oil field near Bakersfield, California *(map, next page)*. Closing the sale, scheduled for February 2, 1998, is conditioned on completing several statutory requirements, including the NEPA process, antitrust review, and a 31-day Congressional review.

The NEPA review was an important step leading to the prospective agreement to sell NPR-1 to Occidental Petroleum Corporation for $3.65 billion—the largest Federal divestiture in U.S. history. Based on the Supplemental EIS, the Office of Fossil Energy will be able to incorporate protection for biological and cultural resources into its decision making.

After the October 6, 1997, announcement of DOE's agreement to sell NPR-1 to Occidental, DOE Assistant Secretary for Fossil Energy Patricia Fry Godley observed: "The NEPA process significantly contributed to the success of the NPR sale process. The prospective new owner will implement mitigation measures, in particular those concerning biological and cultural resources, similar to DOE's past practices. In addition, we involved Federal, State and local government entities as well as the public and private sector efficiently and meaningfully."

Tony Como, the NEPA Document Manager, noted that "the highly interactive EIS team met the challenge of producing a high quality document under a very ambitious schedule."

The endangered San Joaquin Kit Fox would continue to be protected after sale of NPR-1. (Photo courtesy of California Department of Fish and Game.)

Combined Federal and State Environmental Review

DOE and the Kern County Department of Planning jointly prepared the SEIS/PEIR to meet both NEPA and California Environmental Quality Act (CEQA) requirements. The two agencies held joint public hearings on the Draft SEIS/PEIR. The combined process provided an effective framework for close and timely coordination among DOE and State and local agencies.

Potential Effects Warranted Mitigation

NPR-1 serves as important habitat for a variety of threatened and endangered species, including the endangered San Joaquin Kit Fox. The NEPA/CEQA process alerted Federal, State, and county agencies and the public to how increased commercial development of the

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NPR-1 *(continued)*

oil and gas field could have significant impacts on threatened and endangered species and other biological resources. In addition, the optional provisions of the sales contract sensitized the oil and gas companies to the need for mitigation of significant environmental impacts to biological resources by providing for the transfer of an existing permit issued under Section 7 of the Endangered Species Act (ESA). Section 7 provisions ordinarily do not apply to nongovernmental entities, but the transfer was specifically allowed by the Act that authorized the sale. The advantage of a permit transfer is that a successful bidder would have a defined set of agreed-upon mitigation measures for immediate compliance with ESA, with time after the sale to obtain a commercial permit under ESA Section 10. Under the proposed sale agreement,

Naval Petroleum Reserve Fields in California. NPR-1 is located 35 miles southwest of Bakersfield.

Occidental Petroleum will assume DOE's existing Section 7 permit and agree to the same mitigation measures that DOE has been required to implement at the site.

The SEIS/PEIR also focused public attention on potential impacts to cultural resources—specifically two historic oil wells and several prehistoric sites of particular concern to Native Americans. DOE and Kern County are completing consultations and preparing a programmatic agreement with the California State Historic Preservation Officer and the Advisory Council on Historic Preservation concerning possible mitigation activities. Other issues addressed in the SEIS/PEIR include the potential impacts of increased oil and gas operations upon air and water quality.

Congressional Mandate Presents NEPA Challenges

The NPR-1 proposed sale demonstrates that Congressionally mandated divestiture does not diminish DOE's responsibility under NEPA. The schedule for the proposed sale, however, posed challenges to DOE to ensure a full and timely NEPA review while managing the sales process to maximize the financial return to the government. DOE needed to be responsive to a schedule affected by market timing considerations, while striving to meet the Congressional deadline to sell NPR-1 by February 10, 1998. The NEPA review process proved to be a partner in a successful sale process.

For more information, contact Tony Como, Office of Fossil Energy, at anthony.como@hq.doe.gov, phone (202) 586-5935, or fax (202) 287-5736.

Inside *LESSONS LEARNED*

Welcome to the fourth quarter FY 1997 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

Carol Borgstrom
Director
Office of NEPA Policy and Assistance

INEEL High-Level Waste EIS: New Approaches to Public Scoping

By: Roger Twitchell, NEPA Compliance Officer, and
Bradley Bugger, Media Relations Specialist, Idaho Operations Office

When the Idaho Operations Office began planning for an EIS on options for treating high-level waste at the Idaho National Engineering and Environmental Laboratory (INEEL), we knew we were not going to approach scoping in the traditional manner.

In the past, we typically spent substantial sums on formal hearings, and yet our EIS managers told us that the results did not justify the expense. The old format, in which members of the public were given several minutes to stand and read a statement while DOE politely listened, was a polarizing situation with little or no interaction. We wanted to lay a foundation before the scoping workshops so that an informed public could interact meaningfully with DOE to identify issues and alternatives.

The INEEL High-Level Waste and Facilities Disposition EIS (Notice of Intent, 62 FR 49209, September 19, 1997) will analyze potential solutions to extremely complex problems, all of which involve technical, legal, regulatory, and budgetary concerns. DOE-Idaho intended to use the scoping process to actively engage the public in discussions of these complex issues.

As part of the scoping process, DOE-Idaho personnel and contractors staffed mall exhibits to disseminate information and answer questions. Pictured here, shoppers examine a model of a calciner, which solidifies liquid high-level waste.

Building Understanding

The EIS staff, comprised of DOE-Idaho and contractor personnel, set out to build the public's understanding of EIS-related issues in several ways. First, the EIS staff held a public open house in Idaho Falls in April 1997. They then set up and staffed informational displays in shopping malls throughout southern Idaho. EIS staff also gave presentations to more than 200 INEEL employees involved in the high-level waste program at the Idaho Chemical Processing Plant—i.e., workers whose jobs may be affected by decisions made as a result of the EIS.

Finally, EIS staff developed a questionnaire for conducting personal interviews with key stakeholders—State and Tribal officials, Congressional staff, environmental and activist groups, regulators, union officials—and any other individuals or groups who wanted to be heard. The questionnaire also was included in the "Dear Citizen" mailouts that announced the scoping process.

The scoping process included two scoping workshops in Boise and Idaho Falls, in which the public and DOE would work together to identify new alternatives and issues. DOE told stakeholders and the media beforehand that oral comments and recorded transcripts *would not* be taken at the workshops, but participants were encouraged to submit written comments afterward.

Small Working Groups

EIS staff began each workshop with a presentation on DOE's problems in managing INEEL high-level waste, the preliminary alternatives DOE is considering, and the need for an environmental analysis. A question and answer session followed, and then the participants broke into small working groups. Each participant was given a worksheet that described the preliminary alternatives, scoping issues DOE had already identified, and new issues that the public had previously identified for DOE during the mall displays, open house, interviews, and questionnaire submittals.

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Diverse Strategies for EIS Savings

In recent months, several DOE EIS Document Managers have reported achieving savings in the environmental review process. Their approaches are diverse, as discussed in the articles on pages 4, 5, and 6. Bonneville Power Administration uses a model for concise yet comprehensive programmatic reviews; a Savannah River EIS used a data management program that also can support possible future Comprehensive Environmental Response, Compensation, and Liability Act reviews; and preparation of the Waste Isolation Pilot Plant Supplemental EIS used data from the Waste Management Programmatic EIS.

The "Pragmatic" EIS

A Model for Efficient Programmatic Environmental Review

By: Thomas McKinney, NEPA Compliance Officer, Bonneville Power Administration

prag·mat·ic, adj. *Dealing with facts or actual occurrences; practical*

Bonneville Power Administration (BPA) has developed an EIS model for its programs that deal with similar, repetitive implementation techniques and issues, such as wildlife management and watershed management programs. The approach improves efficiency by addressing common issues and generic environmental impacts. Through adopting a broad set of environmental standards and guidelines based on a programmatic EIS, subsequent site-specific project NEPA reviews can be more focused and less expensive.

Key principles of the programmatic approach include establishing a full range of alternatives and identifying program-wide issues and possible resolutions.

Accidental Name Proves Accurate

BPA's environmental staff implemented the model in its Wildlife Mitigation Program EIS (DOE/EIS-246) and Watershed Management Program EIS (DOE/EIS-265), and proposed a similarly structured EIS for BPA's transmission system vegetation management program.

The model was coined "pragmatic" when an automatic spell check computer function converted "programmatic" to "pragmatic" in a briefing paper on one of the model EISs. When the error was detected, the program staff happily embraced the rewording as accurate: the approach was, in fact, "pragmatic."

Approach Reduces Cost

Total cost of the "Pragmatic" EIS strategy includes costs of scoping and preparing the overall program EIS and then of conducting reviews of site-specific projects. The Wildlife Mitigation Program EIS cost $72,000 in contractor expenses (impact analysis and writing/editing), and about $95,000 for Federal staff. The Watershed Management Program EIS cost $52,000 in contractor expenses (the same contractors used similar approaches to the impact analyses and the same format as in the Wildlife Mitigation Program EIS) and about $95,000 for Federal staff. The brevity of both documents (the main part of the Wildlife EIS was 119 pages and the Watershed EIS was 126 pages) helped to contain preparation costs.

BPA expects site-specific project reviews (i.e., supplement analyses) to demonstrate that the programmatic EIS is adequate for the projects/sites. Costs of these reviews have yet to be determined, but are likely to range from about $2,500 to $8,000. This compares favorably with five to ten site-specific project EAs per year (which would have been necessary), varying from $15,000 to $75,000 each. With cost savings likely realized in the first year, applying the "Pragmatic" EIS strategy to the Wildlife Mitigation and Watershed Management programs will undoubtedly prove to be a good value.

For more information, including further description of the "Pragmatic" EIS model, please contact Thomas McKinney at tcmckinney@bpa.gov, phone (503) 230-4749, or fax (503) 230-5699.

Status of CEQ Environmental Justice Guidance

The Council on Environmental Quality (CEQ) expects to issue its "Guidance for Considering Environmental Justice Under the National Environmental Policy Act" before the end of the year. Except for editorial and clarifying changes, a pre-publication version is similar to CEQ's March 1997 draft guidance. The Office of NEPA Policy and Assistance will distribute DOE NEPA guidance on environmental justice (October 1996 draft, as revised after NEPA Compliance Officer comments) after making any necessary changes to reflect the CEQ Guidance.

River Water System Shutdown: Not as Simple as Turning Off the Pumps

By: Richard H. Rustad, NEPA Analyst, Savannah River Operations Office

The 1996 Savannah River Site Strategic Plan included a commitment to identify and dispose of excess infrastructure. The Savannah River Operations Office identified the River Water System, consisting of three pumphouses and approximately 50 miles of underground concrete piping, as surplus (since the cessation of reactor operations) and costly to operate and maintain. The Office projected significant cost savings by not operating any River Water System pumps. However, shutting down all River Water System flow is not as simple as turning off the pumps. As the proposed project developed, the preferred strategy for environmental review—whether to prepare a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) review and incorporate NEPA values; integrate the NEPA and CERCLA processes; or prepare stand-alone NEPA and CERCLA reviews—changed as well.

Shutting off the River Water System would result in the eventual disappearance of L Lake, which DOE created in 1984 to dissipate thermal effluent from L Reactor. L Lake inundated a three-mile section of a creek contaminated with low levels of radionuclides from past operations. Shutting down the River Water System would uncover the contamination, and possibly trigger a response action under CERCLA. Based on historical information, DOE believed exposing the L Lake bed, creek, and floodplain would not pose a significant risk to the public.

The Savannah River Operations Office NEPA Group and Environmental Restoration Division together developed a strategy for environmental review: to perform a Remedial Investigation/Feasibility Study (RI/FS) and incorporate NEPA values into the resulting report, and then prepare a CERCLA interim record of decision to manage the risks from exposed L Lake sediments. After meeting with regulators, however, Savannah River Operations Office decided to prepare a CERCLA Site Evaluation instead. Because a Site Evaluation lacks essential NEPA features such as scoping, alternatives, public participation, and a record of decision, the NEPA Group concluded that a Site Evaluation would not be adequate for incorporating NEPA values. Savannah River Office then prepared a separate EIS for the River Water System (DOE/EIS-0268).

The NEPA Group decided to use a CERCLA sampling protocol for data collection, however, which would support possible future CERCLA remedial decisions. While this may initially have raised the costs of data collection for the NEPA review, it is expected to result in lower costs overall for the anticipated further environmental reviews.

For more information, contact Richard Rustad at richard.rustad@srs.gov, phone (803) 725-1572, or fax (803) 725-7688.

INEEL EIS Scoping *(continued from page 3)*

Each working group selected a spokesperson (a member of the public—*not* a DOE, INEEL, or contractor employee), and then began brainstorming to identify alternatives and issues not previously identified. The spokesperson for each group then shared the group's findings with the entire audience. New issues and concerns were added to a board at the front of the room, which also listed previously identified concerns. At the close of the meeting, participants were asked to place sticker dots on the board for their two highest priority concerns.

The meetings produced a comprehensive list of alternatives and issues, and the participants' sense of which issues were of highest priority. We found that the process was really a win-win situation: DOE received high-quality, well thought-out comments, and the public received answers to their questions, a better understanding of the issues, and an opportunity to influence DOE's deliberations. Feedback provided on comment cards revealed that most participants felt that the workshop format met or exceeded their expectations for participation in the NEPA process.

For more information, contact Brad Bugger at buggerbp@inel.gov, phone (208) 526-0833, or fax (208) 526-8789.

More Lessons from WIPP

By: Harold Johnson, NEPA Compliance Officer and Document Manager, Carlsbad Area Office
Stephen Simpson, Office of NEPA Policy and Assistance

The Supplemental Environmental Impact Statement for the Waste Isolation Pilot Plant (WIPP) Disposal Phase (SEIS-II) (DOE/EIS-0026-S2) is intended to inform a decision on whether to dispose of transuranic (TRU) waste at WIPP. If yes, then DOE also needs to decide the types and amounts of TRU waste to be disposed of, the minimum waste treatment requirements, and the mode of transporting waste to WIPP. Now that the document has been completed, the SEIS-II provides lessons on saving time and money that can be applied to other NEPA reviews. *(See "Effective NEPA Hearings: Learning from the WIPP Experience," Lessons Learned Quarterly Report, June 2, 1997, page 6.)*

Lesson 1—Build on data and analysis from other NEPA documents.

The SEIS-II waste treatment impacts analysis was based on the analysis of the impacts of TRU waste treatment in the Waste Management Programmatic Environmental Impact Statement (WM PEIS), adjusted to account for a later waste inventory and different analytical time frames. Using the information from the WM PEIS saved an estimated $4 million and promoted Department-wide consistency in NEPA reviews.

Lesson 2—Resolve analytical issues with the document management team early.

About the time the Draft SEIS-II was issued, Carlsbad Area Office issued new TRU waste volume projections in the National Transuranic Waste Management Plan. The new projections showed changes in TRU waste volumes relative to the Baseline Inventory Report figures used in the Draft SEIS-II.

The SEIS-II team decided to retain the analysis of the older waste volumes but to acknowledge the newer volume projections in an appendix and qualitatively discuss how impacts would have changed if the newer volume estimates had been used for analysis. Making this decision rather than analyzing the new volume projections saved considerable time and money, while maintaining adequate document quality.

Truck carrying demonstration TRUPACT waste containers, with the WIPP site in the background.

Lesson 3—Try innovative document review practices.

In the Headquarters SEIS-II review, the document management team experimented with "real time" text changes. The text of the SEIS-II was projected on a screen for all reviewers to read and changes were typed in while the reviewers were present. Although reaching consensus on wording took time, discussing changes as they were proposed speeded the subsequent review of the revised document. The production team stayed at the contractor's office in Albuquerque and received revised files for reformatting and production by electronic mail. This technique for revising EIS text during a review is worth exploring further, especially when reviewers recommend specific language for the revisions.

For more information, contact Harold Johnson at johnsoh@wipp.carlsbad.nm.us, phone (505) 234-7349, or fax (505) 887-6970.

ISO 14000 and NEPA

In September 1996, the International Organization for Standardization (known as ISO) published the first in a series of voluntary international standards dealing with environmental management. The standards are referred to by individual numbers in the series designated ISO 14000. Included in this series are standards for a variety of environmental management concerns, such as environmental management systems (EMSs) (ISO 14001), environmental labeling (ISO 14020), and product life cycle assessment (ISO 14040). One reason for developing the ISO 14000 standards was to establish a level playing field for international trade among the nearly 100 nations that participate in the Organization. In the past, the Organization has established standards for everything from the speed of camera film (ISO 100, 400, etc.) to the size of credit cards, ensuring that your local credit card works in a Tokyo automated teller machine.

The NEPA Connection

Many Federal agencies, including the Department of Energy, and their site management contractors have decided that there are important benefits from implementing ISO 14000-style EMSs at their facilities, ranging from increased efficiency for environmental monitoring to improved stakeholder relations. The ISO 14001 EMS standard shares an important characteristic with the requirements for the NEPA review process. EMSs and NEPA reviews both require the analysis of actions affecting the environment to determine the "significance" of potential impacts that may result.

Under the EMS standard, the environmental impact analysis facilitates establishing goals and targets for continually improving environmental performance. Significant impacts related to an organization's environmental "aspects" (actions and processes affecting the environment) become the primary focus of efforts to demonstrate continual improvement. Being able to demonstrate—i.e., to a third-party auditor during periodic audits—continual improvement in meeting environmental goals identified in an EMS is part of how organizations become certified as compliant with ISO 14001.

Similarly, the identification of significant impacts in the NEPA review guides decision makers to needed mitigation of adverse effects. In the NEPA context, however, the term "significant" has important implications in terms of level of review and public involvement that are not present in ISO 14001.

Avoiding Confusion: How NEPA Differs from ISO 14001

Significance in the NEPA sense is related to the context and intensity or magnitude of the environmental effects. Under ISO 14001, significance can be based on an entirely different set of metrics. For example, an organization may develop an EMS for production processes or services that have no adverse environmental effects because of substantial customer or stakeholder concerns about the involved environmental resources. Consequently, it is possible for the NEPA and EMS review processes to arrive at differing conclusions of "significance" for the same activity.

Common Goals

Differences between ISO and NEPA contexts for significance, if not explained and accounted for, could lead to challenges to the conclusions of a NEPA review. Therefore, NEPA practitioners need to understand the ISO 14001 process, share information resources for analytical and procedural elements that are common to EMS and NEPA document development, and participate in EMS development to help avoid misunderstandings. NEPA and ISO 14000 have a common goal of enhancing environmental quality. By understanding and participating in both processes, the NEPA practitioner can help ensure that this goal is achieved.

For more information, contact Ted Hinds, Office of NEPA Policy and Assistance, at warren.hinds@eh.doe.gov, phone (202) 586-7855, or fax (202) 586-7031.

Be a Part of Lessons Learned

We are already planning for the next edition of *Lessons Learned Quarterly Report,* and we want your contributions. If you would like to submit an article for the first quarter FY 1998 edition of LLQR (#14), please contact Yardena Mansoor to discuss your suggestion. Yardena may be reached at yardena.mansoor@eh.doe.gov or (202) 586-9326. Submissions will be due by January 30, 1998.

National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP), founded in 1975, is a multidisciplinary association dedicated to the advancement of the environmental professions in the United States and abroad. NAEP provides a network of professional contacts and a forum for the exchange of information on environmental planning, research, and management among colleagues in industry, government, academia, and the private sector. Currently, NAEP has 2,000 members in 18 state and regional chapters, 24 active student chapters, and numerous committees and working groups that focus on specific association programs and functions. Among these is the NEPA Working Group, whose mission is "to improve environmental assessment as performed under NEPA." General membership in NAEP requires an undergraduate degree and at least three years experience, or a graduate degree, in an environmental field.

Certification for Environmental Professionals

Certified Environmental Professional (CEP) status is available through NAEP's Academy of Board Certified Environmental Professionals. To be eligible for CEP status, one must have an undergraduate degree and at least nine years of applicable environmental experience, including five years in a position of responsibility. Certification is awarded for expertise in environmental research and education, environmental operations, environmental assessment, environmental documentation, or environmental planning. For more information on NAEP membership and the CEP program, contact Donna Carter at naep@ilnk.com, phone (888) 251-9902, or fax (904) 251-9901.

Annual Conference in June

NAEP will hold its 23rd Annual Conference on June 20-26, 1998, in San Diego, California. The meeting will focus on six subject areas: ISO 14000 and Environmental Management; International Environmental Issues; General Environmental Issues; NEPA and the California Environmental Quality Act; the Academic Center for Environmental Excellence; and Public and Stakeholder Participation.

Although abstracts for paper presentations were due October 31, late submissions will be considered. For more information on submitting abstracts or on the conference in general, visit NAEP's Web Site at www.naep.org; or contact Kathy Giles at whn@quick.net, or phone (619) 597-4710.

NAEP Award for Excellence

This year, NAEP will present a NAEP Presidential Award for Excellence in NEPA Practice. A nominated NEPA project, agreement, or achievement will be evaluated against one or more of the following criteria:

- Represents a major negotiating achievement with stakeholders;
- Provides a major contribution to environmental protection with stakeholder recognition;
- Achieves innovation in NEPA methodology or achieves integration of decision making with the NEPA process.

Nominations for the award are due by March 15, 1998, and must include a nomination form and supporting documentation. Forms are available at NAEP's Web site at www.naep.org.

Recent EIS Milestones

Notices of Intent

Hanford Solid (Radioactive and Hazardous) Waste Program EIS (DOE/EIS-0286) (62 FR 55615, October 27, 1997).

Jacksonville Electric Authority Circulating Fluidized Bed Combustor Project EIS, Jacksonville, Florida (DOE/EIS-0289) (62 FR 60889, November 13, 1997).

Advanced Mixed Waste Treatment Project EIS, Idaho National Engineering and Environmental Laboratory (DOE/EIS-0290) (62 FR 62025, November 20, 1997).

High Flux Beam Reactor Transition Project EIS, Brookhaven National Laboratory (DOE/EIS-0291) (62 FR 62572, November 24, 1997).

Draft EISs

Draft Programmatic EIS for Long-term Management and Use of Depleted Uranium Hexafluoride Resources at Several Geographic Locations (DOE/EIS-0269) (approved November 5, 1997—in printing).

Draft EIS for Accelerator Production of Tritium at the Savannah River Site (DOE/EIS-0270) (approved November 24, 1997—in printing).

Draft EIS on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (DOE/EIS-0277) (62 FR 62761, November 25, 1997).

Records of Decision

Nez-Perce Tribal Hatchery Project (DOE/EIS-0213) (62 FR 54617, October 21, 1997).

Interim Management of Nuclear Materials at the Savannah River Site, *Fourth Supplemental ROD* (DOE/EIS-0220) (62 FR 61099, November 14, 1997).

NAEP Task Force Makes NEPA Recommendations

By: Dr. James Roberts, President, National Association of Environmental Professionals

The National Association of Environmental Professionals (NAEP) has formulated recommendations on NEPA reinvention *(related article in the Lessons Learned Quarterly Report, September 2, 1997, page 8)* at the request of the Council on Environmental Quality (CEQ). The NAEP recommendations fall within five broad issues relating to planning, the role of NEPA in environmental protection, analytical focus, public scoping, and consistent application of NEPA within and across agencies. These issues and selected examples of the associated NAEP recommendations are provided below.

Federal agencies do not value or understand quality planning, and Federal managers (and their contractors) lack knowledge and experience in applying planning principles effectively. NEPA is usually detached from internal planning processes.

- Train managers and practitioners in effective planning and NEPA implementation.
- ISO 14000 parallels the NEPA planning and implementation process. Integration of ISO 14000 principles into NEPA would validate NEPA with accepted standards and increase consistency of application. *(See related article on ISO 14000, page 7.)*
- Commitments to mitigation with associated accountability could be documented in the decision.

The role of NEPA in environmental protection and policy development is not clear.

- CEQ should publish guidance on the role of the six goals of NEPA (Section 101(b)) in Federal decision making.
- Records of decision should disclose rationale for not selecting the environmentally preferred alternative.
- Evaluation of the six goals of NEPA also can help an agency evaluate its effectiveness under the Government Performance and Results Act.

Planning efforts are too long and too costly, and lack of analytic focus results in documents that are too lengthy.

- Reviewing agencies should be involved during NEPA document scoping so their concerns can be incorporated into the analysis early.
- CEQ should publish a compendium of good NEPA document sections with annotated rationale.
- Time and page limits should not be used as "one-size-fits-all" quality indicators.

Public scoping must be improved to open up Federal government planning and decision making and make it more effective.

- Public scoping should be conducted for EAs, as well as for EISs.
- Training for Federal employees, reviewing agencies, and the public should simulate public scoping processes and emphasize problem solving.
- Informational meetings may be an effective supplement to comment-driven public meetings.
- Use innovative technologies for public scoping, such as on-line commenting.

Consistency is lacking in both applying NEPA across and within agencies and determining quality. Guidance for consistently implementing NEPA within an agency and across agency lines is lacking. Agencies use different processes, some more restrictive than the CEQ regulations, and no standardized and generally acceptable methods exist for evaluating quality.

- Federal decision makers must read the NEPA document before making the decision.

The full set of recommendations are available, for a nominal cost of reproduction and mailing, from NAEP's executive offices, 6524 Ramoth Drive, Jacksonville, FL 32226-3202 or e-mail: naep@ilnk.com.

For more information, contact Dr. James Roberts at gems@ns.net or phone (916) 483-1564.

The author wishes to thank the NEPA Working Group of NAEP chaired by John Wik, with participation by Judith Lee, Chuck Eccleston, James McElfish, Frederic March, Sharon Saari, and George Wood.

National Environmental Training Office Established at Savannah River Site

By: David Hoel, Savannah River Operations Office

DOE's National Environmental Training Office (NETO) was recently established at the Savannah River Site to provide centralized management of Department-wide environmental training programs. NETO's mission is to strengthen and maintain the environmental management skills of DOE Federal and contractor employees through a national, integrated program. Through resource pooling, the NETO program will provide uniform, high-quality technical training to other Federal and state agencies, as well.

The Office will coordinate training for the environmental compliance, restoration, and waste management Technical Qualification Program; identify and provide training to support process improvement initiatives; and assist DOE Field Training Offices with oversight of contractor environmental management training.

NETO Responds to Identified Need

Defense Nuclear Facilities Safety Board Recommendations 93-3 and 92-7 criticized the technical capabilities of DOE employees and DOE's oversight of contractor training. A Congressional Conference Committee report on the FY 1997 budget expressed concern about DOE's training costs and the absence of central oversight of training requirements and a system to prevent training abuses.

As a result, the Department issued Implementation Plan SAI-44, "Corporate Approach to Training," to eliminate duplication of effort and improve cost-effectiveness. SAI-44 set milestones for consolidating training management, centralizing the development of Federal and contractor training programs, and establishing training Centers of Excellence. NETO serves as the environmental training Center of Excellence.

NEPA Training

NETO is working with the Office of NEPA Policy and Assistance, the Defense Programs NEPA Compliance Officer, and others to determine the training needs of the DOE NEPA community, including drafting a questionnaire to help identify NEPA training needs and priorities.

For more information, visit NETO's Web site at www.orau.gov/doe-sr/neto/neto.html; or contact David Hoel at david.hoel@srs.gov, phone (803) 725-0818, or fax (803) 725-0815.

Coming Training Events

Environmental Justice

Phillip Thompson, Esquire, Private Consultant
January 21–March 26, 1998, Wednesdays 6-9PM
USDA Graduate School—Washington, D.C.
Fee: $199
For information, call (202) 720-5885

Making the NEPA Process More Efficient: Scoping and Public Participation

Dr. Larry Canter, University of Oklahoma;
Debra L. Richards, Arthur D. Little, Inc.
February 18-20, 1998
Duke University—Durham, North Carolina
Fee: $595
For information, call (919) 613-8082
or on the Web at www.env.duke.edu

Advanced Methods and Techniques in Environmental Impact Assessment

Dr. Larry Canter, University of Oklahoma;
Dr. Samuel Atkinson, University of North Texas
March 9-13, 1998
Environmental Impact Training—Dallas, Texas
Fee: $595
For information, call (405) 321-2730

Current and Emerging Issues in Managing the NEPA Process

A collaborative effort with several Federal agencies, Tribes, and non-governmental organizations.
April 1998 *(Dates TBA)*
Duke University—Durham, North Carolina
Fee: $595
For information, call (919) 613-8082
or on the Web at www.env.duke.edu

Beneficial Landscaping Practices

Federal projects often involve landscape changes that require consideration in the planning process. Accordingly, a Presidential Memorandum issued April 26, 1994, directs Federal agencies to implement environmentally and economically beneficial practices on Federal landscaped grounds and to reflect these practices in appropriate NEPA documents. An interagency workgroup subsequently recommended techniques for meeting the requirements of the Memorandum (60 FR 40837, August 10, 1995).

The guidance states "[W]here Federal projects or federally funded activities or projects considered in the NEPA process include landscape considerations, … NEPA documentation … shall reflect the recommendations established in this guidance." DOE, therefore, needs to incorporate these beneficial landscaping practices into NEPA documents, and also into activities and projects that normally are categorically excluded (such as routine maintenance).

General Principles

Landscaping includes not only options for plant selection, water use, and fertilizer and pesticide application, but also pollution prevention, habitat conservation and restoration, energy efficiency, and overall cost-effectiveness. The guidance recommends that NEPA documents reflect the following beneficial landscaping practices:

- Use regionally native plants for landscaping;
- Design, use or promote construction practices that minimize adverse effects on the natural habitat;
- Seek to prevent pollution;
- Implement water and energy efficient practices; and
- Create outdoor demonstration projects.

Integrated pest management can be used to control pests, both plant and animal, resulting in lower pesticide levels in the watershed and overall cost savings. One innovative technique creates "xeriscapes" by grouping plants with similar water needs, using drought-tolerant plants, correctly positioning plants so that the most drought-tolerant are on the side of prevailing winds, and widely using mulch. Such beneficial landscaping techniques are examples of what could be considered in NEPA documents.

DOE's Progress

A DOE Progress Report of July 1996 notes a wide variety of actions under the Memorandum and guidance. A DOE site uses solar power for some of its irrigation systems, for example. Many sites compost and re-use organic wastes, and they landscape with native, drought- and pest-tolerant plant species.

In Washington, D.C., adjacent to DOE's Forrestal Building, DOE created Earth Day Park to demonstrate photovoltaic lighting and to showcase landscaping that does not need fertilizers, pesticides, or mowing. All of these practices serve to reduce cost and effort and minimize adverse environmental impacts.

Achievement Awards

The Memorandum established awards for outstanding achievements in landscaping practices. DOE's Federal Energy Management Program (FEMP) administers the annual awards to individuals and organizations who use beneficial landscaping practices, show cost-effectiveness, and develop landscaping projects of broad applicability.

Recipients of the most recent awards, announced in October 1997, included:

- Luke Air Force Base in Arizona for a pest management treatment that reduces chemical use by 70 percent;
- The U.S. Postal Service in both Arizona and California for incorporation of xeriscape principles, the use of reclaimed water, and development of a demonstration garden; and
- A partnership of Federal, State, and County agencies in New Mexico for the Zuni Canyon Meadow Restoration Project.

Nominations for next year's awards are due in May 1998. For a nomination form or more information about the awards, contact FEMP at (202) 586-5772 or on the Web at www.eren.doe.gov/femp.

For more information about the guidance, contact Barbara Grimm-Crawford, Office of NEPA Policy and Assistance, at barbara.grimm-crawford@eh.doe.gov, phone (202) 586-3964, or fax (202) 586-7031.

Feedback on LLQR

Please submit feedback on the Lessons Learned Quarterly Report to:
Hitesh Nigam, hitesh.nigam@eh.doe.gov, (202) 586-0750, fax (202) 586-7031

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

Global Climate Change in NEPA Documents:
DOE Comments on CEQ's Draft Guidance

After an expedited review by the Office of NEPA Policy and Assistance, cognizant program contacts, and NEPA Compliance Officers, the Department provided comments to the Council on Environmental Quality (CEQ) on its "Draft Guidance Regarding Consideration of Global Climatic Change in Environmental Documents Prepared Pursuant to the National Environmental Policy Act" (October 1997).

In a letter dated October 31, 1997, DOE cited its leadership and commitment in addressing the challenges of global climate change, and specifically agreed with CEQ's main proposition that global climate change is a "reasonably foreseeable" impact of greenhouse gas emissions, in the context of NEPA. DOE also agreed that the NEPA process should explore options to reduce net greenhouse emissions through analyses of alternatives and mitigation measures, and our comments offered many suggestions for making CEQ's guidance more focused and productive.

DOE Suggests Focus on Future Activities

While CEQ's draft guidance proposes an immediate review of *continuing* activities, DOE commented that the most productive consideration of global climate change issues under NEPA is through reviews of proposed *future* activities. CEQ's draft guidance specifically directs Federal agencies to immediately review whether and to what extent continuing and proposed activities contribute directly or indirectly to greenhouse gases and climate change. DOE commented, however, that an immediate review of continuing operations in most cases is unwarranted because it is unlikely that agencies would be able to materially change the course of most ongoing actions (e.g., redesign or shut down operating facilities) even if the greenhouse emissions data and analytical models needed to justify the effort were available.

Two Aspects Apply to NEPA Reviews

In the draft guidance, CEQ discusses the scientific basis for concern about global climate change and presents the major conclusions of the Intergovernmental Panel on Climate Change (IPCC). The guidance discusses the role of the NEPA process and concludes that because global climate change is a reasonably foreseeable impact of greenhouse gas emissions, agencies must consider global climate change in NEPA documents.

CEQ's draft guidance directs Federal agencies to consider the following two aspects of global climate change in their NEPA documents: (1) the potential for Federal actions to influence global climatic change (e.g., increased emissions or sinks of greenhouse gases); and (2) the potential for global climatic changes to affect Federal actions (e.g., feasibility of coastal projects in light of projected sea level rise). DOE commented that the guidance should note further that, in principle, the environmental impacts of a proposed action—i.e., other than the impacts on climate—may differ under different climate conditions; e.g., long-term health effects of waste disposal sites may be sensitive to assumed precipitation rates. DOE also stated, however, that there is no generally accepted method for evaluating such effects.

The draft guidance concludes that analysis of global climate change effects at the project level would not provide meaningful information in most instances, and indicates that agencies should assess such impacts in programmatic NEPA reviews. DOE agreed that such analyses are most useful at the programmatic level, but suggested that project-level NEPA reviews may be appropriate.

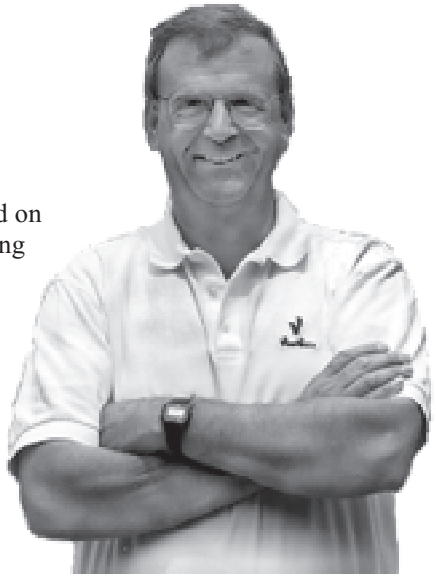
Guidance Could Be Addressed in Reinvention

DOE requested that CEQ not establish specific or new requirements for NEPA reviews and that the guidance should contain a preface stating that the guidance is not intended to be legally binding (such as is found in other recent CEQ guidance). Other DOE comments were directed at improving the clarity of the guidance (e.g., use of technical terms), the accuracy of the technical representations, and providing more complete references to help NEPA practitioners. DOE also suggested that CEQ consider addressing global climate change in the context of any future work under its NEPA Reinvention initiative.

For more information, contact Denise Freeman, Office of NEPA Policy and Assistance, at denise.freeman@eh.doe.gov, phone (202) 586-7879, or fax (202) 586-7031.

TRANSITIONS...

Tony Adduci Retires



Tony Adduci, NEPA Compliance Officer for the Oakland Operations Office, retired on November 3, 1997, after 34 years of service with the Federal government. Reflecting upon his years as NCO and NEPA Document Manager, Tony said he experienced many positive values of NEPA. Tony's approach stressed NEPA as a planning tool, he said, and treating each proposed action at the proper level of NEPA review.

When asked what advice he might give to a new NCO, however, Tony (noted for his humor as well as his directness) recalled the lines of a popular song: "You gotta know when to hold'em, know when to fold'em." NEPA Compliance Officers must satisfy the letter of the law, but, he suggests, they should emphasize intent and principle in making judgments regarding NEPA practices. In 1995, Tony received the Oakland Operations Office Process Improvement Award, and in 1996 the Energy Research Process Improvement Award. He continues to reside in Walnut Creek, California. We wish Tony well in his second career in education and the private sector.

Jim Melton Moves to Private Sector

Jim Melton, who served in the DOE Western Area Power Administration's Sierra Nevada Regional Office as environmental manager and NEPA Compliance Officer for nearly six years, has taken early retirement from Federal service to join the private sector.

Jim's career has been distinguished by many contributions and commendations, most recently the DOE Distinguished Career Service Award for outstanding environmental work on NEPA projects and management initiatives. He received six Outstanding Achievement Awards from the Western Area Power Administration between 1992 and 1997 for toxic waste reduction, cost containment, and administrative leadership.

Jim continues to serve on the Board of Directors of the National Association of Environmental Professionals. He may be reached at jim_melton@cpqm.saic.com or phone (208) 528-2173.

DOE-wide NEPA Contracts Update

Since the Department awarded three DOE-wide NEPA contracts in June 1997, nine tasks totaling $9.7 million have been initiated. The contracts were awarded to three teams headed by Haliburton NUS Corporation, Science Applications International Corporation (SAIC), and Tetra Tech, Incorporated. The following table shows the tasks awarded under these contracts since July 1997.

Task Description	NEPA Document Manager	Award Date	Contractor Team
Los Alamos National Laboratory Site-wide EIS (document production and comment response)	Cory Cruz (AL) ccruz@doeal.gov; phone (505) 845-4282	7/3/97	Tetra Tech, Incorporated
Sandia National Laboratories Site-wide EIS (draft and final EIS and public relations)	Julianne Levings (AL) jlevings@doeal.gov; phone (505) 845-6201	8/15/97	Haliburton NUS Corporation
Commercial Light Water Reactor Tritium Extraction Facility EIS	John Knox (SR) john.knox@srs.gov; phone (803) 725-1128	9/16/97	Haliburton NUS Corporation
Los Alamos Nonproliferation and International Security Center EA	Dean Triebel (LAAO) d.triebel@doe.lanl.gov; phone (505) 665-6353	11/13/97	Tetra Tech, Incorporated
Advanced Mixed Waste Treatment Facility EIS (draft EIS and comment response)	John Medema (ID) medemaje@inel.gov; phone (208) 526-1407	11/14/97	Tetra Tech, Incorporated
Hanford Remedial Action Program EIS (completion of EIS in progress)	Tom Ferns (RL) thomas_w_ferns@rl.gov; phone (509) 372-0649	11/17/97	Haliburton NUS Corporation
High Level Waste and Facilities Disposition EIS	Roger Twitchell (ID) twitchrl@inel.gov; phone (208) 526-0776	11/24/97	Haliburton NUS Corporation

North American Agreement on Transboundary Environmental Impact Assessment

In conjunction with the North American Free Trade Agreement (NAFTA), the United States, Canada, and Mexico also entered into the North American Agreement on Environmental Cooperation (NAAEC). Article 10.7 of the NAAEC calls upon the Commission for Environmental Cooperation Council, which consists of cabinet-level environment officials of the three NAFTA parties, to develop recommendations on notification, consultation, assessment, and mitigation for certain proposed projects likely to cause significant adverse transboundary environmental impacts. Accordingly, in June 1997 the Council announced the parties' decision to negotiate a legally binding agreement on transboundary environmental impact assessment ("Agreement").

From a United States perspective, such an Agreement would provide for early notice of proposed physical projects in Canada and Mexico that are likely to have significant adverse impacts on the U.S. environment, and would provide for an opportunity to express U.S. concerns. The U.S. government and its citizens also could participate in Canadian and Mexican governmental decisions, thus ensuring that U.S. concerns are taken into account.

Notification

There likely will be two bases for notification under the Agreement: (1) proposed physical projects that the originating country, on a case-by-case basis, determines have the potential to cause significant adverse transboundary environmental impacts; and (2) designated categories of physical projects located within 100 km of the United States/Mexico and United States/Canada borders, without characterization of transboundary environmental impact. The U.S. has proposed that, for the United States, only major actions as defined under NEPA and subject to decisions by the U.S. Federal government would be included in the scope of the Agreement.

The first and second negotiating sessions took place this year on September 11–12 and November 17–18 in Montreal, Canada. Further sessions are to occur in the coming months. The target for completing an Agreement is April 1998.

For more information, contact Jim Daniel, Office of NEPA Policy and Assistance, at james.daniel@eh.doe.gov, phone (202) 586-9760, or fax (202) 586-7031.

Support the Preparation of Annual Planning Summaries

Members of the DOE NEPA Community are reminded to support the preparation of their organization's Annual NEPA Planning Summary. DOE Order 451.1A requires each Secretarial Officer and Head of a Field Organization to submit an Annual NEPA Planning Summary to EH-1 by January 31 of each year. The Annual NEPA Planning Summary also must be made available to the public. The Summary is to include: (1) the status of ongoing NEPA compliance activities, (2) any environmental assessments expected to be prepared in the next 12 months, (3) any environmental impact statements expected to be prepared in the next 24 months, (4) the planned cost and schedule for completion of each NEPA document identified, and (5) an evaluation of whether a site-wide environmental impact statement would facilitate future NEPA compliance efforts *(required every three years, starting in 1995).* Annual planning for NEPA reviews promotes efficient resource management and scheduling. Questions may be addressed to Jim Daniel, Office of NEPA Policy and Assistance, at james.daniel@eh.doe.gov, phone (202) 586-9760, or fax (202) 586-7031.

Office of NEPA Policy and Assistance Issues Guidance

The NEPA Office recently issued guidance on several topics. For additional information or copies, please consult the following points of contact.

1. **A Brief Guide: Department of Energy-wide Contracts for NEPA Documentation** (September 30, 1997)
   Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596

2. **DOE EIS Checklist** (November 12, 1997)
   Jim Daniel at james.daniel@eh.doe.gov, phone (202) 586-9760

3. **DOE NEPA Implementing Procedures (10 CFR Part 1021) including Preambles to Final Rulemakings** (November 14, 1997—in printing)
   Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596

If You Don't Know Where You're Going... Any Road Will Take You There

*This article is reprinted with permission from the September 1997 issue of **OnTrack**—Environmental News from Environmental Training & Consulting International, Inc.*

Failure to ask two fundamental questions lies at the root of many practitioners' problems with public involvement.

1. What do you want from the public involvement process?

2. How will you know you have achieved it?

Without a clear purpose for doing public involvement and a well-defined outcome and evidence procedure for each part of the overall program, you can't address other key questions effectively. For example, you won't know which public involvement methods would work best in the given situation, how to attract new participants in the process, or what criteria need to be met to gain consensus or reach informed consent. As the saying goes, "If you don't know where you're going, any road will take you there."

Although these two fundamental questions are deceptively simple, challenge yourself to develop specific answers as you walk through each step of the following procedure.

1. What do you want from the public involvement process?

(a) State your objectives in positive, concrete terms. Focus on what you *do* want, rather than what you *don't* want. "I want 12 new faces at the meeting" is far more effective than "I don't want just the usual participants."

(b) Make sure your goals are within your control. This is crucial. You don't control the responses of other people—particularly in public involvement processes. "I want them to get a better attitude," is not within your control, although you can take many steps that may, over time, generate trust, respect and positiveness and thereby elicit different responses from the public. "I want my presentation to be accurate and well-organized" is an outcome that you do control, one that may lead to an improved "attitude" and increased responsiveness over time.

(c) Set objectives that are achievable within your time/budget constraints. A public involvement goal of gaining the complete trust of all U.S. citizens for the Department of Defense is probably a little aggressive. However, you could set an objective of demonstrating reliability (read trustworthiness) on project XYZ by ensuring that all environmental information communicated to the public is accurate and comes from qualified sources.

2. How will you know when you have succeeded in reaching your public involvement objectives?

The true test on whether your public involvement objectives are clear enough is whether you can easily answer this question.

(a) Make sure that the evidence really relates to the objective. If your objective is to ensure that seven involved parties participate in the public involvement process and your evidence of success is that you'll feel good at the end of each public meeting, you need to develop some other evidence procedure. Feeling good at the end of public meetings is great but is not evidence that the objective was achieved.

(b) Be specific. State what will you see, hear or feel when you have succeeded, rather than vague statements like "we'll make better decisions." The more specific and measurable, the better. If your objective is "The public will feel involved," you'll never know if you've succeeded. Also, "I'll just know" is a cop out. If you'll know, then get clear about *how* you will know. If part of your objective is that 400 people will participate in the public involvement process by December 1997, you'll know if you've gotten there.

Now evaluate the following public involvement outcomes based on these criteria:

Outcome: "I want to give a good presentation."

This is probably not specific enough for an individual objective, and definitely not an outcome for a public involvement process. By going through the evidence procedure, you could develop a more useful outcome.

Outcome: "I want them to like us."

Forget this. It's not within your control and sometimes is less related to your actions than to strategy, long-standing resentments, etc. Evidence would be difficult to obtain.

Outcome: "I want them to like our project."

This is both not specific and not within your control.

Outcome: "By April 1998 when we complete our public involvement activities, we want to determine if the public has issues/concerns that we have not identified. We will involve at least 50 members of the public beyond the three interest groups that are usually involved."

This is an achievable outcome.

Evidence: "Either we will have added to our list of issues, or we will have a written agreement from all participants that no further issues need to be analyzed at this time, and we will have added 50 names to our mailing list."

Effective public involvement is challenging enough by its very nature. Give yourself a head-start by addressing these two fundamental questions at the outset and you'll find that the process becomes easier.

Environmental Training & Consulting International, Inc. is located at 2325 Eudora Street, Denver, CO 80207, etcidenver@aol.com, phone (303) 321-3575, or fax (303) 321-4569.

Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

BPA Wins NEPA Lawsuit and DOE Gains Partial Settlement in Another, but Two New Suits Filed against DOE

Bonneville Power Administration (BPA) recently won a lawsuit concerning a major programmatic EIS. The Department of Energy has also agreed to a partial settlement of the litigation concerning the Stockpile Stewardship and Management Programmatic EIS (SSM PEIS). Two new NEPA lawsuits have been filed recently against the Department, however, concerning a proposed decontamination and decommissioning action at the K-25 Plant and selection of a western port for the receipt of foreign research reactor spent fuel.

Bonneville Business Plan EIS Upheld

The U.S. Court of Appeals for the Ninth Circuit recently upheld the adequacy of the Business Plan EIS (DOE/EIS-0183, June 1995) [and several Records of Decision (RODs) based on that EIS] prepared by BPA to analyze potential market responses and corresponding environmental impacts from BPA's business activities. The Business Plan EIS is the basis of a staged decision making process that tiers from the Business Plan ROD, which decided broad BPA business strategies for which only general marketing responses and environmental impacts can be projected. The Business Plan ROD is being followed by several additional RODs for agency actions that are consistent with the general marketing responses and environmental impacts projected in the Business Plan EIS. Site-specific NEPA reviews, however, will be prepared only for proposed projects for which actual physical effects could be identified and evaluated.

Several utility and environmental organizations sued BPA, alleging, among other things, that the Business Plan EIS and subsequent RODs did not comply with NEPA in several respects. The court disagreed with the plaintiffs:

- The plaintiffs argued that, rather than tiering subsequent RODs to the original Business Plan EIS ROD, BPA was required to prepare a separate EIS before each ROD. The court ruled that, as long as the NEPA review for the subsequent RODs is adequate, whether it is contained in a programmatic EIS or a separate EIS is immaterial. (The court noted in passing that "in many ways, a programmatic EIS is superior to a limited, [project]-specific EIS because it examines an entire policy initiative rather than… a single agency action.") The court could find no intervening changes that would cause the EIS to be outdated.

- The plaintiffs also argued that BPA had not analyzed the cumulative impacts of the contracts that were the subjects of the subsequent RODs. The court found that, in the analysis of the preferred programmatic alternative, BPA had adequately considered cumulative impacts of all of the contracts.

- The plaintiffs argued that the EIS did not consider alternatives to the current access to the transmission system, but the court found that "a fair review" of the alternatives led to the opposite conclusion and that an agency is required to examine only those alternatives necessary to permit a reasoned choice.

- The plaintiffs argued that BPA should have considered a no action alternative under which BPA would not sign any agreements for power or transmission. The court held that BPA's no action alternative (the status quo, i.e., continuation of its present sales contracts) was allowed by the CEQ regulations. The court quoted the answer to Question 3 of *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* that "the 'no action' alternative may be thought of in terms of continuing with the present course of action until that action is changed." (46 FR 18026, March 23, 1981).

- The plaintiffs challenged BPA's analysis of several environmental consequences of the alternatives. The court found for BPA on all counts, noting that BPA was not required to use a particular methodology for impact analysis, or, as for social impact analysis, that NEPA did not require the requested analysis. The court paid special attention to BPA's analysis of long-term impacts (which focused on relationships between variables rather than quantitative projections), and ruled that BPA's method was adequate because BPA could not make statistically meaningful projections of future outcomes.

Association of Public Agency Customers v. Bonneville Power Administration, 1997 U.S. App. LEXIS (9th Cir. 1997).

continued on next page

DOE Suits *(cont'd. from page 16)*

Partial Settlement in Stockpile Litigation

On October 27, 1997, Judge Stanley Sporkin of the U.S. District Court for the District of Columbia approved a Joint Stipulation and Order negotiated by the parties that settles a portion of the Stockpile Stewardship and Management Programmatic EIS (SSM PEIS, DOE/EIS-0236, December 1996) litigation involving the construction of the National Ignition Facility (NIF). (On August 8, 1997, Judge Sporkin had denied the motion filed by the Natural Resources Defense Council, Inc., et al., to preliminarily enjoin DOE from proceeding with construction of NIF. *See related articles in the Lessons Learned Quarterly Report, June 2, 1997, page 5, and September 2, 1997, page 3.)*

Under the Order, DOE must fully evaluate any potential risks to the human environment from continuing to construct and operate NIF in an area possibly contaminated with buried hazardous material. (During construction, DOE excavated capacitors and soil containing polychlorinated biphenyls that were previously unknown and thus were not considered in the SSM PEIS.) DOE will examine available written materials, interview workers with relevant knowledge, conduct reasonably necessary physical tests (as specified in the Order), and provide periodic status reports to the plaintiffs and the court. DOE will then issue a supplement to the SSM PEIS that evaluates the reasonably foreseeable significant adverse environmental impacts of operating NIF in a possibly contaminated area.

Construction of NIF will continue while these activities are being completed, although DOE cannot take any action that may threaten the public health, safety, and/or the environment. The Order does not address the other issues in the lawsuit, including whether the SSM PEIS is adequate and whether DOE is required to prepare a PEIS on Environmental Restoration and Waste Management.

Department Sued to Prepare EIS for K-25 Decontamination and Decommissioning

On August 22, 1997, the Oil, Chemical and Atomic Workers International Union, AFL-CIO; the union local in Oak Ridge, Tennessee; and several union members in Oak Ridge, filed suit in the U.S. District Court for the District of Columbia concerning the Department's award of a contract to BNFL, Inc., for decontamination and decommissioning of three buildings at the K-25 Gaseous Diffusion Plant in Oak Ridge. (Defendants in the suit also include BNFL, Inc., and the Community Reuse Organization of East Tennessee, under an Amended Complaint filed August 28, 1997. On October 23, 1997, the Natural Resources Defense Council, the Oak Ridge Environmental Peace Alliance, and two other environmental groups moved to intervene as plaintiffs on the NEPA claim.)

In addition to counts concerning workforce restructuring and employment opportunities for displaced workers, the plaintiffs also seek to restrain the Department from taking any action under the BNFL, Inc., contract until the Department prepares an EIS for the proposed decontamination and decommissioning action (as allegedly required under Appendix D3 to 10 CFR Part 1021, Subpart D). According to the Amended Complaint, the requested EIS should include the impacts of the proposed commercial sale of radioactive scrap metals, including nickel, that would result from the proposed decontamination and decommissioning action. The Department filed a motion to dismiss the suit on October 21, 1997, based in part on the ban under the Comprehensive Environmental Response, Compensation, and Liability Act on judicial actions before completion of the remedial action.

Department Sued Again on Foreign Research Reactor Spent Fuel EIS

On October 20, 1997, the County of Contra Costa and the City of Concord, both in California, filed suit in the U.S. District Court for the Northern District of California opposing the Department's selection of Concord Naval Weapons Station as the western port of entry for the receipt of foreign research reactor spent nuclear fuel. The selection was based on the Department's February 1996 EIS on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS-0218). (The EIS also was the subject of an earlier lawsuit by the State of South Carolina, which the Department won in December 1996. *See Lessons Learned Quarterly Report, March 3, 1997, page 11.)*

In addition to counts concerning the Department's criteria for choice of the port, the plaintiffs allege that the Department should have analyzed the risks of terrorist activities; the security at military posts generally or the Concord Naval Weapons Station specifically; the risks of transportation through the San Francisco Bay Estuary (including potential impacts on endangered and threatened species); and the inadequacies and dangers of the proposed rail transport route from the Concord Naval Weapons Station to the Idaho National Engineering and Environmental Laboratory. They ask the court to enjoin the Department from scheduling or receiving any shipment of spent nuclear fuel to or through the Concord Naval Weapons Station, and for a judgment that the selection of the Concord Naval Weapons Station as the western port of entry was unlawful. LL

Other Cases of Interest

Alternatives Not Required for Forest Service Mitigation Measure

On July 1, 1997, the U.S. Court of Appeals for the Ninth Circuit ruled that the EIS prepared by the U.S. Forest Service (USFS) for the harvesting of timber and the construction and reconstruction of roads in the Smokey Corridor area of the Lewis and Clark National Forest complied with NEPA. The appellants argued that USFS failed to consider a reasonable range of alternatives for the road closure (or restriction) that was a proposed mitigation measure common to all six action alternatives. The court ruled that, because road closure or restriction was a proposed mitigation measure, USFS was not required to consider alternatives, such as different road closures in different areas.

The appellants also argued that USFS should have prepared a supplemental EIS for the Smokey B timber sale, because the actual acreage sold (based on a survey of the area) was greater than that analyzed in the EIS (based on information in USFS's Timber Stand Management Reporting System database). USFS argued that the difference of plus or minus 10% was typical of the types of minor adjustments that occur in applying the database, and that such a variation was not a substantial change in the proposed project. The court agreed. *Island Range Chapter of the Montana Wilderness Association v. U.S. Forest Service*, 1997 U.S. App. LEXIS 16332 (9th Cir. 1997).

Environmental Impacts Must Be Assessed for Land Exchange in Vermont

The USFS was sued in May 1997 to assess the environmental impacts of a proposed land exchange between USFS and Sugarbush Resort Holdings, Inc. Congressional legislation directed USFS to convey land to the resort management company for acceptable land or cash, under terms and conditions to be prescribed by USFS. Following the legislation (which did not expressly exempt the land exchange from NEPA review), the USFS developed and approved an exchange proposal, concluding that the proposed action was categorically excluded. Subsequently, the USFS determined that the exchange was a non-discretionary agency action and, as such, was exempt from NEPA.

The court found in favor of the plaintiff, stating that the proposed land exchange was not exempt from NEPA because USFS has discretion to impose terms or conditions on the land exchange and to approve or disapprove the transaction, its actions were not purely ministerial, and compliance with NEPA would not be "an empty formality." The court further ruled that the land exchange could not be categorically excluded from NEPA review because, among other reasons, the proposed use (hotel and conference center) would not be "essentially the same" as the current use (parking lot and tennis courts), as required under USFS's NEPA regulations, notwithstanding that the land would retain a high-density land management designation. *RESTORE: The North Woods v. the U.S. Department of Agriculture*, 1997 U.S. Dist. LEXIS 9340 (D. Vt. 1997).

HUD Prevails in Connected Actions Suit

Three not-for-profit community groups brought suit against the U.S. Department of Housing and Urban Development (HUD) alleging that HUD's designation of an area known as Lincoln West in the Riverside South area of Manhattan as eligible for Federal mortgage insurance required NEPA review. The plaintiffs also challenged HUD's decision to limit its environmental review to four apartment buildings within Lincoln West rather than the entire Riverside South area.

The court found in favor of HUD on all points. The court ruled that "NEPA does not require an EA and FONSI or an EIS at the preliminary stage of a development project," such as the designation of the Lincoln West area as eligible for Federal mortgage insurance. The court also found HUD's decision to limit the environmental review to the four buildings to be reasonable.

The court concurred with HUD's determination that construction of the four buildings had "independent utility" from other proposed projects in that the developer requesting HUD's assistance would go ahead with the apartment buildings with or without the other Federal projects in the Riverside South area. The other Federal projects were not, therefore, connected actions under the Council on Environmental Quality NEPA regulations [40 CFR 1508.25(a)(1)]. *Coalition for a Liveable Westside v. U.S. Department of Housing and Urban Development*, 1997 U.S. Dist. LEXIS 8860 (S.D.N.Y. 1997).

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1A 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 July 1 and September 30, 1997. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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—What Worked

- Two no action alternatives. *Two variations of the no action alternative were analyzed based on public scoping comments*.

- Combining DOE's scoping process with another agency's meetings. *Scoping meetings were held jointly with U.S. Fish and Wildlife Service (USFWS) public meetings on an interdependent project*.

- Early mailing to potential stakeholders. *A "Scoping Statement" was mailed to potentially interested stakeholders at the onset of the EA process. This permitted the public and agencies to comment before the EA was prepared*.

Scoping—What's Needed

- More Program Office involvement. *This would have helped the Field Office to clarify the scope of the proposed activities and identify all interested stakeholders. The Field Office was unaware that certain stakeholders were in contact with the Program Office and wanted to review the EA that the Field Office was preparing.*

Data Collection/Analysis—What Worked

- Specifying details of the project to a resource agency. *Providing the location, nature of the project, and a list of species known to occur on the site elicited a succinct and informative reply from USFWS, allowing DOE to complete the Section 7 (threatened and endangered species) consultation quickly.*

- Use of Geographic Information Systems (GIS). *This permitted rapid and cost-effective analysis of complex data and "what-if" scenarios in developing alternatives. While a somewhat expensive tool, GIS more than paid for itself in time and cost savings.*

Data Collection/Analysis—What Didn't Work

- Overly conservative analysis in order to protect classified information. *This raised concerns by the reviewers that the potential impacts were overstated.*

- Change in models. *Changing performance assessment models between the draft and final Supplemental EIS necessitated redoing the analysis.*

Schedule

Factors that Facilitated Timely Completion of Documents

- Early identification of issues and decisions to be made.

- Concurrent review. *This included input from Headquarters in the early stages, and real-time changes throughout the review process.*

- Establishment of a Headquarters/Field Office team relationship early in the process.

- Involving resource agency technical staff in the preparation of the EA. *Staffing the project with Tribal members, State managers, and USFWS personnel facilitated the review process, effectively getting the agencies to "buy-in" to the analysis before the document was issued to the public.*

continued on next page

NEPA Process *(continued)*

Factors that Inhibited Timely Completion of Documents

- Limitations of the tiering document. *Because the document from which the EIS was tiered did not address a scenario similar enough to that needed for a subsequent EIS, additional analysis was required.*

- Lack of NEPA experience among cooperating agency staff. *Apparent confusion among the other agency staff regarding their own NEPA process caused communication problems*.

- Insufficiently trained document manager. *When the NEPA Document Manager is not properly trained in NEPA compliance, there may be a huge learning curve.*

- Unnecessarily limited scope of earlier document. *The project change that triggered the EA had actually been analyzed in – but deleted from – a previous EA*.

Factors that Facilitated Effective Teamwork

- Work sharing. *The delegation of tasks and responsibilities, combined with regular status and deadline meetings, evened out the workload among team members*.

- An "action team." *This team was formed (with representatives from contractors, counsel, stakeholders, and DOE) to establish and monitor the schedule and oversee activities.*

Reminder:

Lessons Learned Questionnaires for all NEPA documents completed during the first quarter of fiscal year 1998 (October 1, 1997 to December 31, 1997) should be submitted as soon as possible after document completion, but no later than January 30, 1998.

For Lessons Learned Questionnaire issues, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov, (202) 586-0750, or fax (202) 586-7031.

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

Factors that Inhibited Effective Teamwork

- Acrimony and complaints. *Acrimony generated by Field Office requests for EIS approval authority and complaints about failure to adhere to the original schedule adversely affected the NEPA process.*

Public Participation Process

Successful Aspects of the Public Participation Process

- Early, informal scoping meetings and public hearings. *The question and answer period at the beginning of each session helped the public feel more comfortable and welcome.*

- Announcement by postcard. *Using a computerized NEPA mailing list, postcards announcing the availability of the draft EA and meeting information were mailed to more than 600 people. This proved to be both effective and relatively inexpensive.*

- Involve stakeholders in developing a public involvement plan.

Unsuccessful Aspects of the Public Participation Process

- Serving a dispersed public. *The project area was rural and the population was widely dispersed. Despite notifications on radio, in the local press, at local meeting places, at meetings, and by direct mailings, many people complained that they received insufficient notice about the project.*

- Late comments. *Several comments submitted after the Finding of No Significant Impact was signed focused on the need for an EIS instead of an EA. Also, most organizations invited to comment on the draft EA did not comment.*

- Meetings remote from the project site. *Public meetings held at distant locations are generally not well-attended. Only highly controversial actions or actions affecting the entire nation or DOE as a whole require meetings in Washington, D.C. or in State capitals.*

continued on next page

NEPA Process *(continued)*

Public Reactions to the NEPA Process

- Timing of public involvement. *Members of the public complained because the comment period and hearings spanned the holidays through the first week of January.*

- EA can provide assurance. *Although this project would have qualified for categorical exclusion, DOE prepared an EA because of public concerns about allowing a private company to work on a DOE facility.*

Usefulness

Agency Planning and Decision Making

- NEPA was "the" planning tool. *While some may initially have had the idea that NEPA was just another hoop to jump through, by the time we had finished the draft EIS, most interested parties had an enhanced understanding of the project.*

Enhancement/Protection of the Environment

- Applicability to future projects. *The EIS will be useful for future watershed management issues and projects, and consequently, will enhance watershed habitats for fish.*

- Environmental vigilance. *The EA process resulted in assurances that the for-profit entities would maintain environmental integrity over the life of the project.*

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."

For this quarter, 9 out of 12 respondents for EAs and five out of six respondents for EISs rated the NEPA process as "effective."

One EA respondent, rating the NEPA process as ineffective, stated that this rating is not fair to the NEPA process, because it was the second time a document had been completed for the same project as a result of the project taking a new direction.

The one EIS respondent who rated the NEPA process ineffective stated that although the outcome of the project was predetermined, the NEPA process did help to define the project and enable better decisions regarding specific actions.

EIS-related Documents Issued Between July 1 and Sept. 30, 1997

Notices of Intent	DOE/EIS-#	Date
Spallation Neutron Source, Oak Ridge Operations Office	0247	7/21/97 (62 FR 40062)
High-Level Waste and Facilities Disposition, Idaho Operations Office	0287	9/15/97 (62 FR 49209)
Draft EISs		
Supplemental EIS/Program Environmental Impact Report for Sale of the Naval Petroleum Reserve No. 1, Elk Hills, California	0158-S2	7/11/97 (62 FR 40074)
Disposal of S3G and D1G Prototype Reactor Plants, Richland, Washington *(Office of Naval Reactors)*	0274	7/16/97 (62 FR 39227)
Records of Decision		
Kenetech/Pacificorp Windpower Program, Bonneville Power Administration *(BLM – Lead Agency)*	0255	7/21/97 (62 FR 40809)
Watershed Management Program in Oregon, Idaho, Washington, and Montana, Bonneville Power Administration	0265	8/27/97 (62 FR 46954)
Supplement Analysis		
Supplement Analysis for Spent Fuel Transportation from High Flux Beam Reactor, Brookhaven National Laboratory to Savannah River Site *(No Supplemental EIS required)*	0203-SA1	Approved 7/2/97

EIS and EA Time and Cost Facts

EISs

Albuquerque Operations Office

Environmental Management
Waste Isolation Pilot Plant Disposal Phase Supplemental EIS
DOE/EIS-0026-S2
EPA Rating: LO
Cost: $8.2 million ($0.3 million Federal, $7.9 million contractor)
Time: 25 months

Bonneville Power Administration

Nez-Perce Tribal Hatchery Project
DOE/EIS-0213
EPA Rating: EC-2
Cost: $492,000 ($101,000 Federal, $391,000 contractor)
Time: 39 months

Western Area Power Administration

Navajo Transmission Project, Arizona, New Mexico, Nevada
DOE/EIS-0231
EPA Rating: EC-2
Time: 50 months

*[**Note:** The costs of this EIS were paid by the applicant; therefore, cost information does not apply to DOE.]*

One EIS Completed in Third Quarter, but Not Previously Reported in LLQR:

Bonneville Power Administration

Watershed Management Program in Oregon, Idaho, Washington, and Montana
DOE/EIS-0265
EPA Rating: LO
Cost: $147,000 ($95,000 Federal, $52,000 contractor)
Time: 15 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

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

Adequacy of the EIS

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

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

EAs

Chicago Operations Office

Nuclear Energy
Proposed Shutdown of the Experimental Breeder Reactor II Project at ANL-West, Idaho Falls, Idaho
DOE/EA-1199
Cost: $165,000
Time: 9 months

Golden Field Office

Energy Efficiency and Renewable Energy

Ponnequin Wind Energy Project, Weld County, Colorado
DOE/EA-1221
Cost: $44,900
Time: 5 months

Biorecycling Technologies, Inc., Noble Biogas & Fertilizer Plant, Fresno, California
DOE/EA-1223
Cost: $11,500
Time: 8 months

Idaho Operations Office

Environmental Management
Test Area North Pool Stabilization—Update
DOE/EA-1217
Cost: $26,000
Time: 2 months

Richland Operations Office

Environmental Management
Trench 33 Widening in Low Level Waste Burial Ground 218-W-5, Hanford Site, Richland, Washington
DOE/EA-1203
Cost: $30,000
Time: 5 months

Defense Programs
Tritium Target/Lead Test Assembly, Richland, Washington
DOE/EA-1210
Cost: $75,000
Time: 6 months

Western Area Power Administration

Proposal to Amend Existing Operating Permit for the Ault-Craig 345-kV and Hayden-Archer 230-kV Transmission Line
DOE/EA-1187
Cost: $25,000
Time: 12 months

Three EAs Completed in Third Quarter, but Not Previously Reported in LLQR:

Bonneville Power Administration

Kootenai River White Sturgeon Conservation Aquaculture Project
DOE/EA-1169
Cost: $141,000
Time: 11 months

Naval Petroleum Reserve-California

Fossil Energy
Curly Top Virus Control Program for 1997-2001 for NPR-C, Elk Hills and Buena Vista, California
DOE/EA-1011

*[**Note:** DOE was a cooperating agency to BLM; therefore, cost and time information do not apply to DOE.]*

Rocky Flats Office

Environmental Management
National Conversion Pilot Project Stage III, Rocky Flats Environmental Technology Site, Golden, Colorado
DOE/EA-1200
Cost: $10,000
Time: 7 months

EIS Completion Time and Cost

The June 2, 1997 Lessons Learned Quarterly Report *noted that of the 24 EISs started after the Secretarial NEPA Policy Statement of June 1994, nine had been completed in a median time of 13 months. Since then, one of those EISs has been cancelled and four more EISs of the 24 have been completed. The median completion time of these 13 completed EISs is 15 months.*

For those same 13 EISs started and completed after June 1994, the median and average costs are $3.0 million and $5.4 million, respectively.