NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

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Need Help Preparing NEPA Documents? New, Improved "Green Book" Is on the Way

By: Carl Sykes, *Office of NEPA Policy and Compliance*

The time has come for the DOE NEPA Community to work together to strengthen our basic NEPA guidebook, *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (also known as the "Green Book"). The Green Book (*www.eh.doe.gov/nepa* under Guidance) is certainly no weakling: it provides succinct recommendations for key NEPA issues in just 38 pages. However, it has a few gaps. The Office of NEPA Policy and Compliance is now undertaking, with input from the DOE NEPA Community, well-targeted revisions to update and augment the Green Book. We aim to increase its usefulness to NEPA document preparers and reviewers.

Carl Sykes is leading the charge to strengthen the Green Book, DOE's NEPA primer.

The DOE Office of Environment, Safety and Health issued the Green Book in May 1993 as an expansion and refinement of earlier informal NEPA "Do and Don't" lists. The NEPA Office had circulated draft versions of the Green Book for comment throughout the DOE NEPA Community as well as to the Council on Environmental Quality (CEQ). CEQ held it as a model for other agencies to emulate. Although some details have become dated, the Green Book guidance is still valid today, a testament to its careful development and thorough review process. The revision must be prepared with similar rigor.

Updates, Refinements Needed

At a minimum, we want the Green Book to address all major issues and, where appropriate, reference other, more detailed NEPA guidance. DOE and other agencies have issued a number of important guidance documents in the decade since the Green Book was first issued. For example, CEQ issued guidance on cumulative effects and environmental justice in 1997, and DOE has issued many guidance documents, including mini-guidance from *Lessons Learned Quarterly Report*. Also, we plan to revise the Green Book section on accident analysis to reference and reflect the July 2002 DOE guidance, *Recommendations for Analyzing Accidents under the National Environmental Policy Act*.

Practical experience, in addition to guidance, will inform the Green Book revision. Over the years, NEPA practices have evolved as lessons have been gleaned from NEPA successes, failures, litigation, and other experiences. We plan to develop a more comprehensive list of NEPA issues to address, with the intent of filling the gaps.

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Inside *LESSONS LEARNED*

Welcome to the 38th quarterly report on lessons learned in the NEPA process. In this issue we are continuing a multi-part examination of lessons learned from *Lessons Learned*. We invite your suggestions on how to improve the Lessons Learned program. Thank you for your continuing support.

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report.* We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by May 3, 2004. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 3, 2004

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2004 (January 1 through April 30, 2004) should be submitted by May 3, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at *www.eh.doe.gov/nepa/* under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web site at *www.eh.doe.gov/nepa/*. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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Modern Pit Facility Final EIS Delayed

On January 28, 2004, National Nuclear Security Administration (NNSA) Administrator Linton Brooks announced the *Modern Pit Facility Final Environmental Impact Statement* (EIS), originally scheduled for publication by April 2004, has been delayed. Mr. Brooks cited congressional concerns about the timing and scope of the project and stated that NNSA needs to respond to the concerns before proceeding with the Final EIS.

In June 2003, NNSA published the *Modern Pit Facility Draft EIS* that analyzed five alternative sites: Los Alamos and Carlsbad, New Mexico; the Nevada Test Site; Pantex Plant, Texas; and the Savannah River Site, South Carolina. The Draft EIS also evaluated upgrading an existing fabrication facility at Los Alamos National Laboratory. The Environmental Protection Agency reviewed the draft EIS and gave it a "Lack of Objections" rating. In accordance with 40 CFR 1502.14 (e), the Final EIS will identify the preferred site for the Modern Pit Facility (or Los Alamos upgrade of the existing facility); a preferred site alternative was not identified in the Draft EIS. LL

NNSA Withdraws FONSI for LANL Biosafety Lab

The National Nuclear Security Administration (NNSA) issued a press release on January 23, 2004, announcing its decision to prepare a new environmental assessment (EA) for operation of a newly constructed Biosafety Level-3 (BSL-3) facility at the Los Alamos National Laboratory. NNSA had issued an EA (DOE/EA-1364) and finding of no significant impact (FONSI) for the construction and operation of the BSL-3 facility in February 2002. Due to new circumstances and information concerning the operation of the BSL-3 facility, NNSA has withdrawn the 2002 FONSI. The BSL-3 facility (and another BSL-3 facility planned for Lawrence Livermore National Laboratory) is the subject of an ongoing lawsuit filed in August 2003, in which plaintiffs claim, among other things that the EA for the facility was inadequate. (See related article in Litigation Updates, page 16.) LL

BLM Programmatic EIS to Examine Wind Energy In Response to President's National Energy Policy

The Bureau of Land Management (BLM), an agency of the Department of the Interior, recently conducted a public scoping process for its *Wind Energy Development Programmatic EIS* (PEIS). The individual comments were overwhelmingly supportive of wind energy development but suggested that siting criteria reflect concerns ranging from visual impacts to habitat and species protection to economics.

PEIS Preparation Involves Multiple Agencies

BLM initiated the PEIS in response to the President's National Energy Policy, which encourages the development of renewable energy resources. The PEIS will evaluate issues associated with establishing a national policy and program for wind energy development on BLM-administered public lands in the western United States, except Alaska. (See *LLQR*, December 2003, page 2.) The Fish and Wildlife Service, also within the Interior Department, is a cooperating agency, providing its special environmental expertise on how to evaluate and mitigate impacts from wind turbines and associated facilities. (See "Interim Voluntary Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines" (68 FR 41174; July 10, 2003); available at *www.fws.gov/r9dhcbfa/windenergy.htm*.)

DOE's national laboratories are assisting in preparation of the PEIS, although DOE is not participating as a cooperating agency. The National Renewable Energy Laboratory (NREL) is providing technical support (described in text box, next page), and Argonne National Laboratory is providing PEIS preparation support. DOE's Golden Field Office, which manages NREL, will participate in PEIS document reviews, and the Western Area Power Administration has offered BLM its assistance.

> *The NEPD [National Energy Policy Development] Group recommends that the President direct the Secretaries of the Interior and Energy to re–evaluate access limitations to federal lands in order to increase renewable energy production, such as biomass, wind, geothermal, and solar.*
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> *– Reliable, Affordable, and Environmentally Sound Energy for America's Future, Report of the National Energy Policy Development Group, May 2001 (www.whitehouse.gov/energy)*

PEIS Intended to Facilitate Wind Energy Development on BLM Lands

BLM maintains land use plans to define how particular parcels of the land it manages may be used. The plans specify restrictions that need to be enforced to ensure consistency with the principles of multiple use and sustainable yield under which BLM operates. Any development of wind energy must be conducted within the parameters established in the applicable land use plan.

BLM administers about 25 rights-of-way in California and Wyoming that authorize commercial development of wind energy, and wind turbines on these public lands generate about 500 megawatts of electricity. The agency has received proposals for development of additional wind energy resources on lands it manages. BLM notes, however, that "commercial wind energy development activities in some cases may not be in conformance with existing land use plans."

To address this potential conflict until the PEIS is completed, BLM established an Interim Wind Energy Development Policy in 2002 (Instruction Memorandum No. 2003-020; October 16, 2002) that encourages the

Photographs like this one from BLM's Wind Energy PEIS Web site (http://windeis.anl.gov) illustrate the siting of wind turbines in a desert landscape in western states.

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Wind Energy Programmatic EIS *(continued from page 3)*

consideration of wind resource potential when land use plans are being revised. The memorandum also provides guidance on processing right-of-way applications for wind energy testing and development projects. The guidance addresses the need for an EA or EIS to accompany each application for wind energy development.

BLM's Proposed Action Could Require Land Use Plan Amendments

BLM proposes to assess in the PEIS where it is reasonably foreseeable that wind energy might be developed on lands it manages. NREL is assisting with this undertaking through an inventory of high-potential wind energy resources. (Information on this NREL-BLM partnership is available at *www.eere.energy.gov/windpoweringamerica*. Under Wind Powering America, select Public Lands for a copy of "Assessing the Potential for Renewable Energy on Public Lands" (February 2003). Also, follow the "Where is Wind Power?" link for state maps showing areas with the potential for producing wind energy.)

BLM also proposes to address the possible amendment of individual land use plans. For example, land use plans might be modified to incorporate stipulations applicable to wind energy development projects (e.g., wildlife management guidelines). As another example, land might be designated for competitive leasing of wind energy resources.

Public Scoping Attracted Broad Interest

The scoping process included a 60-day public comment period that ended on December 19, 2003. Scoping meetings were held in five western states (California, Utah, Wyoming, Nevada, and Idaho). BLM received more than 800 individual scoping comments covering a wide range of subjects, including engineering and design, wildlife, monitoring and mitigation, land use, visual impacts, and national energy policy. A *Summary of Public Scoping Comments* along with a searchable index of all comments received and information on wind energy is available at the PEIS's Web site (*http://windeis.anl.gov*).

The majority of comments address the balance between wind energy development and minimizing environmental impacts. Siting criteria, as would be reflected in individual land use plans, are also a concern. "By taking this big picture look," commented the Idaho Conservation League, "the BLM can help locate wind power projects in locations where there is a sufficient and steady wind supply and environmental concerns can be more easily addressed."

One environmental concern raised by commentors is the potential impact on wildlife habitat. Road construction associated with installing and maintaining wind turbines and related transmission services can disrupt habitat, and the presence of towers can alter a habitat that had been characterized by open space, commentors said.

National Renewable Energy Laboratory: DOE's Focus for Wind Energy Research

NREL is DOE's national laboratory for renewable energy research, development, and deployment, and its National Wind Technology Center (NWTC), located near Boulder, Colorado, is DOE's lead wind energy research facility.

NREL is supporting BLM throughout the PEIS process by providing staff and informational materials for public meetings. It is also providing technical data (e.g., on wind energy technologies, mitigation studies, land suitability for wind energy development, and geographic information system and resource mapping) that are useful to developing the proposed action description and impact analyses. In addition, NREL hosted an interagency workshop on February 3, 2004, at which representatives of the involved agencies discussed the nature of full-scale wind energy projects and the type and magnitude of impacts they present.

NREL has conducted an environmental study at the Technology Center related to one of the more controversial aspects of wind energy development. *National Wind Technology Center Site Environmental Assessment: Bird and Bat Use and Fatalities – Final Report* (NREL/SR-500-32981, January 2003) assesses impacts on populations of birds and bats at the site. Based on a 12-month survey, the study concluded that, "Bird mortality associated with the site appears to be minor," with most deaths "probably the result of collisions with support wires for the meteorological towers rather than the turbines themselves." The study reported "no evidence of bat fatalities at the site."

The Technology Center's Web site (*www.nrel.gov/wind*) presents the study on bird and bat fatalities (under NWTC Library) and includes other useful information about wind energy. For example, there is a report on "Wind Power Today" and basic information on wind energy, such as "How Do Wind Turbines Work?" and "Where Does the Wind Blow?"

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Other environmental concerns include the potential for birds, bats, and insects to be killed by flying into turbine blades, support wires, or transmission wires. Commentors noted that these hazards can be mitigated through the choice of design. For example, the use of towers with smooth exteriors – as opposed to lattice-work towers – eliminates risks associated with birds using the towers as perches. Concerns also were expressed about visual impacts, especially in areas with scenic importance, such as near national parks and historic sites.

In its scoping comments, DOE's Western Area Power Administration identified the need for the programmatic EIS to "consider the impact of wind development on the electric transmission system." Noting that wind development may occur in areas with "limited transmission capability," Western commented that, "A National policy could lead to large scale development that will require construction or rebuild of numerous transmission lines, resulting in other environmental consequences."

This photo, also from the PEIS Web site, illustrates the scale of a turbine.

Companies that develop wind energy commented on the need to use the PEIS to streamline the decisionmaking process. The American Wind Energy Association expressed hope that the PEIS "will help remove procedural and informational barriers to the orderly development of wind generation at appropriate sites" on BLM-managed lands. San Gorgonio Farms, which has developed over 160 megawatts of wind energy projects in California, encouraged BLM to use the PEIS to "decrease the amount of double work that is done at the local level" by providing adequate analysis of key areas of concern. The company also encouraged BLM to "limit the amount of land that can be tied up by any one company" in order to provide "smaller developers a chance" to pursue wind energy development on BLM land.

Commentors also noted potential conflicts between wind energy development and military air space and land use requirements. The U.S. Air Force, which is the lead for the Department of Defense (DOD) for wind energy, suggested steps to enhance coordination, such as identifying locations on BLM lands where wind projects might affect DOD mission sustainability. (See *LLQR*, June 2003, page 9, for discussion of the cancellation of plans to develop wind energy at the Nevada Test Site because of DOD concerns.)

Another comment by the Air Force was that BLM should "[c]onsider expanding the PEIS beyond just BLM-owned lands to include wind facilities on lands owned by other public land management agencies." Other commentors suggested additional ways to broaden the scope of the PEIS, for example evaluating competing energy sources (particularly coal and other fossil fuels).

BLM envisions publishing the draft PEIS in August 2004. For further information about the *Wind Energy Development PEIS*, contact Lee Otteni, BLM Farmington Field Office, at 505-599-8911.

Lessons Learned from *Lessons Learned* Part 2: Schedule and Teamwork

Schedule and teamwork go hand-in-hand, say respondents to DOE's Lessons Learned Questionnaire. The respondents describe a synergistic relationship in which good teamwork contributes to meeting schedules, and adherence to schedules enhances the performance of NEPA document preparation teams. Involving the right people – from contractor support to senior DOE management – and working together as a team is critical to issuing a document on a schedule consistent with the Department's needs, respondents say. Effective teamwork is enhanced by development and implementation of a schedule in a manner that keeps every member of the team informed.

This article is the second of a series examining nearly 1,000 excerpts from responses to DOE's NEPA Lessons Learned Questionnaire published in *LLQR* since December 1994. The excerpts are published on the concluding pages of each issue of *LLQR* under the heading: *What Worked and Didn't Work in the NEPA Process*. (See page 25.) (The Questionnaire is available on DOE's NEPA Web site at *www.eh.doe.gov/nepa* under Lessons Learned Quarterly Reports.)

The first article discussed scoping and data collection and analysis (*LLQR*, December 2003, page 1). This article summarizes responses regarding schedule and teamwork. The series will continue with a discussion of the NEPA process, usefulness, and enhancement/protection of the environment and will conclude with thoughts on how to improve the NEPA lessons learned program and DOE's implementation of NEPA.

What Makes the Schedule Work?

Questionnaire respondents identified many factors that contribute to the successful completion of NEPA documents on schedule. The single most important factor is management attention. According to an analysis of responses, management attention to scope, issues resolution, and the schedule itself is essential to completing EAs and EISs on time. Coupling management attention with good teamwork throughout the NEPA process enhances the chance of achieving schedules.

Respondents added that engaging team members in frequent meetings contributes to successful scheduling. At various points in the process, meetings might be held among the core members of the NEPA document preparation team (often to gauge progress toward interim milestones), program or site office management, and relevant headquarters' offices, to resolve key issues or with reviewers to facilitate completion of the document. Effective meetings can be conducted via conference calls or intensive, multi-day sessions involving representatives of all affected organizations. It can be helpful, some said, to use these meetings to conduct "real time" reviews of revisions to a document.

Other respondents pointed out that it is important to clearly define the scope of the EIS or EA early, even when it adds time at the start of the NEPA process. Data availability early in the process also is important, said respondents, who touted the benefit of timely identification of pre-existing data or generation of needed data (e.g., through the early completion of a risk analysis).

Respondents identified "tools" that contribute to the maintenance of schedules. Some pointed to the efficiency of electronically transferring documents to facilitate reviews and the benefits of software programs to track the schedule. Other respondents attributed success to incorporating the EIS or EA schedule as a performance measure in the document preparation contract. Others highlighted the utility of using in-house resources for laboratory analyses, printing, and other tasks.

Respondents also identified factors that make it difficult to maintain the schedule. Failure of key staff, including managers, to review the NEPA document in a timely manner can undercut efforts to maintain a schedule. Reliance on inexperienced staff (particularly in regard to NEPA experience) and staff changes during document preparation can have a similar impact. Other factors include poor coordination internally and with external parties (e.g., other agencies) and incompatibility in software among team members.

Several respondents pointed to adverse schedule impacts arising from late definition of the scope or changes in the proposed action, alternatives, or other important aspects of the NEPA analysis. Some mentioned that a long public comment period or an extension of the public comment period delayed the schedule. Conversely, another respondent provided an example where closing the scoping process before the completion of supporting studies resulted "in a need to back track and add new project components and alternatives."

What Fosters Good Teamwork?

Respondents underscored the importance of putting together the right team. This includes senior management, the NEPA Document Manager, the NEPA Compliance Officer, program managers, reviewers (including those from the NEPA Office and the Office of the General Counsel), technical project staff, and support contractors. Having the interest, involvement, and commitment of the right people at the right times is key, many said.

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Lessons Learned *(continued from previous page)*

Although respondents cited a variety of contributors to effective teamwork, the most recognized factor was good communication. Lines of communication were made more effective by practices such as an open-door policy by the NEPA Document Manager, regular and frequent meetings and conference calls, use of electronic communication, and addressing issues early.

Other attributes of successful teamwork highlighted by respondents include involving people with the right set of technical skills and those with enthusiasm and commitment, identifying responsibility for discrete aspects of the work, and working well within the team and among offices. Many cited close cooperation – involving contractors, headquarters offices, and others early and often – as a factor in building and maintaining effective teamwork.

What's the real secret to completing an EIS on time?

"The unashamed, liberal application of sugar and caffeine was particularly effective as a procedure to help keep the document team on schedule."

– Questionnaire Respondent

Respondents noted that the NEPA document team did not work effectively when one or more of the attributes mentioned above were lacking. Examples raised include doubts about the effectiveness of the NEPA process (e.g., the perception that a decision had already been made), competition for management attention between reviewing the EIS and other priorities, inability to obtain information in a timely manner, and personnel conflicts.

NEPA Success Relies on Good Management Practices

"The successful completion of a NEPA document hinges on many of the same management principles as any project," said Eric Cohen, Unit Leader, NEPA Office. "We should continually strive to identify the right mix of skills for each NEPA document early in the process, pull together a team of people with the resources and interest in conducting a meaningful and timely NEPA analysis, and work together to get the job done. Responses by DOE's NEPA Community to the Lessons Learned Questionnaire underscore these basic points year after year, from EAs to programmatic EISs alike."

Effective teamwork and scheduling are addressed in existing DOE NEPA guidance. For example, "NEPA Contracting Reform Guidance" (December 1996) emphasizes integrating the NEPA process, contracting, and project management to "do it right the first time." (See *www.eh.doe.gov/nepa* under DOE-wide NEPA Contracting.) Also, DOE Order 451.1B, National Environmental Policy Act Compliance Program, establishes lines of authority for the NEPA document preparation team and encourages approaching NEPA document preparation as a team effort (on the DOE NEPA Web site above under NEPA and Related Requirements).

Coming Next: Lessons Learned about the NEPA Process, Usefulness, and Enhancement / Protection of the Environment

CEQ Chair Emphasizes NEPA's "Productive Harmony" Goal

By: Carolyn Osborne, *Unit Leader, Office of NEPA Policy and Compliance*

Pointing to the national policy goal set out in NEPA Section 101(a) more than 30 years ago, Council on Environmental Quality Chair James L. Connaughton emphasized the need to balance social, economic, and environmental factors in "Attaining Productive Harmony in Environmental Policy in the 21st Century." In this address to a Policy Leadership Forum at Resources for the Future on January 22, he stressed that this national environmental policy, ahead of its time when set forth, is vital today.

Mr. Connaughton noted progress around the globe in health, environmental and social indicators, stemming in part from the massive block of law established in the last three decades. He commented that we now have the luxury to "refine, shape and sculpt" this block. In doing so, he explained that the President's approach places the highest premium on state and local action to further national goals and is predicated on the belief that economic growth is the solution, not the problem, for reducing environmental degradation.

To produce "real results," he emphasized that we must "simplify, simplify, simplify" environmental standards and other tools that stem from our laws. With reference to air quality concerns of acid rain, particulate matter, haze, and toxics, for example, Mr. Connaughton described requirements under the Clean Air Act as a "Rube Goldberg machine" – an extremely complex and uncertain path. He then projected air quality improvements that would occur from the President's current simplifying initiatives on Clear Skies and non-road diesel emissions.

For the near- to mid-term, Mr. Connaughton outlined programs that will deploy technologies that are central to making lasting strides – the FutureGen Program, Hydrogen Fuel Initiative, and FreedomCAR Partnership – new efforts to reduce emissions of greenhouse gases. (DOE has a major part in these efforts.)

How to Build on Our Environmental Progress

Asking "Where do we go next?," Mr. Connaughton outlined five core drivers for continued environmental progress:

- Results – focus on performance in terms of outcomes, not the number of programs or money spent.
- Sound science and quality data – enhance methods of risk management so that we can prioritize and deliver sensible responses.
- Innovation in technology and policy – create an economic and regulatory environment that supports new and cleaner technologies. NEPA created a mandate for the Federal government to create environmental blueprints to aid decisionmaking, and we have developed regulations and other tools to get things done. Now, be more discerning in choosing among these tools, changing them if needed to get a job done.
- Local collaboration for local solutions – switch from "public input" over the last 30 years to "public involvement" over the next 30. When people are engaged at the local level in problem solving, they tend to take on ownership for sustaining the solution.
- Personal stewardship and responsibility – foster accountability by other than professional environmentalists to integrate environmental considerations into operational criteria. Get "the right information, to the right people, at the right place, at the right time, to produce the right action."

At the close of the questions and answers session that followed his presentation, Mr. Connaughton said that in seeking to resolve issues, it often comes down to impacts on real people and having to understand what the environmental piece is in relation to the economic piece in relation to the social piece – that "wonderful sustainable development circle, or NEPA circle." The text, slides, and videotape of Mr. Connaughton's presentation and a videotape of the questions and answers session is available on the Resources for the Future Web site at *www.rff.org*. LL

NEPA Section 101 Policy Balances Objectives

The Congress, recognizing the profound impact of man's activity on…the natural environment…and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares…continuing policy of the Federal Government…to use all practicable means and measures, including financial and technical assistance, **in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.**

Excerpts from NEPA, Section 101(a) with emphasis as added by CEQ Chair, January 22, 2004

Supporting Flexible Decisionmaking in Practice: Sacramento Area Voltage Support

By: Loreen McMahon, *NEPA Compliance Officer, Sierra Nevada Region, and* Catherine Cunningham, *Environmental Protection Specialist, Corporate Services Office, Western Area Power Administration*

Soon after the 2000-2001 electric power crisis in California, the Western Area Power Administration (Western) identified the need to improve electric system reliability, provide voltage support, and increase security of the electric power transmission system in the Sacramento area. Uncertainties abounded, however – in the financial and regulatory environment facing the power industry, in utilities' plans to construct new generation or transmission facilities, and in the nature and timing of specific proposals to fund transmission improvements.

In the face of these challenges, Western needed to be flexible in its decisionmaking. In response, Western prepared the *Sacramento Area Voltage Support Final EIS* (DOE/EIS-0323; September 2003), in which it analyzed alternatives for needed near-term improvements in the electrical transmission system. Western was able to issue a record of decision (69 FR 1721; January 12, 2004) before completing comprehensive surveys for some resources and before receiving project-specific funding. Western is now prepared to complete the resource environmental reviews cost-effectively.

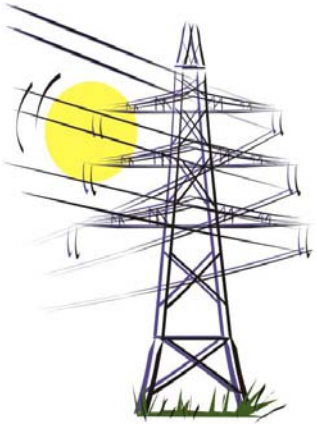
Need for Near-Term Improvements Influences Alternatives

Western began by identifying five broad categories of activities: new power generation, demand-side management (operational and other measures to reduce load, such as conservation and load-shedding), distributed generation (power generated at or near the location where a load is), new transmission, and transmission upgrades. Through internal and public scoping, Western concluded that new power generation, demand-side management, and distributed generation would not meet the screening criteria due to long-term implementation requirements or limited effectiveness, and eliminated these activities from detailed consideration.

Western applied the remaining activities – new transmission and transmission upgrades – to existing routes and potential route alignments to formulate a proposed action (with two alignment options) and three additional action alternatives. Western specified a configuation of new transmission lines and/or reconductoring for a combined distance of approximately 180 miles. Western incorporated almost 60 standard environmental protection measures into the project description.

Detailed Environmental Surveys, Consultations Deferred Until Project-Specific Proposals

Although Western analyzed impacts based on available data, it decided to defer the major resource survey efforts – for air, biological, cultural, and wetland resources – and consultations with the regulatory authorities – U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Historic Preservation Officer – until after receiving specific project funding. Western would then identify mitigation measures beyond the environmental protection measures already incorporated into the alternatives and develop a mitigation action plan. Western met with Environmental Protection Agency (EPA) representatives to obtain input and support for this approach. EPA staff expressed optimism and acknowledged other cases where projects had gotten caught up in an expensive cycle of "hurry up and wait."



In addition to agreeing on the broad approach, EPA recommended that Western make commitments in the final EIS and record of decision on future public participation, a commitment that had already been made internally by the Western NEPA team. Both the final EIS and record of decision state that if the environmental studies and consultations deferred during the EIS process result in modifications to the decision, Western will undertake additional activities to meet its NEPA and public participation obligations.

This approach provides a potential major cost savings to the government. Resource surveys for all the route segments have an estimated cost of more than $400,000. Because project proponents would likely support projects for only some segments, surveys for the entire right-of-way would probably not be needed. In addition, because of uncertainties in utilities' plans and proposals, Western is not able to predict when construction would begin; projects not in the immediate future would have the potential for requiring new or updated surveys. For more information, contact Loreen McMahon at mcmahon@wapa.gov or 916-353-4460.

NEPA Champions Brief Congressional Staff

By: Yardena Mansoor, *Office of NEPA Policy and Compliance*

As an important but controversial transportation funding bill is considered by Congress, seven members of the academic and environmental communities in late January 2004 presented a briefing to House and Senate staff titled "Congress at the Crossroads: Transportation, Public Participation and the National Environmental Policy Act." The bill, which would authorize billions in funding for highway, motor carrier, hazardous materials, and boating programs, is the third iteration of legislation known as the Transportation Equity Act (informally, TEA-3), established by Congress in 1992 and renewed in 1998.

To inform House and Senate staff members, speakers offered presentations on NEPA's history, application, and requirements; NEPA's value to the public and decisionmakers; the causes of project delays often attributed to NEPA compliance; and Congressional challenges to the concepts of environmental review and public participation, including a critique of current TEA-3 and other legislative proposals that the speakers attest would undermine NEPA values.

NEPA Viewed as Valuable in Decisionmaking and Public Disclosure

NEPA emerged over 30 years ago in response to acknowledged degradation of natural resources and an atmosphere of "environmental anxiety" following the publication of Rachel Carson's *Silent Spring,* said Professor Hope Babcock, Director of the Institute for Public Representation at the Georgetown Law Center. Promoted as a full disclosure act, she said that NEPA obligates agencies to disclose and conduct an open evaluation of the environmental impacts of proposals and their alternatives. "NEPA prohibits uninformed – rather than unwise – decisions," she said, citing a Supreme Court decision.

While NEPA does not require selection of alternatives with the least adverse environmental impacts, it imposes significant obligations, both financial and administrative, on an agency," said Robert Dreher, Deputy Executive Director of the Georgetown Environmental Law and Policy Institute (and former Deputy General Counsel for the U.S. Environmental Protection Agency), "but many professionals who are engaged in the process have come to view it as an integral part of good decisionmaking." He pointed to a variety of agency approaches (including DOE's) to promoting, facilitating, and improving their NEPA processes.

Speakers also focused on the value of NEPA as an essential tool for the public to get informed about and participate in decisionmaking. They cited the work of the Council on Environmental Quality's NEPA Task Force as a serious effort to improve NEPA implementation. They characterized the Task Force as representing a partnership of diverse public, environmental, and governmental interests, and stated that its recent Report is a strong endorsement of retaining the current NEPA framework while improving some aspects of its practice. (See *ceq.eh.doe.gov/ntf/report/index.html* and *LLQR*, December 2003, page 1.)

> *"The Department of Energy, through its Lessons Learned Report, emphasizes NEPA successes and carefully analyzes what can be improved."*
>
> *– Robert Dreher, Georgetown Environmental Law and Policy Institute*

Speakers urged the Congressional staff not to demonize NEPA as an obstacle, through costs or delay, to project implementation. Often "NEPA compliance" includes planning, data collection, conceptual design, and public involvement steps that would be necessary in any case, they said. Greg Smith, Transportation Director, Friends of the Earth, presented results of an examination of recent Federal Highway Administration NEPA reviews that had taken longer than 5 years to complete. It was not the NEPA process itself that caused the delay, but the proposed projects' low priority, lack of funding, or overall complexity. In some cases, he added, poor consultant work resulted in inadequacies that needed correcting before completing the NEPA document.

Concern that Legislative Provisions Would Undermine NEPA

It is particularly important, according to Sharon Buccino, Senior Attorney, Natural Resources Defense Council, not to circumvent the NEPA process by the types of provisions that have been included in some recent Congressional bills, including some proposed in TEA-3:

- Specifying mandatory, often unrealistic deadlines, even for highly complex proposals: Under one proposal cooperating agencies would be limited to a 60-day review period for an EIS and 30 days for an EA. In the case of interagency disputes that could not be resolved within 30 days, the issue would have to be reported to the House of Representatives.

(continued on next page)

White House Task Force on Energy Project Streamlining Responds to Requests for Help

(Details, Details... or What a NEPA Nerd Did this Winter)

By: Brian Mills, *Office of NEPA Policy and Compliance*

When President Bush signed Executive Order 13212 (Actions to Expedite Energy-Related Projects) in May 2001, I did not think he was referring to me. The need for a special White House Task Force to get energy project proposals acted on by the various Federal agencies puzzled me: after all, isn't acting on proposals what agencies do?

Last October I was assigned to the Task Force for a 120-day detail. The reality of the need for the Task Force hit home the first week. All Task Force projects are the result of requests for assistance from Federal and state agencies, Indian Tribes, interest groups or individual companies. My first task was the result of a request from a company that held Federal oil and gas leases in Utah. It was having what it called a "NEPA problem" with a Federal agency. Being from the NEPA Office (so the de facto NEPA nerd for the Task Force), I was assigned the "NEPA problem."

In June 2003, the company had filed what it thought was a routine application for increasing the size of a surface pipeline from a four-inch to six-inch diameter. The pipeline is laid on the ground and extends from existing wells along an existing road in a canyon bottom. The increase in pipeline capacity was needed to transport increased production.

The agency had not acted on the application because the NEPA review was not completed. The agency could not decide if the project would be categorically excluded or if an EA was needed. In November 2003 (following a call from the Task Force), the agency decided that the proposed action could indeed be categorically excluded except that it thought that an Endangered Species Act Section 7 consultation was needed. A quick response from the Fish and Wildlife Service, which assured the agency that the action was a "no effect" action on endangered species, resulted in the agency approving the permit and allowing the increased natural gas to be delivered to consumers. (By not getting the permit until late November, the company incurred a 10-fold increase in cost of the routine pipeline replacement because of having to deal with significant snow depths.)

Needless to say, the pipeline problem was not a "NEPA problem." In fact, of all the perceived "NEPA problems" I have worked on with the Task Force, not one was a problem with the NEPA process. The "NEPA problems" have been instead problems of failing to implement existing NEPA regulations or agency NEPA policy.

My time on the Task Force has been entirely enjoyable. Having the opportunity to assist other Federal agencies in solving problems as well as to participate in Task Force initiatives that will indeed streamline how agencies work together has convinced this NEPA nerd that not only is the Task Force needed, it seems to actually be working.

In a letter to the NEPA Office, Robert Middleton, Director, White House Task Force on Energy Project Streamlining, said "Brian was instrumental in the continued success of the Task Force...by volunteering continuously to do whatever it took to make the Task Force accomplish its mission...His professional performance and can-do attitude have reflected positively upon your organization and the U.S. Department of Energy." Brian Mills will return to the NEPA Office this month. See LLQR, *December 2003, page 16, for information on the Task Force.*

NEPA Champions

(continued from previous page)

- Shifting influence away from the public, states, and localities, and authority away from natural resource agencies – even if they are cooperating agencies – to the project proponents: For example, some proposals would allow the Federal Highway Administration alone to determine the purpose and need for government action. In such cases, cooperating agencies could be constrained in meeting their obligations to protect resources through consideration of alternatives or mitigation.
- Dictating the decision outcome irrespective of the NEPA process: Section 115 of the FY04 Energy and Water Appropriations bill funds road construction into the Izembek National Wildlife Refuge in Alaska and mandates construction of Alternative 1 "notwithstanding any other provision of law," thus requiring the Army Corps of Engineers to ignore public comments regarding other less costly and less environmentally damaging alternatives (Pub. Law 108-137, signed December 1, 2003).

Annual Planning Summary Guidance Issued To Facilitate Timely and Efficient NEPA Compliance

To encourage greater involvement of DOE senior managers in their NEPA planning process, the Assistant Secretary for Environment, Safety and Health recently issued *Informal Guidance on the Preparation of Annual NEPA Planning Summaries*. The intent of the December 2003 guidance is to promote the planning summary as a tool for timely NEPA compliance and the efficient allocation of monetary and staff resources. Annual planning summaries are also used to inform the public, for example, through mailings and posting on Web sites, of ongoing and future EAs and EISs to enhance public participation.

In addition to their use by an Office in planning its own NEPA documents, annual planning summaries can be a strategic tool for coordination between a Program Office and its Field Offices. This year, for example, Environmental Management requested that its Field Offices submit their planning summaries through the Program Office for consolidation and coordination. According to NEPA Compliance Officer Steve Frank, "Environmental Management intends to use the planning summaries submitted by its Field Offices to develop corporate NEPA strategies – including scheduling, budgeting, and coordinating crosscutting issues."

In addition to helping Offices plan and informing the public on ongoing and future NEPA reviews, annual planning summaries help the Office of NEPA Policy and Compliance in making staff resources available to assist in the preparation, review, and approval of EISs. Further, identifying all EAs and EISs being prepared or planned throughout the Department helps the NEPA Office identify trends and crosscutting issues.

Guidance, 2004 Summaries Posted on DOE NEPA Web Site

The guidance and the 2004 planning summaries received to date are posted on the DOE NEPA Web site at *www.eh.doe.gov/nepa/summaries.html*. New in the informal guidance are report templates in an automated spreadsheet format (Excel), developed by the NEPA Office in response to NEPA Compliance Officer suggestions requesting a recommended or standard format for the planning summary.

A total of 30 annual planning summaries have been submitted in 2004, five more than in 2003. Based on the information presented in the summaries to date, there are projections for 9 EISs, 4 supplement analyses, and 28 EAs.

A number of notable improvements were observed in the planning summaries submitted this year. Fifteen planning summaries were transmitted by the due date and 29 were signed by the appropriate official. Most of the planning summaries contained the required schedule information for completion of the NEPA reviews identified, although again this year, many of the summaries did not contain cost information.

The NEPA Office is analyzing the summary information and will help Offices to complete the process, on request. In addition, comments on the informal guidance are welcome. Please direct any comments or questions on the guidance to Lee Jessee at lee.jessee@eh.doe.gov or 202-576-7600. LL

Transitions

Retirements in the Office of the General Counsel: Farewell to Bill Dennison and Steve Ferguson

Two leaders in DOE's NEPA compliance activities with almost 60 years of NEPA experience between them – William J. Dennison and Steven E. Ferguson – retired from the Office of the General Counsel on January 2, 2004.

Bill Dennison served in the Office of the General Counsel for 27 years, the last 15 as the Assistant General Counsel for Environment. In that position, he supervised a staff of 12 lawyers providing legal advice to the Office of NEPA Policy and Compliance and DOE programs. Bill helped to develop NEPA compliance strategies for major DOE initiatives and was a key contributor to the DOE NEPA Regulations and major guidance documents.

Steve Ferguson served for 30 years at DOE and its predecessor, the Federal Energy Administration, first with the Office of Fossil Energy and later in the Office of the General Counsel as a Deputy Assistant General Counsel for Environment. He worked on many EISs, from DOE's first one for the Strategic Petroleum Reserve to most recently the National Nuclear Security Administration's Livermore Site-wide EIS. Steve was a frequent speaker at DOE NEPA Community Meetings.

Daniel Ruge now is the Acting Assistant General Counsel for Environment.

Members of DOE's NEPA Community know that the issuance of EISs and development of NEPA guidance takes place in consultation with the Office of the General Counsel. This consultation is never a pro forma process; our legal partners provide invaluable advice and assistance. Bill Dennison and Steve Ferguson will be greatly missed. The Office of NEPA Policy and Compliance offers best wishes to both in their future endeavors.

Three New NEPA Compliance Officers Designated

Legacy Management: Rich Bush

Richard (Rich) Bush is the NEPA Compliance Officer for the new Office of Legacy Management, which is responsible for the long-term care of former nuclear weapons production sites following completion of environmental cleanup. He will also act as the lead for environmental compliance activities for the new organization, which is based in DOE Headquarters and administers its Field sites through its Office of Land and Site Management (formerly the Grand Junction Office). Mr. Bush has recently been a project manager for Environmental Management's Office of Science and Technology at the National Energy Technology Laboratory. Mr. Bush can be reached at rbush@gjo.doe.gov or 970-248-6073. *Tracy Plessinger, former NCO for the Grand Junction Office, continues to serve there as a physical scientist for Legacy Management.*

Ohio Field Office: Mike Reker

Michael (Mike) Reker has been designated as the NEPA Compliance Officer for the Ohio Field Office and the Ohio closure sites under its jurisdiction: Fernald, Mound, the Battelle sites in Columbus and West Jefferson, and the RMI Environmental Services site in Ashtabula. Mr. Reker joined the Energy Research and Development Administration in 1976 as a quality assurance engineer at the Dayton Area Office. There he was responsible for environment, safety, and health; quality assurance; and security programs at the Mound Plant. With the establishment of the Ohio Field Office, Mr. Reker became Team Leader for Environmental Programs, responsible for oversight of environmental activities at the Mound site. Mr. Reker can be reached at michael.reker@ohio.doe.gov or 513-246-0106. *Dan Sullivan continues to serve as NCO for the West Valley Demonstration Project Office in New York.*

Naval Petroleum and Oil Shale Reserves: Mike Taylor

Michael J. (Mike) Taylor has been designated as the NCO for Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming. As Acting Technical Assurance Program Manager, Mr. Taylor is also responsible for the environmental, safety, security, health, counterintelligence, energy conservation, and quality assurance programs. He joined DOE in 2002, after working at Naval Petroleum Reserve No. 3 for 16 years as a contractor. He can be reached at mike.taylor@rmotc.doe.gov or 307-437-9606.

We offer the best wishes of the DOE NEPA Community to former NCOs Robert Grandfield (Ohio Field Office) and Don Ross (Naval Petroleum and Oil Shale Reserves) on their retirement.

New on the NEPA Bookshelf

NAEP's Special Issue of *Environmental Practice*

Edited by Charles H. Eccleston, John H. Perkins, and Debora R. Holmes
Journal of the National Association of Environmental Professionals,
Oxford University Press, December 2003
Phone 800-852-7323 or 919-677-0977
Internet: *www3.oup.co.uk/envpra/*
ISSN 1466-0466; 109 pages; $ 37.00

The December 2003 issue of *Environmental Practice*, the quarterly journal of the National Association of Environmental Professionals (NAEP), is a special issue focused on NEPA in theory and practice, with special attention to NEPA's potential role in the "Age of Terrorism."

The contents are divided into three sections – Points of View; News and Information; and Features, Case Studies and Reviews. Highlights are summarized below.

Points of View

- NEPA's purpose of "stimulating the health and welfare of man" suggests that more attention should be placed on considering the links between the "built environment" – with features such as urban sprawl and vehicle dependency – and chronic diseases such as asthma, obesity, and diabetes. (John Perkins, Evergreen State College)
- An interview with Lynton Caldwell, the "father of NEPA," presents new insights on the politics surrounding NEPA's passage in the late 1960s and recommendations for improved political campaigning on environmental issues. (Editors of *Environmental Practice*)
- More attention to appropriate size and expertise of the interdisciplinary team for NEPA document preparation could improve effectiveness and efficiency of the NEPA process. (J. Peyton Doub and Charles H. Eccleston, NAEP NEPA Tools and Techniques Committee)

News and Information

- "NEPA in the Agencies: A Critique of Current Practices" examines NEPA implementation in 12 Federal agencies, including the Department of Energy, and provides recommendations to the Council on Environmental Quality. (Robert B. Smythe, Potomac Resource Consultants, and Caroline Isber, consultant)
- Cultural resources, which are to be considered in judging the significance of environmental impacts, should include natural landscapes to which indigenous people and communities assign religious and cultural values. Because these are not limited to sites of documented historical events, they pose challenges to NEPA analysts who traditionally consider monument and landmark protection. (Thomas F. King, National Preservation Institute)
- There are advantages to using NEPA as a comprehensive process for evaluating and countering the impacts of potential terrorist actions. (Charles H. Eccleston, Environmental Planning and NEPA Services)
- This December issue provides an extensive list of books published in 2003 that relate to the interests of environmental professionals.

Features, Case Studies and Reviews

- The experience of the Tennessee Valley Authority in integrating NEPA with its Environmental Management System in 2002 offers insights and strategies to other agencies. (Jon M. Loney, et al., Tennessee Valley Authority)
- A study of Ohio River bridges suggests a seven-step process for assessing indirect impacts and cumulative effects. (Ron Deverman, Parsons)
- Following the events of September 11, 2001, many agencies began to limit access to information in NEPA documents; a better practice may be to eliminate information that is not relevant to understanding impacts but that could be useful to those wanting to do harm. (Lucinda Low Swartz, Battelle Memorial Institute)
- NEPA is compared to environmental policy acts of three states – Massachusetts, North Carolina, and Washington – with focus on jurisdiction, documentation of impacts, and public participation; state environmental policy acts do not uniformly provide the ability to enforce mitigation or other commitments made in EISs. (Diane M. L. Mas, Fuss & O'Neill, Inc.)
- Case studies suggest a nine-step process for integrating the NEPA process with planning and consultation activities involving, for example, historic and cultural properties, endangered species, and farmland protection. (Todd Stribley, ICF Consulting; Daniel F. Barone, TetraTech EM Inc., and J. Peyton Doub, TetraTech NUS)

DOE-wide NEPA Contracts Update

The following tasks have been awarded recently under the DOE-wide NEPA contracts. For questions, including information on earlier tasks awarded under DOE-wide NEPA contracts, contact David Gallegos at dgallegos@doeal.gov or 505-845-5849. Information and resources for potential users of these contracts are available on the DOE NEPA Web site at *www.eh.doe.gov/nepa* under DOE-wide NEPA Contracting. LL

Task Description	DOE Contact	Date Awarded	Contract Team
Carbon Sequestration Programmatic EIS	Heino Beckert heino.beckert@netl.doe.gov 304-285-4132	12/19/2003	Potomac-Hudson
Western Greenbrier Co-Production Demonstration Project EIS	Mark McKoy mmckoy@netl.doe.gov 304-285-4426	1/8/2004	Potomac-Hudson
Los Alamos National Laboratory Bio-Safety Level-3 Laboratory Operation EA	Elizabeth Withers ewithers@doeal.gov 505-667-8690	1/23/2004	Battelle

Green Book Revision *(continued from page 1)*

Help Identify Areas for Green Book Improvement

Everybody can help with the next step in updating the Green Book – identifying the gaps. Please re-read the Green Book, noting where discussion of important issues is missing. Think back over past NEPA documents you have prepared or reviewed, and make a list of suggested improvements. E-mail your comments by May 3 to Carl Sykes at *carl.sykes@eh.doe.gov* or call 202-586-9924 if you would like to discuss your comments.

Over the next few months, the NEPA Office will prepare a draft revision of the Green Book to circulate throughout the DOE NEPA community for review and comment. As we have not clearly defined the scope of this revision, the timing of a revised draft is uncertain, but we are aiming for a comment period later this year. The next issue of the LLQR will have an update of this process, including a list of suggestions received. The effort to update the Green Book is underway! LL

"I'm very excited about the review of the Green Book by the NEPA Office. This resource has been very helpful in standardizing DOE's approach to document preparation, particularly the presentation of information. It is now 10 years old, however, and needs to be updated to incorporate our experiences."

– Elizabeth Withers, NEPA Compliance Officer, Los Alamos Site Office

Litigation Updates

DOE NEPA-Related Litigation In Brief

Columbia Riverkeeper and State of Washington, et al., v. Abraham, et al. (E.D. Wash.): These consolidated legal actions seek to prohibit DOE from shipping transuranic and transuranic mixed waste to the Hanford site for treatment and storage pending DOE's preparation of additional NEPA documentation. The court granted in May 2003 the plaintiffs' motions for a preliminary injunction and enjoined any shipment of additional transuranic waste to the Hanford site during this litigation. The court directed the parties to file a joint status report by March 1, 2004, concerning the *Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington* (DOE/EIS-0286F, January 2004) and the state's Hazardous Waste Management Act claims. [Case Nos.: 03-CT-5018 and 03-CT-5044]

Natural Resources Defense Council, et al., v. Abraham, et al. (9th Cir.): This is an appeal of the Idaho District Court's ruling that the provisions of DOE Order 435.1 governing DOE's management of radioactive waste are invalid insofar as they enable the Department to determine that some waste associated with reprocessing spent fuel is not high-level waste. (See *LLQR*, September 2003, page 23.) The Government's brief was filed on January 29, 2004; plaintiffs' brief is due March 18, 2004. The Idaho District Court's decision and related documents are available at *www.id.uscourts.gov* under Case Files, District, Case Files – Non Restricted, case number 01-413. [Case No.: 03-35711]

State of Nevada, et al, v. U.S. Department of Energy, et al. (D.C. Cir.): The court heard oral arguments on this consolidated case (combining Nevada's legal challenges to siting a geologic repository at Yucca Mountain) on January 14, 2004, and on the same day, also heard oral arguments on petitions challenging the regulations issued by Environmental Protection Agency and Nuclear Regulatory Commission concerning the Yucca Mountain site. The court may issue its rulings in these cases by late spring. [Case Nos.: 01-1516, 02-1036, 02-1077, 02-1179, 02-1196]

Tri-Valley Communities Against a Radioactive Environment, et al., v. U.S. Department of Energy, et al. (N.D. Cal.): This action had sought to prohibit DOE from implementing a proposed plan to ship surplus plutonium items from the Rocky Flats Environmental Technology Site to the Lawrence Livermore National Laboratory (LLNL). The case arose, in part, from DOE's intent to use a particular shipping container that was not certified for such shipments. DOE subsequently decided to ship the parts in certified containers to a site other than LLNL, rendering the case moot. In January 2004, the court granted DOE's unopposed motion to dismiss the action. (See *LLQR*, June 2002, page 13, and March 2002, page 19.)

Tri-Valley Communities Against a Radioactive Environment, et al., v. U.S. Department of Energy, et al. (N.D. Cal.): This a NEPA and Freedom of Information Act action brought by two nonprofit organizations and several private citizens alleging deficiencies in the EAs for a proposed biosafety-level 3 (BSL-3) facility at Los Alamos National Laboratory (LANL) and another at Lawrence Livermore National Laboratory (LLNL), and also alleging that DOE is required to prepare an EIS on each BSL-3 facility and a programmatic EIS or programmatic EA on the Chemical and Biological National Security Program. (See *LLQR*, September 2003, page 23.) The complaint seeks to halt construction and operation of the facilities pending completion of these NEPA reviews. The plaintiffs further claim that DOE has failed under the Freedom of Information Act to produce documents relating to the BSL-3 facilities. Based on DOE's decision to withdraw the finding of no significant impact for the LANL facility and prepare a new EA, the parties agree that claims related to the adequacy of the LANL EA are now moot. (See related article, page 2.) The case will proceed, focusing on the adequacy of the LLNL EA and the need for a programmatic EIS, with briefing to continue through April. [Case No.: CV-03-3926-SBA]

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Litigation Updates

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Other Agency NEPA Cases

U.S. Department of Transportation, et al., v. Public Citizen, et al. (Supreme Court): The Supreme Court announced on December 15, 2003, that it will review a decision by the Ninth Circuit Court of Appeals in a lawsuit over a Department of Transportation (DOT) NEPA review for three safety and inspection rules covering Mexican trucking. (See *LLQR*, June 2003, page 22.) The question before the Court is whether a presidential "foreign-affairs action" (i.e., allowing certain foreign trucks to enter the United States pursuant to the North American Free Trade Agreement), which is otherwise exempt from environmental review requirements under NEPA, can become subject to those requirements as a "reasonably foreseeable" consequence of an agency action reviewed under the Council on Environmental Quality NEPA regulations and guidance. The agency action at issue is DOT's rulemakings regarding safety and inspection of trucks from Mexico, for which DOT prepared two EAs and a categorical exclusion. Oral arguments may be scheduled for April 2004, in which case a decision would be expected before the Court's term ends in June 2004. [Case No.: 03-358]

International Snowmobile Manufacturers Association, et al., v. Norton, et al. (D. Wyoming): The court issued a preliminary injunction on February 10, 2004, preventing the National Park Service (NPS) from implementing a 2001 rule banning use of snowmobiles in Yellowstone and Grand Teton National Parks and the parkway that connects the two parks. This decision stems from a challenge to an NPS EIS and subsequent rulemaking. The court concluded that there is a substantial likelihood that plaintiffs' NEPA claims are valid, specifically that (1) the EIS failed to take a hard look at the preferred alternative (i.e., a complete ban on recreational snowmobile use); (2) the ban on snowmobile use was a "prejudged political conclusion;" (3) "NPS failed to involve or consider input from cooperating agencies" when it changed its preferred alternative from that published in the draft EIS, which allowed continued use of snowmobiles subject to new standards to reduce emissions and noise; and (4) "NPS denied the public meaningful participation" in the NEPA process. The court cited two concerns. First, NPS had agreed to solicit public comments on the final EIS due to "potential public controversy" surrounding its choice of preferred alternative. NPS received more than 10,000 comments during the designated comment period, which ran from when it made the final EIS available in hard copy and on the Internet on October 10, 2000, through October 31, 2000. (See ROD at 65 FR 80920; December 22, 2000.) The court, however, pointed out that the notice of availability for the final EIS was published in the Federal Register on October 31, 2000 – the same day as the close of the comment period. Second, the NPS finalized the rule implementing its preferred alternative from the EIS on January 18, 2001 – one day after the close of the public comment period on the proposed rule. [Case No.: 00-CV-229-B]

Natural Resources Defense Council, et al., v. Evans, et al. (N.D. Cal.): The court issued a permanent injunction in August 2003 restricting the Navy's use of certain sonar technology. The restrictions, which were negotiated between the Navy and plaintiffs, will limit the geographic area and times when the sonar can be used in order to protect marine mammals. The agreement resolves litigation over alleged violations by the Navy of the Marine Mammal Protection Act, the Endangered Species Act, the Administrative Procedure Act, and NEPA. In regard to NEPA claims, the court found that the Navy's EIS failed to consider all reasonable alternatives (particularly alternatives that could have mitigated potential impacts) and relevant scientific information. The court had issued a preliminary injunction against the Navy in November 2002 (*LLQR*, December 2002, page 23).

Norton, et al., v. Southern Utah Wilderness Alliance, et al. (Supreme Court): The Supreme Court scheduled oral arguments for March 29, 2004, in this case involving the scope of actions subject to review under the Administrative Procedure Act. A decision is expected before the Court's term ends in June 2004. One issue before the Court is whether certain activities by the Bureau of Land Management (BLM) require supplemental environmental review under NEPA. The dispute centers on BLM's management of wilderness study areas (public lands that might be designated by Congress as wilderness areas) and adjacent lands in Utah. The Southern Utah Wilderness Alliance, et al., claim that BLM has failed to protect these lands from damage caused by the use of off-road vehicles and that BLM should supplement existing NEPA documentation to address the increased use of off-road vehicles. [Case No.: 03-101]

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Litigation Updates

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San Luis Obispo Mothers for Peace, et al., v. U.S. Nuclear Regulatory Commission, et al. (9th Cir.): This action challenges three decisions by the Nuclear Regulatory Commission and is based, in part, on claims that the Commission violated NEPA by failing to consider the potential environmental impacts of terrorist acts at a spent nuclear fuel storage facility proposed by Pacific Gas and Electric Company for its Diablo Canyon Power Plant in southern California. Plaintiffs challenged the decisions during the NRC's licensing process and now are petitioning the court for review of those final decisions. The NRC's decisions rely partly on its earlier determination that NEPA does not require the consideration of impacts of terrorism in rendering licensing decisions (*LLQR*, March 2003, page 10). The three NRC decisions in question (CLI-02-23, November 21, 2002; LBP-02-23, December 2, 2002; CLI-03-01, January 23, 2003) are available on the NRC's Web site at *www.nrc.gov*. [Case No.: 03-74628]

e-NEPA: A New LOOK

The DOE NEPA Web site has recently undergone a facelift to make it consistent with other Office of Environment, Safety and Health (EH) web sites. The contents of the NEPA Web site are essentially the same. However, the new unified look includes features that provide additional EH-related information: a border with information across the top of the page, both left- and right-hand navigation tools, and latest EH news on the front page.

Also, effective immediately, a new Internet address (URL) should be used to navigate to the DOE NEPA web site. Please bookmark the following URL: *www.eh.doe.gov/nepa*. Although the old URL will continue to work, please use this new URL when making references to the DOE NEPA Web site in DOE NEPA documents and notices.

In addition, we have added a new page to the DOE NEPA Web site that includes the annual NEPA planning summaries for Program and Field Offices (related article, page 12). This page includes format templates and the annual NEPA planning summaries guidance. The URL for this page is: *www.eh.doe.gov/nepa/summaries.html*.

Federal Highway Web Training Includes NEPA

Providing online information and guidance on environmental regulations can be an efficient approach to meeting some agency training needs. With funding and technical guidance from the Federal Highway Administration (FHWA), the Maryland State Highway Administration recently developed online training on how to avoid, minimize, and mitigate adverse impacts to certain sensitive resources from highway projects. The training focuses on a required impact evaluation that can be included in an EIS or EA.

Under Section 4(f) of the Department of Transportation (DOT) Act of 1966, FHWA and other DOT agencies cannot approve "use" of land for highway projects if it contains "significant" publicly-owned parks, recreation areas, wildlife or waterfowl refuges, or "significant" cultural resources unless there are no "feasible and prudent" alternatives that avoid the use of such land. In that case, planning must include measures to minimize or mitigate harm to the property.

DOE NEPA practitioners may find this training Web site useful as a simple, user-friendly example that lets one choose how to navigate through related topics, instead of starting at the beginning and reading through to the end. Interactive graphics illustrate the resource examples of alternative roadway routes for sites that contain sensitive resources. The Web site also includes checklists, flowcharts, a glossary, and background information, such as the legislative history. A NEPA section provides an overview of the law and regulations, relevant Executive Orders, and Section 309 of the Clean Air Act.

This training is available at *www.section4f.com*. For more information contact Benita Smith at benita.e.smith@fhwa.dot.gov or 202-366-2065.

Training Opportunities

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

- **Reviewing NEPA Documents**
  Portland, OR: March 9-11
  Logan, UT: April 12-14
  Fee: $795

  Socioeconomic Impact Analysis
  Logan, UT: March 11-12
  Fee: $595

  NEPA Overview and Section 106 of National Historic Preservation Act
  Logan, UT: March 30-31
  Fee: $595

  NEPA Overview and Teambuilding for NEPA Specialists
  Boise, ID: April 6-8
  Fee: $795

  Cumulative Impact Analysis and Documentation
  Logan, UT: April 15-16
  Fee: $595

  How to Manage the NEPA Process and Write Effective NEPA Documents
  San Franciso, CA: May 18-21
  Fee: $995

  The Shipley Group
  888-270-2157 or 801-298-7800
  shipley@shipleygroup.com
  www.shipleygroup.com

- **NEPA Certificate Program**
  Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later may be applied toward the certificate. Also requires completion of course exams and a final project.

  Fee: $4,995 (includes tuition, course fees, and all materials)

  Natural Resources and
  Environmental Policy Program
  Utah State University
  435-797-0922
  judy.kurtzman@usu.edu
  www.cnr.usu.edu/policy/nepa.html

- **Accounting for Cumulative Effects in the NEPA Process**
  Durham, NC: March 31-April 2
  Fee: $990/$1090 (by/after March 1)

  Preparing and Documenting Environmental Impact Analysis
  Durham, NC: June 21-24
  Fee: $990/$1090 (by/after May 24)

  The Law of NEPA
  Durham, NC: July 21-23
  Fee: $695/$775 (by/after June 28)

  Nicholas School of the Environment
  and Earth Sciences
  Duke University
  919-613-8082
  sea3@duke.edu
  www.env.duke.edu/del/shortcourses/courses/upcoming.html

  NEPA Certificate Program
  Requires successful completion of one core and three elective Duke University NEPA short courses. A written paper also is required. Previously completed courses may be applied toward the certificate.

  Fee: Included in registration for constituent courses.

  del@env.duke.edu
  www.env.duke.edu/del/certificates/certificates.html

- **NEPA Workshop**
  This course is designed for individuals with all levels of NEPA experience. The focus is on case studies.

  Cupertino, CA: March 15
  Fee: $171/$226(agency staff/others)

  University of California Santa Cruz Extension
  831-427-6600; 800-660-8639 in CA
  www.ucsc-extension.edu

NAEP Conference to Feature 15th Annual NEPA Symposium

"Building Bridges in a Changing World" is the theme of this year's annual conference of the National Association of Environmental Professionals (NAEP). The conference, which always attracts a large contingent of NEPA practitioners and features a NEPA Symposium, will be held April 25-28 in Portland, Oregon.

"This year's theme focuses on the challenges faced by environmental professionals in balancing the needs of public health and safety, local and regional economics, community development, resource extraction, recreation, and cultural practices with natural resources preservation," state conference co-chairs John Irving (Idaho National Environmental and Engineering Laboratory) and Carol Snead (HDR Engineering Inc, Portland) in their registration invitation. "In this conference we will explore previous successes and the methods used to build bridges among those competing interests and to create a healthy and sustainable environment for everyone."

NEPA topics planned for the conference include process innovations, lessons learned, NEPA and Federal agency lands, transportation in national parks, and legal issues. Special presentations will be made on recent Federal legislation, which mandates the use of "good science" in Federal decisionmaking.

Additional information and a registration form are available at *www.naep.org/CONFERENCE04/Advanced%20Program.pdf* or call 863-679-3852. A discount is offered for registration by March 26, 2004.

Courses at NAEP Conference

The following courses are offered on April 25 in conjunction with the annual NAEP conference:

Morning	• **Integrating Section 4(f) Compliance in Transportation Decision Making**
	• **Measuring Sustainability Using Indicators**
	• **Introduction to Section 106 Process: Historic Property**
Afternoon	• **Methods for Evaluating Secondary Land Use**
	• **Impacts of Transportation Projects**
	• **Integrating NEPA into the ISO 1400 Environmental Management System**
	• **Introduction to Section 404 Process: Wetlands**
Full Day	• **Writing the Perfect EA/FONSI or EIS**

Half-day courses: $150/$250 for NAEP members/nonmembers for one course, $100 for a second course
Full day course: $250/$350 for NAEP members/nonmembers

EAs and EISs Completed October 1 to December 31, 2003

EAs

Los Alamos Site Office
DOE/EA-1447 (11/3/03)
Proposed Consolidation of Operations within the Dynamic Experimentation Division of LANL, New Mexico
Cost: $141,000
Time: 17 months

Western Area Power Administration
DOE/EA-1478 (10/27/03)
Phase II Modifications and Construction of Transmission Lines for the Hoover Dam Bypass Project, Nevada
[Note:The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.]
Time: 7 months

EIS

National Nuclear Security Administration/ Albuquerque Operations Office
DOE/EIS-0350 (68 FR 65705, 11/21/03)
(EPA Rating: LO)
Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, New Mexico
Cost: $1,345,000
Time: 16 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

Adequacy of the EIS
Category 1 – Adequate
Category 2 – Insufficient Information
Category 3 – Inadequate

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the cost of one EA for which cost data were applicable was $141,000.
- Cumulatively, for the 12 months that ended December 31, 2003, the median cost for the preparation of 18 EAs for which cost data were applicable was $45,000; the average was $76,000.
- For this quarter, the median completion time of two EAs was 12 months; the average was 12 months.
- Cumulatively, for the 12 months that ended December 31, 2003, the median completion time for 24 EAs was 11 months; the average was 14 months.

EIS Costs and Completion Times

- The cost for one EIS completed this quarter was $1,345,000. The cost for one EIS (DOE/EIS-0323) completed last quarter was not reported, but was $1,342,000.
- Cumulatively, for the 12 months that ended December 31, 2003, the median cost for the preparation of seven EISs for which cost data were available and applicable was $1,000,000; the average was $899,000.
- For this quarter, the completion time of one EIS was 16 months.For this quarter, the completion time of one EIS was 16 months.
- Cumulatively, for the 12 months that ended December 31, 2003, the median completion time for eight EISs was 22 months; the average was 25 months.

Recent EIS-Related Milestones (December 1, 2003 to February 29, 2004)

Notice of Intent

Bonneville Power Adminstration
DOE/EIS-0367
Transmission Business Policy, Oregon
December 2003 (68 FR 71101, 12/22/03)

Draft EIS

National Nuclear Security Administration
DOE/EIS-0348
Site-wide for Lawrence Livermore National Laboratory, California
February 2004 (69 FR 9315, 2/27/04)

Final EISs

Environmental Management
DOE/EIS-0286
Hanford Site Solid (Radioactive and Hazardous) Waste Program, Washington
February 2004 (69 FR 7215, 2/13/04)

DOE/EIS-0337
West Valley Demonstration Project, Final Waste Management EIS, New York
January 2004 (69 FR 2583, 1/16/04)

Records of Decision

National Nuclear Security Administration
DOE/EIS-0350
Chemistry and Metallurgy Research Building Replacement Project, Los Alamos National Laboratory, Los Alamos, New Mexico
February 2004 (69 FR 6967, 2/12/04)

Western Area Power Administration
DOE/EIS-0323
Sacramento Area Voltage Support Project, California
January 2004 (69 FR 1721, 1/12/04)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program Environmental Impact Statement
(DOE/EIS-0246)

DOE/EIS-0246-SA-36
Logan Valley Wildlife Mitigation Project, Grant County, Oregon
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0246-SA-37
Blue Creek Winter Range–Spokane Reservation, Spokane Indian Reservation, Stevens County, Washington
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0246-SA-38
Proposed Weaver Slough Conservation Easement, Flathead River System, Flathead County, Montana
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0246-SA-39
Albeni Falls Dam Wildlife Mitigation Kalispel Tribe–Pend Oreille County Acquisitions, Pend Oreille County, Washington
(Decision: No further NEPA review required)
February 2004

Watershed Management Program
(DOE/EIS-0265)

DOE/EIS-0265-SA-124
Implement Fisheries Enhancement Opportunities on the Coeur d' Alene Reservation, Benewah Creek Watershed, Benewah County, Idaho
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0265-SA-125
Simcoe Creek Streamflow Enhancement and Passage, Yakima County, Washington
(Decision: No further NEPA review required)
October 2003*

**These earlier documents were not previously reported in LLQR*

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Recent EIS-Related Milestones (December 1, 2003 to February 29, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-126
Improvement of Anadromous Fish Habitat and Passage in Omak Creek, Colville Reservation and Omak Creek Watershed, Washington
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0265-SA-127
Yakima Tributary Access and Habitat–Ahtanum Creek, Yakima County, Washington
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0265-SA-128
Weaver/McWennegar Slough Riparian Habitat, Flathead County, Montana
(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0265-SA-129
Oregon Fish Screening Project, Screen Replacements, Grant, Umatilla, and Walla Walla Counties, Oregon
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0265-SA-130
Yakima Tributary Access and Habitat Program–Dry Creek Fish, Kittitas County, Washington
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0265-SA-131
Habitat Projects Lake Roosevelt Tributaries–Bridge Creek Passage/Habitat Improvements, Ferry County, Washington
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0265-SA-132
Idaho Model Watershed Habitat Projects–Salmon Valley Golf Course, Lemhi County, Idaho
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0265-SA-133
Idaho Model Watershed Habitat Projects–Basin Creek AFO, Lemhi County, Idaho
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0265-SA-134
Challis Creek 8/8A (Highline Canal) Construction of a Fish Screen, Remove Barrier and Install a Steeppass Fish Ladder, Challis Creek, Idaho
(Decision: No further NEPA review required)
February 2004

Vegetation Management Program
(DOE/EIS-0285)

DOE/EIS-0285- SA-179
Vegetation Management for Carlton Tillamook 230 kV Transmission Line from Carlton Substation to Tillamook Substation, BPA Eugene Region, Yamhill and Tillamook Counties, Washington
(Decision: No further NEPA review required)
September 2003*

DOE/EIS-0285-SA-180
Vegetation Management for the Hills Creek Lookout Point No.1 115 kV Transmission Line, BPA Eugene Region, Lane County, Oregon
(Decision: No further NEPA review required)
September 2003*

DOE/EIS-0285-SA-181
Vegetation Management along the Noxon-Hot Springs Transmission Line ROW, Sanders County, Montana
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0285-SA-182
Vegetation Management for the Snohomish-Beverly Park 115 kV Transmission Line from the Snohomish Substation to Structure 5/9, Snohomish County, Washington
(Decision: No further NEPA review required)
September 2003*

DOE/EIS-0285-SA-183
Vegetation Management for the Arlington-Jim Creek 115 kV Transmission Line from the Arlington Substation to Structure 10/5, Snohomish County, Washington
(Decision: No further NEPA review required)
September 2003*

**These earlier documents were not previously reported in LLQR*

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Recent EIS-Related Milestones (December 1, 2003 to February 29, 2004)

(Supplement Analyses, continued from previous page)

DOE/EIS-0285-SA-184
Vegetation Management along the Olympia-Grand Coulee No.1 287 kV and Olympia South Tacoma 230 kV Transmission Line Corridor, Thurston County, Washington
(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285-SA-185
Vegetation Management for the Naselle-Tarlet No.1 and No.2 115 kV Transmission Lines, BPA Olympia Region, Pacific County, Washington
(Decision: No further NEPA review required)
October 2003*

DOE/EIS-0285-SA-186
Vegetation Management along the Midway-Moxee No.1 Transmission Line ROW, Yakima County, Washington
(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285-SA-187
Vegetation Management along the Fidalgo-Lopez No.2 and No.3 Transmission Lines, San Juan County, Washington
(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285-SA-188
Vegetation Management along the Allston-Astoria No.1 115 kV Transmission Line Corridor, Pacific and Wahkiakum Counties, Washington
(Decision: No further NEPA review required)
November 2003*

DOE/EIS-0285- SA-189
Vegetation Management along the Bell-Boundary No.3 83/4 to 83/6 and Colville-Boundary No.1 17/4 to 17/6 Transmission Line ROW, Stevens County, Washington
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0285-SA-190
Vegetation Management on the North Bonneville-Troutdale and North Bonneville-Ross 230 kV Transmission Line Corridors, Skamania and Clark Counties, Washington
(Decision: No further NEPA review required)
December 2003

DOE/EIS-0285-SA-191
Vegetation Management for Olympic-Shelton No.1 and 2 115 kV Transmission Lines and Olympia-Shelton No.3 and No.4 and Olympia-Kitsap No. 3 230 kV Transmission Lines, Thurston and Mason Counties, Washington
(Decision: No further NEPA review required)
January 2004

DOE/EIS-0285-SA-192
Vegetation Management for the Ashe-Howard and Scooteney Tap Line Corridor, Benton County, Washington
(Decision: No further NEPA review required)
January 2004

Grand Coulee-Bell 500 kV Transmission Line Project
(DOE/EIS-0344)

DOE/EIS-0344-SA-2
Design Change for Crossing Avista's Westside Tap 230 kV Line and Relocating Taft-Bell Tower 98/5 Ahead-On-Line to Create Clearance for the Grand Coulee-Bell 500 kV Capacitor Yard, Spokane County, Washington
(Decision: No further NEPA review required)
February 2004 LL

**These earlier documents were not previously reported in LLQR*

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between October 1 and December 31, 2003.

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

Scoping

What Didn't Work

- *Lack of regard for NEPA process.* The project staff did not take the NEPA process very seriously and thought that since it was a "box to be checked" they could be lax with the entire process from soup to nuts. Staff was concerned only with the main course and did not devote adequate attention to details. By the time the process was over, the staff saw the attention that the public paid to their proposal, and realized the importance of the NEPA process. It was an expensive lesson for them. Converts to NEPA are made one by one.

Data Collection/Analysis

What Worked

- *Using past documents as a template.* The project manager was able to model the EA after one prepared earlier on a similiar subject, thus minimizing the time required for formatting and preparation of project description.

What Didn't Work

- *Failure to obtain information.* The need to obtain detailed information concerning the proposed action, such as the identification of utilities and structures to be vacated, was not made a priority.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Schedule tracking system*. The NEPA Compliance Officer and staff requested revised schedules from the project team for all outstanding EAs and tracked schedule compliance on a weekly basis.

Factors that Inhibited Timely Completion of Documents

- *Inability to obtain accurate information.* The EA was initiated too early in the project's development before enough information was known to adequately assess the impacts. There was a delay developing project information, thereby precluding timely completion of the EA.
- *Unresponsiveness.* Requests for information were not completed in a timely manner by all groups involved in document preparation, preventing the completion of the draft EA on schedule.
- *Multiple responsibilities.* Several EAs were being completed at the same time and the project staff was unable to accommodate completion of each one in a timely manner.
- *Extended comment reviews.* The regulators were granted an extended comment review period, which made timely completion difficult.

Teamwork

Factors that Inhibited Effective Teamwork

- *Negligence.* The relationhip between DOE staff and the contractor was strained because the contractor lacked the attention to detail necessary to adequately support the EA preparation.
- *Change in personnel.* Leadership changes made it difficult to work effectively as a cohesive team.

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What Worked and Didn't Work

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Process

Unsuccessful Aspects of the Public Participation Process

- *Misjudging public interest.* There was a difference of opinion between the people that lived close to the facility and those that lived farther away. For this EA, because of its content, the public that lived farther away from the facility wanted an EIS and were not happy with an EA/FONSI. A public meeting was not held for the draft EA since the impacts didn't seem to warrant a meeting. We underestimated the interest in this project.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Defining issues.* The EA process forced the project staff to focus on some problems that were not initially identified. Also, the process helped to center much needed attention on vacated structures and security needs that were not previously addressed.
- *Patience.* A large, renewable supply of patience is always something that is important with NEPA compliance.

Enhancement / Protection of the Environment

- The environment was protected and enhanced since NEPA document preparers noted the need for more attention to final site selection, post-construction site landscaping, and parking area water runoff in the final designs. Given the remote location of the site, without the EA, the tendency of the project team might otherwise have been more lax about such details.
- The NEPA process properly identified environmental concerns, such as cultural resources and hazardous waste sites that could be affected by the proposed action. These concerns were mapped and identified in the scoping process, thereby avoiding all potential negative impacts.

Effectiveness of the NEPA Process

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

For the past quarter, in which 2 questionnaire responses were received for EAs and 1 response was received for an EIS, 3 out of 3 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the NEPA process, "forced the project folks to get their act together – they started by viewing the process as a irritation and a box to check, but by the time that it was finished they had begun to recognize the real benefit and utility of the process."
- A respondent who rated the process as "4" stated that the NEPA process, "went smoothly, was initiated well in advance of construction, and negative environmental impacts were avoided."
- A respondent who rated the process as "3" stated that the NEPA process, "facilitated informed and sound decisionmaking."