

LESSONS LEARNED

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Fourth Quarter FY 2008

NEPA Helps Us Make Good Decisions, Accomplish Missions, Secretary Bodman Says

Secretary of Energy Samuel W. Bodman, speaking at the plenary session of the DOE NEPA Community Meeting on September 25, 2008, noted the important contributions of the NEPA process to achieving DOE missions and expressed his appreciation to those who “make NEPA work for DOE.”

“Of course, we must comply with the law,” he said, “both because it is the right thing to do and because we cannot move forward when litigation stops us in our tracks. But even more significantly, NEPA helps us make good decisions.” Many DOE decisions are highly controversial and affect our country’s highest priorities, including our national security and prosperity, he said. By taking all relevant information into account through the NEPA process, “our decisions will be sound and we will be better able to explain them,” the Secretary observed.

“The theme of this meeting – **Making NEPA Work for DOE** – is appropriate. It is all of you who make NEPA work for DOE. I applaud you and thank you,” the Secretary told about 150 DOE NEPA Compliance Officers (NCOs) and Document Managers, environmental attorneys, and NEPA support contractors at the Washington, DC, meeting hosted by the Office of NEPA Policy and Compliance.

In his remarks, the Secretary acknowledged the important environmental impact statements prepared in support of DOE’s high-profile initiatives, such as establishing a geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain; transforming the nation’s nuclear weapons complex; and advancing the Global Nuclear Energy Partnership. He also noted the important, but less publicized, NEPA reviews that involve



NEPA advances our missions and serves the public interest, said Secretary Bodman.

DOE’s power marketing projects, cross-border transmission lines, clean coal projects, energy efficiency and renewable energy projects, and diverse scientific initiatives.


The NCOs have a special responsibility to explain to their management the unique benefits of “owning their own NEPA process” and integrating it early into project planning, the Secretary said.

This responsibility is even more important when transition to a new

administration brings new managers who may not have had experience in bringing comprehensive environmental review into the decisionmaking process, he said in response to a question.

Meeting Focuses on Challenges, Changes

Distinguished speakers from DOE, the Council on Environmental Quality, and other Federal agencies all touched on the meeting’s theme: that to continue to make NEPA work for DOE, the Department’s NEPA Community must use effective approaches, better manage the NEPA process and quality of NEPA documents, and meet the challenges and changes that will face the Department.

In addition to the plenary session, the NCOs met with the NEPA Office and the Office of the Assistant General Counsel for Environment on September 24 to discuss their leadership responsibilities, and NEPA training sessions were held on September 24 and 26. (See additional articles inside, indicated by the meeting logo.) 



Inside **LESSONS LEARNED**

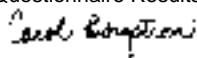
Welcome to the 57th quarterly report on lessons learned in the NEPA process. We are pleased to feature the September DOE NEPA Community Meeting as well as recent case studies.

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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 February 2, 2009. Contact Yarden Mansoor at yarden.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 2, 2009

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2009 (October 1 through December 31, 2008) should be submitted by February 2, 2009, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at www.gc.energy.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

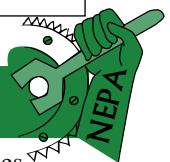
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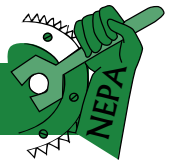
Focus on 2008 NEPA Community Meeting



Remember that we are all trustees of the environment for succeeding generations, said Carol Borgstrom.

As participants entered the DOE NEPA Community Meeting, they saw scenes from the Discovery Channel’s documentary “The Planet Earth” interspersed with a video showing an array of activities that DOE is undertaking. “An interesting juxtaposition, isn’t it?” asked Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in her welcome. “My hope is that through the NEPA process we can have it both ways – we can have our beautiful planet earth, and we can accomplish our important mission,” she said.

“My aim for this meeting is to illustrate the fundamental principle of NEPA – to encourage productive and enjoyable harmony between man and his environment,” said Ms. Borgstrom. She emphasized that the meeting participants are the ones who can make NEPA work for DOE. She said she hoped the meeting logo – the strong arm of NEPA turning the DOE gear – would inspire them to work together to ensure that DOE’s NEPA process is, in fact, a well-oiled machine that truly works for DOE. “We need to assure our senior management and the public that the DOE NEPA process is, in fact, a useful and a powerful tool,” she said. 



General Counsel Emphasizes Value of NEPA, Encourages Programs to “Take Ownership” of Process

“Helping managers to recognize their responsibility for NEPA – that is what ensures that NEPA works for DOE,” said General Counsel David R. Hill in his opening remarks at the plenary session of the NEPA Community Meeting. Mr. Hill challenged DOE’s NEPA practitioners, who coordinate compliance strategies for their Program or Field Offices or who oversee NEPA document preparation, to do a better job of understanding and explaining how NEPA is of value to the Department. Too often, he said, “managers describe actions the Department is planning, and then they acknowledge that they need to ‘do NEPA’ – like one needs to ‘do laundry.’”

Mr. Hill challenged participants to respond by helping senior managers view NEPA not as an obstacle to be overcome or simply a legal requirement, but something that contributes to accomplishing DOE’s critical missions.

“The objective of NEPA is to ensure that we go through a careful decisionmaking process and that we consider relevant information in making informed decisions,” he said. “How can the NEPA process make their Programs more effective, make their jobs easier, or even save money?” he asked. “How can NEPA analysis help them make better decisions?”

The answer, Mr. Hill noted, is for the work of the DOE NEPA Community to become more integrated with decisionmaking, especially early in the process. “It is especially important for Program Offices to own their NEPA analysis” he said, by cultivating strong NEPA managers, and taking responsibility for NEPA compliance strategies, document content, quality control, and schedule, even though the Office of the General Counsel will continue to support the preparation and approval of environmental impact statements (EISs).

“One thing that you can do that would be of great assistance is to inject reality into schedules for key NEPA reviews,” he advised. “If we become better at setting realistic timelines and deadlines instead of overly optimistic or utterly unrealistic ones,” he continued, “we will avoid looking grossly out of compliance with deadlines that were unrealistic the moment that they were set.”

Mr. Hill thanked the meeting participants for their efforts in support of DOE’s NEPA compliance program. LL

Dr. Jane Summerson Recognized for Exemplary Leadership

At the September 2008 NEPA Community Meeting, General Counsel David R. Hill recognized the work of Dr. Jane Summerson, NCO for the Office of Civilian Radioactive Waste Management and NEPA Document Manager for the Yucca Mountain Repository Supplemental EIS (SEIS), the Nevada Rail Corridor SEIS, and the Rail Alignment EIS.

Dr. Summerson received a DOE NEPA Special Achievement Award – with the following inscription:

In recognition of your exemplary leadership of the Yucca Mountain Environmental Impact Statement (EIS) preparation team. Your technical expertise, superior management skills, and profound commitment to NEPA excellence resulted in the timely issuance of high quality EISs, enabling the Department of Energy to meet a major milestone in support of its strategic goal to develop a repository for the disposal of spent nuclear fuel and high-level radioactive waste.



David Hill acknowledged Dr. Jane Summerson’s work as an example of how NEPA should be done and how NEPA should be integrated into a project.

See page 4 for an article on Dr. Summerson’s presentation on the Yucca success story at the recent NEPA Community Meeting. LL



Early Detailed Planning and Integrated Teamwork: Keys to Yucca NEPA Success

“How did we succeed?” asked Dr. Jane Summerson, NEPA Document Manager and NEPA Compliance Officer (NCO) for the Office of Civilian Radioactive Waste Management (RW), as she presented lessons learned from the preparation of the Yucca Mountain Repository Supplemental EIS (Repository SEIS), the Nevada Rail Corridor SEIS, and the Rail Alignment EIS. Integrated teamwork and early detailed planning contributed greatly to our successes, noted Dr. Summerson. She highlighted four elements – senior management buy-in, a management council, traditional project management tools, and formalized EIS-specific procedures – that enabled the timely completion of three high quality EISs.

“This was no easy task,” she said. “Among the major challenges we faced was the need to ensure that the documents were consistent with not only each other, but also with other DOE NEPA actions and DOE’s application to the Nuclear Regulatory Commission [NRC] for authorization to construct the repository, that is, the license application.” Dr. Summerson acknowledged the critical roles played by her EIS support contractors: Jason Associates Corporation, led by Joseph Rivers; Potomac-Hudson Engineering, Inc., led by Michael West; and Lechel Inc., led by David Lechel.

Obtain Senior Management Buy-In

By clearly articulating the need for the EISs to support DOE’s license application to the NRC, Dr. Summerson said she obtained DOE senior management buy-in. Consequently, she explained, the EISs were formally “projectized” within the Program, and the NEPA Document Manager reported directly to the RW Director. Senior management buy-in enabled Department-wide resources, including the EIS preparers and reviewers, to be dedicated to the EIS process, with a corresponding commitment, within both DOE and contractor organizations, that milestones for completing high quality EISs were non-negotiable at all levels, she said.

Use Management Council “Early and Often”

Dr. Summerson outlined DOE’s use of a Management Council, an approach previously used during the preparation of the 2002 Yucca Repository EIS, to ensure that the Yucca EISs met the needs of all owners, on schedule. Members of the Council included not only representatives from DOE offices (RW, General



Counsel, Environmental Management, Naval Reactors) and the EIS preparation team, she said, but also, for the rail EISs, staff from the Federal cooperating agencies (Bureau of Land Management and Surface Transportation Board). She noted that participation by Federal cooperating agencies brought special expertise to the table and ensured that the rail EISs met their agencies’ requirements so they could adopt DOE’s Yucca NEPA documents.

The cooperation among organizations, agencies, and technical leads in completing these EISs serves as a business case management example of how to do things right in the government.

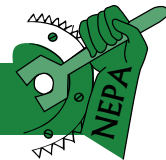
*–Ward Sproat, Director
Office of Civilian Radioactive Waste Management*

In addition, she explained, the Management Council agreed up-front on the analytical approaches, strategy, scope, and appropriate level of detail to be used. For example, she said, the EIS contractors developed technical papers to outline the analytical approach for each impact area and prepared issue papers, which detailed the strategy for resolving policy issues, areas of controversy, and integration issues with other DOE NEPA documents. Subsequently, Dr. Summerson said, “the Council reviewed, agreed upon, and documented in writing each of these decisions.” This approach prevented re-visiting these items and the potential for delays, unless new information or circumstances required it, she said.

Apply Traditional Project Management Tools

Dr. Summerson emphasized the importance of early consideration and implementation of several project management tools, including scope definition, schedule integration, roles and responsibilities, and communication. Detailed planning of scope reduced legal risk, helped ensure consideration of public comments and responsible opposing views, and supported consistency of the Yucca EISs with other DOE EISs, she said. In particular, Dr. Summerson noted that “up-front planning and buy-in of scope resulted in fewer

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Keys to Yucca NEPA Success

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changes later and in turn prevented schedule slips.” A commitment to Congress by the RW Director to meet project milestones and the detailed integration of schedules for the various EIS teams also contributed to the overall adherence to schedule, she said.

Stressing the importance of defining roles and responsibilities, she noted that identifying early on who owns what, designating “tasking authorities” and respecting those boundaries led to the successful day-to-day management of close to 200 (at peak times) authors, contributors, reviewers, and production staff. In addition, she attributed their success largely to team building, which ensured the freedom to communicate and that problem solving approaches were understood and appreciated. Specifically, she underscored the importance of streamlining information flow among document preparation team members and having face-to-face discussions.

Communication and coordination between the team and DOE program offices were essential to ensure the Yucca EISs’ consistency with other ongoing DOE NEPA documents, Dr. Summerson explained. For example, she said, the team coordinated specific language in the Yucca EISs related to the Greater-than-Class C Low-Level Radioactive Waste EIS and the Global Nuclear Energy Partnership Programmatic EIS with DOE’s Office of Environmental Management and Office of Nuclear Energy, respectively ([LLQR, September 2007](#), page 1, and [March 2007](#), page 1).

Formalize EIS-Specific Processes

Dr. Summerson highlighted a series of formalized EIS-specific processes for communication, EIS review and approval, comment response, and document production and distribution. For example, the team used a system of point-of-contact communication among the EISs for content integration and technical data management to identify problems and get them solved early, she noted. In addition, she said, the team established detailed phased review cycles (staggering the review and comment resolution meetings for the EISs) and a formal comment-response process that was accepted by the Management Council prior to start of the public comment period ([LLQR, December 2007](#), page 8, and [March 2008](#), page 5).

Useful Tips for Document Production and Distribution

Document references

- Avoid web references or at least print a paper copy on the day of accessing the information

Publishing

- Use “fresh eyes” for the final quality check before production
- Don’t assume the work ends with document approval; resources must remain available to complete document distribution and to address issues arising after EIS issuance (e.g., litigation support)

Distribution

- Use a “culling” postcard to verify the mailing list and send a summary as the default distribution format for nonresponders

Administrative record

- Screen items early on for potential inclusion in the record

She described an EIS approval approach that included setting up key staff at DOE headquarters to facilitate final document review by DOE program offices, and conducting a series of briefings to inform concurring DOE organizations of the status of the EISs and of issues important to each organization. Dr. Summerson also provided recommendations on document production and distribution. (See text box.)

See related articles (pages 21-23) on the Rail Alignment Record of Decision and the new Groundwater SEIS, plus a timeline and chart showing relationships among the Yucca EISs.

For further information, contact Dr. Summerson at jane_summerson@ymp.gov or 702-794-1493.



NEPA Hot Topics: Sabotage and Terrorism; Global Climate Change


“As a result of heightened public awareness and concern, advancements in science, and increased litigation, the scope of analyses of both sabotage and terrorism and global climate change in DOE NEPA documents has evolved significantly,” said Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance. Mr. Cohen and Bruce Diamond, Assistant General Counsel for Environment, gave their respective technical and legal perspectives on considering sabotage and terrorism and global climate change in DOE NEPA documents and discussed the implications of recent court cases on DOE NEPA practice. “DOE has addressed these topics in NEPA documents for many years – using its discretion,” noted Mr. Cohen, “but in light of these recent court cases, maybe there is less discretion and more direction,” he said.

Sabotage and Terrorism

Mr. Cohen and Mr. Diamond discussed a key court decision in the *San Luis Obispo Mothers for Peace v. NRC* case ([LLQR, September 2006](#), page 19). Mr. Cohen reviewed NRC’s arguments that consideration of sabotage and terrorism is not required under NEPA versus the Ninth Circuit Court of Appeals’ contrary findings, which provide direction and pose challenges for DOE. “As long as the court can see that we’ve done a good faith job of looking at the issue, then we have an enormous advantage should we get in litigation,” Mr. Diamond said.

You are much better off arguing about whether you did an analysis correctly than whether you should have done the analysis at all.

***–Bruce Diamond
Assistant General Counsel for Environment***

 Mr. Cohen summarized DOE’s 2006 Interim Guidance on the [Need to Consider Intentional Destructive Acts in NEPA Documents](#), which directs that DOE NEPA documents, including EAs and EISs, should explicitly address potential environmental consequences of intentional destructive acts. He also described a recent survey of DOE NEPA documents prepared since DOE issued its 2006 Interim Guidance. In virtually all cases, the documents indicated that DOE took a hard look at intentional destructive acts.

NEPA document preparers do not have to “reinvent the wheel” when analyzing intentional destructive acts, he said. The recent terrorism analyses in the Los Alamos National Laboratory Site-wide EIS, the Complex Transformation Supplemental Programmatic EIS, and the Yucca Mountain Repository Supplemental EIS are good examples. He further noted that there are several technical approaches, including the use of generic or specific attack scenarios, and a wide range of information sources, including, for example, safeguards and security documents, safety basis documents, emergency management documents, and sometimes special studies, such as those that review the effects of specific weapons on specific targets.

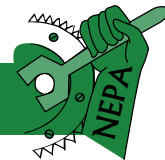
“Providing a basis for a finding of no significant impact can be challenging because the consequences of a terrorist act may be large but, unlike accidents, the probability of an attack may be unknowable or highly uncertain, so the overall risk may be difficult to quantify,” Mr. Cohen said. He discussed several ways to approach this challenge, such as by addressing whether an attack, assuming it occurred, is likely to be successful.

Mr. Cohen noted several trends in recent DOE NEPA documents, including more analyses that address potential consequences (assuming an event occurs without accounting for likelihood), greater consideration of specific attack scenarios, more airplane crash analyses, even if the “accident” probabilities are remote, and more unclassified summaries in NEPA documents that are based on analyses in classified or Official Use Only appendices. He also reminded NEPA practitioners to consult classification and operations security specialists and review both the Council on Environmental Quality and DOE NEPA regulations in order to successfully balance the NEPA public disclosure requirements with security concerns, including those applicable to Internet publication.

Global Climate Change

Historically, DOE has addressed greenhouse gas emissions and global climate change in its NEPA documents. Mr. Cohen referred to the *Clean Coal Technology Demonstration Program Programmatic EIS* (DOE/EIS-0146, 1989), which discussed global warming and projected both incremental and cumulative emissions from the commercialization of clean coal technologies.

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NEPA Hot Topics *(continued from previous page)*

There is a “continuing challenge to identify what is the correct or most useful way of evaluating the global climate change impacts of an individual project,” said Mr. Diamond. In particular, “while we have our arms around the terrorism issue, . . . global warming is different and our approach will continue to evolve rapidly because the science keeps evolving.” Mr. Diamond warned that the “old technique” of reporting X emissions, which are 0.0000X percent of the total annual global emissions “is not good enough,” explaining that “we must look at this in a ‘gross’ way, i.e., the proposed project is contributing to a trend of emissions and then consider the impacts from this trend.”

To assist NEPA document preparers in this effort, Mr. Cohen highlighted several useful climate change references that may be cited in a discussion of potential consequences of greenhouse gas emissions from a specific project. For example, he noted that key findings in the Intergovernmental Panel on Climate Change Fourth Assessment Report (www.ipcc.ch/ipccreports/assessments-reports.htm) and the recent U.S. Climate Change Science Program reports (www.climate-science.gov) are expressed with confidence estimates and are useful in a discussion

of potential global and regional impacts. He also described the June 2008 National Highway Traffic Safety Administration’s Corporate Average Fuel Economy (CAFE) Standards Draft EIS,¹ which has a level of analysis that is at the high end of the “sliding-scale” in that it not only has explicit analysis of direct, indirect, and cumulative impacts on climate change, but it also estimates specific changes to global carbon dioxide concentrations, global mean surface temperature, rainfall, and sea level rise. In addition, Mr. Cohen said, the EIS contains a substantial discussion of uncertainty and incomplete or unavailable information (*LLQR*, September 2008, page 13).

Mr. Cohen identified trends in recent DOE NEPA practice, including that more DOE NEPA documents have addressed cumulative impacts on global climate change. In accordance with the “sliding-scale” principle, he said, such analyses have considered a project’s emissions in combination with other greenhouse gas emissions, total project lifetime emissions, the potential to induce other actions, and life-cycle analyses. In addition, he noted that recent documents have focused on the exploration of alternatives, potential mitigation measures, and the communication of uncertainty. 

¹The National Highway Traffic Safety Administration issued the Final EIS in October 2008, available on the CAFE website at www.nhtsa.dot.gov.

NEPAssist Demonstration Draws Enthusiastic Response


During a presentation on NEPAssist, EPA’s new web-based environmental mapping application, Environmental Protection Agency (EPA) staff Aimee Hessert and Julie Kocher demonstrated the application using Chattanooga, Tennessee, as the sample project area, accessing a variety of useful information including, for example, demographic information, health information from the Centers for Disease Control and Prevention, minority and low-income data, and regulatory information from the respective EPA Region Office.

Ms. Hessert noted that “EPA is seeking to form partnerships with other agencies to make NEPAssist an even more robust system.” She said that if data are available for a particular element, then EPA can incorporate such data into the application. Several DOE NEPA practitioners offered suggestions for additional data



that could be usefully incorporated, including information on endangered species, migratory bird routes, sites and areas regulated by delegated state authority (and not EPA directly), and international data for border nations.

NEPA Office Director Carol Borgstrom noted that the number of comments was a good indicator of enthusiasm for trying out this new NEPA tool, which may be especially useful in screening possible locations for proposed actions and identifying potential environmental impacts. Participants at the DOE NEPA Community Meeting were then offered a test drive of NEPAssist during the midday break. (Ms. Hessert reports that many DOE staff have requested passwords since the NEPA meeting.)

For more information, see *LLQR*, September 2008, page 1. Direct requests for assistance or a password to the NEPAssist site (<https://iasint.rtpnc.epa.gov/NEPA/>) to Aimee Hessert, EPA Office of Federal Activities, at hessert.aimee@epa.gov or 202-564-0993. 



Apply Grade School Advice to NEPA Practice – “Show Your Work” to Get “Credit” for Analysis

“All you ever really need to know about NEPA, you learned in kindergarten or grade school,” said Lisa Jones, Assistant Chief, Appellate Section, Environment and Natural Resources Division of the U.S. Department of Justice. “This boils down to ‘show your work,’” she said, emphasizing the importance of doing so in NEPA documents, so that lay people can understand, and in the administrative record, which may be submitted to the courts. She was joined by Rachel Dougan, Trial Attorney, Environment and Natural Resources Division of the U.S. Department of Justice, to outline current major issues for NEPA practitioners to consider in NEPA practice.

Tell what you did and prepare documents that real people can understand.

– Lisa Jones
U.S. Department of Justice

Consider Context of Proposal in Analyzing Terrorism

The *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* (NRC) case has focused attention on terrorism as an issue for NEPA analysis, said Ms. Jones. In that case, the plaintiff claimed that NRC must consider environmental consequences of a potential terrorist attack on spent nuclear fuel facilities in its NEPA analysis, she explained. Noting DOE’s policy to consider terrorism in its NEPA analyses, Ms. Jones recommended that DOE always explain (including in responses to any comments on the issue) the context of a proposed action and why it structured an analysis of the impacts of terrorism the way that it did, or why it did not analyze those impacts. In other words, always show your work.

Analyze Climate Change Impacts

The failure to adequately consider a Federal action’s contribution to global climate change is an increasingly common allegation, Ms. Jones said, so the issue cannot be ignored. In a 2007 case, for example, the Ninth Circuit held that an environmental assessment (EA) for corporate average fuel economy standards, referred to as the CAFE

Standards EA, must consider the potential for slight changes in carbon emissions as a direct result of agency actions, but also combined with other actions, she said (*LLQR, December 2007*, page 24). She noted that the court said that the underlying benefit – a 2% decrease in greenhouse gas emissions from new emissions standards – must be analyzed in the context of an increase in the number of vehicles to which the standards would apply. At least in the Ninth Circuit, she said, a demonstration of potential beneficial environmental impacts may require preparation of an EIS.

The Council on Environmental Quality regulations direct that the “energy requirements and conservation potential” of an action and alternatives be discussed, Ms. Jones noted. (See 40 CFR 1502.16 regarding the content of an EIS.) Consider the impact of the proposed action on both greenhouse gas emissions and climate change, Ms. Jones advised, which can arise in the context of alternatives analysis, direct and indirect effects, or cumulative effects.

Document Categorical Exclusions

Federal agencies need to clearly document why a proposed action can be categorically excluded and further NEPA analysis is not necessary, Ms. Dougan advised. In so doing, agencies must include an assessment of whether there are extraordinary circumstances that would prevent application of a categorical exclusion (CX), she said. Ms. Dougan emphasized that it is difficult to determine in court if the use of a CX is arbitrary and capricious if there is no contemporaneous documentation of the agency’s decision to use that CX. In addition, she suggested that DOE consider posting the records of its application of CXs to proposed actions on its website, as it would help public understanding of why a proposed action was categorically excluded, she explained.

Have an Organized Administrative Record

As part of “showing your work,” Ms. Jones and Ms. Dougan provided tips on preparing and maintaining an administrative record. Ms. Jones advised that an administrative record should include the inputs and outputs for modeling and cite studies the agencies used.

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“Show Your Work” (continued from previous page)

It is a misnomer that NEPA just does not apply if there is a categorical exclusion – the categorical exclusion is a way to comply with NEPA.


*– Rachel Dougan
U.S. Department of Justice*

In order to have a comprehensive administrative record, Ms. Dougan advised NEPA practitioners to “be over inclusive, rather than under inclusive” and include, for example, materials that are both for and against the agency’s decision. “Having a record that discloses some level of disagreement is not a bad thing,” she said, because it shows the agency’s consideration of all viewpoints. Most of all, she concluded, “be organized” – chronologically, reverse chronologically, or by resource area. She noted that an organized administrative record allows the agency

to identify items early on that might be missing from the record and builds the court’s confidence in the agency’s decision..

Write for the Nontechnical Reader


Ms. Jones recommended writing environmental documents for the general public, with nontechnical explanations in the main body of an EIS and technical explanations in appendices or the administrative record. She pointed out that including maps and diagrams in an EIS is helpful, noting courts sometimes want to make a site visit. To help ensure the adequacy of environmental documents, Ms. Jones said that preparers should read their documents from beginning to end, and she suggested including a statement in documents to that effect, advising readers to “read the document as a whole.”

“Show your work, explain what you know about uncertainties, and disclose disagreements where they exist,” Ms. Dougan concluded, noting that because NEPA is largely a procedural statute – “the more you show your work, the more ‘credit’ you get in complying with the law.” 

NEPA Training Covers Diverse Topics

“Standing Room Only” characterized some of the training sessions offered by the Office of NEPA Policy and Compliance as part of the September 2008 NEPA Community Meeting. Six topics identified as priorities by the DOE NEPA Community were offered. Almost 100 meeting participants registered for one or more training course and many more audited; 183 certificates were issued to registrants for successful completion of the course and test.

One course – *NEPA Fundamentals: Principles and Process* – was designed for the NEPA novice. One presented a guided tour of DOE’s cornerstone guidance on writing NEPA documents (*LLQR*, March 2005, page 4) – *Using the Green Book to Avoid NEPA Pitfalls*. [The “Green Book” is shorthand for *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (December 2004; www.gc.energy.gov/NEPA/guidance.htm).]

Another course, on *Effective Leadership*, was targeted to DOE’s NEPA Compliance Officers and NEPA Document Managers, and two courses focused on specific aspects of the NEPA process: *EIS Distribution and Comment Response* and *DOE Supplement Analysis Process*. In recognition of DOE’s recently expanded activities in loan guarantees and other forms of financial assistance, a new course was offered on *NEPA and Applicant Processes* (related article, page 14). To allow meeting participants maximum opportunity to take the courses of interest, three courses were offered twice. 





NNSA Associate Administrator/NCO Offers NEPA Advice from HQ and Field Perspectives

Speaking from her experiences as the National Nuclear Security Administration (NNSA) NEPA Compliance Officer (NCO) and Manager of the West Valley (New York) Project Office, and looking ahead to her new role as Manager of the Livermore Site Office,¹ Alice Williams advised NEPA practitioners on how best to tap the potential of the NEPA process and their roles in it. Ms. Williams emphasized the importance of a close working relationship between the decisionmaker and NEPA practitioners, whether it is to define a workable scope for a proposed action or to assure NEPA compliance for the day-to-day activities of a Site or Program Office. In addition to serving as NNSA NCO, Ms. Williams was the Associate Administrator for Infrastructure and Environment in NNSA.

Tie NEPA Reviews to Site Planning

“Sometimes our eyes are bigger than our stomachs,” said Ms. Williams in recounting two proposed projects that were overly ambitious – the proposal for a new production reactor in the late 1980s and the proposed closure of the West Valley Project in the late 1990s. Before the reactor proposal was cancelled and the closure proposal down-scoped, the NEPA processes had been costly to the Department: actions could not be taken, taxpayer funds had been spent on research and documentation, and citizens who had participated in the NEPA processes were worn out and did not like DOE, she explained.

Ms. Williams advised NEPA practitioners to work together with managers on a staged approach to decisionmaking for large and complex projects. She described the successful change of scope (reconfiguration) of the proposed closure of West Valley, first analyzed in a 1996 draft EIS, to two proposed actions considered in separate EISs, one for decontamination and waste management (final EIS issued in December 2003) and one for decommissioning or long-term stewardship (draft EIS to be issued shortly). Ms. Williams urged DOE’s NCOs to take advantage

of the opportunity provided by site or program planning activities to coordinate with the NEPA process.

Pursue Cooperating Agencies


DOE sites that perform Work for Others, said Ms. Williams, should aim to have the other agency cooperate in the EA or EIS that DOE prepares for the proposed work. She urged NEPA practitioners to be assertive in establishing such working relationships. She said that she intends to foster such relationships at the Livermore Site Office.

We must train our new managers, especially if they are new to DOE, as to what NEPA means to DOE and why they have to pay attention to it.

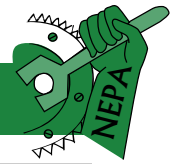
–Alice Williams

Work Closely with Managers/Project Directors

Based on her experience as an NCO, Ms. Williams emphasized the regular interaction that she intends to have with the Livermore Site Office NCO, noting that one important NEPA activity coming up is the 5-year review of the site-wide EIS.

In this regard, she recommended that 10-year site plans and their annual updates should be linked to the NEPA planning process. She recognized, however, that NCOs at other sites and in program offices often must train managers about NEPA and how the process can contribute to good decisionmaking. NCOs must also work directly with project directors to incorporate the NEPA budget and schedule into the overall project budget and schedule. In acknowledging the tough job that NCOs have, she said that it is important for them also to train their successors so there is no gap in meeting the letter and spirit of NEPA. 

¹Ms. Williams assumed her new position as Manager, Livermore Site Office, on November 2, 2008 (related article, page 32).



CEQ Airs “Hot Topics”

The Council on Environmental Quality (CEQ) has been working on a panoply of “hot” NEPA topics in the last several years, said Edward (Ted) Boling, CEQ General Counsel. He illustrated new NEPA approaches, current issues, and resources available to NEPA practitioners, some of which are highlighted below.

Explore More Effective Use of Public Involvement in NEPA Processes

The integration of the NEPA process with other public participation activities by the National Marine Fisheries Service for its proposed NEPA regulations (05/14/08; 73 FR 27997) has illustrated the challenges of integrating NEPA requirements with other planning and environmental review procedures, Mr. Boling said. The agency had found that, notwithstanding many public hearings on its proposed procedures, the agency and stakeholders were “talking past each other,” he explained. Mr. Boling characterized a workshop in which agency representatives and stakeholders worked side-by-side and line-by-line through proposed NEPA procedures as a potential “saving grace” – as he expects the workshop will result in a much improved final rule. Mr. Boling added that agencies may find processes similar to this “negotiated rulemaking” process to be helpful in revising their NEPA procedures or developing NEPA documents.

Apply Current Climate Science Resources

Recognition of climate change issues predates NEPA, said Mr. Boling, and he referred to a 1968 “white paper” prepared by the Joint House-Senate Colloquium, which is a cornerstone of the legislative history of NEPA. The participants considered the long-term and global effects of energy consumption and recommended that a process, such as the NEPA process, would be an essential tool to monitor and address the trend that atmospheric scientists were observing, he said.

Any guidance that CEQ might issue on how to analyze climate change impacts, Mr. Boling explained, would focus on using current scientific resources that are appropriate to the particular action being evaluated. The recent reports by the Intergovernmental Panel on Climate Change incorporated much from the U.S. Climate Change Science Program, he noted, and www.climatescience.gov is the best source for Synthesis and Assessment Products that present this information in a format useful for decisionmakers. Any CEQ guidance also would rely on the growing record of agency EIS analyses that exists, Mr. Boling said, pointing in particular to DOE’s robust history of such evaluation (*LLQR*, December 2007, page 1).

The area of most common concern to local communities is apt not to be emissions of greenhouse gases from Federal agency actions, emphasized Mr. Boling, but their implications. For example, he said, the recent analysis prepared by the Department of Transportation on the implications of sea level rise, and the associated increased risk



“NEPA is no stranger to the climate change debate,” said Ted Boling, CEQ General Counsel.

of storm surges on infrastructure along the Gulf of Mexico, was outstanding, and he referred NEPA practitioners to it (www.nhtsa.dot.gov; *LLQR*, September 2008, page 13).

As part of the upcoming transition activities in Federal agencies, we should inform new senior decisionmakers about the entire NEPA process and what a great tool it is.

–Ted Boling, CEQ

Take Advantage of Improved Tools

NEPA practitioners should regularly visit the CEQ NEPA website, www.nepa.gov, Mr. Boling said, as materials posted there form the cornerstone of NEPA practice. To illustrate key features, he pointed out, for example, that *Collaboration in NEPA: A Handbook for NEPA Practitioners* emphasizes establishing trust, a hallmark of the NEPA process, and provides recommendations on doing so at each step along the way. He also emphasized that the guidance on aligning NEPA processes with environmental management systems (EMS) illustrates how EMS can help with project monitoring and follow up actions, thereby enhancing NEPA compliance.

CEQ is very interested in technology improvements in the NEPA process, said Mr. Boling, and he expressed interest in agencies pursuing a web-based collaborative approach to document preparation. There is merit in “the wisdom of the crowd,” he said, as collectively we can know more than any one individual. Mr. Boling challenged DOE to lead the way in improving the NEPA process by use of the web-enabled collaboration. **LL**



The Essential Role of the NEPA Compliance Officer

“NEPA is the first line of attack by parties opposed to a government project,” observed Mary Neumayr, Deputy General Counsel for Environment and Nuclear Programs.



Mary Neumayr recognized the contributions of all members of the DOE NEPA Community.

Compared to other agencies, DOE is less frequently a defendant, Ms. Neumayr noted, and when it faces such litigation, DOE’s position is often upheld by the court. She attributed these positive outcomes to three factors.

First, DOE recognizes the importance of NEPA and has institutionalized the NEPA Compliance Officer (NCO) role to help managers

appreciate that NEPA is essential to meeting program goals and is not just another task on the critical path.

Second, DOE has exceptionally capable NEPA staff. Ms. Neumayr characterized NCOs, the Office of NEPA Policy and Compliance, and the Office of the Assistant General Counsel for Environment as experienced professionals committed to performing thorough technical analysis and following prescribed regulatory procedure.


Finally, DOE has a strong working relationship with the Council on Environmental Quality and the Department of Justice as a result of many years of collaboration and cooperation.

Ms. Neumayr advised NCOs to keep their managers apprised of developing issues in NEPA reviews to help them take ownership of their NEPA processes. This is especially helpful during a long decisionmaking process, she noted, when goals, conditions, and information can change. A good NEPA document will address a broad range of reasonable alternatives so the process does not need to start over in the face of change. “Make your EIS an enduring piece of work,” she said.

Addressing NEPA issues early on pays large dividends.

***–Mary Neumayr
Deputy General Counsel
for Environment and Nuclear Programs***

Ms. Neumayr noted that the administrative record is generally publicly available and used to support the government’s position in NEPA litigation. All components may have to be disclosed unless protected by applicable privileges; she advised NCOs to consult with counsel on appropriately identifying such materials. She also urged NCOs and members of their NEPA document teams to maintain a professional tone even in informal, internal communications, as this can influence perceptions of the quality of an agency’s analysis in a NEPA document. Finally, it is essential to deal with issues raised by other Federal agencies to demonstrate a consistent governmental position; she advised that the comment response section of a final EIS should make it easy to see the responses to agency comments made on the draft EIS.

In closing, Ms. Neumayr thanked the NCOs for their contribution to achieving the Department’s missions: “You have a challenging role, and a very important one.” 

Ms. Neumayr offered advice to the NCOs on how to enhance their effectiveness:

- ✓ Engage the NEPA Office and legal counsel early in the NEPA process to obtain the benefits of their advice and experience.
- ✓ Be personally involved in developing critical parts of the NEPA approach, including the statement of purpose and need for agency action, and the alternatives that flow from that need.
- ✓ Look at other environmental statutes, such as the Endangered Species Act, and consult with other Federal and state agencies early in the NEPA process.
- ✓ Consider whether there are candidates for cooperating agency roles and seek to establish collaborative relationships.
- ✓ Learn how other DOE NEPA reviews have addressed issues that are critical to your analysis; don’t reinvent the wheel.
- ✓ Learn how DOE is addressing emerging issues in NEPA documents, such as terrorism and climate change.
- ✓ Keep NEPA on your manager’s radar screen.



Advice from Counsel

Internal DOE reviewers are finding ineffective writing and poor quality in NEPA documents submitted for approval, in spite of the emphasis on assuring quality at each step of EIS and EA development at a previous NEPA Compliance Officer (NCO) meeting, May 2006 (LLQR, June 2006, page 1). To help ensure that NEPA documents attain legal sufficiency, two DOE Headquarters attorneys offered advice on writing NEPA documents and recommendations on NEPA compliance in general.

Quality Matters!

In working closely with DOE Program and Field environmental attorneys to prepare EAs and EISs, NEPA Document Managers often ask, “Why are lawyers so picky?” stated Bruce Diamond, Assistant General Counsel for Environment. Although not characteristic of all documents that his Office reviews, he said that far too many NEPA documents are not written well and do not read well – jeopardizing defensibility of the documents.

“We have a bedrock obligation to inform the public as to what the environmental and other consequences of an action would be,” Mr. Diamond emphasized. When sentences are garbled, logic flow is not evident, or tables are inconsistent, for example, it is hard to persuade a judge that we have analyzed the situation properly, he said. Quality does matter, he insisted.

***If a NEPA document does not read well,
our credibility goes out the window.***

***–Bruce Diamond
Assistant General Counsel for Environment***

Demand a Thorough QA Process

“Are we doing enough to make sure that strong internal Quality Assurance (QA) processes are in place during EA and EIS preparation?” Mr. Diamond asked. NEPA document preparation contractors should have QA staff who are separate from the technical writing staff and who have sign-off authority before a document is submitted for approval, he proposed. Mr. Diamond acknowledged the “toxic situation” that we can find ourselves in when an inferior product is received from a contractor, program management is up against a deadline to issue the NEPA document, and legal counsel is seen as giving the DOE NEPA Document Manager and EIS preparation team “a hard time.”

“How can we avoid this situation? How can we keep from rewarding contractors for suboptimal work? Should we develop best practices?” Mr. Diamond asked the NCOs. For example, he posed, would it help make the system work better if we simply sent a document back to a contractor, with the general direction to remove inconsistencies and correct grammar and misspellings?

Some NCOs responded that, more effective than what might be perceived as “bring me a rock,” would be to write the task order or the contract for the NEPA document as specifically as possible. A specific task order, the NCOs explained, could have a requirement for a robust QA system, including a QA plan that provides for an independent editorial review. Others suggested working with Contracting Officers, perhaps to set up penalties in case high quality documents are not received the first time, on time, and to routinely give thorough evaluations of contractor performance to Contracting Officers.

The Good, the Bad, and the Ugly

The NCOs are a “good” part of DOE’s NEPA program, said Paul Detwiler, Deputy General Counsel, National Nuclear Security Administration (NNSA), as they know “on the ground” facts about a site and serve as institutional experts, e.g., has a document been issued? has a facility been built? has the environment changed? He acknowledged that NCOs often find themselves caught in the middle – pressured between project deadlines and the time needed for the NEPA process. He emphasized that DOE’s terrorism guidance and, building on it, DOE’s analysis of the effects of terrorism, are also “good” aspects of DOE’s NEPA practice. He offered additional advice on how to improve other aspects of the DOE NEPA Compliance Program. (Also see page 33.)



Applicants and the DOE NEPA Process

“What’s different about applicant processes?” asked Carol Borgstrom, Director, Office of NEPA Policy and Compliance, in distinguishing DOE’s NEPA process for a private entity’s request to DOE for financial assistance from DOE’s process for a DOE proposal. Ms. Borgstrom highlighted four potentially different features – the source of project and environmental information, contracting mechanisms, the number of alternatives, and competition among proposals for funding.

The Council on Environmental Quality (CEQ) and DOE NEPA regulations and “Frequently Asked Questions” provide direction and guidance on issues related to NEPA review of applicant proposals, she advised, referring to them throughout her presentation. Noting in particular the DOE NEPA regulations concerning NEPA review for private entity proposals, she explained that 10 CFR 1021.215, “Applicant process,” and 1021.216, “Procurement, financial assistance, and joint ventures,” define both applicant and DOE responsibilities for an efficient NEPA process (text box, next page). She emphasized that the regulations do not apply when an applicant’s proposal can be categorically excluded.

For Project and Environmental Information, Applicant Submits and DOE Verifies

An applicant must provide enough information to assist DOE in determining the level of NEPA review required for the applicant’s proposal, but DOE is required to assist the applicant by outlining the types of information needed, Ms. Borgstrom said. “You must specify what you need to know,” Ms. Borgstrom advised, “as we depend in large measure on what the applicant gives us when applying for a permit or submitting a proposal in response to a solicitation.” DOE’s recent solicitations for loan guarantee applications provided an outline of an environmental report to be submitted by applicants that DOE will also use to prepare an EA or EIS, if necessary, or compare proposals, if necessary, she explained. (*LLQR*, September 2008, page 3.)

“It is important for DOE to validate and verify environmental information from the applicants,” Richard Ahern, Deputy Assistant General Counsel for Environment, stressed. DOE was challenged over one EIS where applicant information was erroneous, but was not verified, he said.

In Third-Party Contracting, DOE Selects and Directs, Applicant Pays

Third-party contracting refers to the preparation of an EA or EIS by a contractor chosen and directed by DOE, but paid for by the applicant, Ms. Borgstrom explained. She said that an applicant may issue a “request for proposal” and then present a slate of candidate contractors for DOE to consider, but DOE is not limited to those proposed by an applicant. Ms. Borgstrom said that an EIS preparation contractor for an applicant proposal must sign a statement indicating no “conflict-of-interest,” the same as is required of any contractor preparing an EIS for an agency proposal.

A memorandum of understanding among DOE, an applicant, and a document preparation contractor should be established, she recommended, to define roles and responsibilities of each. Although an applicant establishes the contract for NEPA document preparation, she emphasized that DOE is fully responsible for document scope and content. Mr. Ahern added that applicants may be reluctant to fund environmental analyses for actions and activities not in the scope of their proposals, and the memorandum of understanding can serve to emphasize that the agency must meet its NEPA obligations.

DOE does not serve an applicant well if the NEPA process is not followed, impacts are not adequately analyzed, and information is not validated or verified.

–Richard Ahern

Deputy Assistant General Counsel for Environment

Evaluate All Reasonable Alternatives

“Consider both the applicant’s purpose and need and the Department’s purpose and need when developing the range of reasonable alternatives,” Ms. Borgstrom advised, stating that determining the range may be complicated and should be done on a case-by-case basis. Mr. Ahern added that determining the range can be a very creative act, but if carefully done, courts generally give deference to an agency’s determination of the alternatives to analyze.

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Applicant Process *(continued from previous page)*

NEPA does not dictate the number of alternatives to analyze for any proposal, said Mr. Ahern. Even though the agency's decisionmaking for an applicant proposal would appear to be "go/no-go," that is, grant the proposal or, under no action, deny it, Mr. Ahern explained, DOE should make every effort to identify a range of real, substantive alternatives. He added that even in cases where Congress tells DOE to take a certain action, unless Congress exempts the action from NEPA review, NEPA does not limit an agency analysis to that directed by Congress.

Ms. Borgstrom referred to one of the CEQ "40 Questions" that states that "Reasonable alternatives . . . are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant"¹ in underscoring an agency's responsibility to look beyond an applicant's proposal.

Confidential, Competitive Process Results in Conditional Selection

Under Section 216 of the DOE NEPA regulations, explained Ms. Borgstrom, DOE conducts a confidential, competitive process when there are more applicants than funding resources can support, and there is a need to protect proprietary business information. She said that this confidential process results in a conditional selection of proposals, which is followed by a publically available synopsis of it, and an EA or EIS for each applicant proposal that was selected conditionally. The confidential process and documentation under the "216 process," she emphasized, can be viewed as a "mini EA or EIS to compare environmental impacts of proposals in the competitive range."

This topic was addressed both in the NCO meeting and in a training session. Materials from the training session are available on request from the DOE Office of NEPA Policy and Compliance: (1) excerpts from CEQ and DOE regulations and guidance concerning the applicant process, (2) examples of requests for environmental information, (3) an example memorandum of understanding among DOE, an applicant, and an EIS preparation contractor, and (4) a statement of work for documentation under 10 CFR 1021.216. Contact AskNEPA@hq.doe.gov or call toll free, 800-472-2756. LL

¹ Question 2a in "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," see www.gc.energy.gov/nepa, under Guidance.

DOE NEPA Regulations Concerning Applicant Proposals

10 CFR 1021.215, Applicant process applies unless the action is categorically excluded.

Applicant responsibilities:

- ✓ Consult early with DOE
- ✓ Conduct studies that DOE deems necessary and appropriate
- ✓ Consult early with other involved agencies and notify DOE of other required actions for project completion
- ✓ Notify DOE of persons/organizations interested in the proposed undertaking
- ✓ Notify DOE if the applicant plans to take an action . . . that may have an adverse impact or limit the choice of alternatives

DOE responsibilities:

- ✓ May prepare generic guidance on the level/scope of environmental information to be provided
- ✓ Begin its NEPA review as soon as possible
- ✓ Independently evaluate/verify applicant-supplied information
- ✓ Complete and consider any NEPA documents before final decision on the application

10 CFR 1021.216, Procurement, financial assistance, and joint ventures applies unless the action is categorically excluded.

- ✓ When relevant in DOE's judgment, DOE shall require the offeror to submit environmental data and analysis as part of the proposal
- ✓ DOE shall independently evaluate/verify information submitted by offeror
- ✓ For offers in the competitive range, DOE shall prepare and consider an environmental critique before selection (subject to confidentiality requirements)
- ✓ A publicly-available environmental synopsis shall be incorporated in any subsequent EA or EIS



2008 NEPA Community Meeting – NCO Session

DOE NEPA Metrics Update: Achieving 15-Month Goal Remains a Challenge

While EIS costs appear to be under control, EIS completion times remain a concern, said Eric Cohen, Unit Leader, Office of NEPA Policy and Compliance, in updating metrics on EIS completion time and cost, based on a review of data over the past 10 years (January 1998 through December 2007). He noted that this conclusion is a familiar theme, and DOE management continues to show interest in reducing EIS completion times to meet program needs.

Mr. Cohen reminded NEPA practitioners that in 1994 DOE set a median EIS completion time goal of 15 months (from the DOE notice of intent to the Environmental Protection Agency’s notice of availability for the final EIS) and since then, the NEPA Office has provided data and analyses of DOE NEPA metrics in *LLQR*.

EIS Costs

The cost to prepare an EIS has remained about the same over the past 10 years, Mr. Cohen said. The median EIS cost was \$1.8 million for the 49 EISs with applicable cost data completed from 1998–2007 (Figure 1). Median costs for programmatic EISs (about \$4 million) and site-wide EISs (about \$7.6 million) were greater than for project-specific documents (\$1.5 million). Median costs generally are more useful than average costs, which are skewed by a single, extraordinarily expensive document in 2002.

EIS Completion Times

Data for the past 10 years (Figure 2) show that DOE has not met its 15-month median EIS completion time goal, said Mr. Cohen, noting that the median completion time was 27 months for the 68 EISs completed from 1998–2007. On an annual basis, median EIS completion times have varied between less than 20 months and more than 30 months, he explained. Although meeting DOE’s 15-month goal remains a challenge, Mr. Cohen emphasized that DOE can prepare

Figure 1: EIS Cost and Number of EISs, 1998–2007

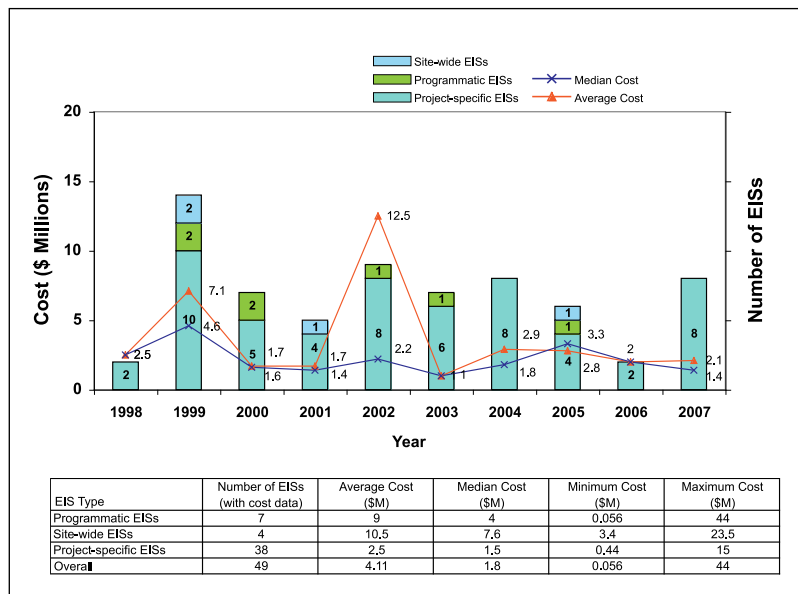
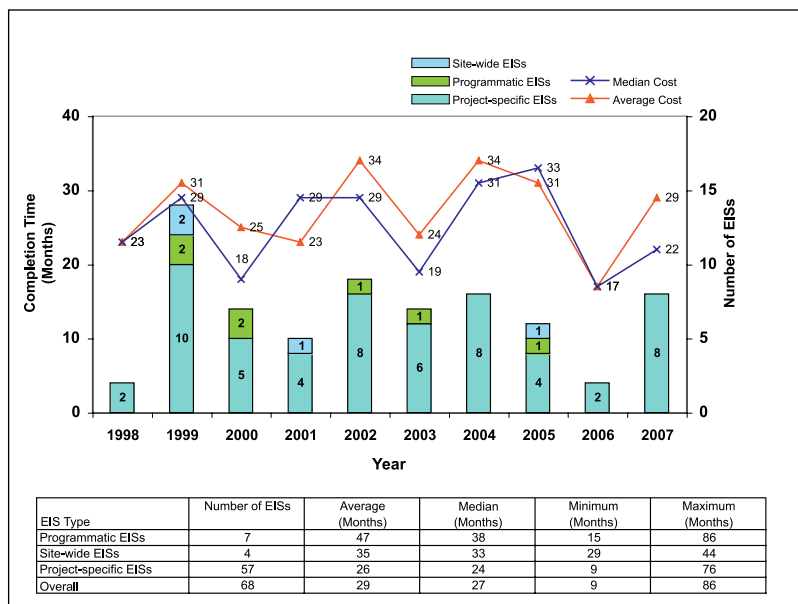


Figure 2: EIS Completion Times and Number of EISs, 1998–2007



EISs in 15 months (or as needed to meet program needs) and pointed to data on DOE’s past EISs as evidence of this fact. Figure 3 shows the distribution of all EIS completion

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Metrics Update (continued from previous page)

times for documents completed in the past 10 years, and he said the data show that about 20 percent of the EISs were completed in 15 months or less, and that the most frequent completion time (mode) was 15 months.

Factors Contributing to EIS Completion Time

Discussing factors associated with short and long EIS completion times based on a “root cause” analysis of information from Lessons Learned Questionnaire responses, he noted the primary factor associated with short EIS completion times is management attention to scope, schedule, and key issues. Strong preparation teams with dedicated members and appropriate skills, and excellent team communication are among other factors related to short EIS completion times, he said.

Conversely, projects with poor scope definition, including changing proposals and late identification of alternatives, and involvement of multiple DOE program/site offices, which often have competing priorities, are factors contributing to long EIS completion times, he said. In addition, Mr. Cohen noted that cooperating agencies often add to an EIS’s completion time, but cooperating also adds value (e.g., building consensus and ability to implement projects). For EISs completed in 1998–2007, Figure 4 identifies the agencies DOE cooperated with and the number of DOE EISs for each cooperating agency.

How Does DOE Calculate Cost and Time Metrics?

Mr. Cohen responded to questions on how NEPA metrics are determined. With regard to how the metrics account for suspension of or delays in the NEPA process, Mr. Cohen suggested that NEPA document managers officially “stop the clock” by announcing a document’s suspension to the public (and “restart the clock” by announcing a document’s reactivation). (See [Mini-guidance Articles from Lessons Learned Quarterly Reports, December 1994 to September 2005](#), page 6-5, for more information on how to keep the public informed



Figure 3: EIS Completion Time Distribution, 1998–2007

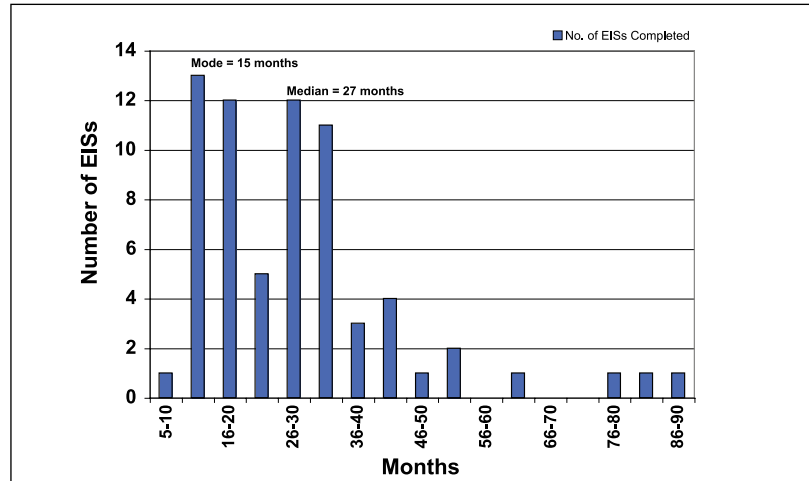
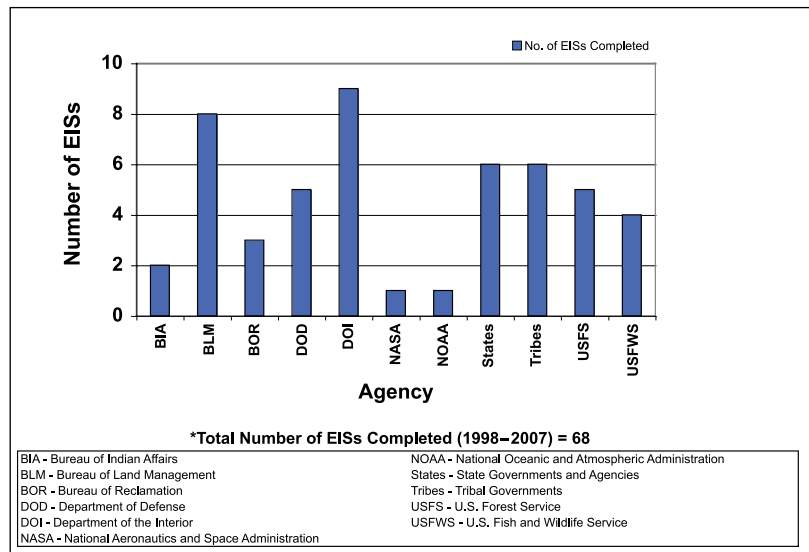


Figure 4: Number of DOE EISs Sorted by Cooperating Agency, 1998–2007*



when EIS plans change.) He also responded to a question on how costs are assigned, noting that DOE NEPA metric costs almost always reflect only contractor costs and do not include Federal staff costs. He added that document managers should only report costs that would not be incurred except for the NEPA process. For example, site characterizations for detailed design and construction purposes, or costs to obtain air and water permits, should be excluded (see Instructions within the Lessons Learned Questionnaire on the DOE NEPA Website at www.gc.energy.gov/nepa). LL



A Closer Look at the DOE NEPA Compliance Officers — Round 2

By Carrie Moeller, *Office of NEPA Policy and Compliance*



At the September 2008 DOE NEPA Community Meeting, the Office of NEPA Policy and Compliance distributed a questionnaire to NEPA Compliance Officers (NCOs) to get a sense of their current NEPA and non-NEPA workloads and their assessment of their ability to perform NEPA responsibilities. The NEPA Office received a total of 23 responses from the 38 NCOs¹ in attendance and from this information we drew four conclusions. Also, the NEPA Office compared this year's questionnaire responses with findings from a similar NCO questionnaire distributed in 2005.² Findings #1 and #2 below were also true in 2005, but were re-emphasized in this year's questionnaire responses.

Finding #1: NCOs [Still] Know NEPA

Based on results from this year's questionnaire, NCOs have served in that capacity for an average of 6 years and have an average of nearly 18 years of NEPA experience. Based on the 2005 questionnaire, NCOs had served an average of 7 years and had an average of 15 years of NEPA experience. Since June 2005, DOE has appointed more than 20 new NCOs. (See Transitions articles in this and the past 14 issues.) Despite this, the overall NEPA experience of the group remains high. The average time served as NCO decreased approximately 15% from 2005 to 2008. However, in the same timeframe, the average amount of NEPA experience per NCO increased 15%. Also, 7 of the 23 NCO respondents stated they had more than 10 years of NCO experience. These 7 NCOs have an aggregate of more than 170 years of NEPA experience (or 43% of the total NEPA experience of the 23 NCO respondents). Therefore, we conclude that the NCOs still know NEPA!

Finding #2: NCOs [Still] Wear Many Hats

As reported in 2005, NCOs have many non-NEPA responsibilities. This remains true today. Based on the 2008 questionnaire, NCOs spend, on average, 45% of their time on NEPA-related activities, which is an increase from the 2005 results when NCOs reported spending, on average, about one-third of their time on NCO duties.

However, there is a wide range of responses – one respondent reported spending only 5% of her time on NEPA-related activities whereas another respondent reported spending 90% of her time on NEPA-related activities.

To illustrate collateral responsibilities, some NCOs serve as the Site's or Program Office's cultural resources contact (including National Historic Preservation Act and tribal contact), Environment, Safety and Health point of contact or manager, and waste management compliance contact – to name a few. NCOs' other responsibilities include environmental compliance and remediation, pollution prevention, site and activity walkthroughs, Clean Water Act permitting, Endangered Species Act compliance, quality assurance, and Work for Others oversight.

Finding #3: NCOs Are Recognized As NEPA Authorities

More than 85% of NCO respondents stated that they frequently were consulted by program and project managers for NEPA advice. Nearly 75% of NCO respondents said their concurrence is always required for NEPA-related actions within their organizations. In addition, more than 90% of NCO respondents indicated that they felt they had enough authority to carry out NCO responsibilities in their organizations. The fact that NCOs are often consulted for NEPA advice and are included as part of the concurrence chain for NEPA-related actions is evidence that NCOs are recognized as NEPA authorities in their organizations.

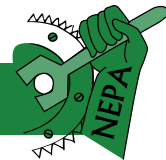
Finding #4: NCOs Need to Pass On Their NEPA Knowledge

As recognized "NEPA authorities" in their organizations, NCOs must provide NEPA training and disseminate guidance materials and related information (per DOE Order 450.1B, Section 5(d)(9)). In this year's questionnaire, 13 of the 23 NCO respondents (56%) stated they had provided NEPA training in their organization in the past year.

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¹At the time of the meeting, DOE had a total of 48 NCOs.

²On the occasion of the 35th anniversary of NEPA in 2005, the NEPA Office distributed a questionnaire to gather data and elicit wisdom on the NCO experience (LLQR, June 2005, page 1).



A Closer Look at NCOs *(continued from previous page)*

Several NCOs have retired or changed positions in the past few years and others are considering retirement. Specifically, in the past few years, turnover among NCOs has been high. Also indicative of the NCO turnover is that more than half (12) of the 23 NCOs that submitted questionnaire responses have served 3 years or less as NCO. Five of these individuals were designated NCO within the past year.

As NCOs begin to consider retirement or changing positions, it is increasingly important that they pass on their knowledge to mitigate the loss of NEPA expertise. For example, one NCO, before retiring in January 2008, assembled a NEPA training briefing for his successor that included recommendations based on his years of experience in a small Field Office whose activities are important to many Programs and other Field Offices ([LLQR, December 2007](#), page 18). Another suggestion

would be to bring staff “in training” for your NCO position to DOE NCO meetings (two NCOs did this for the September NCO meeting).

Several NCO respondents stated that the “NCO network” or “system of NCOs” is one of the things DOE does well in NEPA “space” and that they recognized the value of attending NCO meetings and receiving training. To assist the NCO training efforts, the NEPA Office hopes to hold NCO meetings more frequently.

Acknowledgements

The Office of NEPA Policy and Compliance would like to thank the NCOs for their NEPA efforts and for giving the Office a “window” into the NCO world by responding to the questionnaire. The most recent NCO Directory is posted on the DOE NEPA Website under Contact Us.

Policies and Procedures for the DOE NEPA Website

The DOE NEPA Website (www.gc.energy.gov/nepa) has become an important component of DOE’s NEPA Compliance Program. To be effective, however, NEPA documents need to be posted on time.

“The NEPA document preparation process is not complete until the NEPA Office receives paper and electronic copies for archiving and posting on the DOE NEPA Website,” said Denise Freeman, Office of NEPA Policy and Compliance. Ms. Freeman reminded NCOs of their obligation under DOE Order 451.1B to provide the NEPA Office with copies of completed DOE NEPA documents and discussed the importance of maintaining a complete and accurate central electronic archive.

Ms. Freeman asked NCOs to help meet DOE NEPA Website goals, which include the timely posting of 100% of all DOE NEPA documents on the DOE NEPA Website. “Environmental impact statements should be posted on or before the day that the U.S. Environmental Protection Agency publishes the notice of availability in the *Federal Register*,” Ms. Freeman said.

Suzanne Nawrot, DOE Webmaster, Office of the Chief Information Officer, discussed the launching of the new DOE NEPA Website ([LLQR, September 2008](#), page 4), and emphasized the importance of providing electronic files that have been optimized for internet publication. Ms. Nawrot advised NCOs to review the new *Procedures for Submitting Documents for Posting on the DOE NEPA Website*” (www.gc.energy.gov/nepa/documents/Procedures_NEPA_Doc_Submission.pdf) and discussed key procedures, including the need to:

- ✓ reduce (“optimize”) the file size, particularly graphics;
- ✓ not write-protect files; and
- ✓ not include spaces or special characters in the file name.

Ms. Freeman said that the NEPA Office continues to seek ways to improve the DOE NEPA Website and recognizes that maintaining the archives is a joint effort with the DOE NEPA Community. Questions or suggestions should be directed to Denise Freeman, NEPA Webmaster, at denise.freeman@hq.doe.gov.



DOE Categorical Exclusions – Are Changes Needed?

As the DOE officials who apply categorical exclusions (CXs) to actions proposed by Program and Site Office managers, NEPA Compliance Officers (NCOs) probably know best whether more CXs are needed and whether any existing CXs should be modified, said Carolyn Osborne, Unit Leader, Office of NEPA Policy and Compliance, at the September NCO meeting. She reviewed the process that DOE followed in establishing its 103 CXs (Appendices A and B to Subpart D of the DOE NEPA regulations, 10 CFR 1021), the last in 1996, and the recordkeeping procedures that DOE has had in place for applying them since 1998 (on the DOE NEPA Website under Guidance).

CXs play a very important role in our NEPA Compliance Program, she said, because applying them properly can free the Department's NEPA practitioners to focus on those proposed actions with potential for significant environmental impact. NCOs have the on-the-ground experience to know whether there are DOE actions that should be categorically excluded, but there is no DOE CX that fits the action or an existing DOE CX is too narrowly defined to be useful, she explained.

In asking NCOs to propose new or modified CXs to the NEPA Office for it to determine whether to begin a NEPA rulemaking, Ms. Osborne advised NCOs generally to apply the draft guidance prepared by the Council on Environmental Quality's interagency work group on CXs that was issued for public comment in September 2006 ([LLQR, December 2006](#), page 9). The draft guidance outlines the types of information that could be in an agency's administrative record and available to the public.

"The closer we can get CXs to fit the work we do that has no potential for significant environmental impact, the better," said Richard Ahern, Deputy Assistant General Counsel for Environment. On the other hand, he explained, if a site-wide NEPA review is comprehensive and includes all site activities, application of a CX for the actions with no potential for significant impact would not be necessary for that site. Such site-wide NEPA reviews, he added, could be used to help support establishment of a CX for Department-wide use.

- **Categorical exclusion [CX]** means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (40 CFR 1507.3) and for which, therefore, neither an environmental assessment [EA] nor an environmental impact statement [EIS] is required. (40 CFR 1508.4)
- **Types of Information to Substantiate a Categorical Exclusion** (summarized from the draft guidance, "Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act," September 19, 2006; 71 FR 54816)
 - *Evaluations of Implemented Actions* – would include evaluations of the environmental effects predicted in an EA or EIS for implemented actions and could use data generated through an Environmental Management System.
 - *Impact Demonstration Projects* – involves evaluation after project implementation of impacts predicted in an EA or EIS for a type of action with which the agency does not have extensive experience. The EA or EIS would need to have explained that one purpose of the document was to establish the basis for a CX.
 - *Professional Opinion and Scientific Analyses* – includes use of professional staff both within and outside of an agency (with supporting credentials) and use of scientific analyses (need not be limited to peer-reviewed findings) as valid sources of information to substantiate CXs.
 - *Benchmarking* – involves using information and records from private and public entities' experiences with similar actions.

As requested in an October 22, 2008, memorandum from Carol Borgstrom, Director, Office of NEPA Policy and Compliance, NCOs should submit suggestions for new or modified CXs and supporting materials by December 15, 2008, to Carolyn Osborne at carolyn.osborne@hq.doe.gov, 202-586-4596, or fax 202-586-7031.

Record of Decision for Yucca Railroad Selects Caliente, Commits to Continuing Consultation/Mitigation

DOE has decided to construct and operate a railroad in Nevada for shipments of spent nuclear fuel, high-level radioactive waste, and other materials to Yucca Mountain, based in part on the *Final Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0369) (Rail Alignment EIS). Issued in July 2008, the Rail Alignment EIS contains DOE's analysis of alternative alignments within two rail corridors, Caliente and Mina. (See [LLQR, September 2008](#), page 11.) The cooperating agencies on this EIS were the U.S. Air Force; the Bureau of Land Management (BLM); the Surface Transportation Board (STB); Esmeralda, Lincoln, and Nye Counties; and the City of Caliente.

DOE Picks Alignment, Shared-Use Option

In its Record of Decision (ROD), issued on October 10, 2008 (73 FR 60247), DOE selected a specific alignment for the approximately 330-mile railroad in the Caliente corridor. DOE also decided to allow shipments of general freight on the railroad (the Shared-Use Option).

In the ROD, DOE identified the Mina corridor as environmentally preferable to the Caliente corridor. The ROD notes that impacts in either corridor would be similar and generally small, and that differences in environmental impacts generally result from differences in the amount of land disturbance, which would be less for the shorter Mina corridor (281 to 312 miles, depending on the alignment). A railroad in the Mina corridor also would be less costly to construct (about \$2.03 billion for Mina versus \$2.57 billion for Caliente). However, DOE did not select an alignment in the Mina corridor because of objections from the Walker River Paiute Tribe to transportation of nuclear waste across its reservation. Without the Tribe's written consent, DOE could not obtain a right-of-way through the reservation from the Bureau of Indian Affairs.

The ROD explains that DOE's decision to select the Shared-Use Option is responsive to public comments on the Rail Alignment Draft EIS, which identified economic benefits to communities through which the railroad would pass. Implementing this option requires a Certificate of Public Convenience and Necessity from the STB.

Iterative/Consultative Approach to Mitigation


In the ROD, DOE committed to several specific mitigation measures and to an iterative process to develop and implement them. Under this approach, preliminary best management practices and mitigation measures described

in the Rail Alignment EIS will be further developed and detailed through (1) the regulatory process (e.g., DOE's application to the BLM for a right-of-way and DOE's application to the STB for a Certificate of Public Convenience and Necessity), (2) development of the final design for the railroad, and (3) consultation with directly affected parties, such as grazing permittees and communities through which the railroad will pass.

Following are some of the mitigation commitments in the ROD:

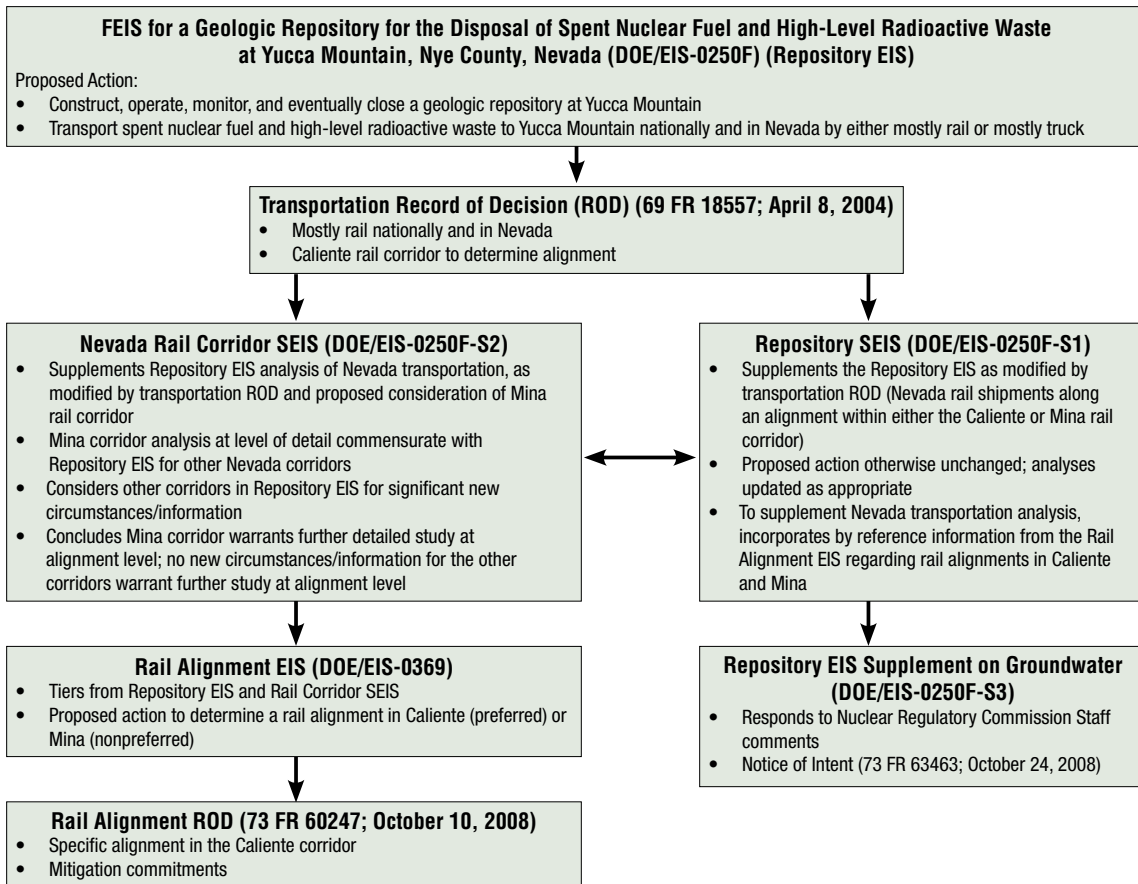
- ✓ Reaffirmation of mitigation commitments in DOE's 2004 transportation ROD (69 FR 18557; April 8, 2004), which include consultation with states, Native American tribes, local governments, utilities, the transportation industry, and other interested parties to refine the transportation system as it is developed;
- ✓ Proposed formation of one or more Mitigation Advisory Boards to enable consultation with Federal, state, and local regulatory authorities and directly affected parties, and to assist DOE, BLM, and STB in developing, implementing, and monitoring best management practices and mitigation during railroad construction and operation;
- ✓ Implementation of a cultural resources management program, including an ethnographic evaluation of the rail alignment area with the proposed assistance of the Consolidated Group of Tribes and Organizations;
- ✓ Implementation of a wetlands compensatory mitigation plan that will include measures specified by the Environmental Protection Agency in its comments on the Final EIS; and
- ✓ Implementation of measures specified by the Fish and Wildlife Service in the biological opinion to protect two endangered species, the Ute ladies'-tresses (a perennial orchid) and the Mojave population of the desert tortoise.

DOE will prepare a Mitigation Action Plan in accordance with DOE NEPA regulations (10 CFR 1021.331), and may revise the Plan as more specific information becomes available or in consultation with the proposed Mitigation Advisory Board(s) and directly affected parties.

For further information about the ROD or the associated EISs, contact Dr. Jane Summerson, NEPA Document Manager and NCO, at jane_summerson@ymp.gov or 702-794-1493. See also the chart and timeline on the next page. 

Background on Yucca EISs

Document Relationships



Yucca EISs Timeline

Document	2002	2003	2004	2005	2006	2007	2008	2009	2010
Repository EIS (DOE/EIS-0250F)			EPA NOA of Final EIS	Transportation ROD					
Repository SEIS (DOE/EIS-0250F-S1)					NOI for Repository SEIS	Draft SEIS	Final SEIS		
Nevada Rail Corridor SEIS (DOE/EIS-0250F-S2) and Rail Alignment EIS (DOE/EIS-0369)				NOI for Rail Alignment EIS	NOI for Rail Corridor SEIS and Expanded Scope Rail Alignment EIS	Draft SEIS and EIS	Final SEIS and EIS		ROD for Rail Alignment EIS
Repository EIS Supplement-Groundwater (DOE/EIS-0250F-S3)									NOI for EIS Supplement
Program Milestones	The Secretary's recommendation of Yucca Mountain to the President (accompanied by Repository EIS)	The President signs Pub. L. 107-200, designating Yucca Mountain						NRC docket License Application; determines practicable to adopt EISs with supplementation	
	FEB 2002	JUL 2002	OCT 2002	APR 2004	OCT 2006	OCT 2007	JUL 2008	SEP 2008	OCT 2008

New Supplement to the Yucca Mountain Repository EISs Will Address NRC Comments on Groundwater Impacts

DOE is preparing a new Supplement to the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F, February 2002) (Repository EIS) and the *Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250F-S1, July 2008) (Repository SEIS). The following summarizes the purpose and proposed scope for the new Supplement (DOE/EIS-0250F-S3).

DOE submitted an application to the Nuclear Regulatory Commission (NRC) on June 3, 2008, seeking authorization to construct a geologic repository at Yucca Mountain. DOE's application was accompanied by the Repository EIS. On June 16, 2008, DOE submitted the Repository SEIS to NRC. On July 11, 2008, the Environmental Protection Agency announced in the *Federal Register* (73 FR 39958) the availability of the Repository SEIS. Under Section 114(f)(4) of the Nuclear Waste Policy Act of 1982, as amended, NRC shall adopt, to the extent practicable, any EIS prepared by DOE in connection with the proposed repository.


On September 8, 2008, in its Notice of Acceptance for Docketing of DOE's License Application, the NRC informed DOE that NRC staff reviewed DOE's Repository EIS and Repository SEIS and determined that it is practicable to adopt, with further supplementation, these EISs. The NRC staff concluded that these EISs did not adequately address all of the repository-related impacts on groundwater, or from surface discharges of groundwater, and therefore requested that DOE prepare a supplement to the Repository EIS and Repository SEIS.

The basis for the NRC staff position is presented in the NRC staff's Adoption Determination Report (available online at www.nrc.gov/reading-rm/adams/web-based.html, at accession number ML082420342).

DOE's Notice of Intent (NOI), published in the *Federal Register* on October 24, 2008 (73 FR 63463), states that based on a review of the NRC staff evaluation, DOE has decided to prepare the requested Supplement. The Supplement will further describe the volcanic-alluvial aquifer near Yucca Mountain, particularly those parts that could become contaminated, and how water (and potential contaminants) can leave the groundwater flow system. In addition, the Supplement will provide an analysis of the cumulative amount of radiological and non-radiological contaminants that can be reasonably expected to enter the aquifer from the repository.

The Supplement also will provide a discussion of the potential impacts on soils and surface materials from the processes involved in surface discharges of contaminated groundwater, describe locations of potential surface discharge of groundwater for present and future wetter periods, and discuss processes at surface discharge locations that can affect accumulation, concentration, and potential remobilization of groundwater-borne contaminants.

The 30-day comment period on the NOI ended November 24, 2008. DOE received four comment documents from three Nevada counties and one Indian tribe. DOE plans to issue the Draft Supplement in the spring of 2009.

For further information about the Supplement, contact Dr. Jane Summerson, NEPA Document Manager and NCO, at jane_summerson@ymp.gov or 702-794-1493. 



Western Corridors Programmatic EIS Completed, A New Era for Energy Transport Projects

The Final Programmatic EIS (PEIS) for the *Designation of Energy Corridors on Federal Lands in 11 Western States* (DOE/EIS-0386) (West-Wide Energy Corridors PEIS) was issued on November 28, 2008 (73 FR 72477). DOE and the Bureau of Land Management (BLM), Department of the Interior, were co-lead agencies together with 13 cooperating and consulting agencies.

Section 368 of the Energy Policy Act of 2005 directed the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior to take a series of steps to designate energy transport corridors on Federal lands. The agencies were also required to perform environmental reviews and incorporate the designated corridors into the relevant agency land use, resources management, or equivalent plans (*LLQR, December 2007*, page 12).

The Final PEIS analyzes a No Action Alternative and the Proposed Action Alternative, which is also the preferred alternative, under which the agencies would designate and incorporate Federal energy corridors through amendment of relevant land use plans.

Public Comments Alter Routes, Operating Procedures

Approximately 14,000 individuals and organizations submitted over 3,500 substantive comments on the Draft PEIS during a 97-day public comment period that ended on February 14, 2008. Public hearings were conducted in all 11 western states (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), the Navajo Reservation, and Washington, DC. Comments, including those resulting from a form-letter campaign, were received from across the United States and from several other countries.

The agencies reviewed and considered all comments received on the Draft PEIS. “We used a database to categorize comment topics, weighed the public’s concerns, made adjustments to the PEIS as called for, and then developed a ‘library’ of responses to create the comment response summary in Volume 4 of the Final PEIS,” explained LaVerne Kyriss, DOE NEPA Document Manager for the PEIS. Among the concerns expressed,


some questioned proposed corridor routing near sensitive environmental areas, and others advocated required, rather than voluntary, interagency operating procedures that would be used to minimize or avoid project specific environmental impacts. As a result of the public comments, some corridor routes were altered to avoid sensitive environmental resources and proposed mandatory resource-specific interagency operating procedures were added to the Final PEIS.

Next Steps

“As applicants propose the construction or operation of new, and potentially cross-jurisdictional, energy transport facilities, BLM and affected agencies will take advantage of a streamlined process to review applications and address environmental and regulatory concerns,” explained Ray Brady, BLM Energy Team Leader. “In the past, project delays have often been the outcome of multiple agency offices issuing environmental reviews, project requirements, and land use authorizations.”

“The designation of energy corridors across all Federal lands, not just the National Forest System lands, provides land managers, the public, and industry a clear road map of where energy transportation facilities can be located,” said Greg Smith, Director of Lands, U.S. Forest Service. “This road map of connected corridor locations would help minimize impacts of multiple uses of our National Forests. This project would improve the procedures for authorizing use of National Forest lands while addressing America’s needs for energy supplies and protect our natural resources,” he said.

Records of decision (RODs) can be issued no sooner than December 29, 2008, 30 days after issuance of the Final PEIS and, for BLM, after the 60-day Governors’ review required by BLM regulations. Although DOE is a co-lead agency, DOE will not issue a ROD, as the Department will not amend any land use, resource management, or equivalent plans.

For additional information, contact LaVerne Kyriss at kyriss@wapa.gov or 720-962-7170, or visit the PEIS website at www.corridoreis.anl.gov. 

Decision Issued for Third Los Alamos Site-wide EIS

The National Nuclear Security Administration (NNSA) issued a Record of Decision (ROD) on September 26, 2008 (73 FR 55833), for the *Site-wide Environmental Impact Statement (SWEIS) for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS-0380, May 2008). The first Los Alamos SWEIS was issued in 1979, the second in 1999, and now the third in 2008. Since publication of the 1999 SWEIS, several new facilities have been constructed, and a major wildfire (Cerro Grande Fire of 2000, which burned approximately 7,700 acres within LANL boundaries) altered environmental conditions at LANL. The new SWEIS updates environmental analyses of this 25,600-acre site, including the cumulative impacts of LANL operations expected in the next 5 years.

In the 2008 SWEIS, NNSA assesses three alternatives for the continued operation of LANL: (1) No Action; (2) Reduced Operations; and (3) Expanded Operations. The Final SWEIS includes an updated seismic hazard analysis, new accident source terms, and a new analysis of seismic risks. The potential environmental impacts of terrorist activities are assessed in a classified appendix.

Decision

As described in the ROD, NNSA has decided to implement the No Action Alternative, i.e., continuing operations at current levels, consistent with the 1999 SWEIS ROD, other RODs, and findings of no significant impact, and to include several elements of the Expanded Operations Alternative (text box).

Elizabeth Withers, SWEIS Document Manager, explained that “NNSA will continue to conduct its current missions at LANL, but will increase certain operations at existing facilities and will implement new facility projects to enhance environmental and worker protection. Several elements from the Expanded Operations Alternative were chosen to facilitate compliance with the 2005 New Mexico Department of Environment Consent Order,” she said.

Taking into account economic, budgetary, environmental, scheduling, policy, and technical considerations, the Expanded Operations Alternative was identified as both NNSA’s preferred alternative and the environmentally preferable alternative because it would best fulfill NNSA’s statutory responsibilities and its environmental responsibilities under NEPA. Many facilities at LANL are more than 40 years old. The proposed new laboratories and production facilities would incorporate modern standards for energy efficiency and environmental and worker safety.

NNSA issued the ROD for the SWEIS while it continued to evaluate alternatives for the proposed transformation of the nuclear weapons complex in the *Complex Transformation Supplemental Programmatic Environmental Impact Statement (SPEIS)*. NNSA issued the Final SPEIS in October (related article, page 27).

Public Involvement/Mitigation

The public involvement process for the LANL SWEIS spanned a 3-year period, beginning with publication of a Notice of Intent on January 5, 2005 (70 FR 807). The Draft SWEIS was issued on July 6, 2006, with a 75-day

(continued on page 31)

Elements of Expanded Operations Alternative Selected in the 2008 ROD

- ✓ Supporting the Global Threat Reduction Initiative and Off-Site Sources Recovery Project by broadening the types and quantities of radioactive sealed sources stored at LANL.
- ✓ Expanding the capabilities and operational level of the Metropolitan Center for Modeling and Simulation, improving NNSA’s ability to certify that the nuclear weapons stockpile is reliable without nuclear testing.
- ✓ Performing research to improve detection and mitigation methods for beryllium – needed to implement exposure controls to ensure worker safety.
- ✓ Retrieval and disposition of legacy transuranic waste (approximately 3,100 cubic yards of contact-handled and 130 cubic yards of remote-handled) from belowground storage.
- ✓ Planning, design, construction and operation of the Waste Management Facilities Transition projects, facilitating compliance with the Consent Order.
- ✓ Repair and replacement of critical cooling system components for buildings in TA-55.
- ✓ Final design of a new Radioactive Liquid Waste Treatment Facility, and design and construction of the Zero Liquid Discharge Facility component of this new treatment facility, replacing a facility that does not meet current standards and that cannot be acceptably renovated.

GNEP PEIS Evaluates Alternative Futures for U.S. Nuclear Power



Under its Global Nuclear Energy Partnership (GNEP) initiative, DOE advocates a “closed” nuclear fuel cycle for the production of electricity from nuclear power. Nuclear fuel would be recycled by separating used (or “spent”) nuclear fuel into usable materials and waste products. This differs from the “open” nuclear fuel cycle currently used in the U.S. in which spent nuclear fuel is stored pending disposal in a geologic repository.

As part of this initiative, DOE in October issued a Draft GNEP Programmatic Environmental Impact Statement (PEIS) (DOE/EIS-0396; 73 FR 61845; October 17, 2008). The Draft PEIS evaluates the potential environmental impacts of alternative open and closed nuclear fuel cycles in the U.S. The primary analysis is based on an approximate doubling of nuclear generating capacity in the U.S. over about the next 50 years (i.e., from about 100 to 200 gigawatts-electric). The PEIS also evaluates impacts associated with slower and faster nuclear power growth rates.

From Technology Demonstration to Programmatic Analysis

The GNEP PEIS has undergone several major changes over the past 2^{1/2} years that reflect the development of the GNEP initiative. DOE launched GNEP in 2006 as part of President Bush’s Advanced Energy Initiative. The original proposal was described in a March 2006 Advance Notice of Intent (Advance NOI; 71 FR 14505; March 22, 2006). At that time, DOE proposed to demonstrate three closed fuel cycle technologies: (1) proliferation-resistant processes that would separate the usable elements in commercial spent fuel from its waste elements; (2) the conversion of transuranics into shorter-lived radioisotopes; and (3) an advanced fuel fabrication process. (See [LLQR, June 2006](#), page 10.)

Two of the major themes in public comments in response to the Advance NOI were that DOE should prepare a programmatic EIS and that the technologies needed additional bench-scale development prior to the demonstrations proposed by DOE. Also, DOE received input from industry in 2006 that it may be possible to proceed directly to commercial-scale facilities.

By the time the NOI was issued on January 4, 2007 (72 FR 331), DOE had revised its NEPA strategy. The NOI announced that DOE would prepare a PEIS to analyze both programmatic and project-level proposals. The programmatic analysis would address DOE’s proposal to move directly to commercial-scale facilities for the recycling of spent nuclear fuel. (See [LLQR, March 2007](#), page 1.)

The NOI described project-specific proposals. An advanced fuel cycle research facility would be located on a DOE site. A nuclear fuel recycling center (which would undertake the spent nuclear fuel separations and fuel fabrication operations discussed in the Advance NOI) and an advanced recycling reactor could be privately owned and operated and would be located at a site proposed by interested communities. Both the nuclear fuel recycling center and advanced recycling reactor could be somewhat larger than envisioned in the Advance NOI.

Several additional alternatives were suggested during the scoping period. These generally involved different technologies to accomplish DOE’s purpose and need to support an expansion of nuclear energy production while reducing the risks of nuclear proliferation and the impacts associated with the disposal of spent nuclear fuel. DOE considered these comments, and in response, **the Draft GNEP PEIS includes six primary alternatives.**

- ✓ **No Action.** Continue the current open fuel cycle.
- ✓ **Fast Reactor Recycle Alternative.** Spent nuclear fuel would be separated, and certain of the usable materials would be made into fuel for advanced recycling reactors. This alternative is similar to DOE’s original proposal.
- ✓ **Thermal/Fast Reactor Recycle Alternative.** Similar to the Fast Reactor Recycle Alternative, but recovered materials would be recycled in both advanced recycling reactors and light water reactors (the type currently deployed in the U.S.).
- ✓ **Thermal Reactor Recycle Alternative.** Spent nuclear fuel would be separated and certain of the usable materials would be made into fuel for thermal reactors. Three reactor types are analyzed: light water reactors, heavy water reactors, and high temperature gas-cooled reactors.
- ✓ **Thorium Alternative.** Rather than uranium-based fuel, light water reactors would be fueled with a thorium fuel in an open fuel cycle.
- ✓ **Heavy Water Reactor/High Temperature Gas-Cooled Reactor Alternative.** These are two alternatives to the reactor technology currently used in the U.S. Both would use uranium fuel in an open fuel cycle.

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Supplemental PEIS to Support Options for Nuclear Weapons Complex



The National Nuclear Security Administration (NNSA) issued its Final *Complex Transformation Supplemental Programmatic Environmental Impact Statement* (Supplemental PEIS) on October 24, 2008, just over two years after the notice of intent. During those two years, more than 100,000 people participated in the NEPA process for the Supplemental PEIS. NNSA revised the Final Supplemental PEIS in response to public comments and in anticipation of the need for flexibility in planning for the continued transformation of the U.S. nuclear weapons complex into a national security enterprise better suited to address the threats of the 21st century.

“We need to move NNSA from an outdated, Cold War nuclear weapons complex to one that is better able to support our future national security needs,” said NNSA Administrator Thomas D’Agostino in issuing the Final Supplemental PEIS.

The Supplemental PEIS analyzes various combinations of new and existing facilities for consolidating many functions of the nuclear weapons complex among sites in six states. The range of alternatives changed noticeably from the notice of intent (see [LLQR, December 2006](#), page 1) to the Draft Supplemental PEIS (see [LLQR, March 2007](#), page 3, and March 2008, page 1) to the Final Supplemental PEIS.

In remarks to NNSA leadership, the Director of the Office of Strategic Planning and Complex Transformation, Dr. George Allen, said, “The comments received over the past two years have sharpened our understanding of issues and potential alternatives for transforming the nuclear weapons complex in addition to improving the quality of our documents.”

Alternatives for Pit Manufacturing

The future of plutonium pit manufacturing was among the functions of most interest to the public. A pit is the core of a nuclear weapon. In the notice of intent, NNSA proposed to construct a new Consolidated Plutonium Center at one of five sites (Los Alamos in New Mexico, Nevada Test Site in Nevada, Pantex in Texas, Savannah River Site in South Carolina, or Y-12 National Security Complex in Tennessee). The two alternatives outlined in the notice of intent both involved continuing plutonium manufacturing in existing facilities at Los Alamos. In response to scoping comments, NNSA added consolidation alternatives that would co-locate plutonium manufacturing with one or both of the other two functions that would involve significant quantities of weapons-usable nuclear materials (highly-enriched uranium operations and weapons assembly/

disassembly). Also in response to scoping comments, NNSA added to the Draft Supplemental PEIS a qualitative discussion of a smaller nuclear weapons stockpile and an alternative to produce 50–80 plutonium pits per year at Los Alamos (compared to the 125 pits per year in other alternatives).

The public submitted more than 100,000 comment documents on the Draft Supplemental PEIS, most of which were part of several campaigns that oppose nuclear weapons production and asked NNSA to evaluate alternatives that did not involve such production. In response, NNSA added to the Final Supplemental PEIS a No Net Production Alternative that would maintain capabilities but involve production at a very low level – on the order of 10 pits per year.

Alternatives for Flight Testing

Flight testing is another area where alternatives changed through preparation of the Supplemental PEIS. Current flight testing for gravity weapons is conducted at the Tonopah Test Range in Nevada, which NNSA manages under a permit with the Air Force. These tests, which involve modified weapons incapable of a nuclear explosion, check the interface between a weapon and delivery system (airplane) and assess weapon system functions in realistic delivery conditions.

The notice of intent described alternatives that would relocate flight testing to the Department of Defense’s White Sands Missile Range in New Mexico or to the Nevada Test Site, as well as an alternative to upgrade facilities at Tonopah. Public comments during the scoping period and on the Draft Supplemental PEIS from communities around the Tonopah Test Range were strongly supportive of NNSA’s mission and raised concerns about significant adverse socioeconomic impacts if NNSA relocates flight testing. NNSA considered these comments along with other information and revised the alternatives.

In the Draft Supplemental PEIS, NNSA identified as a preferred alternative a plan to cease NNSA operation of Tonopah in approximately 2009 and conduct flight testing at a Department of Defense Facility. The Draft Supplemental PEIS also included a new alternative – Campaign Mode Operations, in which flight testing would continue at Tonopah but most staff would be brought in on an as-needed basis. In the Final Supplemental PEIS, NNSA looked closer at options for maintaining operations at Tonopah. NNSA identified as a preferred alternative a reduction in the area of Tonopah Test Range for which it is

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Complex Transformation PEIS (continued from previous page)

responsible (the Air Force would take responsibility for the remaining area), an upgrade to use mobile equipment, and operations in campaign mode.


Project Management Paved Way to Success

“We managed this Supplemental PEIS as a project from day one,” said Ted Wyka, NEPA Document Manager. “We established Integrated Project Teams to collect and analyze data on each functional area. These teams worked on the environmental analysis for the PEIS in parallel with information related to mission and technical risk, and the cost and other economic data in business cases.”

As a Supplemental PEIS, the Complex Transformation analysis tiered from the Stockpile Stewardship and Management PEIS completed in the mid-1990s (DOE/EIS-0236). However, as the first broad look at alternatives for the nuclear weapons complex in more than a decade, the Supplemental PEIS required significant quantities of new data and analysis. In addition, public participation was higher than for any previous DOE EIS, and the project’s schedule required the efficient consideration of each comment.

Mr. Wyka emphasized three lessons learned from preparation of the Supplemental PEIS at a training session during this year’s NEPA Community Meeting.

- ✓ **Program Involvement Is Essential** – Use senior management summits, Integrated Project Teams, meetings and videoconferences, and the review and concurrence process to keep senior headquarters managers and site and facilities officials involved in the analysis and decisionmaking.
- ✓ **QA, QA, QA** – The quality of data and analysis matters when preparing a NEPA document or other information to support decisionmaking. Involve field personnel in reviewing data, and do not rely solely on the NEPA support contractor. The clarity of presentation and readability of the document also matter. Quality Assurance is important throughout the NEPA process.
- ✓ **Address Non-Environmental Components of a Decision Early** – Identify all the factors (e.g., cost, program risk) that will go into a decision. Develop a schedule to work these issues in parallel with the NEPA process.

The Complex Transformation Supplemental PEIS and related information are available at www.ComplexTransformationSPEIS.com and www.nnsa.doe.gov. For questions, contact Ted Wyka at theodore.wyka@nnsa.doe.gov. 

GNEP PEIS (continued from page 26)

In addition to adding the last four alternatives, while preparing the Draft PEIS, DOE decided not to pursue any project-specific proposals at this time. Instead, the PEIS focuses on the programmatic alternatives. Project-specific proposals could be made later.


The Draft GNEP PEIS also discusses international initiatives under GNEP. The PEIS includes a general discussion of the types of environmental impacts that could be associated with a reliable fuel services program and the development of grid-appropriate reactors. However, DOE does not have any specific proposals for these initiatives at this time and would not make any related decisions based on the PEIS.

Public Comments on Draft PEIS

The 60-day public comment period on the Draft GNEP PEIS ends on December 16, 2008. However, DOE intends to extend the comment period. Meanwhile, DOE has begun holding a series of 13 public hearings around the country. These are being held in the same cities where scoping meetings for the PEIS were held.

In November, hearings were held in New Mexico, Washington, Oregon, and Idaho. Attendance has averaged from about 25 at the four hearings in New Mexico (Carlsbad, Hobbs, Los Alamos, and Roswell) to more than 100 in Pasco, Washington, and Hood River, Oregon, and about 200 in Idaho Falls, Idaho. Less than half the participants provided oral comments at the hearings. Thus far, most of the public comments express support for or opposition to recycling spent nuclear fuel or to locating facilities in the local area.

Hearings continue in December in Kentucky, Ohio, Tennessee, Illinois, South Carolina, and Washington, DC. DOE has not yet responded to requests to hold additional hearings.

The Draft GNEP PEIS and related information is available on the GNEP website at www.gnep.energy.gov. Additional information also is available from Frank Schwartz, GNEP PEIS Document Manager, at schwarzfg@id.doe.gov or 208-526-6390. 

Department of the Interior Codifies NEPA Procedures

The Department of the Interior (DOI) issued final regulations codifying its NEPA implementing procedures, which had been contained in the DOI *Departmental Manual*. The regulations (43 CFR Part 46; 73 FR 61292; October 15, 2008), which became effective on November 14, 2008, adopt existing practices for NEPA compliance and clarify Departmental requirements. These regulations apply to all DOI Bureaus, whose specific procedures may be revised for conformance to the new rule. DOI anticipates that the codified procedures will provide greater visibility to its NEPA process, enhancing opportunities for public involvement.



Points of Interest

- ✓ **Tiered Documents:** A NEPA document that tiers from a broader NEPA document must evaluate the validity of the previous impact analysis to the proposal in the tiered document. The regulations clarify the use of tiering by describing findings of no significant impact (FONSIs) for tiered EAs. A FONSI from a tiered EA would be, in effect, a finding of no significant impact for impacts other than those already disclosed and analyzed in the EIS (from which the EA is tiered). This FONSI may also be called a “finding of no *new* significant impact.”
- ✓ **Consensus-based Management:** The regulations encourage the involvement of persons, organizations, and communities that may be interested in or affected by a proposed action. When a reasonable consensus-based alternative is proposed, a discussion of its effects must be included in the NEPA document. The Responsible Official determines whether the consensus-based alternative should be the preferred alternative and, if not, must state reasons in the environmental documentation. (See [LLQR, June 2007](#), page 4, for more on consensus building in the NEPA process.)
- ✓ **Adaptive Management:** The regulations state that Departmental Bureaus should incorporate adaptive management approaches in decisionmaking, particularly in circumstances where long-term impacts are uncertain and monitoring will aid in adjusting the course of implementation. The range of management options should be identified and analyzed, and the environmental effects of any adaptive management strategy must be evaluated in an initial or subsequent NEPA analysis.
- ✓ **Mitigation:** For an action proposed by DOI, a NEPA document must analyze the effects of any appropriate mitigation measures and best management practices. NEPA review of an applicant’s proposal must include any “ameliorative design elements” required to make the proposal conform to applicable legal requirements, as well as any voluntary ameliorative design elements. The effects of any additional mitigation measures (i.e., those identified by DOI) also must be analyzed. The analysis of such mitigation measures may be structured as alternatives to the applicant’s proposal or as separate mitigation measures to be imposed on any alternative selected for implementation. LL

Read Tomorrow’s *Federal Register* Today

The public has easy access to pending *Federal Register* notices via the Electronic Public Inspection Desk (www.federalregister.gov/page2.aspx), which was added to the Office of the Federal Register’s website last spring. At about 8:45 a.m. every Federal business day, the website is updated with a new set of documents that are available for public inspection prior to publication in the *Federal Register*, typically up to three days later. Also, the Regular Filing section of the Electronic Public Inspection Desk includes the complete table of contents and notices scheduled to appear in the next day’s issue of the *Federal Register*.

Notices of intent to prepare EISs, notices of availability for draft and final EISs, and records of decision all are published in the *Federal Register*, along with other NEPA-related notices. When developing a communications

plan for an EIS or other NEPA document, DOE NEPA practitioners should bear in mind that the public will have access to these notices prior to the actual publication date. However, this early public access does not affect the start of schedule milestones that are linked to the date of publication in the *Federal Register*. For example, a comment period on a draft EIS still begins on the date of publication of the Environmental Protection Agency’s notice of availability.

Documents filed for publication in the *Federal Register* have always been available for public review prior to the date of publication. The Federal Register Act requires that, “Upon filing, at least one copy shall be immediately available for public inspection” in the Office of the Federal Register (44 U.S.C. 1503). With the Electronic Public Inspection Desk, public access is no longer limited to the physical office in Washington, DC. LL

HUD Offers Tribal Directory Assessment Tool

A Tribal Directory Assessment Tool has been developed by the Environmental Planning Division, Office of Environment and Energy, U.S. Department of Housing and Urban Development (HUD), to assist users with National Historic Preservation Act Section 106 compliance and tribal consultation. This web-based tool is a useful starting point for identifying Federally-recognized tribes that might have an interest in or be affected by a DOE or applicant proposal.

Features

The tool, released in August 2008, identifies tribes at the county level that have potential interest in Federal projects. For each of the identified tribes for a particular county, the tool provides a point of contact within the tribe and the following information (if available): title, mailing address, work phone, fax, email, and whether or not the tribe has assumed the functions of the State Historic Preservation Officer for undertakings on tribal lands (i.e., has a Tribal Historic Preservation Officer) (36 CFR 800.2(c)). If the tribe has a Tribal Historic Preservation Officer, the tool provides similar contact information for that individual. In addition, users can access U.S. Geological Survey (USGS) mapping data from the tool's website by clicking the "National Atlas State Maps" link under Related Information. This feature allows users to view their project locations geographically, access electronically a USGS topographical map, and print or email the map to other parties.


How to Use

The tool is very easy to use and information can be easily obtained in just a few steps. First, the user must download a state report from the tool's website. Second, the user opens the PDF file and performs a word search

for the county in which the proposed project would be located to identify the specific Indian tribes, Native Hawaiian organizations, and Alaska Natives that might be interested in the project. For example, if the project's proposed site is located in Stevens County, Kansas, the tool identifies three potentially-interested tribes (Apache Tribe of Oklahoma, Comanche Nation, Kiowa Indian Tribe of Oklahoma) to consult with as part of the NEPA participation and Section 106 consultation processes. The tool also identifies the tribes' Tribal Historic Preservation Officers. However, for this particular example, none of the three tribes has assumed the functions of the State Historic Preservation Officer.



Additional Information

HUD encourages users to provide feedback on how the Tribal Directory Assessment Tool may be improved and to send updated information and corrections for the tool's database, including tribal areas of interest and contact information. Please send comments or new information to ATEC@hud.gov. Based on the information provided by users and tribes, HUD plans to update the tool's tribal areas of interest information periodically. To access the tool and a Users Guide with general instructions and information on data sources, such as the National Park Service's Native American Consultation Database, go to www.hud.gov/offices/cpd/environment/tribal/. For more information on HUD's Tribal Directory Assessment Tool, please contact David Blick of HUD's Office of Environment and Energy at david.g.blick@hud.gov or 202-402-5718. 

Basic Requirements for Tribal Involvement in the Section 106 and NEPA Processes

Section 106 of the National Historic Preservation Act – requires Federal agencies to consider the impacts of their projects on historic properties and give the Advisory Council on Historic Preservation an opportunity to comment.

The Advisory Council on Historic Preservation Regulations – require Federal agencies to make “a reasonable and good faith effort” to identify Indian tribes¹ (includes Alaska Natives) and Native Hawaiian organizations that shall be consulted in the Section 106 process (36 CFR 800.2).

DOE NEPA Regulations – state that in addition to notifying the host state or host tribe of its determination to prepare an EA or EIS, DOE may also notify any other state or American Indian tribe that, in DOE's judgment, may be affected by the proposal. The regulations also require DOE to afford the host state or host tribe an opportunity to comment on an EA, prior to DOE's approval. In addition, DOE may also provide any other state or American Indian tribe that same opportunity if, in DOE's judgment, that state or tribe might be affected by the proposed action (10 CFR 1021.301).

¹Even though the National Historic Preservation Act's definition of “Indian tribe” refers only to Federally-recognized Indian tribes (and HUD's Tribal Directory Assessment Tool only identifies Federally-recognized tribes), Federal agencies may invite a State-recognized Indian tribe or non-recognized Native American group to participate in consultation based on a demonstrated interest in the undertaking's effects on historic properties (www.achp.gov/regs-tribes.html).

EPA Western Regions NEPA Reviewers Focus on Climate Change



In response to heightened interest in the topic, the Environmental Protection Agency (EPA) focused on global climate change and NEPA at its three-day *NEPA Western Regions Meeting* in Seattle in November. At the meeting, approximately 30 NEPA “Section 309” reviewers from EPA Regions 8, 9, and 10 participated in training on considering greenhouse gas emissions and climate change under NEPA and a review of emerging energy technologies.

Under Section 309 of the Clean Air Act, EPA is required to review and publicly comment on the environmental impacts of major Federal actions including actions that are the subject of EISs. The Seattle meeting was intended to provide information to EPA reviewers to foster better EPA comments on Federal agency EISs.

A one-day course on how to address climate change in NEPA documents was provided. The instructor, Ray Clark, Duke University, reflected on his experience as NEPA coordinator at the Council on Environmental Quality and noted that “each generation of NEPA practitioners has faced challenging new issues. Climate change is such an issue and has the potential to energize the entire practice of NEPA.” The training covered a range of subjects, including: an update on climate change science and policy development; methods to inventory greenhouse gas emissions; discussion of environmental, social, and economic impacts; cumulative impacts; and climate change adaptation and mitigation.

After the training, presentations and group discussions considered the potential impacts on climate change of four major sectors: public lands management, water resources, goods movement and transportation, and energy.

The discussion of public lands management featured a presentation on climate change effects on forest

ecosystems by David L. Peterson, a co-recipient of the Nobel Peace Prize in 2007 for his research and contributions to the Intergovernmental Panel on Climate Change. Dr. Peterson also participated in a panel discussion with Kathy O’Halloran, Natural Resources Staff Officer on the Olympic National Forest, and Professor Alan Hamlet, of the University of Washington, to explore the latest findings relevant to estimating potential impacts on western forests and water resources.

As part of the discussion on the energy sector, Eric Cohen of DOE’s Office of NEPA Policy and Compliance described the consideration of climate change in DOE NEPA documents, and discussed challenges DOE and other agencies face in addressing this topic. Other presentations addressed emerging energy technologies, including presentations on marine wave energy production by representatives of the Minerals Management Service and the State of Oregon Department of Land Conservation and Management; nuclear power and integrated gasification combine cycle technology by experts from EPA; the outlook for geothermal energy production in the West by an expert from the Bureau of Land Management; and the promising potential for concentrated solar power to contribute to meeting the Nation’s electrical power needs by a representative of the organization Clean Energy Action. Other presentations addressed transportation planning in the Puget Sound area and the role of the Federal Energy Regulatory Commission.

EPA’s attention to global climate change indicates that Federal agencies can expect EPA to consider this topic when commenting on draft EISs, Mr. Cohen said. [LL](#)

Third Los Alamos SWEIS (continued from page 25)

comment period. The Notice of Availability for the Final SWEIS was published in the *Federal Register* on May 16, 2008 (73 FR 28461). More than 2,500 comments were received and addressed during the NEPA process. Comments focused on opposition to nuclear weapons and pit production; modernization of the nuclear weapons complex; impacts of LANL operations on groundwater in the regional aquifer and surface water; the generation of waste at LANL and its ultimate disposal; the adequacy of the environmental justice analysis; the potential loss of farmland; impacts of seismic hazards; and NNSA’s efforts to initiate government-to-government consultation with tribal governments.

A Mitigation Action Plan (MAP) is being developed to address mitigation commitments. With respect to concerns raised by the Santa Clara Pueblo, NNSA will continue its efforts to support the Pueblo and other tribal entities in matters of human health, and will participate in various intergovernmental cooperative efforts to protect indigenous practices and locations of concern. NNSA will conduct government-to-government consultation with the Pueblo and other tribal entities and incorporate these matters into the MAP.

Questions about the SWEIS and ROD may be addressed to George J. Rael, NEPA Compliance Officer, Los Alamos Site Office, at 505-665-0308. [LL](#)

Transitions

NNSA NCO Alice Williams Now Manager, Livermore Site Office

Alice Williams, recently Associate Administrator for Infrastructure and Environment and NCO, NNSA, now serves as Manager of the Livermore Site Office. Ms. Williams worked as a contractor to the Idaho Operations Office for 11 years before joining the Operations Office, where she served for 13 years. Her work there included many aspects of the NEPA process (e.g., the Draft New Production Reactor EIS, 1991, and the Spent Nuclear Fuel Programmatic EIS, 1995), and she held the position of Deputy Assistant Manager for environmental activities. Ms. Williams then served as Site Manager for the West Valley Demonstration Project in New York for 3 years. She joined the Headquarters Office of Environmental Management in 2003 as Associate Deputy Assistant Secretary for Waste Disposition and Logistics, and in 2004 transferred to NNSA and became its NCO the next year. As a senior DOE manager with more than 20 years of Federal service, she coordinated a number of major EISs for NNSA, most recently Continued Operation of the Los Alamos National Laboratory and Complex Transformation (related articles, pages 25 and 27).

On behalf of the DOE NEPA Community, the Office of NEPA Policy and Compliance wishes Alice success in her new role and appreciates her dedication to DOE's NEPA activities, her presentations at DOE NEPA meetings, and support for the DOE-wide NEPA contracting acquisition.



Mary Martin (right) takes over the NNSA NEPA responsibilities from Alice Williams, who is now Manager of the Livermore Site Office.

New NCOs

NNSA: Mary Martin

Mary E. Martin, who was designated as NNSA's NCO to replace Alice Williams, has a longstanding interest in the relationship between technology and policy. Most recently, in the NNSA Office of Environmental Projects and Operations, she assisted Ms. Williams in supporting NNSA's NEPA activities, including work on the Complex Transformation Supplemental Programmatic EIS, and the Los Alamos National Laboratory and Y-12 Site-Wide EISs, among other NEPA documents. NNSA Administrator Thomas P. D'Agostino recently acknowledged her NEPA work, particularly her efforts to help develop an approach for terrorist threat analysis in EISs, stating that she was "setting the standard in this new area."

Before joining NNSA in 2001, Ms. Martin served for 23 years on active duty as an engineer in the Navy, developing and applying technologies for defense and national security, and retired from the Navy as a Commander in November 2001. A physicist by training, Ms. Martin is a member of the American Physical Society, American Society of Naval Engineers, the Society of Naval Architects and Marine Engineers, and the Naval War College Foundation. She can be reached at mary.martin@nnsa.doe.gov or 202-586-9438.

CFO: Matt McMillen

Matt McMillen, who was introduced in the September 2008 issue of *LLQR*, has been designated as NCO for the Office of the Chief Financial Officer, which includes the Loan Guarantee Program Office, where he serves as Director of the NEPA Compliance Division. He can be reached at matthew.mcmillen@hq.doe.gov or at his new phone number, 202-586-7248.

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Transitions *(continued from previous page)*

EM: Jeanie Loving

Jeanie Loving transferred in October from the Office of NEPA Policy and Compliance to the Office of Regulatory Compliance within the Office of Environmental Management (EM), and has been designated as EM's NCO. Former NCO Tish O'Connor, now serves as an EM senior environmental policy advisor for site closure, performance assessments, and cleanup transition planning to long-term stewardship.

Since joining the NEPA Office in January 2001, Ms. Loving contributed to a number of EM's major EISs and was the principal author of DOE guidance on the supplement analysis process. She is a strong advocate for quality management in the NEPA process. Recently, Ms. Loving has been and expects to continue working on EISs for West Valley Demonstration Project Decommissioning and/or Long-Term Stewardship, Hanford Tank Closure and Waste Management, and Greater-Than-Class C Low-Level Radioactive Waste Disposal. Ms. Loving can be reached at jeanie.loving@hq.doe.gov or 202-586-0125.

The NEPA Office appreciates Jeanie's many contributions – reviewing EISs, developing guidance and LLQR articles, and championing the cause of NEPA document quality.

NEPA Office Bids a Fond Farewell to NNSA Deputy General Counsel Paul Detwiler

R. Paul Detwiler, the Deputy General Counsel of the NNSA, will become a Senior Management and Technical Advisor at DOE's National Energy Technology Laboratory in Pittsburgh, PA, in January 2009. Dr. Detwiler has made many contributions to the Department's NEPA Compliance Program during his 13 years at DOE Headquarters. Most recently as NNSA's NEPA attorney, he has been a key player in preparation of the *Complex Transformation Supplemental Programmatic EIS* and the *Site-wide EIS for Continued Operation of Los Alamos National Laboratory*.



Dr. Detwiler is a strong advocate of taking the time “to get it right” – the best approach for long-term success. His paper, *The Environmental Style: Writing Environmental Assessments and Impact Statements*, found on the DOE NEPA website under Guidance, will continue to be valuable to NEPA practitioners in this regard. It provides eight guidelines on structuring an EA and EIS in compliance with NEPA and additional guidelines on how to write well, for example, using the active voice and eliminating “freight trains” – long strings of nouns used as adjectives.

DOE's Office of NEPA Policy and Compliance will miss Paul's wisdom and candor and, on behalf of DOE's NEPA Community, wishes him success in his new position. □□

NEPA Contracting Update

The six DOE-wide NEPA contracts now in place have been extended through December 15, 2008. Tasks issued before the expiration dates need not be completed before the expiration dates. Information on the contracts and how to issue task orders under them is available on the DOE NEPA Website at www.gc.energy.gov/nepa under NEPA Contracting.

The Integrated Project Team for procuring the next set of DOE-wide NEPA contracts – led by the NNSA Service Center and including NEPA Compliance Officers – is nearing completion of the selection process, and the results will be announced to NEPA community as soon as available and reported in the next *LLQR*.

David Nienow, formerly the Contract Administrator for the DOE-wide NEPA contracts, retired from the NNSA Service Center in October. The new Contract Administrator is Francis Ting, who can be reached at fting@doeal.gov or 505-845-4912.



Litigation Updates

These articles are not intended to be comprehensive legal summaries, but rather emphasize the lessons that may be of broadest use to DOE's NEPA practitioners. The links to opinions or, in some cases, the full docket in the online version of LLQR are provided so the interested reader can gain a more complete understanding.

DOE Litigation

Groups Challenge EA for Kansas City Plant Relocation

Four nonprofit organizations and four individuals have challenged the NEPA analysis for a plan by the NNSA and the General Services Administration (GSA) to relocate operations of the NNSA's Kansas City Plant, which manufactures and procures nonnuclear components for nuclear weapons. DOE and GSA prepared the *Environmental Assessment for the Modernization of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the Kansas City Plant* (DOE/EA-1592, April 2008) and issued a finding of no significant impact (FONSI) (73 FR 23244; April 29, 2008) for their proposal to relocate the operations to a new facility in the Kansas City, Missouri, area.

The plaintiffs claim, among other things, that the agencies did not adequately consider the potential environmental

impacts of relocating the operations (including potentially necessary environmental remediation of the existing site), or of reasonable alternatives; decided to move forward with the proposal before the NEPA process was complete; and segmented consideration of some aspects of DOE's nuclear weapons-related production activities in separate NEPA documents (referring to the *Complex Transformation Supplemental Programmatic EIS* (DOE/EIS-0236-S4, October 2008)). The plaintiffs requested that the court set aside the FONSI and enjoin the agencies from proceeding with the relocation until they complete an EIS and issue a record of decision. The complaint was filed in the U.S. District Court for the District of Columbia on October 8, 2008; a schedule for the case has not been set. *Natural Resources Defense Council v. DOE* (D. D.C.) Case No.: 08-01709. [LL](#)

Litigation Dismissed Regarding NEPA Review for Coal Project Tax Credits

The U.S. District Court for the District of Columbia on November 10, 2008, dismissed a complaint filed by Appalachian Voices and The Canary Coalition against DOE and the Department of the Treasury. The plaintiffs, two nonprofit environmental groups both located in North Carolina, sought to suspend a program under the Energy Policy Act of 2005 that allocated \$1.65 billion in tax credits for nine experimental coal-fired power projects. The plaintiffs alleged the agencies violated NEPA and the Endangered Species Act by failing to assess the environmental impacts of advanced coal projects, specifically the effects of mining (e.g., from mountaintop removal and valley fills) and air emissions (e.g., sulfur dioxide, mercury, particulates, and carbon dioxide) that would result from the projects.

The court found that the plaintiffs lacked standing and dismissed the case. In its opinion, the court stated that, in

order to demonstrate standing, a plaintiff must satisfy a three-pronged test: (1) the plaintiff must have suffered an injury in fact, defined as a harm that is concrete and actual or imminent, not conjectural or hypothetical; (2) the injury must be fairly traceable to the alleged governmental conduct; and (3) the requested relief will redress the alleged injury. In this case, the court found that the plaintiffs satisfied the injury-in-fact test with respect to only one of the nine projects that qualified for the tax credit, as the others are outside of North Carolina, where the plaintiff organizations are located. The court concluded that the plaintiffs failed to satisfy the traceability criterion because they could not demonstrate that availability of the tax credit was at least a substantial factor motivating the power company's decision to construct the plant. *Appalachian Voices v. DOE* (D. D.C.) Case No.: 08-00380. [LL](#)



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Other Agency NEPA Litigation

Supreme Court Decides Sonar Case in Favor of Navy; Addresses Injunction, not NEPA Emergency Provisions

In a case involving the emergency provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.11), the Supreme Court issued its opinion on October 8, 2008, without addressing whether general national security needs constitute an emergency under NEPA. Without addressing the underlying merits arguments, writing for a majority of the Court, Chief Justice Roberts explained that the lower courts had used an improper formulation of the preliminary injunction standard by evaluating whether the plaintiffs had shown a “possibility” of irreparable harm to themselves, rather than a “likelihood” of irreparable harm. The Court also concluded that the District Court and Court of Appeals had erred by not giving sufficient weight to the harm to the Navy caused by the additional mitigation conditions and by improperly balancing the equities and the public interest.

In litigation brought by Natural Resources Defense Council and others, the Navy had appealed to the Supreme Court following a ruling by the U.S. Court of Appeals for the Ninth Circuit. The Appeals Court had disagreed with CEQ’s and the Navy’s determination that national security needs constitute an emergency for purposes of allowing “alternative arrangements” to replace the normal NEPA process ([LLQR, March 2008](#), page 19, and [June 2008](#), page 22).

The Navy’s proposed action was a series of major training exercises involving “mid-frequency active sonar,” which can harm marine mammals. These exercises, needed to certify Navy “strike groups” of coordinated ships, submarines, and aircraft as ready for deployment, are being conducted off the southern California coast through

January 2009, when the Navy expects to have completed an EIS for the use and expansion of the southern California naval training area.

The Court of Appeals in February 2008 affirmed a preliminary injunction issued by the District Court, which permitted the Navy to proceed with the training exercises on the condition that it use a number of measures to mitigate the potential for harm to marine mammals which exceeded the mitigation measures the Navy had developed in consultation with the National Marine Fisheries Service. The Court of Appeals left in place two particular mitigation measures imposed by the District Court that the Navy had claimed would significantly limit its conduct of training and jeopardize its ability to certify that the Navy forces were ready for deployment.

The Court of Appeals then stayed the injunction while the case was pending before the Supreme Court, allowing sonar exercises to proceed under the Navy’s less restrictive mitigation. The Supreme Court vacated the provisions of the preliminary injunction challenged by the Navy – i.e., the two mitigation measures.

The Navy is expected to issue a comprehensive environmental impact statement in January 2009 encompassing all Navy activities in the Southern California Operating Area, including the types of training activities at issue.

Winter, Secretary of the Navy, v. Natural Resources Defense Council et al.

See www.supremecourtus.gov/docket/docket.html
Case No.: 07-1239.

DOE Issues Alternative Dispute Resolution Policy



DOE issued a [policy statement](#) that reaffirms DOE’s commitment to using Alternative Dispute Resolution to resolve controversial issues in a “fair, timely, and cost efficient manner.” The policy (73 FR 63458; October 24, 2008) incorporates directives of the joint Council on Environmental Quality and Office of Management and Budget Memorandum on Environmental Conflict Resolution (November 28, 2005; [LLQR, March 2006](#), page 13.)

The policy statement encourages the use of Alternative Dispute Resolution, including Environmental Conflict Resolution, to prevent or resolve disputes over contentious issues and decisions, and thereby to avoid litigation and

administrative proceedings. Such conflicts may arise “over the actual, potential or perceived impacts of DOE operations on the environment and natural resources.” Basic principles of the approach include balanced, voluntary, and inclusive representation of affected interests, and distribution and accessibility of relevant information.

DOE’s designated dispute resolution specialist is Kathleen Binder, Director, Office of Conflict Prevention and Resolution, who can be reached at kathleen.binder@hq.doe.gov or 202-586-6972. Resources are provided on the Office’s website, www.gc.doe.gov/disputeResolution.htm.

Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- Continuing Legal Education (CLE)
800-873-7130
www.cle.com
NEPA
San Diego, CA: February 23-24
San Francisco, CA: March 5-6
\$795 (Discounts available)
- Colleague Consulting
301-277-0255
cvaughan@colleagueconsulting.com
www.colleagueconsulting.com
Environmental Laws and Regulations, and NEPA
Oak Ridge, TN: February 2-4
Albuquerque, NM: April 7-9
No Fee
- Nicholas School of the Environment and Earth Sciences
Duke University
919-613-8082
del@nicholas.duke.edu
www.env.duke.edu/del/continuing/courses.html
Implementation of NEPA
Durham, NC: December 8-12
\$1,225
Considering Greenhouse Gas Emissions and Climate Change under NEPA
Durham, NC: January 28-30
\$800 (\$875 after 1/7/09)
Socioeconomic Impact Analysis under NEPA
Durham, NC: February 18-20
\$800 (\$875 after 1/28/09)
Scoping, Public Involvement, and Environmental Justice
Durham, NC: April 1-3
\$800 (\$875 after 3/11/09)
Certificate in NEPA
Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by CEQ.
Fee: Included in registration for constituent courses.
- Northwest Environmental Training Center
206-762-1976
info@nwetc.org
www.nwetc.org
NEPA: Writing the Perfect EA/FONSI or EIS
Denver, CO: December 9-10
Oakland, CA: January 29-30
\$495 (\$395 reduced tuition is available, see website)
- The Shipley Group
888-270-2157 or 801-298-7800
shipley@shipleygroup.com
www.shipleygroup.com
How to Manage the NEPA Process and Write Effective NEPA Documents
San Francisco, CA: January 6-9
\$1,115 (GSA contract: \$1,025)
St. Louis, MO: January 26-28
\$915 (GSA contract: \$825 until 12/16/08)
Cleveland, OH: March 3-6
\$1,145 (GSA contract: \$1,055 until 1/21/09)
NEPA Climate Change Analysis
Portland, OR: January 7-8
\$715 (GSA contract: \$625)
San Francisco, CA: March 26-27
\$745 (GSA contract: \$655 until 2/2/09)
NEPA Cumulative Effects Analysis and Documentation
San Antonio, TX: January 13-15
\$915 (GSA contract: \$825)
St. Louis, MO: January 29-30
\$715 (GSA contract: \$625 until 12/16/08)
San Francisco, CA: March 24-25
\$745 (GSA contract: \$655 until 2/2/09)
Reviewing NEPA Documents
Denver, CO: January 26-28
\$915 (GSA contract: \$825 until 12/2/08)
Reviewing NEPA Documents/Managing NEPA Projects and Teams
Denver, CO: January 26-30
\$1,315 (GSA contract: \$1,225 until 12/2/08)

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Training Opportunities

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How to Manage the NEPA Process and Write Effective NEPA Documents/ NEPA Cumulative Effects Analysis and Documentation

St. Louis, MO: January 26-30

\$1,315 (GSA contract: \$1,225 until 12/16/08)

Managing NEPA Projects and Teams

Denver, CO: January 29-30

\$715 (GSA contract: \$625 until 12/2/08)

Cultural and Natural Resource Management/ Endangered Species Act Overview

Phoenix, AZ: February 3-5

\$915 (GSA contract: \$825 until 12/29/08)

How to Manage the NEPA Process – Emphasis on Native American Issues

Phoenix, AZ: February 10-12

\$915 (GSA contract: \$825 until 12/31/08)

How to Establish and Manage an Interdisciplinary Team/ Clear Writing for NEPA Specialists

Salt Lake City/Park City, UT: February 23-27

\$1,315 (GSA contract: \$1,225)

Clear Writing for NEPA Specialists

Salt Lake City/Park City, UT: February 25-27

\$915 (GSA contract: \$825 until 12/30/08)

NEPA Cumulative Effects Analysis and Documentation/NEPA Climate Change Analysis

San Francisco, CA: March 24-27

\$1,145 (GSA contract: \$1,055 until 2/2/09)

Integrating Federal Environmental Laws into NEPA

Jackson Hole, WY: March 31-April 2

\$945 (GSA contract: \$855 until 2/20/09)

NEPA Certificate Program

Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.

Natural Resources and Environmental Policy Program

Utah State University

435-797-0922

Judy.Kurtzman@usu.edu

www.cnr.usu.edu/policy/

- SWCA Environmental Consultants

800-828-7991

training@swca.com

www.swca.com/training

Comprehensive NEPA

Tucson, AZ: March 11-13

\$795 (discounts available)

- US Institute for Environmental Conflict Resolution

130 S. Scott Ave.

Tucson, AZ 85701

(520) 901-8501

usiecr@ecr.gov

www.ecr.gov/Training/training.aspx

Introduction to Managing Environmental Conflict

Tucson, AZ: January 13-14

Washington, DC: March 10-11

\$995

Advanced Multi-Party Negotiation of Environmental Disputes

Washington, DC: February 10-12

\$1,295

Collaborative Competencies

Washington, DC: February 24-26

\$1,495

EAs and EISs Completed July 1 to September 30, 2008

EAs

Golden Field Office/Office of Energy Efficiency and Renewable Energy
DOE/EA-1620 (8/11/08)
Burbank Hydrogen Fueling Station Project, California
Cost: \$101,000
Time: 6 months

DOE/EA-1621 (9/21/08)
Oregon Institute of Technology (OIT) Deep Geothermal Well and Power Plant Project, Klamath County, Oregon
Cost: \$41,000
Time: 5 months

DOE/EA-1628 (9/29/08)
Construction and Operation of a Proposed Lignocellulosic Biorefinery, POET Project LIBERTY, LLC., Emmetsburg, Iowa
Cost: \$112,000
Time: 3 months

National Energy Technology Laboratory/Office of Fossil Energy
DOE/EA-1616 (9/10/08)
Power Systems Development Facility, Carbon Research Center Project, Southern Company Services, Wilsonville, Alabama
Cost: \$35,000
Time: 5 months

National Nuclear Security Administration
DOE/EA-1502 (9/23/08)
Transport of Plutonium between the U.S. and a Foreign Country (Classified)
Cost: \$85,000
Time: 52 months

Oak Ridge Office/Office of Science
DOE/EA-1618 (7/28/08)
Oak Ridge National Laboratory Modernization Initiative, Tennessee
Cost: \$80,000
Time: 3 months

Savannah River Operations Office/Office of Environmental Management
DOE/EA-1605 (8/6/08)
Biomass Cogeneration and Heating Facilities at the Savannah River Site, South Carolina
Cost: \$30,000
Time: 11 months

Western Area Power Administration
DOE/EA-1623 (6/20/08)*
Groton Generation Station Unit II Project, South Dakota
Cost: The cost for this EA was paid by the applicant; therefore, cost information does not apply to DOE.
Time: Not applicable

* Not previously reported in LLQR

EISs

Office of Civilian Radioactive Waste Management
DOE/EIS-0250F-S1 (73 FR 39958, 7/11/08)
(EPA Rating: EC-2)
Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada
Cost: \$7,300,000
Time: 21 months

DOE/EIS-0250F-S2 (73 FR 39958, 7/11/08)
(EPA Rating: LO)
Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor
Cost: See DOE/EIS-0369, below
Time: 51 months

DOE/EIS-0369 (73 FR 39958, 7/11/08)
(EPA Rating: EC-2)
Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada
Cost: \$18,200,000
(includes cost for DOE/EIS-0250F-S2)
Time: 51 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 website at www.epa.gov/compliance/nepa/comments/ratings.html.)

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 7 EAs for which cost data were applicable was \$80,000; the average cost was \$69,000.
- Cumulatively, for the 12 months that ended September 30, 2008, the median cost for the preparation of 23 EAs for which cost data were applicable was \$85,000; the average cost was \$113,000.
- For this quarter, the median completion time for 7 EAs was 5 months; the average was 12 months.
- Cumulatively, for the 12 months that ended September 30, 2008, the median completion time for 26 EAs was 12 months; the average was 21 months.

EIS Cost and Completion Times

- For this quarter, the median cost of three EISs for which cost data were applicable was \$12,750,000; the average cost was \$8,500,000.
- Cumulatively, for the 12 months that ended September 30, 2008, the median cost for the preparation of 9 EISs for which cost data were applicable was \$3,580,000; the average cost was \$5,930,000.
- For this quarter, the median completion time for 3 EISs was 51 months; the average was 41 months.
- Cumulatively, for the 12 months that ended September 30, 2008, the median completion time for 11 EISs was 37 months; the average was 36 months.

Recent EIS-Related Milestones (September 1 to November 30, 2008)

Advance Notice of Intent

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0406

*Designation of Energy Corridors on Federal
Land in 39 States*

October 2008 (73 FR 57613, 10/3/08)

Notices of Intent

Office of Civilian Radioactive Waste Management

DOE/EIS-0250-S3

*Supplement to the Environmental Impact Statement
for a Geologic Repository for the Disposal
of Spent Nuclear Fuel and High-Level Radioactive
Waste at Yucca Mountain – Groundwater,
Nye County, NV*

October 2008 (73 FR 63463, 10/24/08)

Office of Fossil Energy/National Energy Technology Laboratory

DOE/EIS-0409

*Demonstration of the Integrated Gasification
Combined Cycle (IGCC) Technology,
Kemper County, Mississippi*

September 2008 (73 FR 54569, 9/22/08)

Western Area Power Administration

DOE/EIS-0408

Upper Great Plains Wind Energy Programmatic EIS

September 2008 (73 FR 52855, 9/11/08)

Notice of Cancellation

Western Area Power Administration

DOE/EIS-0390

*Eastern Plains Transmission Project, Colorado
and Kansas*

September 2008 (73 FR 51295, 9/2/08)

Draft EIS

Office of Nuclear Energy

DOE/EIS-0396

*Global Nuclear Energy Partnership Programmatic
Environmental Impact Statement*

October 2008 (73 FR 61859, 10/17/08)

(continued on next page)

Recent EIS-Related Milestones *(continued from previous page)*

Final EISs

National Nuclear Security Administration

DOE/EIS-0236-S4

Complex Transformation Supplemental Programmatic Environmental Impact Statement
October 2008 (73 FR 63470, 10/24/08)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0386

Programmatic Environmental Impact Statement, Designation of Energy Corridors on Federal Land in the 11 Western States
(co-lead, Bureau of Land Management, Department of the Interior)
November 2008 (73 FR 72477, 11/28/08)

DOE/EIS-0399

Environmental Impact Statement for the Montana Alberta Tie Ltd. (MATL) 230-kV Transmission Line, Great Falls, Montana
(co-lead, Montana Department of Environmental Quality)
October 2008 (73 FR 57620, 10/3/08)

Records of Decision

National Nuclear Security Administration

DOE/EIS-0380

Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico
September 2008 (73 FR 55833, 9/26/08)

Office of Civilian Radioactive Waste Management

DOE/EIS-0369

Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada
October 2008 (73 FR 60247, 10/10/08)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0399

Environmental Impact Statement for the Montana Alberta Tie Ltd. (MATL) 230-kV Transmission Line, Great Falls, Montana
November 2008 (73 FR 67860, 11/17/08)

Supplement Analysis

Office of Environmental Management

DOE/EIS-0222-SA-1

Hanford Comprehensive Land-Use Plan Environmental Impact Statement, Hanford Site, Richland, Washington
(Decision: No further NEPA review required)
September 2008

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0222

Hanford Comprehensive Land-Use Plan Environmental Impact Statement, Hanford Site, Richland, Washington
September 2008 (73 FR 55824, 9/26/08)

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.

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 NEPA Policy and Compliance.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Regular team meetings.* Pre-arranged weekly meetings with all players facilitated timely completion of the EA.
- *Contractor thoroughness and knowledge.* The contractor's thoroughness and knowledge of the project enabled efficient completion of the EA.

Factors that Inhibited Timely Completion of Documents

- *Team member over-involvement in project details.* Too many of the project "players" provided input on the minor details of the project process, such as every email, meeting, and phone call, which became cumbersome and time consuming.
- *Subcontractor management and staffing difficulties.* DOE attempts to begin the EA were delayed due to subcontractor project management problems with staffing, project details and the inability to establish a realistic timeframe for EA completion.
- *Program Manager's lack of NEPA experience.* The DOE Program Manager started the project without an adequate understanding of NEPA, delaying the start of the NEPA process. The process went smoothly after the Program Manager accepted the process.

Teamwork

Factors that Facilitated Effective Teamwork

- *Direct communication among team members.* Open and direct communication between DOE and all the contractors allowed the project to proceed smoothly and on schedule despite extremely tight scheduling issues.
- *Team review of draft document.* Two "real time" reviews of the draft document using a projector allowed for efficient review of the document by the team, which included the NEPA department, state representatives, and legal counsel.

- *Understanding of project issues.* A very clear understanding of the project by the contractor and recipient facilitated the smooth completion of this EA.
- *Good working relationship with contractor.* A close working relationship between DOE and the contractor facilitated effective EA completion.
- *Previous team experience.* The team had worked together on similar documents previously and knew what needed to be done to meet an aggressive schedule.

Factors that Inhibited Effective Teamwork

- *Poor planning.* Poor planning from the beginning of the project greatly inhibited the flow of the EA process.
- *Workload and budget constraints.* The workload and budget constraints of the state program office did not allow for a site visit by the project officer or his engineer, which would have facilitated their understanding of the project and the EA process.
- *Applicant resistance to NEPA process.* The grant recipient resisted proceeding with the required EA.

Process

Successful Aspects of the Public Participation Process

- *Input from community stakeholders.* The involvement of the local government in the joint state/Federal EA enhanced work with the key stakeholders. As a result, all potential issues were identified early and resolved prior to the public review.
- *Community understanding of project.* No comments were received from the public in the process. The local residents were familiar with the project, which had the full support of the community.

Unsuccessful Aspects of the Public Participation Process

- *Lack of public interest.* The public meeting was poorly attended. Only two individuals from the public attended and only stayed briefly.

(continued on next page)

Questionnaire Results

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

Usefulness

Agency Planning and Decisionmaking:

- *Potential impacts understood and addressed.* The EA thoroughly analyzed potential impacts, which were successfully mitigated prior to the beginning of construction.
- *Evaluation of available resources.* The NEPA process allowed for a complete understanding of the resources affected at the project site and identified the impacts of the planned project activities on the resources.

Enhancement/Protection of the Environment

- *Further impacts prevented.* The project site was previously disturbed; however, the NEPA process ensured that the existing environment was maintained without additional impacts.
- *Environmental disturbance minimized.* Disturbance of the environment will be minimized and maintained within allowable thresholds as a consequence of the NEPA process.
- *Environmental issues identified.* The environment was protected because issues of concern that had not been a part of the prior planning effort were identified.

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 3 questionnaire responses were received for EAs, 2 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “2” stated that Federal NEPA requirements prolonged and complicated the state environmental evaluation process. There was no applicable CX for a basic project upgrade, which required a complete NEPA review.
- A respondent who rated the process as “4” stated that the NEPA process allowed the field and program office to fully understand the potential impacts associated with the project and to make the changes necessary to mitigate impacts. Impacts would have been more severe if the NEPA analyses were not required.
- A respondent who rated the process as “4” stated that once the Program Manager acknowledged the need for the NEPA process, its value to the project was evident.

NEPA Staff Positions Open

The Office of NEPA Policy and Compliance is looking to hire up to two Environmental Protection Specialists, GS-0028, at the GS-12, -13, or -14 level. Two vacancy announcements, one a Merit Promotion open to DOE employees and the other a Public Notice open to other Federal or non-Federal applicants, are expected to be posted on December 1, 2008, at www.usajobs.gov.

If you are looking for a challenging and rewarding job, we hope you will apply. Otherwise, please help us spread the word about this opportunity.