

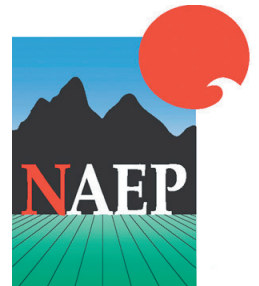
**LESSONS  
LEARNED****Old NEPA Tools Still Work in a “Changing Climate”**

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

When we are immersed in the work of preparing and reviewing NEPA documents, we may lose sight of what “good NEPA” is and how to achieve it. I have found that the Council on Environmental Quality NEPA regulations and associated guidance have withstood the test of time. They provide a useful framework for environmental impact analysis, while allowing us flexibility to exercise judgment and try innovative approaches.

NEPA practitioners face many challenges, and the existing regulations and guidance help us address them. How can we have more effective public participation in preparing environmental impact statements (EISs)? To what extent is public participation needed in preparing environmental assessments (EAs)? How should we establish the basis for a new categorical exclusion? How should we analyze the impact of greenhouse gas emissions? How can we determine if impacts are significant? What is the difference between indirect and cumulative impacts? What are we overlooking in the available NEPA tools?

In the following pages, I have summarized several discussions that addressed these and other questions at the 2008 Conference of the National Association of Environmental Professionals (NAEP) and the California Association of Environmental Professionals. These articles are indicated by the meeting logo. The conference, *Changing Climates*, March 26–28, was preceded by a one-day symposium on greenhouse gas emissions and global warming. You will also find lessons from our recent NEPA activities (public scoping for a supplemental EIS), information from Federal NEPA contacts meetings (how to integrate the NEPA process with an environmental management system, and factors to consider in an analysis of health impacts), and standard features that aim to help you make NEPA work for the Department of Energy.

**September Meeting: *Making NEPA Work for DOE***

With the support of David Hill, DOE General Counsel, planning for the next DOE NEPA Community meeting is underway! The September 2008 meeting in Washington, DC, will provide opportunities to discuss “hot topics” and meet new members. The meeting will start on Wednesday, September 24,

with a morning session for NEPA Compliance Officers, followed by afternoon NEPA training sessions and a September 25 plenary session for the DOE NEPA Community. On September 26, training sessions may be repeated and consultations may be scheduled with DOE

NEPA and legal staff. Additional information will be sent to the DOE NEPA Community soon. Recognizing that efficient NEPA compliance is an important step to accomplishing DOE missions, the meeting theme will be *Making NEPA Work for DOE*. The agenda will include:

- *Producing high quality documents*: taking ownership, the approval process, lessons from major EISs, NEPA contracting
- *NEPA procedures*: categorical exclusions and applicant processes
- *Analytical issues*: greenhouse gas emissions and global climate change, intentional destructive acts.

## Inside **LESSONS LEARNED**

Welcome to the 55<sup>th</sup> quarterly report on lessons learned in the NEPA process. We are pleased to feature the recent NAEP conference, *Changing Climates*, thanks to our on-the-scene reporter Carolyn Osborne. There are also several articles related to global climate change and NEPA. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for further improvement.

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*Carol Borgstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned


### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 1, 2008. Contact Yarden Mansoor at [yarden.mansoor@hq.doe.gov](mailto:yarden.mansoor@hq.doe.gov) or 202-586-9326.

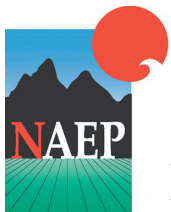
### Quarterly Questionnaires Due August 1, 2008

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2008 (April 1 through June 30, 2008) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at [www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa) under Lessons Learned Quarterly Reports. (Please see note on page 30.) For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto: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.eh.doe.gov/nepa](http://www.eh.doe.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. This icon () indicates that LLQR online ([www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa) under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.

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## Keynote Speaker: Holistic, Collaborative Approach Needed To Address Climate Change Challenge

"Addressing climate change is challenging us to apply a more holistic approach to environmental issues than has been applied in the past," said Wayne Nastri, Regional Administrator, Environmental Protection Agency (EPA), Region 9. In his keynote address to participants at the NAEP Conference in San Diego, March 26, he acknowledged the particular challenge to EPA, where the focus in the past was on pollution control rather than pollution prevention, and which is compartmentalized in separate EPA Offices (e.g., for air or water) and Regions (with different approaches and drivers for action). Few have the opportunity to see the big picture of all that EPA does, he said.

"How can we make progress?" Mr. Nastri asked. He answered reassuringly that there are ways to protect the

environment – emphasizing the role of partnerships and collaborations at the Federal, state, and local level, and individual action. Mr. Nastri described the formation of the West Coast Collaborative, a public-private partnership with EPA Regions 9 and 10, environmental groups, industry and the states, working to reduce diesel emissions along the West Coast. An agency can be influential by the groups that it brings together and the nature of the financial assistance it gives; results may be seen more quickly than by establishing regulations, he added.

He challenged Conference participants to work toward a broader buy-in from the public, asking how we can instill a sense of responsibility in individual consumers for their carbon footprints. If we are creative, we can do a lot, emphasized Mr. Nastri. 

# Public Scoping Is a First Step to Modifying a Recent Decision

By: Yardena Mansoor, Office of NEPA Policy and Compliance, and EIS scoping team

A little more than a year ago, DOE issued a record of decision (ROD) announcing the selection of Richton, Mississippi, as the location of a new site to expand the Strategic Petroleum Reserve (SPR) and the locations of associated infrastructure. This site was selected for its large and undeveloped salt dome, oil distribution capabilities, and inland location that is less vulnerable to damage from hurricanes than other sites considered. In its decision, DOE committed to develop mitigation plans during the permitting process, after consulting with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Mississippi Department of Environmental Quality, and other Federal, state, and local natural resource agencies.

As a result of initial consultations, DOE is now revising the conceptual plan for support operations for the Richton expansion site and considering different locations from those addressed in the EIS for certain facilities and their associated pipelines.

- ✓ For the source of water to create the storage caverns and retrieve stored crude oil (drawdown), DOE is considering the Pascagoula River and other sources with greater water availability than the Leaf River, which was selected in the ROD.
- ✓ Due to factors such as shipping channel depth, potential commercial development, and site suitability, DOE is considering alternative locations in Pascagoula, Mississippi, for a crude oil marine terminal.
- ✓ Because of the proximity of the proposed brine diffuser to the Gulf Islands National Seashore and tanker channels, DOE is considering an alternative location for brine disposal.

DOE determined that changing the locations of the raw water intake, marine terminal, and brine disposal pipeline and diffuser would be substantial changes that are relevant to environmental concerns, and announced in March its intention to prepare a Supplemental EIS for the Richton SPR facility.

*A supplemental EIS is required, under the Council on Environmental Quality NEPA regulations, if the agency makes substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9).*

## SPR NEPA Documents and Resources

- *EIS for Site Selection for the Expansion of the Strategic Petroleum Reserve* (DOE/EIS-0385, December 2006)
- *Record of Decision and Floodplain Statement of Findings* (72 FR 7964; February 22, 2007)
- *Notice of Intent to Prepare Supplemental EIS* (73 FR 11895; March 5, 2008)
- *LLQR* reported on the SPR Site Selection EIS and its ROD (March 2007, page 1) and on DOE's extension of public scoping following Hurricane Katrina (December 2005, page 30).
- The SPR website ([www.fossil.energy.gov/programs/reserves/spr/expansion-eis.html](http://www.fossil.energy.gov/programs/reserves/spr/expansion-eis.html)) provides extensive additional resources, including the scoping meeting posters.

## Different Meeting Formats, Locations Elicit Different Public Scoping Reactions

In mid-April, DOE conducted public scoping meetings in three towns and one city in Mississippi, covering each of the counties that would be directly affected by the project. As people entered these scoping sessions, they were invited to register and request future information on the project, including the draft Supplemental EIS; they could then proceed to seven information stations with displays and handouts. These stations were staffed by knowledgeable representatives of the Headquarters Office of Petroleum Reserves and its EIS contractors, the SPR Project Office in New Orleans and its management and operating contractor, and the Office of NEPA Policy and Compliance. Visitors could also watch a video on SPR. Tables were provided for writing comments and a court reporter was present to take oral statements.

Three of the scoping meetings – in the small towns of New Augusta, Leakesville, and Lucedale – employed an “open house” format for several hours so participants could “drop in” when convenient. The fourth meeting, in Pascagoula, included an open house in the afternoon and a “town hall” meeting in the evening, with speakers addressing the assembled participants as well as the DOE officials.

Participants in the open house meetings generally stayed an hour or more. A few provided positive feedback: that while they still had concerns about the impacts of the

*(continued on page 5)*

# Lessons Learned from SPR Scoping Process

*Members of the SPR scoping team – 16 people from 3 DOE and 3 contractor organizations – offer these observations and recommendations as “Lessons Learned.”*

## On Preparing for Meetings

- **Establish a clear assignment of responsibility, based on expertise, for providing information.** Inevitably, scoping team members at one information station were asked questions regarding matters best answered by the representatives at other stations. Direct questions to the appropriate responder.
- **Anticipate how the agency’s process may be perceived.** More than 2 years after scoping for the SPR Site Selection EIS, local citizens still express anger that DOE held scoping meetings immediately after Hurricanes Katrina and Rita, at a time when local populations were scattered, without access to local media, and overwhelmed by the need to repair their homes and restore their livelihoods. Given the unavailability of public venues in Pascagoula (Jackson County) at that time, DOE instead held scoping meetings in the city of Jackson, some 200 miles away. Several individuals expressed the belief that DOE exploited the conditions of the time to avoid dealing with public opposition to the project, behavior they did not excuse even though Congress had established a 1-year deadline for DOE to complete the EIS.

## On the Conduct of Scoping Meetings

- **Strive to explain the difference between the EIS process and decisionmaking.** When inviting comments, clearly explain that scoping seeks input to the environmental analysis – not votes for or against the project.
- **“Know your stuff” and stay grounded in fact.** Some individuals may make incorrect assertions that a knowledgeable spokesperson should be able to address. One participant, for example, claimed the SPR Site Selection EIS was deficient because it did not contain a cost benefit analysis, and its absence demonstrates that DOE cannot justify the project. Scoping team members responded that NEPA implementing regulations do not require a cost benefit analysis. If a complete answer cannot be given on the spot, consider asking the individual to submit the question in writing.
- **Respond to provocative interactions by restating scoping’s purpose and procedures and inviting written or recorded comment.** Some people claimed that DOE’s environmental analysis was scientifically invalid or politically influenced to favor the project. Others made personal attacks on the intelligence of DOE officials and contractors. An appropriate response is to invite the speaker to submit a written comment or present a statement to the court reporter.

## On General Comment Procedures

- **Avoid informal receipt of scoping input.** The NEPA Document Manager received several phone calls from individuals who wished to comment on the Supplemental EIS scope. He correctly advised them that written comments could be delivered by a number of means and oral comments would be accepted through recorded testimony at the scoping meetings. The potential problem with informal records, such as notes of a phone conversation, is the possibility that DOE might not capture the comment correctly.
- **Clarify privacy expectations and respect personal information.** A local environmental organization asked DOE to provide a copy of the registration lists from the scoping meetings. General Counsel staff advised that a request for such lists should be filed under the Freedom of Information Act; Counsel would then make a determination whether the information may be withheld under the provision that protects the personal information of individuals.
- **Cooperating and consulting agencies may continue to provide input.** The public scoping period need not be extended to enable state and local agencies with roles in project planning and permitting to provide information. Their input, while part of the administrative record, need not be grouped with the public scoping comments unless the commenting agency submits the comments as such.

# Public Scoping (continued from page 3)



*Despite the leftover Mardi Gras decorations, the atmosphere at the town hall scoping meeting in Pascagoula was far from festive. (Photo: Joyce Teerling, DynMcDermott Petroleum Operations)*


project, they felt they now understood it much better. Attendance was relatively low at the first two scoping meetings; about 35 people registered in New Augusta and Leakesville, two towns closest to the Richton site. At Lucedale, closer to a candidate water intake site on the Pascagoula River, attendance was about 100.

Some 380 individuals registered at the Pascagoula meeting, and 42 spoke during the town hall session – all

of them against the project. Various speakers opposed the concept of emergency petroleum reserves that would support continued reliance on imported oil, the selection of the Richton site, the use of the Leaf or Pascagoula Rivers as water sources, the discharge of brine in the near offshore areas, and the proposed development of the Pascagoula marine terminal.

Many people spoke movingly about their love of the natural ecology of the rivers, estuaries, and barrier islands; of the hardships they have endured from the 2005 weather disasters and current economic conditions; and their concerns that the local residents will bear a disproportionate share of the environmental impacts relative to the benefits. One speaker provided information on improving the modeling of underwater dispersal of brine. There was also criticism of the Site Selection EIS.

## Next Steps, Additional Resources

The scoping period closed on April 29, 2008. DOE is now analyzing more than 300 comment documents received, continuing consultations, and preparing the draft Supplemental EIS. For further information, contact the NEPA Document Manager, Don Silawsky, Office of Fossil Energy, at [donald.silawsky@hq.doe.gov](mailto:donald.silawsky@hq.doe.gov) or 202-586-1892. 

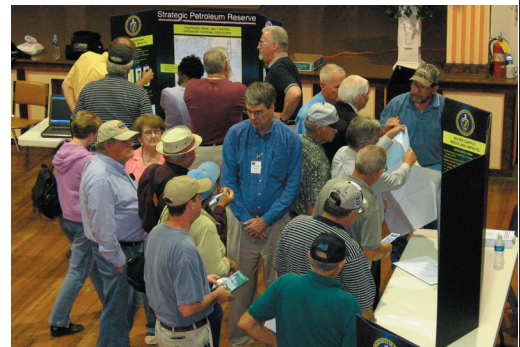
## Poster Displays Presented Technical and Process Information



The positive interactions in the open house meetings were due in part to a series of informative posters prepared for the occasion. In sequence after the registration table, seven posters addressed: an overview of the SPR Program; the initial and supplemental EIS processes; proposed changes to the water supply, brine disposal, and the marine terminal; the SPR Program's commitment to environmental stewardship; and the socioeconomic impacts of the proposed expansion project.

The “greeters” at the overview poster were able to give visitors needed background information, explain the sequence of posters, and direct visitors to information and experts on the topics of concern. The large, attractive posters anticipated the likely questions of the public and emphasized the differences between the support facilities included in the 2007 ROD and alternatives to be considered in the Supplemental EIS.

*Information displays on water intake and brine disposal for the SPR expansion project drew the most public interest.*





# Underappreciated Provisions of the CEQ NEPA Regulations



When people refer to NEPA as “just a process,” they are forgetting the goal set forth in Section 101 of NEPA – “to create and maintain conditions under which man and nature can exist in productive harmony” – stated Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), at the NAEP Conference.

Discussing provisions of the CEQ NEPA regulations<sup>1</sup> that do not receive the attention, nor the affection, they deserve, Mr. Greczmiel pointed to Section 1505.1, *Agency decisionmaking procedures*, which directs that agency NEPA implementing procedures shall achieve the requirements of Sections 101 and 102(1) of the Act. He then challenged Conference participants to let him know of any EIS that states its purpose as furthering the goals of Section 101.

## Make Diligent Efforts to Involve the Public

The courts have said that the public needs to have meaningful involvement in the NEPA process, Mr. Greczmiel reminded Conference participants, and he emphasized “don’t blindsides the public.” Agencies are directed in Section 1506.6, *Public involvement*, to make diligent efforts to involve the public in implementing their NEPA procedures, he noted, and in Section 1501.4(b), agencies are specifically directed to involve the public, to the extent practicable, in preparing EAs; he added that “practicable” means “possible.”

“Every sector wants to get involved in the NEPA process early,” said Mr. Greczmiel. In referring to Section 1501.2, *Apply NEPA early in the process*, he emphasized that an agency can do more about impacts to resources when it knows about them early rather than playing “catch-up.” In cases where actions are planned by non-Federal entities before Federal involvement, this Section directs agencies to consult early with state and local agencies, Indian tribes, and interested persons and organizations when the agency’s involvement is reasonably foreseeable.

## Write to Be Readily Understood

“Five pages of acronyms may not inspire” nor result in a document that meets the requirements of Section 1502.8, *Writing*, warned Mr. Greczmiel, noting the requirement that “the public can readily understand” the document. He urged writers to “do a fresh read” of what they have written, including a check that it is free of jargon.

With special attention to the *Summary* (Section 1502.12), Mr. Greczmiel said writers should ask whether it covers

the “who, what, when, where, why, and how” of the proposed action, identifies the issues to be resolved, and presents options and recommendations to resolve those issues. He acknowledged that this can be difficult to do. However, noting the emphasis in Section 1500.2, *Policy*, to make the NEPA process useful to decisionmakers and the public, Mr. Greczmiel stated that he intends to focus in the future on the usefulness of EIS summaries and will consult with agencies on any problems that he finds. (See DOE’s *EIS Summary Guidance* available at [www.eh.doe.gov/NEPA](http://www.eh.doe.gov/NEPA) under NEPA Compliance Guide, Volume II.)

## Use the Flexibility in the Regulations

Take advantage of the options provided in the CEQ regulations, advised Mr. Greczmiel. Although Section 1502.10, *Recommended format*, sets forth a standard EIS outline, the Section permits needed information to be presented differently if there is a compelling reason to do so (e.g., integration with another statute or with a state agency). Certain items are required, however, as Mr. Greczmiel illustrated with item (i), *List of agencies, organizations, and persons to whom copies of the EIS are sent*; this list is important information for the decisionmaker, informing that person of “who knows what” and with whom consultation has occurred or should occur, he said.

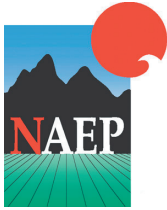
The need to compare alternatives – the heart of the EIS, as described in Section 1502.14, *Alternatives including the proposed action*, – can be met in many ways, advised Mr. Greczmiel. Choose an approach that best illustrates the differences among alternatives, their consequences, and how they would meet the purpose and need for agency action, he urged. Use charts, graphs, and other presentation devices as aids, he said. Names of alternatives should “resonate” – clearly indicating how they are unique – rather than being alternative A27 in a list of 27 alternatives. He reminded the audience that mitigation measures can be presented as a stand-alone alternative or part of an alternative.

## Read and Reread the Regulations

There is always something “new” to be found when rereading the CEQ regulations, said Mr. Greczmiel, explaining that provisions can be more meaningful to you over time, based on your NEPA experiences. He referred to several sections of the NEPA regulations in this regard. Assessment of potential impacts to children (highlighted in Executive Order 13045) has always been required

<sup>1</sup> 40 CFR Parts 1500–1508

(continued on next page)



## Underappreciated Provisions (continued from previous page)

under Section 1508.8, *Effects*. Although not explicitly called out, it is certainly part of human health, he said (related article, page 18). Similarly, socioeconomic impacts must be addressed in both EAs and EISs under Section 1508.14, *Human environment*. However, he noted that significant socioeconomic impacts alone, without an interrelationship to the physical or natural world, would not trigger an EIS.

Although the CEQ regulations specify that certain parties must receive an entire EIS (Section 1502.19, *Circulation of the environmental impact statement*), Mr. Greczmiel advised that it is good practice to ask other recipients their preferences before EIS distribution. (See DOE's guidance on *EIS Distribution*, available at [www.eh.doe.gov/nepa](http://www.eh.doe.gov/nepa) under New Guidance Tools.) He emphasized that paper

copies are still required for filing with the Environmental Protection Agency because technology is changing, asking, "Who could work with a microfiche copy of an EIS today?"

NEPA documents do not need to repeat information from another source in its entirety, under Section 1502.21, *Incorporation by reference*, but must briefly describe the materials referenced and their relevance to the current analysis. Writers must also make sure that any references are available to readers, he said.

Overall, Mr. Greczmiel urged Conference participants to be sure to "focus on what counts," referring to item (b) in Section 1500.1, *Purpose*, that states that NEPA documents must concentrate on the issues that are truly significant, rather than amassing needless detail. **LL**

## CEQ Interagency Work Groups Make Progress

The DOE Office of NEPA Policy and Compliance continues to participate in developing and reviewing NEPA guidance prepared by the Interagency Work Groups led by the Council on Environmental Quality (CEQ). The Work Groups were established in 2005 to help implement recommendations from the NEPA Task Force report to CEQ, *Modernizing NEPA Implementation* (September 2003; *LLQR*, December 2003, page 1). For more information on these initiatives, see the CEQ website at [www.nepa.gov](http://www.nepa.gov).

### Coordinating NEPA with Related Laws

The NEPA Office recently submitted DOE's comments on draft sections of a handbook under Work Group development, *Coordinating NEPA with Other Federal Environmental Laws*, which CEQ had distributed for Federal agency review. This *Handbook* is intended to assist NEPA practitioners in "harmonizing" the NEPA process with review processes under other environmental statutes, implementing regulations, and executive orders, which may have overlapping substantive and procedural requirements with NEPA. As the draft Introduction explains, the *Handbook* will focus on achieving efficiencies by identifying, for each Federal environmental law, requirements that promote or inhibit integration with NEPA and then recommending a process that could satisfy the procedural requirements of NEPA and the related law.

In comments on the draft chapter on the National Historic Preservation Act (NHPA), DOE recommended clarification and expansion of certain topics, such as describing the similarities and differences between NEPA and NHPA requirements to highlight the benefits and challenges of coordinated compliance. The Work Group is now considering the comments received and will provide a revised draft of the NHPA chapter for another round of review by the Federal agencies, along with draft chapters on other environmental laws.



### Other Work Group Documents

- ✓ *Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act* – The Work Group has completed its revision of this guidance based on public comments on the draft version (71 FR 54816; September 19, 2006). CEQ is conducting its review of the guidance before issuing it as a final document.
- ✓ *NEPA Programmatic Guidance* – The Work Group has revised the guidance based on Federal agency comments on a preliminary draft that CEQ distributed in September 2007. CEQ plans to issue the draft soon for public review. **LL**



# Innovative NEPA Procedures Highlighted in CEQ Annual NEPA Updates



New approaches to NEPA compliance, not explicitly called out in the Council on Environmental Quality (CEQ) regulations, were described by Horst Greczmiel, Associate Director for NEPA Compliance, CEQ, in the CEQ Annual NEPA Updates session at the recent NAEP Conference.

The examples below – concerning the basis for proposing categorical exclusions, analysis of how mitigation measures would minimize impacts, and emergency EA procedures – illustrate that agencies are not unduly restricted by the CEQ regulations. Mr. Greczmiel encouraged agencies to be proactive in their NEPA procedures, within the framework of NEPA and the CEQ regulations.

## Substantiating a Categorical Exclusion

The Bureau of Land Management (BLM) web-posted its analysis and rationale for each of six proposed categorical exclusions in a *Categorical Exclusion Analysis Report* and then, following public comments on some of the proposals, web-posted additional supporting material before establishing the categorical exclusions. See [www.blm.gov/planning/news.html](http://www.blm.gov/planning/news.html) for these reports.

As stated when establishing the categorical exclusions (72 FR 45503; August 14, 2007), BLM followed CEQ's proposed guidance, *Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act* (71 FR 54816; September 19, 2006), which describes various ways an agency can document its experience and substantiate its determination that a proposed class of actions would not individually or cumulatively have a significant effect on the human environment, including evaluations of the environmental impacts of past actions and the use of professional staff and expert opinion.

## Incorporating Adaptive Management in Alternatives Analysis

Both the Department of the Interior (DOI) and the U.S. Forest Service have proposed incorporating adaptive management into analyzed alternatives. CEQ has addressed the use of adaptive management in the NEPA process, describing how “an EMS [environmental management system] can support the implementation of a NEPA ‘adaptive management’ approach” (in its guidance, *Aligning National Environmental Policy Act Processes with Environmental Management Systems; A Guide for NEPA and EMS Practitioners*, April 2007).

Mr. Greczmiel, however, took care to distinguish EMS – a policy tool to help manage environmental issues – from NEPA – a legal requirement to consider environmental factors in decisionmaking.

DOI defines adaptive management in its proposed rulemaking (43 CFR Part 46; 73 FR 126; January 2, 2008) as “a system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes.” The proposed regulation further states that “The NEPA analysis conducted in support of . . . an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring, and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.”

Similarly, the U.S. Forest Service has proposed that adaptive management strategies may be incorporated into alternatives if the strategies are “clearly articulated and the effects of said strategies analyzed . . .” (36 CFR Part 220; 72 FR 45998; August 16, 2007).

## Providing NEPA Review for Emergency Actions Normally Requiring an EA

The U.S. Forest Service's proposed NEPA regulations address a gap with regard to NEPA review for those emergency actions that would be the subject of an EA because the proposed action cannot be categorically excluded and does not have potential for significant environmental impact. (Emergency actions with potential for significant impact are addressed in the CEQ regulation, 40 CFR 1506.11, *Emergencies*, which provides for alternative NEPA arrangements.) The proposed regulation, 36 CFR 220.4(b), *Emergency Responses*, provides for consultation among Regional Offices and U.S. Forest Service Headquarters for EA-level emergency actions.

## Suggestions for CEQ Website?

Mr. Greczmiel concluded with an invitation for participants to provide suggestions for improving CEQ's *NEPAnet* website, [www.nepa.gov](http://www.nepa.gov), adding that CEQ will be updating its listing of Federal agency NEPA contacts and regulations soon. Suggestions can be submitted by using the “*NEPAnet* Feedback System” link located at the bottom of the opening page of the *NEPAnet* website.





## “Real-time” Interactive Process Proposed as Pathway to Quality NEPA Documents


An incremental, iterative EIS preparation process involving “real-time” collaboration with stakeholders has been proposed by the U.S. Forest Service in its NEPA implementing regulations (36 CFR Part 220; 72 FR 45998; August 16, 2007). The proposed optional interactive process was described by Joe Carbone, Assistant Director, Ecosystem Management Coordination, Forest Service, in an NAEP Conference session on *Producing Quality NEPA Documents*.

Incremental changes an agency makes in its alternatives or analytical results during EIS preparation would be presented to stakeholders in “real-time” – in preliminary draft or final EIS documents, said Mr. Carbone. In turn, the public would be able to participate in the agency’s ongoing decisionmaking process in “real-time.” Each subsequent preliminary EIS document could incorporate by reference and summarize earlier versions to show the development of the document. Multiple preliminary EIS documents circulated under the proposed iterative process, explained Mr. Carbone, would be similar to the *Congressional Record* concept, where versions of bills and other records are available to the public during the legislative process.

NAEP Conference participants reacted positively to the proposed option to EIS preparation, but not without some reservations. They saw benefits in reacting to stakeholder

comments as issues arose, rather than only later, in a formal response to comment. Mr. Carbone emphasized that the Forest Service was aiming to take down barriers and have dialog with its stakeholders. Participants also noted that technologies, especially the Web, are opening up many new ways of sharing documents in preparation.

Although some participants were concerned that the option would result in more paperwork, Mr. Carbone did not think so. He explained that individuals would not see specific responses to their comments in subsequent documents, just revisions made in response, and the agency would be simply making publicly available incremental stages of a draft EIS that it would, without the optional process, otherwise prepare but not circulate.

Requirements to circulate a draft and final EIS and to file each with the Environmental Protection Agency (under 40 CFR 1506.10 and 1502.19) would apply to the last draft and last final EIS prepared, Mr. Carbone emphasized. Questions on the proposed Forest Service NEPA procedures may be addressed to Mr. Carbone at [jcarbone@fs.fed.us](mailto:jcarbone@fs.fed.us) or 202-205-0884. 



### Thoughts on Quality

A good EIS tells the story and ties the pieces together. A good EIS is written with the audience in mind – just enough detail, not too much. More is not better – a shorter document forces better understanding.

– David Mattern, *Parametrix*, Moderator, Panel on Producing Quality NEPA Documents

Improving quality is hard work. Be prepared to rethink things.

– Stephanie Miller, *Parametrix*

The “quality conundrum” – keep it simple versus keep it defensible. The two are not mutually exclusive. Muddy writing equals muddy thinking. Einstein said – if you can’t explain something simply, you don’t understand it well.

– Kelley Dunlap, *California Department of Transportation*

Distinguish between the document and the documentation record. Plan for a pyramid, with the greatest volume, the administrative record, on the bottom. The next layer of the pyramid would be the technical reports, and the next layer would be the document appendices. The top of the pyramid is the EIS or EA.

– Lamar Smith, *Federal Highway Administration*

# Analyzing Climate Change Under NEPA Is “Feasible”



“What is it that the CEQ regulations do not already do?” asked Ted Boling, General Counsel, Council on Environmental Quality (CEQ), on the issue of climate change and NEPA. A major purpose of the regulations is to identify “at an early stage the significant environmental issues deserving of study,” he emphasized (referring to 40 CFR 1501.1(d), *Purpose*).

The global nature of carbon dioxide emissions presents a unique cumulative impact, illustrated by CEQ Chairman James Connaughton at the recent Bali Conference on climate change, related Mr. Boling. The CEQ handbook on cumulative impacts assessment addresses global climate change as a cumulative impact to be analyzed, noted Mr. Boling. (See *Considering Cumulative Effects Under the National Environmental Policy Act*, 1997, [www.nepa.gov](http://www.nepa.gov).) He acknowledged that CEQ is actively considering a recent petition to specifically address the issue in the CEQ NEPA implementing regulations and a guidance memorandum. (See related article, page 11.) Mr. Boling emphasized several sections of the regulations that provide general direction on analyzing the effects of agency action in light of available information on global climate change, pointing to sections on *Scope*, *Significantly*, *Incorporation by reference*, and *Incomplete or unavailable information* (40 CFR 1508.25, 1508.27, 1502.21, and 1502.22, respectively).


- “Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR 1508.7)
- “Effects” include:
  - (a) Direct effects, which are caused by the action and occur at the same time and place.
  - (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems . . . (40 CFR 1508.8)

Analyzing climate change impacts is “feasible,” said Mr. Boling, but he acknowledged that analysts have many questions on how best to handle the scoping of the issue. Questions raised during the Conference included whether a finding of no significant impact could be justified for any project causing a net increase in greenhouse gas emissions and whether there could be a *de minimus* approach to greenhouse gas emissions analysis.

Mr. Boling emphasized that CEQ does not prescribe thresholds for agencies to use in analysis, but leaves such matters to informed agency discretion. Decisions regarding the extent to which environmental effects of greenhouse gas emissions and climate change warrant analysis and documentation under NEPA are committed to the expertise and sound discretion of the agency decisionmakers, he said.



Mr. Boling directed analysts to the website of the US Climate Change

Science Program, [www.climatescience.gov](http://www.climatescience.gov), characterizing it as the best available source for up-to-date results on the science of climate change. The US Climate Change Science Program integrates Federal research on climate and global change, sponsored by 13 Federal agencies and overseen by the Office of Science and Technology Policy, CEQ, the National Economic Council, and the Office of Management and Budget. The site presents results from the Intergovernmental Panel on Climate Change, which together with the approach outlined in the CEQ regulations should guide analysts well, said Mr. Boling. 

On May 27, 2008, the US Climate Change Science Program issued its final report, *The Effects of Climate Change on Agriculture, Land and Water Resources, and Biodiversity in the United States*, available on its website.

## NEPA Case Law and Global Warming

In his paper “Global Warming in EAs and EISs: What the NEPA Case Law Tells Us” and as he discussed at the NAEP Conference, Owen Schmidt (an environmental attorney who worked for the Bonneville Power Administration in the 1980s) concludes from a study of case law to date (13 lawsuits) that global warming is not an impact apart from any other foreseeable environmental consequence. Contact Mr. Schmidt for a copy of his paper at [oschmidt@att.net](mailto:oschmidt@att.net).

# Petition to CEQ on Climate Change Analysis and NEPA

Is climate change a “reasonably foreseeable” impact under NEPA? If so, how should an agency conduct such an analysis?


In a petition filed with the Council on Environmental Quality (CEQ) in February, the International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club are seeking an amendment to CEQ’s NEPA regulations to clarify that climate change should be addressed in NEPA documents and CEQ guidance on how to do so. To date, CEQ has not taken action on the petition but has the petition under review.

To support their contention that climate change is reasonably foreseeable, petitioners first summarize “the substantial scientific evidence of global climate change and its current and future adverse effects on the natural environment.” They include findings from the Intergovernmental Panel on Climate Change, the 2002 U.S. Climate Action Report (submitted to the United Nations by the U.S. Department of State), and the 2001 National Academy of Sciences Report (through the National Research Council), *Climate Change Science: An Analysis of Some Key Questions*, and cite several scientific studies on human health and on the connection between climate change and “extreme weather” events.

In presenting their conclusion that “NEPA mandates consideration of climate change as part of each Federal agency’s NEPA process as a ‘reasonably foreseeable’ effect,” the petitioners refer to the existing CEQ NEPA implementing regulations and guidance and to case law. The regulations require the analysis of both direct and indirect, as well as cumulative, effects in NEPA documents, state the petitioners. They add: “While some

uncertainties about climate change may remain, agencies cannot, by law, wait until after climate change effects are certain to occur in order to address them. Rather, CEQ’s regulations mandate that federal agencies address all ‘reasonably foreseeable’ environmental impacts of their proposed programs, projects, and regulations. . . . It is well-established that some ‘reasonable forecasting’ by the agency is implicit in the NEPA process. . . . Stated differently, climate change is ‘reasonably foreseeable’ as that phrase is understood in the context of NEPA and the CEQ regulations,” the petition states.

The petitioners point to 40 CFR 1502.22, *Incomplete or unavailable information*, in emphasizing that “. . . when the nature of an effect is reasonably foreseeable but its extent is not, the agency cannot simply ignore the effect.” They also point to existing CEQ guidance, *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997), in which CEQ cited climate change effects as a component of cumulative atmospheric effects to be addressed in describing the affected environment and in alternatives analyses.

To review the petition, which includes proposed amendments to the CEQ regulations and proposed guidance that would explicitly address a requirement to analyze effects of global climate change in NEPA documents, see the International Center for Technology Assessment website, [www.icta.org](http://www.icta.org) (under Global Warming & the Environment, Legal Actions, find *Petition Requesting that the Council on Environmental Quality Amend Its Regulations to Clarify that Climate Change Analyses Be Included in Environmental Review Documents*, February 28, 2008.) 


## Executive Order on Climate Change and NEPA Proposed

The Federal government already has statutory mandates and regulatory processes to identify, disclose, and mitigate the effects of global warming, emphasized a panel of environment experts at a symposium hosted on May 5, 2008, by the Center for American Progress, a non-partisan nongovernmental organization. The need to do so is pressing, they urged. The panelists, who included former Secretary of the Interior Bruce Babbitt and former Environmental Protection Agency Administrator Carol Browner, said that the agencies must more diligently fulfill their responsibilities under NEPA, the Clean Air Act, the Endangered Species Act, and other environmental statutes to consider climate change.

To promote that goal, the Center issued a proposal for the immediate issuance of an Executive Order that would obligate the Council on Environmental Quality to issue guidance and instructions on addressing global

climate change in NEPA compliance documents and support rulemaking through which guidance would be incorporated into agency policy. Specific proposals for NEPA reviews include:

- A quantitative analysis of a proposal’s direct and indirect contributions to greenhouse gas emissions
- An evaluation of the consequences of changing climatic conditions on a proposal
- Consideration of alternative actions and mitigation measures that could reduce greenhouse gas emissions and climatic vulnerability.

*Full Disclosure: An Executive Order to Require Consideration of Global Warming Under the National Environmental Policy Act* is available at [www.americanprogress.org/issues/2008/05/full\\_disclosure.html](http://www.americanprogress.org/issues/2008/05/full_disclosure.html). 

# NEPA Analysis of CAFE Standards Focuses on Climate Change



The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) is analyzing the impacts of its corporate average fuel economy (CAFE) program on climate change, consistent with a 2007 court decision (*LLQR*, December 2007, page 24). Although the Government is seeking a rehearing in the Ninth Circuit on the appropriateness of the court's remedy, NHTSA intends to consider issues raised in the litigation and announced its intent in March (73 FR 16615; March 28, 2008) to prepare an EIS to address the potential environmental impacts of its CAFE standards for model year 2011–2015 passenger cars and light trucks.

The Energy Policy and Conservation Act (EPCA), recently amended by the Energy Independence and Security Act of 2007, directs the Secretary of Transportation, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency (EPA), to establish standards for passenger cars and light trucks that achieve a combined fleet-wide fuel economy average for model year 2020 of at least 35 miles per gallon, up from model year 2010 levels of 27.5 miles per gallon for passenger cars and 23.5 miles per gallon for light trucks.

## Supplemental Notice Requested Comments on Climate Change Impacts

A recent supplemental notice (73 FR 22913; April 28, 2008) focused on climate change and provided additional information about the scoping process, which ended May 28, 2008, the proposed standards, and the alternatives to be considered in its EIS.

In this notice, NHTSA requested comments on the potential impacts of the CAFE standards on climate change. Specifically, the agency requested:

- peer-reviewed scientific studies issued since the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (*LLQR*, December 2007, page 5);
- information on how to estimate potential temperature change from proposed emissions and potential resulting environmental impacts; and
- reports analyzing potential specific impacts of climate change on particular U.S. geographical areas.

In the supplemental notice, NHTSA noted that it placed monetary values on environmental considerations, including the benefits of reductions in carbon dioxide

(CO<sub>2</sub>) emissions. NHTSA also stated that it consulted with DOE and EPA on a wide variety of matters in developing its standards.


In its EIS, NHTSA is considering seven alternatives, including “no action” – which the agency cannot adopt under EPCA. The NEPA analysis will consider an “optimized scenario” alternative, with standards based on applying technologies until net benefits are maximized. Three other alternatives consider standards at varying levels below and above the optimized level. The sixth alternative would apply technologies to increase fuel economy until the total costs equal total benefits, and the seventh alternative would require every manufacturer to apply every technology that may be available for its model year 2011–2015 fleet.

## Uncertainty in Evaluating Climate Change

NHTSA expects to encounter considerable uncertainty in evaluating the potential impacts of the proposed standards and their alternatives on climate change. In its supplemental notice, the agency noted that “it may be difficult to predict with a reasonable degree of certainty or accuracy the range of potential global temperature changes that may result from changes in fuel and energy consumption and CO<sub>2</sub> emissions due to new CAFE standards. In turn, for example, it may be difficult to predict and compare the ways in which potential temperature changes attributable to new CAFE standards may impact many aspects of the environment.” Therefore, NHTSA expects that its NEPA analysis will apply the provisions in the Council on Environmental Quality regulations (40 CFR 1502.22) addressing “[i]ncomplete or unavailable information.” NHTSA will rely on the IPCC 2007 Fourth Assessment Report as a recent “summary of existing credible scientific evidence.”

The agency plans to incorporate material into its NEPA analysis by reference “when the effect will be to cut down on bulk without impeding agency and public review of the action,” as directed by the CEQ NEPA regulations at 40 CFR 1502.21.

## Next Steps

According to the supplemental notice, NHTSA plans to issue a draft EIS for public comment “later this spring” and a final EIS to support a final rule later this year. NHTSA intends to update its website with relevant CAFE information ([www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)). 

# Interagency Partnership Receives NEPA Excellence Award



An Interagency Work Group, representing two Federal agencies and a state agency, won the NAEP 2008 NEPA Excellence Award for two guidance documents prepared collaboratively. The California Division of the Federal Highway Administration, the California

Department of Transportation (known as Caltrans), and Region 9 of the Environmental Protection Agency (EPA) prepared *Guidance for Preparers of Cumulative Impact Analysis* (2005) and *Guidance for Preparers of Growth-related, Indirect Impact Analysis* (2006)<sup>1</sup> under a 2000 partnership agreement to “support concerted, cooperative, effective and collaborative work” in the transportation and environmental planning processes.

Although targeted for California transportation proposals being reviewed under NEPA and the California Environmental Quality Act, the guidance documents can be of general use to NEPA document preparers when considering indirect impacts and cumulative impacts. Both guidance documents provide a step-by-step approach to identifying and assessing the impacts, a hypothetical example, and links to more detailed references and manuals. Both also emphasize that use of the approaches and tools presented will depend on the potential impacts of the proposed project, the type or condition of the resource under consideration, and the professional judgment of the analyst.

## Relationship between Indirect Impacts and Cumulative Impacts

The guidance on growth-related indirect impacts distinguishes indirect impacts from cumulative impacts and emphasizes that direct and indirect impacts of a proposed action are a subset of cumulative impacts. The guidance acknowledges the difficulty in analyzing potential growth-related impacts in general and describes

### NAEP Award Nominations Due September 30

NAEP invites nominations for its President’s and National Environmental Excellence Awards by September 30 to recognize outstanding achievement in eight categories, including NEPA Excellence, Public Involvement/Partnership, and Environmental Management. Nominations may include self-nominations; the nominator need not be a member of NAEP. Instructions for submitting award nominations are provided on the NAEP website ([www.naep.org](http://www.naep.org)).

factors for determining whether there is “causality” between an action and impact and also judging the reliability of a prediction that an impact is “reasonably foreseeable.” The guidance directs the reader to the website informally known as “Re: NEPA” ([nepa.fhwa.dot.gov/ReNEPA/ReNepa.nsf/home](http://nepa.fhwa.dot.gov/ReNEPA/ReNepa.nsf/home)), the Federal Highway Administration’s online “community of practice” (i.e., blog) for the latest exchange of information on these and other aspects of the NEPA process.

## Relevance to Determination of “LEDPA”

Both guidance documents can assist in assessing impacts on jurisdictional waters of the United States, which are those waters protected by Section 404 of the Federal Clean Water Act. As the guidance documents explain, EPA guidelines specify that a permit to discharge into jurisdictional waters can be issued only if the discharge is determined to be the least environmentally damaging practicable alternative (LEDPA), and the guidelines require an analysis of cumulative and secondary (indirect) impacts to make this determination. As the guidance documents emphasize, “it is possible for an alternative with greater direct impacts, but fewer indirect impacts (including growth-related impacts) to be selected as the LEDPA.”



Kent Norton (left), President, California Association of Environmental Professionals (CAEP); Jim Melton (center), President, NAEP; and John Irving, Conference Co-Chair, confer at the start of the NAEP/CAEP Conference Awards Ceremony.

<sup>1</sup> The guidance documents are available, along with other “standard environmental references” at [www.dot.ca.gov/ser](http://www.dot.ca.gov/ser).

# Are There “Mistakes and Gaps” in the CEQ Regulations?



“Have you ever puzzled over a section of CEQ’s regulations, wondering if you are the only one who does not understand it? Or cannot understand how it could be implemented?” asked attorney Owen Schmidt in a presentation at the NAEP Conference on mistakes and gaps

that he has found in the Council on Environmental Quality (CEQ) NEPA implementing regulations. To open a dialog among a panel of NEPA experts (photo) and Conference participants, he described some of the 29 mistakes (something that operates to produce a result contrary to what was intended) and 25 gaps (a lost opportunity) in the regulations about which he has recently written.<sup>1</sup>

Using the word “cumulative” to refer to a distinct type of impact is the biggest mistake in the CEQ regulations, asserts Mr. Schmidt. He explained that consequences occur in natural systems in a chain of causation – one thing leads to another – and he adds, a complete “impacts analysis” will in fact account for all incremental environmental impacts. In contrast to Mr. Schmidt, Nicholas Yost (former CEQ General Counsel and lead draftsman of the regulations, now with Sonnenschein Nath & Rosenthal, LLP) believes that the specific requirement to look at cumulative impacts works well, as it is important to consider what others are doing and the regulatory language emphasizes that. Mr. Ron Bass (ICF Jones & Stokes and coauthor of *The NEPA Book*<sup>2</sup>) agreed, pointing in particular to the cumulative nature of growth inducing impacts.

## Popularity of EA Was Not Foreseen

Failing to provide more definition of an EA and finding of no significant impact (FONSI) presents the most gaps in the CEQ regulations, stated Mr. Schmidt. He noted in particular the failure to define whether an increment to a “significant problem” could be found “not significant” (and if so, how). For example, NEPA practitioners assessing potential impacts of greenhouse gas emissions on global climate change are asking if there would be emissions of greenhouse gases, could a FONSI be written?

No one foresaw the predominance of EAs over EISs, Mr. Yost said, referring to a ratio of 100 EAs to 1 EIS he saw in a recent tabulation. He agrees that the failure to give more attention to EAs and FONSI is the biggest gap in the regulations. What should they look like? How extensive should they be? Should there be a draft, then a final EA? With regard to the last question, he said that he believes the Ninth Circuit got it right in its recent decision (*Bering Strait Citizens v. U.S. Army Corps of*



*Dubbed the “NEPA Dream Team” (by Moderator Michael Smith, not pictured), from left to right: Ron Bass, Owen Schmidt, Nicholas Yost, and Horst Greczmiel discuss the meaning of the CEQ NEPA implementing regulations.*

*Engineers*), that is, an agency must provide the public with sufficient information to allow them to inform agency decisionmaking. (See related article, page 21.)

Looking back almost 30 years after the CEQ regulations were issued, Mr. Yost emphasized the importance of remembering the context in which they were written. He recounted the extensive consensus-building needed among the various groups brought into the process, such as the U.S. Chamber of Commerce, environmental groups including the Natural Resources Defense Council, state legislatures, and Federal agencies. The degree of acceptance under the five Presidential administrations since the regulations were issued is noteworthy, he said.

## Focus on Timeliness and Timelines Urged

Reflecting on other provisions of the regulations, Mr. Yost emphasized that practitioners need to focus more on timeliness in NEPA implementation. He noted that the provisions in the CEQ regulations concerning timelines are the most underused provisions, meriting revisiting and strengthening. Also he advised that more could be done to foster cooperation among states and the Federal agencies. He added that global climate change issues, although not specified in the regulations, should be considered along with energy issues that were emphasized when the regulations were written (i.e., the potential energy requirements and conservation potential of alternatives).

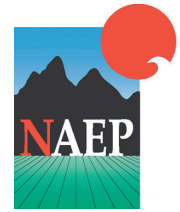
“Why has the main NEPA document become an EA?” asked Mr. Bass, agreeing with the others that regulatory emphasis on EISs does not reflect current NEPA practice. He speculated that if there were time limits for EIS preparation, which he advocates, there might be a greater proportion of EISs. Mr. Bass, referring to situations where

<sup>1</sup> Mr. Schmidt’s paper can be found at [www.studioskb.com/NEPA/Downloads.html](http://www.studioskb.com/NEPA/Downloads.html).

<sup>2</sup> See LLQR, December 2001, page 11.

(continued on next page)

## “Mistakes and Gaps”? (continued from previous page)



FONSI are reached by mitigating impacts, expressed concern that there is no mechanism for enforcing mitigation or monitoring to test its effectiveness.

writers of the regulations chose to just give factors for practitioners to think about.

### Better Implementation of Regulations Needed

Regulatory changes would not fix problems with NEPA implementation, emphasized Horst Greczmiel (CEQ), stating that what is needed is more effective and efficient NEPA practice. To that end, he referred to the ongoing development of NEPA guidance by CEQ, including guidance on the preparation of EAs. Mr. Greczmiel emphasized that practitioners should focus on the options and opportunities presented by the CEQ regulations, also pointing to the recent Ninth Circuit decision concerning public participation for EAs (related article, page 21) to illustrate a situation where agencies have to apply good judgment in NEPA implementation.

In response to a question on whether NEPA review of a plan could conclude there were no environmental consequences, Mr. Yost said that he could not imagine that situation. Mr. Greczmiel acknowledged that the technology available today, such as geographic information systems, aids us in identifying resources and other aspects of areas being considered in a plan.

Professional judgment is needed to determine the threshold for the level of significance of an impact, acknowledged Mr. Greczmiel, noting that agency-specific discretion must also be applied. Mr. Yost agreed that significance is very difficult to define and said that the

“What is keeping decisionmakers from getting environmental information of value from the NEPA process?” asked Mr. Greczmiel, encouraging Conference participants to ask themselves how to provide timely and useful information when they engage in any NEPA process. He said that one factor he believes is critical to providing useful information is to have project proponents and document preparers work together. He also emphasized that NEPA practitioners need to keep the goals of Section 101 of the Act in mind to add greater value to the NEPA process and document. ■■

## Transitions: New NEPA Compliance Officers

### Loan Guarantee Program Office: Dan Tobin

Dan Tobin has been designated Acting NEPA Compliance Officer (NCO) for the Loan Guarantee Program Office, which reports to DOE’s Chief Financial Officer. Mr. Tobin has 10 years of professional experience in the energy, electricity, and environmental fields. Prior to joining DOE, he completed economic and policy analyses to deploy renewable energy technologies into rural areas of India and China. His professional experience includes preparation of Master Plans and EISs for Department of Defense and Department of Homeland Security facilities. He can be reached at [daniel.tobin@hq.doe.gov](mailto:daniel.tobin@hq.doe.gov) or 202-586-1940.

### Nevada Site Office: Linda Cohn

At the Nevada Site Office, National Nuclear Security Administration, Linda Cohn has been designated NCO after serving for several years as Deputy NCO under Mike Skougard, who has retired after 31 years of Federal service. Ms. Cohn is also the Office’s Cultural Resource Program Manager, American Indian Consultation Program Manager, and Program Coordinator for classified projects. She can be reached at [cohl@nv.doe.gov](mailto:cohl@nv.doe.gov) or 702-295-0077.

*The NEPA Office expresses its appreciation for Mike Skougard’s many contributions as the Nevada Site Office’s NCO since 1997 and, on behalf of the DOE NEPA Community, wishes him success and fulfillment in his future endeavors.*

### Southwestern Power Administration: Larry Harp

Southwestern Power Administration’s new NCO is Larry Harp, a 30-year veteran of the U.S. Army Corps of Engineers before he joined the Power Administration 4 years ago. Mr. Harp is currently the Director, Division of Engineering and Planning, which includes the Administration’s environmental program. He can be reached at [larry.harp@swpa.gov](mailto:larry.harp@swpa.gov) or 918-595-6700. The previous NCO, Darlene Low, served in the position since 2000 and now serves as Program Manager over the Safety and Health Program Office. ■■



# Analyzing Greenhouse Gas Emissions under CEQA

Guidelines on how California state and local agencies should analyze, and when necessary, mitigate greenhouse gas emissions under the California

Environmental Quality Act (CEQA) process are required to be issued and adopted by 2010, through actions taken by the Governor and state legislature in 2007. (See Senate Bill 97 and the Governor’s Signing Message.) At the one-day symposium on global warming that preceded the NAEP Conference, NEPA and CEQA practitioners learned of ongoing planning and coordination efforts as state agencies respond to the recent mandates. NEPA practitioners who prepare joint NEPA/CEQA documents should be aware of the alternative approaches under consideration.


A key question of CEQA practitioners is what level of new emissions to consider as the threshold for significance. The Governor’s Office of Planning and Resources, charged with establishing guidelines for analysis of impacts from greenhouse gases and mitigation strategies under CEQA (which will be certified by the California Resources Agency), has various thresholds under consideration. One would be to set no threshold level for significance; this would continue the current practice whereby agencies have discretion to set significance threshold levels. Another would be to set the threshold at

zero, whereby all emissions of greenhouse gases would be significant (and would have to be mitigated to zero unless there were “overriding considerations,” as allowed under CEQA). Also under consideration are non-zero thresholds based on state emission reduction targets (e.g., 1990 levels by 2020) or on specified project characteristics.


Until CEQA Guidelines are established, the Office of Planning and Resources advises CEQA practitioners to approach the analysis of climate change as a cumulative impact analysis and to consider preparing programmatic environmental impact reports from which to adopt programmatic mitigation strategies.

## For Further Information

Check the following websites for CEQA information, updates on California initiatives concerning analysis of greenhouse gas emissions and global climate change, and scientific information:

- CEQA – [www.ceres.ca.gov/ceqa](http://www.ceres.ca.gov/ceqa)
- The Governor’s Office of Planning and Research – [www.opr.ca.gov](http://www.opr.ca.gov) (under CEQA Guidelines and Greenhouse Gases)
- California Climate Change Portal – [www.climatechange.ca.gov](http://www.climatechange.ca.gov) 

## DOE-wide NEPA Contracting Update

On April 8, 2008, the National Nuclear Security Administration (NNSA) Service Center issued two solicitations – one for small business concerns and one under full and open competition – for DOE-wide NEPA support services. An Integrated Project Team, led by the NNSA Service Center and including NEPA Compliance Officers, is now evaluating proposals submitted in response to the solicitations. The NNSA Service Center expects to establish contracts no later than September 30, 2008. 



*What’s better than winning the lottery? Winning a CEQ NEPA t-shirt, says Jim Daniel, Unit Leader, Office of NEPA Policy and Compliance, who was one of three attendees at the April CEQ NEPA Federal Contacts Meeting to answer a CEQ regulation question posed by Horst Grezmiel, Associate Director for NEPA Oversight, CEQ.*





# NEPA Strategy for Restructured FutureGen Project

DOE has taken a step toward implementing a restructured approach to the FutureGen project by issuing a draft Funding Opportunity Announcement (FOA) on May 7, 2008. [DOE announced its intent to restructure the FutureGen project in January 2008, following issuance in late 2007 of the Final EIS for the original FutureGen project (*LLQR*, March 2008, page 4)].

As explained in the draft FOA, under the restructured approach DOE aims to accelerate the near-term deployment at a commercial scale of advanced clean coal technology by equipping multiple new Integrated Gasification Combined Cycle or other clean coal power plants with cutting-edge carbon capture and storage technology.

The draft FOA outlines the planned scope of possible projects, evaluation criteria, terms and conditions, and cost sharing requirements for public-private cooperation under the restructured FutureGen project. DOE's estimated investment, which would be set out in cooperative agreements or technology investment agreements awarded to commercial partners, would range from \$100 million to \$600 million per project. Subject to compliance with NEPA, DOE expects that commercial operation would begin as soon as plants are commissioned but no later than December 31, 2015.

## 100,000+ Commented on Draft Complex Transformation SPEIS


The National Nuclear Security Administration (NNSA), a semi-autonomous agency within DOE, has received comments from more than 100,000 people on its Draft *Complex Transformation Supplemental Programmatic Environmental Impact Statement* (SPEIS; DOE/EIS-0236-S4). In response to public comment, NNSA extended the 90-day public comment period by 20 days to end on April 30, 2008 (73 FR 19829; April 11, 2008) and is still logging comment documents and reviewing individual comments. The SPEIS analyzes alternatives for the future of the U.S. nuclear weapons complex and could affect facilities in six states.

The vast majority of comments are part of campaigns by public organizations opposed to nuclear weapons production. These campaign comments, which repeat a concise statement, were submitted primarily by email (about 81,000 separate messages) and petition (more

## Comparative Environmental Evaluation


Under the NEPA strategy described in the draft FOA, DOE would request environmental information from applicants. DOE would use the environmental information together with other information provided by the applicants or that DOE develops to perform a comparative environmental evaluation of potential environmental impacts of the proposals per 10 CFR 1021.216 before making selection(s) of one or more projects for further consideration. DOE would then conduct a site-specific NEPA review for each project before making a go/no-go decision. The draft FOA states that, preliminarily, DOE anticipates that an EIS will be required for each project.

## Next Steps

The comment period on the draft FOA ended May 21, 2008. After considering the comments received, DOE expects to issue the final FOA in mid-summer 2008, with the selection of projects for further consideration targeted for December 2008. DOE would then initiate site-specific NEPA reviews in early 2009. 

than 15,000 signatures). NNSA also received more than 2,000 detailed written comment documents. In addition, 625 people provided comments at 20 public hearings held in 14 cities across the country during February and March 2008.

"We've begun reviewing the suggestions to add additional alternatives and other major comments," said Ted Wyka, Complex Transformation SPEIS Document Manager. "We're impressed by the level of detail in many of the comments and have teams in place to ensure that each comment is carefully considered."

For additional information on the SPEIS, see *LLQR*, March 2008, page 1 or [www.complexttransformationspeis.com](http://www.complexttransformationspeis.com). Mr. Wyka may be reached at [theodore.wyka@nnsa.doe.gov](mailto:theodore.wyka@nnsa.doe.gov) or 202-586-3519. 

# Integration of NEPA and Health Impact Assessments

What is a Health Impact Assessment (HIA)? Can NEPA and HIA documents be integrated? These questions were addressed by Dr. Aaron Wernham, Project Director, Alaska Collaborative for Health Impact Assessment, Alaska Inter-Tribal Council, in his presentation at the Council of Environmental Quality's (CEQ's) Federal NEPA Contacts Meeting on April 22, 2008, in Washington, DC. Dr. Wernham explained that health concerns are often not fully assessed in EISs. In a survey of 45 EISs, 83 percent of them did not discuss health, while in the remainder, the discussion was limited to single-substance cancer risk assessment, he said. Another survey found that among NEPA professionals there was little understanding of health concerns, he said.

Dr. Wernham claimed that most EISs rely on regulatory compliance as a proxy for health analysis and avoid any discussion of community health concerns: social ills (domestic violence, drug and alcohol use, suicide, criminality), mental health problems (depression, anxiety, stress), or issues dealing with dietary change and diabetes (because subsistence resources are less available). But for certain types of projects, such as major oil and gas development, such human impacts can be significant and long term, said Dr. Wernham.

Dr. Wernham focused his presentation on three main points: (1) including public health in NEPA analyses

improves the planning process; (2) NEPA and related statutes clearly define health as a consideration; and (3) a well-defined methodology for addressing health concerns exists (i.e., HIA). According to Dr. Wernham, including public health in NEPA reviews improves the planning process by preventing harm to public health and maximizing public health benefits, focusing on the issues of greatest concern to the public, and strengthening relationships between the agency, industry, and the community.

## Definition of an HIA

HIA is defined as a combination of procedures, methods, and tools by which a proposed policy, program or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population. It also identifies appropriate actions to manage those effects.


Dr. Wernham identified five stages of the HIA process that are similar to environmental impact assessment and environmental management system processes:

1. Screening: determine if the impacts are large enough to require HIA
2. Scoping: public meetings and literature review to determine the potential health concerns to be analyzed
3. Assessment/Analysis: using existing data, define baseline health status and model the potential health effects; develop mitigation measures
4. Reporting and Evaluation: write the HIA and present it for public review
5. Monitoring and Reassessment: monitor health effects and make modifications to plans as necessary

Existing public health data, public testimony, quantitative or qualitative analysis, expert opinion, and risk assessment would be used when preparing a HIA.

## Could an HIA Improve NEPA Reviews?

Dr. Wernham thinks an HIA would improve a NEPA review, but adds that there are problems or barriers to be overcome. Many agencies lack health expertise, funding, and staff time, as well as a familiarity with HIA. Agencies would also have to develop guidance. Federal agencies should consider partnerships with local, regional, Tribal, or state health agencies, he said.

Following the presentation, Horst Greczmiel, CEQ's Associate Director explained that an HIA probably would not be required in all EISs because not every EIS would identify health issues as significant. Mr. Greczmiel added that CEQ has no plans to prepare NEPA/HIA integration guidance at this time. 

## Health Requirements Related to NEPA

### NEPA

- Section 2: "The purposes of this Act are: . . . to promote efforts which will . . . stimulate the *health* and welfare of man . . ."
- Section 101: The government must "assure for all Americans safe, *healthful* . . . surroundings; attain the widest range of beneficial uses of the environment without . . . risk to *health* . . ." "The Congress recognizes that each person should enjoy a *healthful* environment . . ."

### CEQ Regulations, 40 CFR Part 1508

- Section 1508.8: "Effects includes . . . *health*, whether direct, indirect, or cumulative."
- Section 1508.27: "The degree to which the proposed action affects public *health* or safety" should be considered when evaluating intensity.

### Executive Orders (E.O.)

- E.O. 12898: Environmental Justice in Minority Populations and Low-Income Populations (Presidential Transmittal Memorandum).
- E.O. 13045: Protection of Children from Environmental Health Risks and Safety Risks.

*emphasis added*

# Integrating NEPA and EMS Benefits Planning

Integrating the NEPA process with an Environmental Management System (EMS) sounds like a good idea, but many agencies have little experience in doing so. At the March 2008 meeting of the Federal NEPA Contacts, Matthew McMillen described how the Federal Aviation Administration (FAA) pioneered Federal efforts to effectively coordinate EMS and NEPA and use the EMS framework to accomplish environmental goals.

FAA's internal procedures for NEPA implementation provide that "where available and applicable, an environmental management system may be used for tracking and monitoring mitigation commitments," explained Mr. McMillen. As most of FAA's NEPA reviews are related to airport actions, FAA has specific implementing instructions for these actions. A regional FAA office can use an airport sponsor's EMS or an EMS for a similar airport action to determine if mitigation measures proposed in an EA would likely prevent significant impacts, he said, and the internal procedures direct that "the regional airports office responsible for the proposed action should track an airport sponsor's mitigation compliance via an EMS." Incentives are



## Federal Aviation Administration

needed to promote EMS development, Mr. McMillen emphasized, and FAA provides financial aid to sponsors of medium to large public-use hub airports to develop an EMS, he said.

The 2004 FAA paper, *Environmental Management Systems (EMS) and NEPA Adaptive Management*, at [www.faa.gov/regulations\\_policies/policy\\_guidance/envir\\_policy](http://www.faa.gov/regulations_policies/policy_guidance/envir_policy), laid the groundwork for the 2007 CEQ guidance, *Aligning National Environmental Policy Act Processes with Environmental Management Systems – A Guide for NEPA and EMS Practitioners*, at [www.nepa.gov](http://www.nepa.gov). For further information on promoting EMS development and aligning it with the NEPA process at FAA, contact Mr. McMillen at [matthew.mcmillen@faa.gov](mailto:matthew.mcmillen@faa.gov) or 202-493-4018. LL

# BLM Expands NEPA Handbook



The Bureau of Land Management (BLM) recently announced the availability of its revised *NEPA Handbook* (73 FR 22162; April 24, 2008), which provides procedures, guidance, and examples to assist BLM NEPA practitioners in complying with Council on Environmental Quality (CEQ)

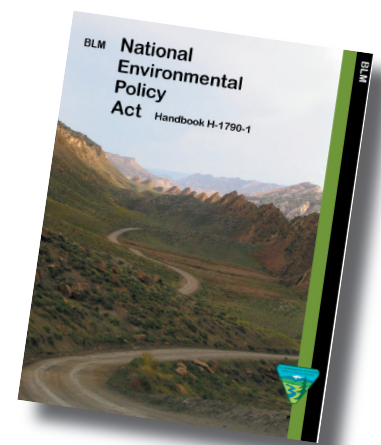
NEPA regulations and the Department of the Interior's environmental procedures. Last updated in 1998, the expanded *Handbook* now includes guidance on new topics, including cumulative effects analysis and public involvement for EAs.

The *Handbook* starts with a Users Guide and a "NEPA Screening Process" flowchart that includes chapter references for each step. Flowcharts also are provided for BLM's EA and EIS processes and for screening a proposal for conformance with a land use plan. The *Handbook* uses "plain language" to identify legal requirements and BLM's analytical and procedural approaches and to describe the content of the sections of a NEPA document. Other

chapters address monitoring, cooperating agencies, working with advisory committees, and administrative procedures such as recordkeeping and preparing an administrative record. A chapter on adaptive management will be added at a later date, and the online *Handbook* (at [www.blm.gov/wo/st/en/info/nepa.2](http://www.blm.gov/wo/st/en/info/nepa.2), under NEPA Handbook)

will in the future activate links to references (e.g., CEQ regulations and guidance) and to BLM examples of NEPA document content (e.g., description of the no-action alternative) and administrative documents (memoranda of understanding with tribes and cooperating agencies).

Because DOE is a cooperating agency with BLM in several ongoing EISs, DOE NEPA practitioners may find the *Handbook* useful. For questions on the *Handbook*, inquire by email to [NEPA@blm.gov](mailto:NEPA@blm.gov). LL





# 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.*

## New DOE NEPA Litigation

### Complaint Claims NEPA Review Needed for Coal Project Tax Credits

On March 3, 2008, Appalachian Voices and The Canary Coalition, two nonprofit environmental groups, filed a complaint and a motion for an injunction against DOE and the Department of the Treasury, seeking to suspend a program under section 1307 of the Energy Policy Act of 2005 that allocated \$1.65 billion of tax credits for nine experimental coal-fired power projects. In its consultation role, DOE reviewed applications to assess the technical and financial feasibility of the proposed projects and submitted a list of the qualifying applications to the Internal Revenue Service, which then decided which projects to certify for tax credit award. The plaintiffs allege the agencies violated NEPA by failing to assess in an EA or EIS 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 Government has filed a motion to dismiss. *Appalachian Voices v. DOE* (D. D.C.) Case No.: 08-00380.

### Complaint Alleges Safety Issues for Particle Accelerator in Europe

Two private citizens have sued DOE, Fermilab, the National Science Foundation, and the European Organization for Nuclear Research (CERN), alleging that they violated NEPA by preparing the Large Hadron Collider for operation without NEPA review. The Large Hadron Collider, a physics research facility to be operated by CERN and located on the French-Swiss border, will accelerate proton particles to nearly the speed of light and collide them at the center of four large detectors designed to observe those collisions.

The plaintiffs cite various theories in alleging that adverse consequences could result from the operation of the Large Hadron Collider. A 2003 CERN safety report on new phenomena that might occur during high-energy collisions at the facility found no basis for any conceivable threat, including those alleged by the plaintiffs. The plaintiffs claim that the safety report contained flaws and that DOE should have prepared an EA or EIS addressing safety issues.

The plaintiffs request a temporary restraining order to prohibit the defendants from further preparing the Large Hadron Collider for operation or operating it, a preliminary injunction until an EA or EIS is issued, and a permanent injunction against operation of the Collider until it can be proven to be "reasonably safe within industry standards." *Sancho v. DOE* (D. Hawaii) Case No.: 08-00136.

### Complaint Claims EIS Required for Biosafety Level 3 Facility

Tri-Valley CAREs (Communities Against a Radioactive Environment, an environmental organization) and private citizens have filed a lawsuit alleging that DOE violated NEPA by issuing an EA for a Biosafety Level 3 facility at Lawrence Livermore National Laboratory. The plaintiffs allege that DOE's revised EA (DOE/EA-1442-R, January 2008) is inadequate, particularly in its analysis of potential impacts of a terrorist act, and does not support a finding of no significant impact (FONSI); that the EA should have been supplemented to evaluate significant new circumstances and information; that a proposed FONSI should have been issued for public review; and that an EIS is required for the facility. *Tri-Valley CAREs v. DOE* (N.D. Calif.) Case No.: 08-01372.



# Court Rules on Public Involvement in the EA Process

Federal agencies have flexibility in how they involve the public in EAs, but they must provide sufficient information to allow such involvement, concluded the U.S. Court of Appeals for the Ninth Circuit in a decision earlier this year. The case involved a major gold-mining project near Nome, Alaska. Plaintiffs in *Bering Strait Citizens v. U.S. Army Corps of Engineers* alleged that the Corps violated the Clean Water Act and NEPA in issuing a permit for the mining project. The court found no violation and upheld the Corps' decisions. This article summarizes those aspects of the court's opinion that relate to NEPA, specifically whether there is a need to circulate a draft EA, whether the EA was adequate, and whether an EIS should have been prepared.

### Public Involvement Required for EAs

Plaintiffs argued that the Corps was required to circulate the draft EA in order to comply with CEQ regulations to "involve environmental agencies, applicants, and the public, to the extent practicable" in preparation of an EA (40 CFR 1501.4(b)). The court stressed, however, that the CEQ "regulations governing public involvement in the preparation of EAs are general in approach," and the court concluded that circulation of a draft EA is not required in every case. "Our conclusion is consistent with the views of other circuits, which uniformly have not insisted on the circulation of a draft EA," the court added.<sup>1</sup>

The court then addressed the question: "[W]hat level of public disclosure is required under NEPA before issuance of a final EA?" The court noted that each EA will be prepared under different circumstances and concluded that, "An agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process."

In this case, the court found that the Corps had passed this test by disseminating information about the project widely throughout the community. Steps taken by the Corps included distribution via its website and in a printed public notice describing the project, conducting a public meeting, and accepting public comments on the project. In response, "the Corps received a high level of public comment from the Nome community," the court noted. The court also credited the permit applicant's "substantial efforts to provide additional information to the public," including a weekly newspaper column, local presentations, radio interviews, and joint efforts with state agencies.

### EA Deemed Adequate

Plaintiffs alleged that the Corps' EA was inadequate in four areas: cumulative impacts, alternatives analysis, mitigation, and environmental impacts. In regard to cumulative impacts, the court called the EA's discussion succinct but adequate and found that plaintiffs had "not identified any comparable project – past, present, or future – that could call into question the cumulative impacts analysis." The court considered other, smaller-scale mining expected to take place in the vicinity of the proposed project but found that the potential impacts are "not germane to the cumulative impacts assessment of the large-scale hard rock mining project at issue here." Also, the court noted that reclamation that is required after any current mining activities is expected to improve environmental conditions because it will, in part, address impacts from past mining in the area that was completed before reclamation requirements were in force.

The EA only addressed environmental impacts of the applicant's preferred alternative, and plaintiffs alleged that the EA failed to adequately discuss other alternatives. The court pointed out, though, that this preferred alternative was based on consideration of 24 design alternatives and discussions between the applicant and the Corps and/or state officials on at least 59 occasions. Consequently, the court found the analysis of alternatives sufficient, noting that an agency need not consider every available alternative.

Plaintiffs alleged that mitigation plans are inadequate because they were to be fully developed after the project begins. In part, plaintiffs referred to comments from the U.S. Environmental Protection Agency (EPA), which in the words of the court, had objected "to the propriety of issuing the permit while some details of the mitigation plan were not finalized." The court pointed out, though, that "the mitigation plans that have not yet been fully developed are only a small part of the overall mitigation plan" and concluded, "Because the measures overall are developed to a reasonable degree, the Corps could reasonably conclude that additional mitigation measures would be developed after work commenced at the site."

Plaintiffs alleged that the EA did not adequately consider environmental impacts, including air quality, water quality, and biological habitat. In each case, the court found the analysis in the EA adequate, in part by considering an Environmental Information Document that was incorporated by reference into the EA.

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<sup>1</sup> DOE's NEPA regulations require DOE to "provide the host state and host tribe with an opportunity to review and comment on any EA prior to DOE's approval of the EA" (10 CFR 1021.301(d)), and DOE guidance encourages public distribution, particularly to those who request a pre-approval copy of an EA for review.



# Litigation Updates (continued from previous page)

## EIS Not Required

Finally, the court addressed plaintiffs’ allegations that the Corps should have prepared an EIS, specifically: (1) whether plaintiffs had raised “substantial questions” about the potential environmental impacts, and (2) whether EPA’s disagreement regarding certain mitigation requirements raises a substantial question that requires preparation of an EIS. The court wrote, “An EIS must be prepared if ‘substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.’”<sup>2</sup>

On the first point, the court concluded, as summarized above, that the EA and referenced Environmental Information Document “show that the Corps undertook a reasonable approach” to address environmental impacts. Quoting a prior Ninth Circuit opinion,<sup>3</sup> the court wrote, “Simply because a challenger can cherry pick information and data out of the administrative record to support its position does not mean that a project is highly controversial or highly uncertain.”

On the second point, the court determined that EPA’s objections were limited. As summarized above, the court found the Corps’ approach to mitigation to be reasonable, noting both that finalizing some details after issuing the permit was suggested by U.S. Fish and Wildlife Service

<sup>2</sup> Quoting *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1212 (9<sup>th</sup> Cir. 1998).

<sup>3</sup> *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1240 (9<sup>th</sup> Cir. 2005).

## Additional Court Opinion on Mitigation

The Ninth Circuit also addressed mitigation earlier this year in a separate opinion. In *NRDC et al. v. Navy* (related article, below), the court addressed, among other issues, whether mitigation measures discussed in an EA justified a decision not to prepare an EIS. The court acknowledged that mitigation can be relied on for this purpose in some circumstances but added, “However, we have also held that a ‘perfunctory description’ or ‘mere listing of mitigation measures, without supporting analytical data,’ is insufficient to support a finding of no significant impact.”

and that the mitigation would favorably affect parts of the area that suffered environmental damage from previous mining. “That EPA disagreed with the Corps’ assessment does not create a substantial issue requiring an EIS under these circumstances,” the court concluded.

The complete opinion in *Bering Strait Citizens v. U.S. Army Corps of Engineers* (Case No.: 07-35506) is available on the court’s website at [www.ce9.uscourts.gov](http://www.ce9.uscourts.gov) by selecting “Opinions” then searching by date. The court’s opinion was filed on January 3, 2008, and amended on April 30, 2008.

# Navy Appeals to Supreme Court in Case Involving Emergency Provisions under NEPA

In a case involving the emergency provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.11), the Navy has appealed to the Supreme Court, following an adverse ruling by the U.S. Court of Appeals for the Ninth Circuit. The Court of Appeals on February 29, 2008, affirmed a district court’s preliminary injunction that disagreed with CEQ’s and the Navy’s determination that an emergency exists for purposes of allowing “alternative arrangements” to replace the normal NEPA process (*LLQR*, March 2008, page 19).

The proposed action is a series of major naval training exercises that employ mid-frequency active sonar, including mitigation measures developed with the National Marine Fisheries Service, which reviewed the effectiveness of the mitigation, including the results of their use in recent exercises in the southern California naval training area. These exercises are necessary to certify Navy strike groups for deployment throughout the world, including combat support near Afghanistan and Iraq. The exercises are scheduled to be 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 order affirmed the district court’s preliminary injunction that permits the Navy to proceed with training exercises on the condition that it use a number of measures to mitigate the potential for harm to marine mammals, harm that the district court found would, “to a near certainty,” result from the Navy’s use of the mid-frequency active sonar.

The Court of Appeals order left in place two mitigation measures that the Navy claims would significantly limit its conduct of training and jeopardize its ability to certify that the Navy forces were ready for deployment. These two measures, which are more restrictive than the mitigation measures the Navy accepted as part of the CEQ alternative arrangements, involve suspending the use of sonar or reducing its level when marine mammals are detected

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## Litigation Updates (continued from previous page)

within certain distances or when certain conditions are present. The Court of Appeals stayed the injunction while the case is pending before the Supreme Court, allowing sonar exercises to proceed under the Navy's mitigation measures until the Supreme Court rules.

The Navy petitioned the Supreme Court for a *writ of certiorari* (petition to review the Court of Appeals decision) on March 31, 2008. Natural Resources Defense

Council filed its opposition brief on May 23 and the Government response is due on June 2, after which time the Supreme Court will determine whether it will review the case.

*Natural Resources Defense Council (NRDC) et al. v. Winter, Secretary of the Navy*. See [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov), Case No.: 08-55054 and [www.supremecourtus.gov/docket/docket.html](http://www.supremecourtus.gov/docket/docket.html), Case No.: 07-1239. 



## NEPA Litigation Scorecard Examined

For the first time in several years, the Government did not win the majority of NEPA cases decided in 2007, said Lucinda Low Swartz, Battelle Memorial Institute, in her annual update of recent NEPA cases for NAEP Conference participants. In 28 substantive decisions involving the implementation of NEPA, she explained, the Government prevailed in 12 cases (43 percent).

DOE, involved in three cases, won two (*Citizens for Alternatives to Radioactive Dumping et al. v. DOE et al.*, *LLQR*, June 2007, page 21; *Coalition on West Valley Nuclear Wastes et al. v. DOE, LLQR*, December 2007, page 22), but lost *Natural Resources Defense Council et al. v. DOE et al.* (concerning remediation of Area IV of the Santa Susanna Field Laboratory in California; *LLQR*, June 2007, page 20).

Litigation themes generally paralleled those for 2006, Ms. Swartz explained: Courts upheld decisions where the agency could demonstrate that it had given potential environmental impacts a "hard look." Conversely, courts invalidated decisions where the agency failed to do so. Courts invalidated NEPA documents that were not based on the best available science or that used faulty scientific methodologies, and invalidated decisions where the agency could not demonstrate that it had applied a categorical exclusion (or considered extraordinary circumstances when doing so) at the time the decision was made.

Regarding cumulative impacts, courts upheld NEPA documents that properly analyzed the cumulative impact of the proposed action with other projects and invalidated NEPA documents that failed to fully consider them. Those upheld were *Miccosukee Tribe of Indians v. United States* (S.D. Fla., July 30, 2007; No. 02-22778), an Army Corps of Engineers' analysis of water and flood control in southern Florida, and *Natural Resources Defense Council v. Kempthorne* (D. D.C., November 30, 2007; No. 07-1709), a Bureau of Land Management analysis of natural gas development in Wyoming.

Those not upheld include *Center for Biological Diversity v. National Highway Traffic Safety Administration* (*LLQR*, December 2007, page 24; related article page 12). Three others not upheld were *Oregon Natural Resources Council Fund v. Brong* (9<sup>th</sup> Cir., July 24, 2007; Nos. 05-35062, 05-35063) concerning logging after a forest fire, *Oregon Natural Resources Council Fund v. Goodman* (9<sup>th</sup> Cir., September 24, 2007; No. 07-35110) concerning an endangered species, and *Sierra Club v. United States Army Corps of Engineers* (W.D. Missouri, May 24, 2007; No. 03-04254) concerning levee work along the Missouri River.

Ms. Swartz, formerly the Council on Environmental Quality Deputy General Counsel and long-time associate of DOE's NEPA Community, left Battelle in April 2008 to work on her own.

# 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; please check with the course provider.

- American Law Institute - American Bar Association  
800-CLE-NEWS  
[www.ali-aba.org](http://www.ali-aba.org)  
**Environmental Due Diligence in the Era of Climate Change**  
Live Webcast: Jul 23  
\$199
- Northwest Environmental Training Center  
206-762-1976  
[rsobol@nwetc.org](mailto:rsobol@nwetc.org)  
[www.nwetc.org](http://www.nwetc.org)  
**Wetlands Demystified! Navigating the Complicated World of Wetland Delineation, Regulation, and Restoration**  
Troutdale, OR: Jul 8-10  
\$695  
**NEPA & CEQA Workshop**  
Pasadena, CA: Jul 15-16  
\$495  
**NEPA: Writing the Perfect EA/FONSI or EIS**  
Phoenix, AZ: Aug 6-7  
\$495  
Helena, MT: Sep 3-4  
\$495  
Lacey, WA: Oct 8-9  
\$495
- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.env.duke.edu/del/continuinged/courses.html](http://www.env.duke.edu/del/continuinged/courses.html)  
**Ecological Risk Assessment: Theory and Practice**  
Durham, NC: Jun 23-27  
\$1,150  
**Tribal Consultation**  
Keystone, CO: Aug 6-8  
\$800  
**Accounting for Cumulative Effects in the NEPA Process**  
Durham, NC: Sep 10-12  
\$800
- The Shipley Group  
888-270-2157 or 801-298-7800  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)  
**Overview of the NEPA Process**  
Olympia, WA: Jul 15  
\$355 (GSA contract: \$265)  
**Clear Writing for NEPA Specialists**  
New Orleans, LA: Jul 15-17  
\$845  
**NEPA Climate Change Analysis**  
San Antonio, TX: Jul 22-23  
\$715 (GSA contract: \$625 until 6/4/08)  
Jacksonville, FL: Sep 23-24  
\$715 (GSA contract: \$625 until 8/13/08)  
**How to Manage the NEPA Process and Write Effective NEPA Documents**  
Portland, OR: Jul 29-Aug 1  
\$1,115 (GSA contract: \$1,025 until 6/11/08)  
**Reviewing NEPA Documents**  
Phoenix, AZ: Aug 18-20  
\$894 (GSA contract: \$804 until 7/2/08)  
**NEPA Project and Program Management**  
Phoenix, AZ: Aug 21-22  
\$694 (GSA contract: \$604 until 7/2/08)  
**NEPA Cumulative Effects Analysis and Documentation**  
Dallas/Ft. Worth, TX: Sep 16-18  
\$915 (GSA contract: \$825 until 8/6/08)  
**How to Manage the NEPA Process – Emphasis on Native American Issues**  
Las Vegas, NV: Sep 30-Oct 2  
\$915 (GSA contract: \$825 until 8/13/08)  
**NEPA Certificate Program**  
Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.  
\$4,955 (includes tuition, course fees, and all materials)  
Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922;  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu);  
[www.cnr.usu.edu/htm/students/graduate\\_programs/nepa](http://www.cnr.usu.edu/htm/students/graduate_programs/nepa)

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# Training Opportunities

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## Customized NEPA Training

- Environmental Training & Consulting International, Inc.  
503-274-1790  
info@envirotrain.com  
www.envirotrain.com

### NEPA Toolbox™ Training

Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including those from other agencies. Services are available through a GSA contract.

- Environmental Impact Training  
512-940-7969  
info@eiatraining.com  
www.eiatraining.com

### Environmental Impact Training

Courses cover topics such as environmental impact assessment, cumulative effects, environmental justice, reviewing NEPA documents, computer-based models, and adaptive management. Topics from several courses can be packaged together to meet the specific training needs of clients.

- Environmental Planning Strategies, Inc.  
563-332-6870  
jleeeps@mchsi.com  
www.jlee-eps.com/workshops.php

### Powerful Planning Using NEPA and the Facilitated Planning Approach

3-5 days

### NEPA Document Review under Section 309 of the Clean Air Act

3-4 days

### Conducting Effective NEPA Document Reviews for NEPA Practitioners and Managers

3-4 days

### Conducting Quality Cumulative Impact Analyses under NEPA

2-3 days

### NEPA: A Dialogue of Understanding for Quality Planning

Length tailored to need

### NEPA: Powerful Planning Focusing on Purpose and Need

3-4 days

### Developing and Implementing Effective NEPA Planning Strategies

Length tailored to need



### “Green” Conference

Planners for the April Conference of the National Association of Environmental Professionals and the California Association of Environmental Professionals went “green.” Conference bags and lanyards were 100% natural fiber. Lanyards and name badges were collected for reuse and recycle. Food was served in bulk whenever possible to minimize packaging, and no plastic utensils were used. Conference participants received a water bottle that they were able to refill at the conference and save for use afterwards; no bottled water was served. Individuals could choose to reuse hotel linens. (See *LLQR*, June 2007, page 19, for more information on “green” meetings and conferences.)



# EAs and EISs Completed January 1 to March 31, 2008

## EAs

### **Bonneville Power Administration**

DOE/EA-1576 (3/28/08)

*Olympic Peninsula Transmission Line Reinforcement Project, Clallam, Jefferson, Kitsap, Harbor, Mason, and Thurston Counties, Washington*

Cost: \$130,000

Time: 17 months

### **Livermore Site Office/**

### **National Nuclear Security Administration**

DOE/EA-1442-R (1/25/08)

*Revised Environmental Assessment for the Proposed Construction and Operation of a BSL-3 Facility at Lawrence Livermore National Laboratory, Alameda County, California*

Cost: \$25,000

Time: 13 months

### **Oak Ridge Operations Office/Office of Science**

DOE/EA-1575 (2/20/08)

*Oak Ridge Science and Technology Project at the Oak Ridge National Laboratory, Oak Ridge, Tennessee*

Cost: \$57,000

Time: 18 months

### **Western Area Power Administration**

DOE/EA-1389 (2/20/08)

*Charlie Creek-Williston Transmission Line Fiber Optic Overhead Ground Wire Installation Project, McKenzie and Williams Counties, North Dakota*

Cost: \$345,000

Time: 83 months

### **Y-12 Site Office/**

### **National Nuclear Security Administration**

DOE/EA-1529 (7/6/05)\*

*Transportation of Unirradiated Uranium in Research Reactor Fuel from Argentina, Belgium, Japan, and the Republic of Korea to the Y-12 National Security Complex*

Cost: \$80,000

Time: 6 months

\* Not previously reported in LLQR

## EISs

### **Western Area Power Administration**

DOE/EIS-0323-S1 (73 FR 16672, 3/28/08)

(EPA Rating: EC-2)

*Sacramento Area Voltage Support Supplemental Environmental Impact Statement, Sacramento, Sutter, and Placer Counties, California*

Cost: The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 22 months

DOE/EIS-0376 (72 FR 18644, 4/13/07)\*

(EPA Rating: LO)

*White Wind Farm Project, Construct a Large Utility-Scale Wind-Powered Electric Energy Generating Facility, Brookings County, South Dakota*

Cost: The cost for this EIS was paid by the applicant; therefore, cost information does not apply to DOE.

Time: 26 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](http://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 4 EAs for which cost data were applicable was \$93,000; the average cost was \$139,000.
- Cumulatively, for the 12 months that ended March 31, 2008, the median cost for the preparation of 16 EAs for which cost data were applicable was \$104,000; the average was \$165,000.
- For this quarter, the median completion time for 4 EAs was 18 months; the average was 33 months.
- Cumulatively, for the 12 months that ended March 31, 2008, the median completion time for 18 EAs was 22 months; the average was 30 months.

## EIS Costs and Completion Times

- Cumulatively, for the 12 months that ended March 31, 2008, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1,571,000; the average was \$2,331,000.
- For this quarter, the median and average completion times for 2 EISs were 24 months.
- Cumulatively, for the 12 months that ended March 31, 2008, the median completion time for 8 EISs was 24 months; the average was 30 months.

## Recent EIS-Related Milestones (March 1 to May 31, 2008)

### Notices of Intent

#### **Office of Energy Efficiency and Renewable Energy**

DOE/EIS-0403

*Programmatic Environmental Impact Statement  
for Solar Energy Development* (co-lead: Bureau  
of Land Management)

May 2008 (73 FR 30908, 5/29/08)

#### **Office of Environmental Management**

DOE/EIS-0402

*Remediation of Area IV of the Santa Susana  
Field Laboratory, Ventura County, California*

May 2008 (73 FR 28437, 5/16/08)

#### **Office of Fossil Energy**

DOE/EIS-0385-S1

*Supplemental Environmental Impact Statement  
for Site Selection for the Expansion of the Strategic  
Petroleum Reserve, Mississippi*

March 2008 (73 FR 11895, 3/5/08)

[Additional scoping meeting: 73 FR 15150, 3/21/08]

### Draft EIS

#### **Bonneville Power Administration**

DOE/EIS-0397

*Lyle Falls Fish Passage Project, Klickitat County,  
Washington*

March 2008 (73 FR 16672, 3/28/08)

### Final EIS

#### **National Nuclear Security Administration/ Los Alamos National Laboratory**

DOE/EIS-0380

*Site-Wide Environmental Impact Statement  
for Continued Operation of Los Alamos National  
Laboratory, Los Alamos, New Mexico*

May 2008 (73 FR 28461, 5/16/08)

### Additional Public Hearing

#### **National Nuclear Security Administration**

DOE/EIS-0236-S4

*Complex Transformation Supplemental  
Programmatic Environmental Impact Statement*

March 2008 (73 FR 12409, 3/7/08)

(continued on next page)

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

## Extension of Comment Period

### **National Nuclear Security Administration**

DOE/EIS-0236-S4

*Complex Transformation Supplemental Programmatic Environmental Impact Statement*  
April 2008 (73 FR 19829, 4/11/08)

## Records of Decision

### **Bonneville Power Administration**

DOE/EIS-0312

*Fish and Wildlife Implementation Plan*  
May 2008 (73 FR 26380, 5/9/08)

### **Office of Fossil Energy/**

### **National Energy Technology Laboratory**

DOE/EIS-0361

*Western Greenbrier Co-Production Demonstration Project, Greenbrier County, West Virginia*  
April 2008 (73 FR 23214, 4/29/08)

### **Western Area Power Administration**

DOE/EIS-0323-S1

*Sacramento Area Voltage Support Project, Sacramento, Sutter, and Placer Counties, California*  
May 2008 (73 FR 24970, 5/6/08)

## Supplement Analyses

### **Bonneville Power Administration**

#### **Transmission System Vegetation Management Program Environmental Impact Statement (DOE/EIS-0285)**

DOE/EIS-0285-SA-354\*

*Vegetation Management along the SnoKing Tap to Echo Lake - Monroe No. 1, 500 kV Transmission Line Corridor, Snohomish County, Washington*

(Decision: No further NEPA review required)  
January 2008

DOE/EIS-0285-SA-355\*

*Vegetation Management along the Metaline Falls Tap to Colville - Boundary No. 1, 115 kV Single Circuit Transmission Line Corridor Right-of-Way from Structure 1/1 to 1/11, Pend Oreille County, Washington*

(Decision: No further NEPA review required)  
January 2008

\*Not previously reported in LLQR

DOE/EIS-0285-SA-356\*

*Vegetation Management along the North Bonneville - Ross No. 1 and No. 2, 230 kV Transmission Line Corridors; along the Sifton - Fishers Road No. 1, 115 kV Transmission Line Corridor; and along the Ross - Vancouver Shipyard No. 1, 115 kV Transmission Line Corridor, Clark and Skamania Counties, Washington*

(Decision: No further NEPA review required)  
January 2008

DOE/EIS-0285-SA-357\*

*Vegetation Management within the Cape Blanco Beam Path, Curry County, Oregon*

(Decision: No further NEPA review required)  
January 2008

DOE/EIS-0285-SA-358

*Vegetation Management along the Olympia - Grand Coulee 287 kV and Olympia - South Tacoma 230 kV Transmission Line Corridors, Pierce and Thurston Counties, Washington*

(Decision: No further NEPA review required)  
March 2008

DOE/EIS-0285-SA-359

*Vegetation Management along the Kitsap - Bremerton No. 1, 115 kV Transmission Line Corridor, Kitsap County, Washington*

(Decision: No further NEPA review required)  
April 2008

DOE/EIS-0285-SA-360

*Vegetation Management along the Paul - Satsop No. 1, 500 kV, Paul - Olympia No. 1, 500 kV, and Chehalis - Olympia No. 1, 230 kV Transmission Line Corridors, Grays Harbor, Lewis, and Thurston Counties, Washington*

(Decision: No further NEPA review required)  
March 2008

DOE/EIS-0285-SA-361

*Vegetation Management along the Chief Joseph - Monroe No. 1, 500 kV Transmission Line Right-of-Way from Structure 35/2 to 64/5 and Chief Joseph - Snohomish No. 3 and 4, 345 kV Transmission Line Right-of-Way from Structure 35/2 to 64/5, Chelan County, Washington*

(Decision: No further NEPA review required)  
March 2008

DOE/EIS-0285-SA-362

*Vegetation Management along the Grand Coulee - Bell Transmission Line Corridor, Grant, Lincoln, and Spokane Counties, Washington*

(Decision: No further NEPA review required)  
March 2008

*(continued on next page)*

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

DOE/EIS-0285-SA-363

*Vegetation Management along the Kitsap - Bangor No. 1, 115 kV Transmission Line Corridor, Kitsap County, Washington*

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-364

*Vegetation Management along the Tacoma - Raver No. 1 and 2, 500 kV Transmission Line Right-of-Way from Structure 1/1 to 15/6, Pierce and King Counties, Washington*

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-365

*Vegetation Management along the McNary - Roundup, McNary Powerhouse, Lower Monumental - McNary, McNary - Badger Canyon No. 1, and Radar Tap Transmission Line Corridors, Umatilla, Benton, and Franklin Counties, Washington*

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-366

*Vegetation Management along the Paul - Allston No. 2 et al., 500 kV, 230 kV, and 115 kV Transmission Line Corridors, Cowlitz and Lewis Counties, Washington, and Columbia County, Oregon*

(Decision: No further NEPA review required)

March 2008

DOE/EIS-0285-SA-367

*Vegetation Management along the Satsop - Aberdeen No. 2 and 3 (1/1 to 21/3) and Satsop Park - Cosmopolis No. 1 (7/6 to 16/7) Transmission Line Corridors, Grays Harbor County, Washington*

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-368

*Vegetation Management along the Taft - Hot Springs No. 1, 500 kV Transmission Line Corridor Right-of-Way from Structure 1/1 to Structure 22/1, Mineral and Sanders Counties, Montana*

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-369

*Vegetation Management along the Raver - Paul No. 1, 500 kV Transmission Line Corridor, Pierce and King Counties, Washington*

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-370

*Vegetation Management along the St. Johns - St. Helens No. 1 and St. Helens - Alston No. 1, 115 kV Transmission Line Corridors, Multnomah and Columbia Counties, Oregon*

(Decision: No further NEPA review required)

April 2008

DOE/EIS-0285-SA-371

*Vegetation Management along the Chehalis - Centralia No. 1, 69 kV and Chehalis - Centralia No. 2, 115 kV Transmission Line Corridors, Lewis County, Washington*

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-372

*Vegetation Management along the Elbe Tap to Alder - LaGrande 115 kV, and Lynch Creek Tap to LaGrande - Cowlitz 115 kV Transmission Line Corridors, Pierce County, Washington*

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-373

*Vegetation Management along the Cheney Tap to Silver Lake - Sunset, 115 kV Transmission Line Corridor Right-of-Way from Structure 1/1 to 10/5, Spokane County, Washington*

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-374

*Vegetation Management along the St. Johns - Keeler No. 2, 115 kV Transmission Line, Tower 3/4 to Keeler, Multnomah and Washington Counties, Oregon*

(Decision: No further NEPA review required)

May 2008

DOE/EIS-0285-SA-375

*Vegetation Management along the Hungry Horse - Conkelley No. 1, 230 kV Transmission Line Right-of-Way from Structure 1/1 to 10/2 and along the Hungry Horse - Columbia Falls No. 1, 230 kV Transmission Line Right-of-Way from Structure 1/1 to 8/8, Flathead County, Montana*

(Decision: No further NEPA review required)

May 2008

# 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.

**Note:** The server supporting the Lessons Learned online questionnaire was deactivated in late April due to security concerns. Persons trying to use the questionnaire experienced an array of problems, including the disappearance of completed submissions. This report is based on questionnaires submitted online before loss of service, or via other means. We value your input and apologize for any inconvenience. Please contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov) if you have any questions.

## Scoping

### What Worked

- *Pre-scoping workshop.* At the beginning of the NEPA process, DOE hosted a workshop for the alternative site teams and the industrial partner to: (1) provide an overview of the NEPA process, (2) express DOE's expectations for information and support for the NEPA process, and (3) answer any questions.
- *Informal sessions.* Informal sessions before the formal portion of the scoping meetings provided a good opportunity for information exchange between the project representatives and the public.
- *Exhibits and models.* Exhibits at the scoping meeting served as conversation starters and provided members of the public with a better understanding of the project.
- *Active participation by site proponents in the scoping meetings.* The local site proponents facilitated communication, helped set up media events, and assisted with logistical needs.

### What Didn't Work

- *Failure to discuss concerns garnered from scoping meeting.* Insufficient time remained after the scoping meeting for a debriefing with the DOE team members and local site proponents.
- *Lengthy speeches by officials.* DOE allowed public officials to speak for too long at scoping meetings, taking valuable time from other speakers. Before the public hearings for the draft EIS, DOE worked with stakeholders to better allocate time among participants.

## Data Collection/Analysis

### What Worked

- *Early environmental input.* Environmental information prepared by the applicant was helpful and delivered early in the process.
- *Excellent contractor support.* The EIS contractor appropriately directed information collection efforts, filled data gaps, and provided extensive analytical work.
- *Simulations, analyses, and further data.* Simulations, analyses, and other information provided by the local proponent were helpful in preparing the EIS.
- *State-of-the-art risk assessment.* Because of the unprecedented nature of the proposal, a special study was commissioned to prepare a comprehensive risk assessment of carbon sequestration.
- *Contractor principals involved.* The EIS preparation contractor committed the resources needed to complete the work in a timely fashion.

### What Didn't Work

- *Lack of direct involvement by EIS drafters.* Drafters of the EIS did not develop as much understanding of the issues and potential impacts of the proposed action as they would have obtained from gathering information for themselves. The contractor would have preferred to gather its own data rather than depend on data gathered by the industrial partner.
- *Lack of time.* The EIS was drafted over a 4-week period that included major holidays, and far too little time was allotted to write, assemble, edit, and proofread the draft EIS prior to DOE review. As a result, extensive revision of the document was required after DOE review.

(continued on next page)

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

- *Insufficient time for QA/QC.* The schedule and process provided too little time for thorough analysis, general editing, and quality assurance/quality control, resulting in delays during the approval process.
- *Frequent communication.* Close and constant communication between the organizations comprising or contributing to the NEPA team facilitated the timely completion of the EIS.

### Schedule

#### Factors that Facilitated Timely Completion of Documents

- *Detailed schedule and statement of work.* A detailed schedule and a statement of work, both focused on the EIS process steps and deliverables, effectively communicated what was expected, and facilitated better planning and more realistic cost estimates.
- *Widespread support.* The EIS process was completed in a timely manner. This was made possible by a tremendous amount of goodwill from all organizations involved. The project generated enthusiasm because of the widespread belief that it would benefit society and provide outcomes needed to mitigate environmental and economic harms.

#### Factors that Inhibited Timely Completion of Documents

- *Terrorism analysis.* Defining expectations for a new analysis in the EA, regarding terrorism/intentional destructive acts, took considerable time.
- *Changes in scope.* Changes in the proposed action's scope made timely completion of the EA difficult.
- *Overly aggressive schedule is counterproductive.* While an aggressive schedule may be appropriate, a schedule must be achievable or quality problems may result in delays. Sufficient time should be allocated to develop NEPA documents.

### Teamwork

#### Factors that Facilitated Effective Teamwork

- *Effective contractor teaming arrangement.* The strengths of three firms combined into a NEPA contractor team achieved more as a whole than an individual firm could have accomplished.
- *Team leadership.* Excellent leadership and a results-oriented attitude on the part of all organizational units led to a superior outcome. Needs were met quickly once they were identified.

- *Weekly conference calls.* Weekly conference calls helped to orient all involved in drafting the EIS and allowed for faster resolution of problems.
- *Established points of contact.* Routing requests for information through established points of contact reduced the potential for confusion and inaction.
- *Status as an "informal" cooperating agency.* Serving as an "informal" cooperating agency simplified the process for coordinating document reviews and resolving comments between agencies, but still allowed for meaningful participation.

#### Factors that Inhibited Effective Teamwork

- *Too many voices.* The participation of about 50 people in preparing the EIS made it difficult for the contractor's project manager to fit all the pieces of the EIS together seamlessly. A small number (e.g., 5 to 7) of "resource leads" should write their respective sections of the EIS based on input from others, to achieve a document written in one voice with internal consistency.

### Process

#### Successful Aspects of the Public Participation Process

- *Meetings with neighbors.* The proponent's communications team visited the communities hosting the alternative sites, including residents near the proposed sites, the general public, and local leaders.
- *Qualified lead for communications team.* The communications team was headed by a trained scientist who could effectively communicate the concepts underpinning the project.
- *Meetings with local leaders.* The NEPA team first met with local leaders to both ask and answer questions which served as an effective introduction between the two groups. The local leaders arranged tours and for local experts to meet with the team and provide substantial amounts of information.

*(continued on next page)*

# Questionnaire Results

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

- *Informal sessions at public meetings.* Informal sessions provided an opportunity for concerned parties to voice their concerns to the appropriate parties and to receive direct responses without having to do so in front of a large audience.
- *Post-hearing debriefs.* Debriefs held after the public hearings provided the best opportunity for DOE, the project proponent, and the EIS team members to compile and discuss the informal comments heard from attendees and to gauge public sentiments and concerns.
- *Community input benefitted project design and plans.* Both the community input and the analyses of the NEPA process had a positive impact on the development of project plans and designs.
- *Public awareness.* People at the alternative sites gained considerable understanding of the project and were suitably introduced to DOE and the industrial participants.
- *Bridge for future projects.* Local participation in the EIS process prepared local leaders to participate in planning for another similar project.
- *Dedicated email address.* A dedicated email address enabled electronic capture of comments and allowed DOE to quickly forward actions to responsible parties.
- *Improved facility appearance.* The appearance of the proposed facility received greater attention due to the level of public concern.
- *Incorporation of environmental concerns.* The EIS process allowed environmental concerns to be carefully considered and incorporated into the project plans, designs, and operational practices (including mitigation measures).

## Other Issues

### Guidance Needs Identified

- *Intentional destructive acts/terrorism guidance.* Guidance that considers intentional destructive acts/terrorism in NEPA documents is recommended.  
**Editor's Note:** See LLQR, December 2006, page 3, for information on DOE's interim guidance on intentional destructive acts.

## 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 2 EAs and 1 EIS, 2 out of 3 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "4" stated that the process for the project was the most effective he had seen in meeting the intent of NEPA from his perspective and in terms of dealing with the industrial participant.
- A respondent who rated the process as "3" stated that because the land in question was already disturbed, the NEPA process was not as necessary to consider impacts.
- A respondent who rated the process as "2" stated that DOE's NEPA expectations regarding the level of detail used in describing the laboratory's work greatly exceed expectations of other agencies more familiar with the hazards associated with similar type of work.

## Unsuccessful Aspects of the Public Participation Process

- *Second public comment period.* DOE received public comments requesting a second opportunity for public comment, after incorporating public comments into the draft EA.
- *Dedicated telephone number.* A dedicated telephone number was established for the public to provide oral comments; however, very few calls were received.
- *Second court reporter.* At meetings and hearings, a second court reporter was put in an area where the public could make recorded oral statements without having to face an audience; however, this accommodation was scarcely used.

## Enhancement/Protection of the Environment

- *Protection of public health and safety.* Because of the risk assessment work involved in the EIS, numerous potential concerns were addressed in the planning and design process.