Environmental Issues Identified by Applicants under ICCS Program

1. What is the level of NEPA review for my project? → How is the level of NEPA review determined?

DOE must determine the level of NEPA review for each project. This evaluation can only be made after the submission and review of the Renewal Application. However, an experienced NEPA contractor should be able to advise the applicant regarding whether an EA or EIS would be required, after becoming familiar with the project and the site-specific issues.

NEPA, the federal statute, requires that for every major federal action significantly affecting the quality of the human environment, an EIS must be prepared (see Sec. 102(2)(c)). In practice and in accordance with applicable regulations (40 CFR 1501.4(a)), federal agencies determine whether a proposal is one which (a) normally requires an EIS, or (b) normally does not require either an EIS or an EA (i.e., categorical exclusion). If an action is not covered by this custom of the practice, the agency will prepare an EA to determine whether there is a potential for a significant impact, which would trigger the requirement for an EIS (see also 40 CFR 1508.18 and 1508.27).

DOE will review each renewal application (perhaps supplemented with the initial application, if needed) and use the information in each application to make a determination about whether an EA or an EIS would be required. DOE did not make such determinations on the initial applications.

2. If DOE elects to use third-party contract arrangements for the production of NEPA documents, what will be the process for selecting or approving NEPA contractors and what qualifications must they have?

Excerpt from the Cooperative Agreement:
Selection of a NEPA Contractor

Should an Environmental Assessment (EA) or Environmental Impact Statement (EIS) be necessary, DOE reserves the right to use a third party contract arrangement. The term "third party contract" refers to the preparation of an EA or EIS by a contractor paid by the applicant. The "third party" is DOE which, in accordance with Council on Environmental Quality Regulations at 40 CFR 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EA or EIS. The applicant may propose a consulting firm to DOE, but DOE will make the selection.

The applicant will hire the consulting firm once a third-party agreement or memorandum-of-understanding has been signed by DOE, the consulting firm, and the applicant. The firm must sign a conflict of interest form indicating that it has no financial or other interest in the outcome of the project. DOE will not be involved in the fee and contractual negotiations between the applicant and the consulting firm. Cost incurred by the consultant will be reimbursable at the cost-share ratio established in the cooperative agreement to the extent the costs are allowable under the applicable cost principles.

The consulting firm is responsible to DOE for preparing an EA or EIS that meets the requirements of the NEPA regulations and DOE's NEPA procedures. The consulting firm will work exclusively under the direction of DOE. DOE will be solely responsible for the contents of the EA or EIS. Additional information on DOE NEPA procedures is available at http://www.eh.doe.gov/nepa.

DOE will not recommend a contractor for preparation of an Environmental Information Volume (EIV).

For the preparation of an EIS or EA, DOE expects to "select" the consulting firm from among those proposed by the applicant; however, DOE reserves the right to not use the third-party contract arrangement, such as when those proposed by the applicant do not meet DOE's criteria. When judging a contractor's qualifications, DOE will apply two criteria: (1) lack of a conflict of interest, and (2) experience with the preparation of EAs and/or EISs for DOE. DOE would like to see a specific list of EAs and EISs (citing DOE's EA and EIS numbers, so that NETL can quickly access these documents) prepared by the candidate contractors.

3. Is there a list of qualified environmental consultants that can do third-party EAs/EISs for our projects?

While DOE does have a list of seven contractors included in the DOE-Wide Contracts Program, this is certainly NOT an exhaustive list of NEPA contractors. There are many qualified firms. If DOE elects to utilize a third-party arrangement for the preparation of NEPA documents, the two criteria DOE will apply to the candidate contractors are:

A) A lack of conflict of interest

B) Experience with the preparation of EAs and/or EISs for DOE

DOE would like to see a specific list of EAs and EISs (citing DOE's EA and EIS numbers, so that NETL can quickly access these documents) prepared by the candidate contractors.

Guidance from CEQ: ***Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations***.

17a. **Disclosure Statement to Avoid Conflict of Interest.** If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

4. What must be addressed in an Environmental Information Volume (EIV), and how should an EIV be organized and developed?

The most recent EIV guidance can be accessed on the Internet at: http://www.netl.doe.gov/business/forms.html Go to the Post Selection Forms heading and select 451.1-1/6 *Environmental Information Volume Guide.*

EIVs should be tailored to meet three purposes: (1) EIVs will be reviewed along with all other parts of the renewal application as part of DOE's evaluation of the proposals (e.g., feasibility of each proposal, readiness of each proposal for implementation), (2) EIVs will provide basic information to support DOE's environmental review under the requirements of 10 CFR 1021.216 (see these regulations for a description of the information needs), and (3) EIVs will provide a foundation of information that would support the preparation of an EA or an EIS, as appropriate.

Furthermore, applicants and their consults have been advised to format the document in a way that would make it easy to supplement, edit, and convert the EIV into an EIS or EA, as appropriate for the project. In this way, the time required to complete the NEPA process can be minimized. Source documents may be submitted along with the renewal application as appendices to the EIV. For applications selected for Phase II awards, copies of source documents will be needed by both DOE and the NEPA contractor.

DOE requests that applicants avoid to the greatest extent possible including business sensitive information, trade secrets, proprietary information or the like when submitting environmental information to DOE. However, if inclusion of such information cannot be avoided, that information must be submitted in an appendix that is clearly marked as "business sensitive" or "confidential". Keep in mind that public domain information cannot be held in confidence by DOE.

5. What is available to guide applicants and their environmental contractors in the production of an EIV? Examples?

Please refer to item 4 and the following link to example EIVs.
http://www.futuregenalliance.org/news/evi.stm

An example EIS for a project that includes CO_2 pipelines (both existing pipelines and proposed pipelines) and sequestration of CO_2 in saline reservoirs is found at:
http://www.netl.doe.gov/technologies/coalpower/futuregen/EIS/

Keep in mind that EIVs, as support documents, should usually contain more detailed information than the EIS. The example EIS presented with this link would be subject to re-consideration after site selection from among the four alternatives and after additional geologic exploration work (e.g., drilling of an exploratory well and 3-D seismic surveys) and site-specific design work are complete. So, a Supplemental EIS might be required to finish the NEPA process, for this example.

6. What is the "scope" of coverage of an EIV, EA or EIS for my project?

Guidance on compliance with NEPA is available at:
http://www.gc.energy.gov/NEPA/guidance.htm

Some relevant guidance, from various sources, on "scope" is re-printed here:

40 CFR Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. *Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:*

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. *Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.*
3. *Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.*

(b) Alternatives, which include:

4. *No action alternative.*
5. *Other reasonable courses of actions.*
6. *Mitigation measures (not in the proposed action).*

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

40 CFR Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. ….

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; …

(b) Federal actions tend to fall within one of the following categories:

1. *N/A.*
2. *N/A.*
3. *N/A.*
4. *Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.*

Guidance from CEQ: ***Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations***.

2a. ***Alternatives outside the Capability of Applicant or Jurisdiction of Agency.*** *If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?*

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

9. ***Applicant Who Needs Other Permits.*** *To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?*

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

 These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be

delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

18. ***Uncertainties about Indirect Effects of a Proposal.*** *How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?*

A. The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." Section 1508.8(b). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

19a. ***Mitigation Measures.*** *What is the scope of mitigation measures that must be discussed?*

A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14.

19b. How should an EIS treat the subject of available mitigation measures that are (1) ***outside the jurisdiction*** *of the lead or cooperating agencies, or (2)* ***unlikely*** *to be adopted or enforced by the responsible agency?*

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle

in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

25a. ***Appendices and Incorporation by Reference.*** *When is it appropriate to use appendices instead of including information in the body of an EIS?*

A. The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

25b. How does an ***appendix*** *differ from* ***incorporation by reference?***

A. First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information, would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commentors upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

7. What are "connected actions" and how do these apply to my project?

See Response to 6. Generally, when one action would not likely occur "but for" another action, the dependent action is connected to the independent action. Such tightly connected actions are usually addressed in the EA or EIS at the same level of detail as the principal action.

An action is also connected if part of its justification rest upon another action, although the intensity of NEPA review and analysis may be reduced for loosely connected actions.

Usually, a federal agency cannot directly impose or enforce any particular mitigation requirement on connected actions that are not themselves subject to federal decision-making. In other words, if the federal agency is not deciding whether to grant assistance or a permit to the connected action, the federal agency would probably have no means to require any particular mitigation requirements under NEPA. However, the federal agency could specify requirements for related actions that are subject to its decision making. Generally, connected actions are described and analyzed in NEPA documents to

help ensure that the federal agency is aware of both the direct and indirect effects of its decisions.

Connected actions must be described and analyzed in EIVs, EAs and EISs. The intensity of description and analysis of each is a function of the certainty of the connected action and the degree of connection.

8. What are "cumulative actions" and "cumulative effects" and how do these apply to my project?

See Response to 6. Cumulative actions are those that collectively lead to one or more cumulative effects, even though the effects of the individual actions may not be significant. A classic example is when air emissions from one project, added to the air emissions from all the other sources in the region plus the background concentrations, leads to an exceedance of the air quality standards or the consumption of a significant increment of the permissible increases in pollutant concentrations.

In the case of ICCS projects, funding of the construction and operation of several large CO_2 capture devices, along with funding of some pipeline construction, leads perhaps to a significant increase in EOR operations in a particular region of the U.S, as a cumulative impact. If more oil is produced and brought to market at a fair price, this potential beneficial impact would be another cumulative impact of several of the proposed projects of the ICCS Program. All of the cumulative impacts, beneficial and non-beneficial, should be described in the EAs and EISs.

9. Should EIVs cover things like tribal interests and special environmental interests in the area?

Yes, please refer to page four of 451.1-1/6 Environmental Information Volume Guide. It is helpful for EIVs to identify the tribes that are known to have or that may have an

interest in the vicinity of the project site and/or project activities. The nature of the tribal interest and an appropriate tribal contact point should be identified. The probability of the existence and potential for disturbance of artifacts, archaeological sites, sacred areas, and historical sites of interest to the tribes should be described. If available, information from surveys and field studies should be included.

It is understood by DOE that surveys and field studies may not be undertaken in time for inclusion in the EIVs. However, it is helpful to indicate in the EIVs what surveys, field studies, and mitigation efforts might be required and what the schedule might be (roughly) for these activities.

10. How should alternatives be handled in the EIVs and in the renewal applications?

Please refer to page one of 451.1-1/6 *Environmental Information Volume Guide.*

See also question 6 (above), Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. 2a. Alternatives outside the Capability of Applicant or Jurisdiction of Agency.

Both technology alternatives and site alternatives should be addressed, preferably at the same level of detail as used for the preferred alternative. It is not necessary to identify a preferred alternative, if none is preferred. EIVs should address in detail only those alternatives that are reasonable (real) alternatives for the applicant (and sub-awardees and subcontractors). Alternatives that have been considered but dismissed from further consideration should be identified and briefly described, including a brief description of why they were dismissed from further consideration (i.e., why they were determined to be unreasonable).

While the applicant may have already selected a site or a route for the project, it is beneficial to explain what sites or routes were originally considered, why they were originally considered, and why they were dismissed from further consideration.

In other cases, sites or routes may not be defined at this time. In these cases, the applicant should explain the process (including selection criteria) and rough schedule that will be followed in the site or route selection. The relevant environmental attributes of the area or region of likely site or route selection should be described in general terms, so that the reader understands the relevant issues (including environmental issues) and challenges in the selection process.

11. What stage of permitting should/must be completed before the EIV and renewal application is submitted?

Excerpt from the Statement of Project Objectives:

C1.2.2 Permits and Other Regulatory Authorizations

The Recipient will obtain the necessary approvals from appropriate environmental and other regulatory bodies for the project. As part of its Phase 2 Renewal Application, due no later than April 16, 2010, the Recipient will provide documentation as evidence to the DOE demonstrating that it has the necessary approvals from appropriate environmental and other regulatory bodies to proceed into Phase 2 of the project. If this is not available, the Recipient will provide documentation showing that sufficient progress has been made and permitting strategies developed that provide a sufficient degree of confidence that such permits are likely to be obtained in a time frame which will not adversely impact the successful accomplishment of Recovery Act requirements (including those related to schedules) and technical performance targets.

Also, please refer to page four and five of 451.1-1/6 *Environmental Information Volume Guide.*

It is understood by DOE that all necessary permits and approvals for the project may not be obtained before the submission of the EIVs and renewal applications. However, it is helpful to indicate in the EIVs what plans/strategies have been developed and what the schedule might be (roughly) for obtaining these permits.

12. Parts of the plans for my project are business sensitive, so how is this handled in the EIV and in the NEPA process?

From DOE's NEPA Implementation Regulations:

§1021.340 Classified, confidential, and otherwise exempt information.
(a) Notwithstanding other sections of this part, DOE shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C.552) and 10 CFR 1004.10(b) of DOE's regulations implementing the FOIA, except as provided by 40 CFR 1506.6(f).
(b) To the fullest extent possible, DOE shall segregate any information that is exempt from disclosure requirements into an appendix to allow public review of the remainder of a NEPA document.
(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE shall withhold the entire NEPA document from the public; however, DOE shall prepare the NEPA document, in accordance with the CEQ Regulations and this part, and use it in DOE decisionmaking.

The regulations reprinted above apply to NEPA documents (e.g., EAs and EISs) that are usually made available to the public. EIVs, in comparison, are not routinely published for public review (FutureGen was an exception). EIVs, as background and support documents, usually include more detail than is typically presented in an EA or EIS. As support documents, they must be available upon request, except that business sensitive information can be either redacted or confined to an appendix that would not be released to the public. If there is some truly business sensitive information in the EIV, the applicant should indicate on the cover of the EIV and on a header or trailer of each page of the EIV containing such sensitive information that the EIV contains business sensitive information. Before a public release of a marked EIV in response to a request, DOE would offer to the applicant an opportunity for a timely review and redaction of truly business sensitive information.

NEPA is a "government in the sunshine" law. It requires an opportunity for public participation in the process (within the limits described in the regulations that are reprinted above) along with disclosure to government decision-makers. Public participation usually requires publication of NEPA documents (e.g., EAs and EISs), public availability of support documents (e.g., reports of field studies and surveys, environmental modeling results and reports, basic process information), and disclosure of

sufficient information to enable the public to judge for themselves what the potential impacts might be and whether the EA or EIS appropriately addresses the potential for environmental impacts. NEPA is counterbalanced by the Trade Secret Act, which requires federal employees to hold proprietary information and truly business sensitive information in confidence, and imposes fines, job loss, and even jail time on Federal employees for improper disclosure of confidential information. Within the Federal Government, there is a presumption of openness and public disclosure, so confidential information must be carefully circumscribed and marked by the applicant.

As stated in response to question 4 (above), DOE requests that "business sensitive" or "confidential" information not be included in environmental information submitted to the Department. However, if this is not possible, truly business sensitive information must be put into appendices that are marked as "business sensitive" or "confidential". Keep in mind that public domain information cannot be held in confidence by DOE. Protectable information includes: trade secrets, proprietary commercial information, and confidential financial information. Public domain information includes:

- Permits issued by federal, state and local government organizations
- Permit applications (exceptions exist for certain manufacturing process information and certain oil and gas well information)
- Waste streams and emissions data and information submitted to a regulatory agency pursuant to a permit
- Environmental monitoring data submitted to a regulatory agency pursuant to a permit
- Compliance orders issued by a regulatory agency
- Publications and parts thereof (trade journals, web-postings, public presentations)
- Patents
- Information obtainable by the general public from governmental organizations and private sector organizations
- Common knowledge among people generally familiar with the subject matter or industry (some matters of common knowledge can be protectable, depending on the circumstances, such as Trade Secrets)

- Information that will be disclosed and made publicly available in permit applications (depending on the circumstances and timing)
- Disclosures pursuant to EPCRA and other regulatory disclosures that are not protected

Before DOE issues a NEPA document to the public, DOE usually gives the applicant an opportunity (often more than one opportunity) to review the document. The applicant should indicate to DOE if these review drafts contain business sensitive or confidential information that should not be disclosed. Usually the pros and cons of disclosure are discussed between DOE, the applicant and the NEPA contractor. DOE may request a written clearance from the applicant on the concurrence review copy of the document.

Applicants who have not previously dealt with federal financial assistance often attempt to assert that all information regarding their project is "business sensitive" and therefore should be protected by the Federal Government from public disclosure. On the other hand, applicants who have a long history of receiving financial assistance are usually comfortable with a high level of public disclosure. Nevertheless, they continue to operate successful businesses in a competitive environment where protection of some information is paramount.

13. If the Applicant did not budget for an EIV in the original application, can DOE fund or co-fund the production of an EIV and what would be the level of funding?

This will be determined on a case-by-case basis.

14. How will NEPA compliance costs (EA, EIS, etc.) be covered for projects that are selected for Phase II?

The cost sharing arrangement of the cooperative agreement for Phase II will apply to NEPA costs (e.g., the costs of a NEPA contractor) incurred under a third-party contract arrangement, to the extent the costs are allowable under the applicable cost principles. The costs of DOE's own NEPA staff and contractors will not be considered. Pursuant to provisions in the Phase II cooperative agreement, the costs incurred for the applicants own staff may be considered as allowable costs.

15. Permitting. In the EIV, we plan to identify the state, federal, and local permits required to complete the project. We would like to discuss with DOE the appropriate level of effort to addressing project permitting. Do we need to discuss permit-ability with government agencies? Do we need to actually apply for permits as part of the EIV? Do we need to do any preapplication meetings with government agencies or get an opinion in writing from them?

Please refer to item 11. EIVs should describe the permits that are anticipated, the basic steps in the permit acquisition, the anticipated time frame for acquiring each permit (number of months from initial step in the process to the final step), the basic information submission requirements, any particular strategy or plan for acquiring each permit, and the point in the project schedule when the permit must be obtained to avoid project delays. This information may be presented in a table. The applicant should discuss with a regulatory agency the permit-ability of the proposed project if there is a likely obstacle to acquiring a particular permit in a timely manner. For permits where no particular obstacle is anticipated, discussions with the regulatory agency at this time may not be productive. If a permit is required for the applicant to enter into Phase II, the applicant should acquire such permit. Otherwise, the applicant should seek permits and proceed

through the steps of the permitting processes when the situation is ripe for each. Generally, DOE does not require any particular pre-application meetings, although the applicant might find some pre-application meetings to be fruitful. DOE usually does not need to see pre-application "opinions" from regulatory agencies, and such agencies usually would be reluctant to issue pre-application "opinions".

16. Does DOE expect a Section 106 SHPO review of the project? The guidance document for the EIV just states that the EIV should include information regarding contacts with State agencies to assess project impacts on archaeological, cultural, and historically-significant resources.

A section 106 consultation process will be the responsibility of DOE, supported by the NEPA contractor and the applicant. Such a consultation would occur during Phase II as part of the NEPA process. Before Phase II, however, applicants can more completely prepare their EIV by including information from the data bases and files of the SHPO, to the extent that the applicants (and their EIV contractors) can access this information.

17. I'm a bit concerned about selecting appropriate region of influence (ROI). For the pipeline, I think, realistically, the ROI for many evaluated features is just the area that will be disturbed by pipeline installation and its support equipment. The Mattoon report has pretty generous ROIs, which may be difficult to evaluate along 53 miles of pipeline. But the Mattoon report also dealt with construction of a power plant, which has a large

regional impact. Some discussion with the DOE about ROIs as they relate to this project would be helpful.

From page three of 451.1-1/6 *Environmental Information Volume Guide*:

This section of the Environmental Volume shall describe the anticipated environmental impacts from the project. It shall describe all impacts and consequences of the project (at the selected site[s] and the alternative site[s], if appropriate). The existing environment (described in Section A.3) shall be evaluated in terms of the potential impacts from any construction, operation/testing, and disposition activities. Any mitigative measures that will address these impacts shall also be identified.

The customary practice for evaluating potential environmental impacts often involves the establishment of ROIs. These ROIs differ for each resource category where this approach to analysis is applied. ROIs also differ with the various design parameters of the project. ROIs may also differ with between jurisdictions. NEPA contractors employ specialists who are familiar with establishing ROIs that would be acceptable to governmental agencies with jurisdiction or special expertise. It is best to rely on these specialists.

18. The EOR targets for CO_2 injection are currently in use as producing oil fields and are currently receiving CO_2. The infrastructure is already in place. What is the required level of evaluation/documentation? Will the existing EOR fields be considered connected actions?

Please refer to item 6. Permanent sequestration of the captured CO_2 is a requirement for each project, as specified in the Funding Opportunity Announcement. Therefore, for projects where EOR is the proposed means of sequestration, the potential for environmental impacts associated with the EOR must be evaluated under NEPA, although, the “sliding scale of analysis” applies.

For fields already employing a CO_2 flood for EOR, the existing operations may supply some information on permanence or loss rates of CO_2, success rates in EOR, and other useful information that will help in evaluating the proposed project and in planning for the MVA. As a minimum, public domain information should be presented on the field, the EOR targets, potential leakage pathways, resources potentially at risk, etc. The potential for environmental impacts should be reviewed and assessed accordingly. For ongoing operations, the intensity of NEPA review and analysis is likely to be reduced, compared to that for new fields, especially those in "new areas" where CO_2 floods have not previously been practiced. In particular, DOE would like to know the risks of leakage of CO_2 and the risks of displacement of native fluids to any location where harm might occur to natural resources (e.g., underground sources of drinking water, surface vegetation) or people, how these risks would be monitored (this is part of the MVA plan), and (briefly stated) how harmful leaks or displacements would be mitigated, if they occur. Under NEPA, DOE cannot close its eyes to any of the potential environmental impacts associated with the projects that it financially supports.

19. Because there are no tribal lands within the project area, do we need to investigate any tribal interest in this project?

Yes, for every land-disturbing project there should be an investigation into potential tribal interests. Tribal interests and tribal rights extend far outside of modern day reservations and tribal lands. Archaeological resources along with lands of historic or prehistoric settlement areas, sacred areas and other special interests are subject to certain tribal rights and protections. This subject matter is very briefly mentioned on page four of 451.1-1/6 *Environmental Information Volume Guide.*

20. What are the NEPA/EIV implications of sending CO_2 to an existing pipeline for EOR operations?

A similar answer applies as for item 18 (above). Transportation of the captured CO_2 to the sequestration site is a requirement for each project, as indicated in the Funding Opportunity Announcement. Therefore, for projects where an existing pipeline is part or all of the proposed means of conveyance, the potential for environmental impacts associated with the pipeline's use must be evaluated under NEPA, although, the "sliding scale of analysis" applies.

For existing pipelines already transporting CO_2, existing operations may supply some information on accident rates (rates/magnitudes of leaks and punctures) and other useful information that may be available to help in evaluating the proposed project and in planning for any new (connector) pipelines that might be built (e.g., existing level of public opposition to pipelines or to pipeline conveyance of CO_2). As a minimum, public domain information should be presented on the existing pipeline, such as its route, diameter, and safety controls (e.g., spacing of emergency shutoff valves, depth of burial, cathodic/surface protections). The potential for environmental impacts associated with the proposed project's use of the existing pipeline should be reviewed and assessed relative to the proposed project. For ongoing operations, the intensity of NEPA review and analysis is likely to be reduced, compared to that for new pipeline. In particular, DOE would like to know the risks of accidents and the potential for harm in the event of an accident. Under NEPA, DOE cannot close its eyes to any of the potential environmental impacts associated with the projects that it financially supports.

21. How is the Environmental Management Plan (p. 12 of the Cooperative Agreement) different from the Environmental Information Volume?

As part of the Renewal Application, applicants are requested to provide a comprehensive discussion that supports the applicant's organizational and management capabilities to successfully implement the project plan and achieve the objectives of the FOA. Among the several requested management plans, the Renewal Application must include an

Environmental Management Plan (EMP) to establish a protocol for managing (i.e., for assessing, reporting, and responding to) the potential environmental impacts of the project and the project's performance. In particular, the EMP should describe how the applicant would monitor the impacts to air, land, and water resources, and waste production in terms of compliance monitoring, unregulated pollutant monitoring, and NEPA monitoring. The EMP should establish a protocol for reporting the results of the monitoring effort. The EMP should also describe the management structure for overseeing environmental concerns.

Therefore, the EMP is a "management plan" used primarily after the project begins operations, whereas the EIV is an "informational document" that is used primarily before a project is constructed. The EMP would mostly describe operational protocols, whereas the EIV describes (or supports the description of) the affected environment and the potential impacts of the construction and operations. The EMP presents the plan for assessing how well the project is meeting environmental goals, whereas the EIV supports a prediction of how the entire project would impact the environment. The EMP is to be used primarily by the project's designers, constructors and (especially) operators, whereas the EIV feeds information into an EA or EIS, which is to be used by all interested parties: the project proponents, the relevant governmental agencies and the public.