

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

September 1, 1998, Issue No. 16

For Third Quarter FY 1998



DOE NEPA Community to Meet in October

On October 14 and 15, 1998, the DOE NEPA Community will meet in North Las Vegas, hosted by the Nevada Operations Office at its new Support Facility. The Office of NEPA Policy and Assistance is sponsoring this meeting to improve DOE NEPA performance through sharing of lessons learned and discussion of current issues.

Managing the NEPA Process

The meeting will focus on issues that NEPA Document Managers face daily: What tools and techniques can help manage a NEPA review process? How can NEPA Compliance Officers, project managers, contracting officers, and others be engaged to maximize success of a NEPA review?

Meeting participants, all of whom play key roles in the DOE NEPA process, will be encouraged to recount successful experiences and give advice on these matters. Several guidance documents being developed will be spotlighted in a plenary session and then discussed in breakout sessions. (See related article on page 3.)


Improving Performance and Getting Results

Richard A. Minard, Jr., Associate Director of the Center for the Economy and the Environment, National Academy of Public Administration, will highlight the Academy's recent review of the DOE NEPA Compliance Program (related article, page 4) and challenge the DOE NEPA

Community to further successes under the Government Performance and Results Act of 1993. Follow-on speakers will help meeting participants explore performance-based NEPA contracting, NEPA litigation lessons learned, and the role of NEPA in planning land use and divestiture.

Site Tours Offered

The Nevada Operations Office is offering optional site tours before and after the meeting. The tour of the Yucca Mountain facility (related article in *Lessons Learned Quarterly Report*, March 1998, page 1) will include a visit to the exploratory study facility (tunnel) at the north portal, the south tunnel boring machine, other study facilities at the base of the mountain, and a trip to the mountain crest. The tour of the Nevada Test Site will include former nuclear weapons testing facilities and sites.

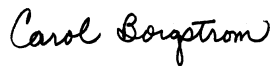
Thanks to Mike Skougard, NEPA Compliance Officer for the Nevada Operations Office, for volunteering to host the meeting and assisting in meeting planning. For more information concerning the DOE NEPA Community Meeting, including tour registration, contact Jim Sanderson at jim.sanderson@eh.doe.gov, phone (202) 586-1402, or fax (202) 586-7013. 

(Photograph shows the mountains above Mercury Base Camp, Nevada Test Site.)

Inside *LESSONS LEARNED*

Welcome to the third quarter FY 1998 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:


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Director
Office of NEPA Policy and Assistance

NEPA Stakeholders Directory Issued

The Office of NEPA Policy and Assistance issued the 10th edition of the DOE NEPA Stakeholders Directory on July 31, 1998. The directory provides contact information on potential stakeholders for the Department's actions under NEPA. This edition replaces the 9th edition, which should be recycled.

For further information, contact Stephen Simpson, Office of NEPA Policy and Assistance, at stephen.simpson@eh.doe.gov or phone (202) 586-0125. 

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report*. Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or phone (202) 586-9326. Draft articles for the next issue are requested by October 30, 1998.

Fourth Quarter Questionnaires Due October 30

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter fiscal year 1998 (July 1 to September 30) should be submitted as soon as possible after document completion, but no later than October 30, 1998. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

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

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback on the *Lessons Learned Quarterly Report* to Hitesh Nigam at hitesh.nigam@eh.doe.gov, phone (202) 586-0750, or fax (202) 586-7031.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

LLQR Index

A cumulative index of the LLQR is provided in the September issue each year.

Guidance Underway to Assist in DOE's NEPA Process and Document Preparation

A major focus of the October DOE NEPA Community Meeting will be guidance now in preparation by the Office of NEPA Policy and Assistance to promote efficient and effective NEPA document preparation:

NEPA Document Manager. The NEPA Document Manager guidance will spotlight the importance of the NEPA Document Manager in the Department's NEPA process. The guidance will provide information on what has worked in the past and suggest ways to avoid mistakes.

NEPA Glossary. The NEPA Glossary will define terms that are frequently used in DOE NEPA documents. This resource should reduce the need to research or reinvent definitions and improve efficiency and consistency among the Department's NEPA documents.

EIS Summary. This guidance will help EIS preparers write an adequate and accurate summary that sharply defines the environmental consequences of choosing among alternatives. For many readers, the summary forms their first and lasting impression of the EIS. This guidance will review regulatory requirements, provide recommendations on good writing, and discuss how to use the summary to increase efficiency.

Environmental Justice. This guidance will assist in incorporating environmental justice considerations into DOE's NEPA process, by describing techniques for enhancing public participation and approaches for environmental justice analysis at every level of NEPA


review. The DOE guidance will be consistent with DOE's Environmental Justice Strategy and will build on the Council on Environmental Quality's (CEQ's) December 1997 general environmental justice NEPA guidance. DOE's guidance will also be consistent, to the extent applicable, with the April 1998 guidance on environmental justice issued by the Environmental Protection Agency's Office of Federal Activities.

Accident Analysis. Although the CEQ regulations do not use the term "accident," analyses of potential accidents are an important part of many DOE NEPA documents. Proposed actions involving potentially dangerous processes merit close attention to "off-normal" operations, whether due to natural phenomena or human error. This guidance is the starting point for additional guidance dealing with issues and concerns about accident analyses.

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NEPA Compliance Guide Issued

The updated NEPA Compliance Guide, prepared by the Office of NEPA Policy and Assistance, has been completed and will be distributed to the DOE NEPA community in October. Volume I of the Guide, *General NEPA References*, includes the NEPA statute and related regulations and guidance from the Council on Environmental Quality, Department of State, and the Environmental Protection Agency.

Volume II of the Guide (*Department of Energy Regulations and Guidance*) provides the DOE NEPA regulations and related guidance. All documents included in the Guide also will be available on the DOE NEPA Web (<http://tis.eh.doe.gov/nepa/>). For further information, contact Barbara Grimm-Crawford at barbara.grimm-crawford@eh.doe.gov or phone (202) 586-3964. 

EH-42 Guidance Contacts

For more information regarding the guidance topics mentioned in this article, consult the following points-of-contact at the Office of NEPA Policy and Assistance (EH-42). Internet addresses for all are firstname.lastname@eh.doe.gov. The fax number in all cases is (202) 586-7031.

NEPA Document Manager

Shane Collins (202) 586-1979

NEPA Glossary

Denise Freeman (202) 586-7879

EIS Summary

Yardena Mansoor (202) 586-9326

Environmental Justice

Stephen Simpson (202) 586-0125

Accident Analysis

Warren (Ted) Hinds (202) 586-7855

Eric Cohen (202) 586-7684

NEPA Process in the Privatization Context

Stan Lichtman (202) 586-4610

Clean Air Act Conformity

Mary Greene (202) 586-9924

NEPA Web Updates

Lee Jessee (202) 586-7600

The National Academy of Public Administration Examines DOE's Management of the NEPA Process

DOE has made “substantial progress” over the past ten years in making its implementation of NEPA more efficient, according to a report, “Managing NEPA at the Department of Energy,” published by the National Academy of Public Administration in July 1998. The report concludes that the Department is also preparing its NEPA documents in “substantially less time than it used to,” and NEPA process costs appear to be decreasing, at least for EAs.

Perspective

The Academy's study was commissioned by the DOE Office of NEPA Policy and Assistance and conducted by the Academy's Center for the Economy and the Environment. The report tells the history of DOE's progressive adoption of administrative reforms in the Department's NEPA compliance program, particularly the changes carried out in the 1990s during the tenures of Admiral James Watkins and Hazel O'Leary as Secretaries of Energy.

Under the leadership of Academy Fellow and distinguished NEPA expert Lynton Caldwell, the study team reviewed data and documents at DOE Headquarters, conducted interviews of persons within and outside the DOE NEPA community, and convened a roundtable discussion on a draft of the report.

Effectiveness of the Secretarial NEPA Policy Statement

The Academy mainly studied whether the reforms of the Secretarial NEPA Policy Statement have made DOE's NEPA process more efficient. The report concludes that the Department is making “steady and incremental improvements in its management of the NEPA process.” It notes that the 1994 Secretarial Policy Statement helped set goals for performance and initiate procedural changes that have streamlined the NEPA process, without reducing opportunities for public involvement. It also credits DOE for developing performance measures to track progress toward NEPA reform goals.

These procedural changes “have likely resulted in some cost savings,” according to the report; however, these savings “cannot be readily quantified.” The report states that: “From the current data on actual NEPA process costs, it appears that EA costs have decreased in the last few years, but it is not possible to draw any firm conclusions regarding the costs of EISs as a whole.” The report also notes that the Department's “historic


under-investment in effective environmental management, planning, and record-keeping has forced the Department to gather basic site information as part of NEPA analyses, thus raising the apparent cost of the analysis.”

The report suggests that the Department needs to improve its NEPA support contracting, specifically in the areas of contract incentives and contractor evaluations. “It is not clear that Department managers have implemented effective ways to evaluate and improve contractor performance.” According to the report, the DOE-wide NEPA contracts are “very promising but still unproved” (related article, page 8).

The report also suggests that the Department “needs to do more to make its NEPA reviews its ‘own.’” The Department could save more money and do an even better job if DOE employees — rather than contractors — played a greater role in preparing NEPA documents. Specifically, the report suggests that DOE staff take direct charge of scoping each analysis, preparing the statement of purpose and need, and defining the proposed action and alternatives.



As the report acknowledges, the study did not address whether there has been any improvement in the quality of the Department's NEPA documents or whether the NEPA process effectively informed DOE decision making. The report urged the Department to develop performance measures that would enable the Department to track progress on these critical issues.

The National Academy of Public Administration is an independent, nonpartisan organization founded in 1967 and chartered by Congress to provide assistance to Federal, state, and local governments in improving their effectiveness, efficiency, and accountability. The Center for the Economy and the Environment is one of the Academy's eight focus areas. The report is available on the DOE NEPA Web (<http://tis.eh.doe.gov/nepa/>) under DOE NEPA Process Information and on the Academy's web site (<http://www.napawash.org/>). 

NEPA Practitioner's Bookshelf

Of likely interest to readers of *Lessons Learned* are three recently published NEPA-related books, described briefly below. The Office of NEPA Policy and Assistance from time to time makes this type of information available to DOE NEPA practitioners, including the "Suggestions for the NEPA Practitioner's Bookshelf" (August 1996), available in the DOE NEPA Compliance Guide and upon request from the Office of NEPA Policy and Assistance.

Environmental Policy and NEPA: Past, Present, and Future

Ray Clark and Larry Canter, editors; June 1997
CRC Press LLC/St. Lucie Press
2000 Corporate Blvd., NW
Boca Raton, Florida 33431

Phone (800) 374-3401
Internet <http://www.crcpress.com>

CRC Press publication number SLO721
360 pages, \$65.00

Environmental Policy and NEPA: Past, Present, and Future presents the work of 28 contributing authors who address the historical background of NEPA, current trends and issues associated with the environmental impact assessment process, and future opportunities for increasing the effectiveness of NEPA.

Edited by Council on Environmental Quality (CEQ) Associate Director Ray Clark and University of Oklahoma Professor Larry W. Canter, the book reflects and expands upon the background and ideology of the 1997 CEQ effectiveness study (*Lessons Learned Quarterly Report*, March 1997, page 1). It also includes a chapter by one of NEPA's "founding fathers," Lynton Caldwell, on "Implementing NEPA — A Non-Technical Political Task."

Among the wide-ranging topics in this book are: NEPA as the rational approach to change, the basic purposes and policies of NEPA regulations, the effect of NEPA abroad, the concept of continuous monitoring and adaptive management, highlights of NEPA in the courts, public involvement under NEPA, alternative dispute resolution, and sustainable development.

NEPA Effectiveness — Managing the Process

Frederic March; June 1998
Government Institutes, Inc.
4 Research Place, Suite 200
Rockville, Maryland 20850

Phone (301) 921-2300; fax (301) 921-0264

Government Institutes product code 608
200 pages, \$79.00

This book grew out of Mr. March's participation, as a member of the National Association of Environmental Professionals, in CEQ workshops on its effectiveness study. *NEPA Effectiveness — Managing the Process* is organized around ten themes of NEPA practice. For each theme, Mr. March provides related insights, guidance, and tools.

In this book, Mr. March, a senior environmental scientist at Sandia National Laboratory and one of the authors of *NEPA Compliance Manual* (Government Institutes, 1994), shows how the keys to NEPA effectiveness are within the regulations but often are not recognized. He also discusses CEQ's NEPA reinvention initiative (*Lessons Learned Quarterly Reports*, June 1997, page 3; September 1997, page 8; and December 1997, page 9), addresses CEQ's recent guidance on cumulative impacts (see *Lessons Learned Quarterly Report*, March 1997, page 3), and provides a step-by-step approach to determining significance in the NEPA context. The book cites DOE's use of categorical exclusions as an outstanding example of good NEPA practice. An index of NEPA-related topics and lists of NEPA-related references and web sites are also provided.

"NEPA Bookshelf" continues on page 8

Publishing a Draft EIS on the DOE NEPA Web

By: Lee Jessee, Office of NEPA Policy and Assistance

Three draft EISs were recently published on the DOE NEPA Web to coincide with the beginning of their public comment periods:

- Continued Operation of Los Alamos National Laboratory (DOE/EIS-0238),
- Tritium Extraction Facility at the Savannah River Site (DOE/EIS-0271), and
- Idaho National Engineering and Environmental Laboratory Advanced Mixed Waste Treatment Project (DOE/EIS-0290).

Plan for Timely Publication of Draft

Each of the three draft EISs was created with electronic publishing in mind. They were prepared using software that automatically converts the electronic file to Web publishing format — either hypertext markup language (html) or portable document format (pdf). Each was ready to be accessible on the DOE NEPA Web within three working days of receipt by the Office of NEPA Policy and Assistance (EH-42) because the files were complete and Web publishable. For user convenience, the DOE NEPA Web availability announcement for each draft EIS was hyperlinked to both the full-text draft EIS and to the full-text notice of availability.

Benefits of Web Publication

Web publication increases the range of public involvement opportunities at low cost. Publishing on the Web makes a draft EIS immediately accessible to individuals, who may browse through the document and

transfer or print portions of interest. Efficiency is enhanced to the extent that public access through the Web replaces requests for the entire document, reducing distribution costs.

Web Services Available from EH

Staff from two DOE Environment, Safety and Health offices, EH-42 and Information Management (EH-72), collaborate to support Web publication of NEPA documents. Technical assistance is available to help in planning, using Web-compatible software, and scheduling electronic publication.

The NEPA Compliance Officer or Document Manager may request a summary report of electronic access to the draft EIS. The summary report can profile users by country, region, city, state, province, and most active organizations.

The table below shows, for the three draft EISs cited above, how long the document had been available on the Web when the data were generated, the number of visits or “hits” to the document, the number of users of each document, and how many kilobytes (a measure of electronic information) the users transferred (downloaded).

Keys to Success

- **Web Standards:** To allow preparation of the draft EIS for Web publication during the brief period between EIS approval and publication of the notice of availability, the electronic version should be submitted

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Data on Web Users Examination of 3 DOE Draft EISs


EIS Number	Days on Web When Data Generated	“Hits”	Number of Users	Kilobytes of Information Transferred
DOE/EIS-0238	92	2775	438	327,371
DOE/EIS-0271	64	2105	316	27,404
DOE/EIS-0290	13	57	21	3520

DOE-wide NEPA Contracts Showing Benefits

In the first year, use of the multiple DOE-wide NEPA support contracts has changed pricing mechanisms for NEPA documents and substantially reduced procurement lead times, according to the Albuquerque Operations Office's Contracts and Procurement Division (June 18, 1998, status memorandum to Richard H. Hopf, Deputy Assistant Secretary for Procurement and Assistance Management). The Albuquerque Operations Office issued the contracts in June 1997 and is responsible for overall contract administration on behalf of the Department.

Of the tasks issued at the time of the status report, only half were awarded on a cost plus fixed fee basis. As noted in the memorandum, the decreased use of this pricing mechanism "represents a significant departure from

historical practice and demonstrates progress toward the achievement of NEPA contract reform." The outcome of issuing half of the tasks (both by number and dollar value) on either a firm-fixed price or cost plus incentive fee pricing arrangement (rather than cost plus fixed fee) will be assessed when the tasks and performance evaluations are complete.

The memorandum also reported that tasks orders were issued within 10 to 31 days from the time that task proposals were requested, depending on the complexity of the work. Such a reduction in procurement lead times (from about a year under conventional practice) was achieved, as noted in the memorandum, "by all the ordering offices, indicating a truly streamlined process." 

New Task Orders

The tasks below have been issued since May 1998. (See related article and table of previous tasks in *Lessons Learned Quarterly Report*, June 1998, page 6). For more information on the use of the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov or (505) 845-6215.

Task Description	NEPA Document Manager/ Technical Point of Contact	Award Date	Contractor Team
Analyses to Support the INEEL High-Level Waste and Facilities Disposition EIS	Tom Wichmann NEPA Document Manager wichmatl@inel.gov (208) 526-0535	5/8/98	Halliburton NUS
Nuclear Materials Integration Project, NEPA Compliance Assessment ¹	Gary Roberson Technical Point of Contact groberson@doeal.gov (505) 845-5805	6/1/98	Tetra Tech, Inc.
Habitat Management Plan Overview Document ^{1,2}	Teralene Foxx Technical Point of Contact foxxt@lanl.gov (505) 667-3024	6/12/98	SAIC
Rapid Reactivation Project at Sandia National Laboratory EA	Tom Goss NEPA Document Manager tgoss@doeal.gov (505) 845-5510	8/18/98	Battelle Memorial Institute

1 These are technical documents related to DOE's NEPA Compliance Program.
2 This was the first task to be issued by a management and operating contractor.

NEPA Bookshelf (continued from page 5)

Communicating Risk in a Changing World

Timothy L. Tinker, Maria T. Pavlova,
Audrey R. Gotsch, and Elaine Bratic Arkin, editors;
May 1998


Ramazzini Institute/OEM Press
OEM Health Information, Inc.
8 West Street
Beverly Farms, Massachusetts 01915

Phone (800) 533-8046
Internet <http://www.oempress.com>

OEM Press publication number 23046
198 pages, \$42.50

This book reports the discussions and conclusions of a 1996 symposium sponsored by the U.S. Department of Health and Human Services Environmental Health Policy Committee's Subcommittee on Risk Communication and Education, DOE, and the

Consortium for Risk Evaluation with Stakeholder Participation. Participants included more than 25 researchers and practitioners from government, academia, and industry who are active in science-based public communications. Topics addressed include: environmental justice, comparative risk assessment, broadening stakeholder involvement, the role of the media, educational strategies, and community and worker right-to-know issues. One of the editors, Dr. Maria Pavlova, is a Medical Officer in DOE's Office of Occupational Medicine and Medical Surveillance (EH-61).

For more information on this book and the results of the symposium (including a DOE project on "Communicating Health Risk: Working Safely with Beryllium"), contact Dr. Maria Pavlova at maria.pavlova@eh.doe.gov or phone (301) 903-3658. 


Guidance Underway

(continued from page 3)

NEPA Process in the Privatization Context.

This guidance will address Section 216 of the DOE NEPA regulations (10 CFR Part 1021), which applies to consideration of environmental information in the procurement process. DOE increasingly applies Section 216 as it turns to the competitive marketplace (rather than management and operating contractors) to carry out projects.

Clean Air Act Conformity. This guidance will discuss the Clean Air Act requirements found at 40 CFR Part 93 for determining conformity of Federal actions to State Implementation Plans, and how these requirements are addressed in the NEPA process. The guidance will help NEPA document preparers obtain information regarding air quality designations, determine the applicability of Clean Air Act conformity regulations to proposed actions, judge whether a conformity determination is needed, and address conformity in NEPA documents.


NEPA Web Updates. The DOE NEPA Web has been upgraded with a new search engine. The guidance will provide an overview of new features and the latest instructions on electronic publishing of DOE NEPA documents. 

NEPA Web

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in Web-ready format, preferably html. (Microsoft Word 6.0 or newer and WordPerfect 6.0 or newer enable direct conversion of files to html.) Using software that does not conform to this standard requires time-consuming conversion of the electronic file and may preclude Web publication by the desired date. Information on Web publishing standards is provided in the EH Electronic Publishing Standards and Guidelines (currently under revision) located in the Tools module of the DOE NEPA Web (<http://tis.eh.doe.gov/nepa/>).

- **Early Coordination:** The NEPA Document Manager should coordinate early with the DOE NEPA Webmaster to identify technical and timing requirements.

To coordinate on Web publication of a draft EIS, or for further information on the DOE NEPA Web resources or Web publishing standards, contact Lee Jessee, DOE NEPA Webmaster, at lee.jessee@eh.doe.gov or (202) 586-7600. 

NAEP Conference Held in San Diego

By: Yardena Mansoor, Office of NEPA Policy and Assistance

NEPA practitioners wishing to participate in a broader environmental community may consider the opportunities provided by the National Association of Environmental Professionals (NAEP). (See related article in *Lessons Learned Quarterly Report*, March 1998, page 9).

Conference Theme Links NEPA to Environmental Management

Over 200 people, many of them members or friends of the DOE NEPA community, attended NAEP's annual conference held June 21 to 24, 1998, in San Diego, California. The intertwined theme of the conference was "Environmental Management: Linking NEPA, ISO 14000, and Sustainable Development." Conference sessions also addressed public participation and university level environmental education.

CEQ Counsel is Keynote Speaker

Dinah Bear, General Counsel of the Council on Environmental Quality (CEQ), delivered a keynote speech that tied together the three conference sub-themes of NEPA, ISO 14000, and sustainable development. She observed that these ideas are linked as embodiments of the NEPA's Section 101 statement of national environmental policy:

[I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.


Ms. Bear remarked that NEPA emphasizes the role of planning in achieving these goals; ISO 14000 addresses approaches to environmental management after the planning stage; and sustainable development recognizes the balancing between current and future resource use that is central to both NEPA and ISO 14000. She also praised NAEP — in particular, for its Code of Professional Ethics and Standards of Practice — and urged its members to strive for credible and effective communication of scientific information.

The second keynote speaker was John Dunlop, Chairman of the California Air Resources Board since 1995. He described the evolution of regulatory paradigms by which California air quality has dramatically improved while the


state's population and vehicle-miles driven have multiplied. The early approach to improving environmental quality was based on command and control regulations based on the first feasible technologies identified, primarily for motor vehicles. As industry gained experience with implementation of these technologies, both scientific knowledge and attitude evolved, permitting the emergence of a vast environmental technology industry that offered a broad range of choices for addressing many types of emissions. The maturing of the industry has permitted a new market-driven paradigm: state regulatory bodies work with industry to set reasonable goals — now for 48 categories of consumer products — and industrial entities meet their goals by choosing individually preferable approaches. This system is more accommodating, more collaborative, and less adversarial than command and control regulation, and is more economically efficient as well.

NAEP Activities

NAEP publishes a bimonthly magazine, "NAEP News," and administers an environmental professional certification program as a tool for career development. The organization has 19 affiliated state and regional chapters throughout the country and 25 university chapters.

Planning is underway for the 1999 NAEP Conference to be held in early June in Kansas City, Missouri. Abstracts will be due in October 1998. For more information on NAEP, to obtain a copy of Conference proceedings, or to inquire about membership, contact the organization's offices at (888) 251-9902, fax (904) 251-9901, or view <http://www.naep.org> on the Web. 

Savannah River Guidance Wins NAEP Environmental Quality Award

NAEP recently awarded the Savannah River Site its NEPA Presidential Excellence Award for integrating the NEPA compliance and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) processes at the site. The team, which included Bart Marcy and John Sessions (Westinghouse Savannah River Company) and Richard Rustad and Brian Hennessey (DOE, Savannah River Operations Office), was acknowledged for developing a NEPA/CERCLA Integration Guidance document that complies with both NEPA and CERCLA requirements. 



Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

Court Dismisses Stockpile Stewardship and Management Portion of Ongoing Lawsuit Interim Decision in K-25 Lawsuit; WIPP and EBR-II Challenged

In the ongoing litigation concerning DOE's NEPA review for the Stockpile Stewardship and Management Program, the court has dismissed the plaintiffs' amended complaint that DOE should prepare a supplemental EIS, while ordering the Department to fulfill its commitments to complete certain technical studies and supplement analyses; the Waste Management Programmatic EIS portion of this litigation continues. Concerning the NEPA review for decontamination and decommissioning of three buildings at the former K-25 Plant in Oak Ridge, DOE has received a partial victory based, in part, on the court's interpretation of CERCLA requirements. In the existing lawsuit concerning the Waste Isolation Pilot Plant (WIPP) Disposal Phase Final Supplemental EIS, a new party has moved to intervene. Also, another organization has sued DOE concerning the NEPA review for the Experimental Breeder Reactor-II (EBR-II) at Argonne National Laboratory-West.

Stockpile Stewardship Portion of *NRDC v. Peña* Case Dismissed

On August 18, 1998, Judge Stanley Sporkin of the U.S. District Court for the District of Columbia granted DOE's Motion for Partial Summary Judgment and dismissed the case filed by the Natural Resources Defense Council et al. regarding NEPA compliance for the Stockpile Stewardship and Management (SSM) Program. In its original complaint filed in May 1997, the plaintiffs had alleged that DOE failed to perform an adequate environmental review of the program as required by NEPA. (See related articles in the *Lessons Learned Quarterly Reports*, June 1997, page 5; September 1997, page 3; and December 1997, page 17.) The plaintiffs amended their complaint in January 1998 to withdraw 11 of their 13 claims concerning the SSM Program and substituting claims that DOE should prepare a supplemental SSM Programmatic Environmental Impact Statement (PEIS) based on alleged new information. The new information cited by the plaintiffs involved: (1) seismic and safety risks affecting pit production facilities at Los Alamos National Laboratory; (2) the potential for plutonium fires at the Los Alamos facility where the agency uses both weapons grade plutonium-239 and plutonium-238; (3) a new congressionally mandated plan requiring the agency to design, construct, and partially operate a larger scale pit production facility at multiple sites; and (4) new proposals to conduct a range of

experiments using hazardous and radioactive materials at the National Ignition Facility at the Lawrence Livermore National Laboratory. (See related article in the *Lessons Learned Quarterly Report*, March 1998, page 13.)

Issues Not Ripe for Review

In this recent decision, Judge Sporkin ruled that, based on oral and written representations made by DOE, "none of the issues raised by Plaintiffs is now ripe for review." However, the judge stated that the plaintiffs had the right to return to the court for appropriate action if DOE were to fail to follow through with its promises or if it were found that the Department misrepresented its position to the court. In dismissing the plaintiffs' SSM Program causes of action, the court also entered an order embodying DOE's representations. These representations include DOE's commitment to:

- complete and publish several Los Alamos seismic studies by December 31, 1998;
- issue a supplement analysis to the SSM PEIS containing a technical analysis of whether the information in the seismic studies is significant;
- include in the supplement analysis a technical analysis setting forth the extent to which a building-wide fire at Technical Area-55 at Los Alamos would result in the release of plutonium;
- based on the supplement analysis and after a 30-day public comment period, make a determination on the need to prepare a supplemental SSM PEIS;

"Litigation Updates" continues on page 11

Litigation Updates (continued from page 10)

- prepare and circulate a supplemental SSM PEIS prior to taking any action that would commit DOE resources for pit production capability at Los Alamos for a capacity in excess of the level analyzed in the SSM PEIS; and
- determine, by January 1, 2004, whether certain experiments involving hazardous and radioactive materials would be conducted at the National Ignition Facility or to prepare a supplemental SSM PEIS analyzing the reasonably foreseeable environmental impacts of such experiments.

Waste Management PEIS Litigation Continues

This decision, however, does not end this litigation. In their original complaint, plaintiffs also claimed that DOE is required to prepare an Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (ERWM PEIS). (See related article in the *Lessons Learned Quarterly Report*, June 1997, page 5.) The plaintiffs requested that the court hold DOE in contempt for failing to issue an ERWM PEIS in alleged violation of the Stipulation and Order of Dismissal in *Natural Resources Defense Council v. Watkins*, No. 89-1835 (D.D.C. Oct. 22, 1990). A trial on the contempt motion is scheduled to start October 15, 1998. (See related article in the *Lessons Learned Quarterly Report*, March 1998, page 13.)

K-25 NEPA Challenge Partially Barred by CERCLA

The Department has received a partial victory concerning the NEPA review for the decontamination and decommissioning of three buildings at the East Tennessee Technology Park (ETTP) (formerly the K-25 Gaseous Diffusion Plant) in Oak Ridge and possible recycling of the resulting contaminated metal.

On June 3, 1998, Judge Gladys Kessler of the U.S. District Court for the District of Columbia issued a Memorandum Opinion in the lawsuit concerning the Department's award of a contract to BNFL, Inc. for decontamination and decommissioning of three buildings at the ETTP and possible recycling of the resulting

contaminated metal. The suit was filed by the Oil, Chemical and Atomic Workers International Union, AFL-CIO; the union local in Oak Ridge, Tennessee; several union members in Oak Ridge; and the Natural Resources Defense Council, the Oak Ridge Environmental Peace Alliance, and two other environmental groups. (See related article in the *Lessons Learned Quarterly Report*, December 1997, page 16.)

Judge Kessler dismissed that portion of the suit that sought an EIS for the decontamination and decommissioning action, finding that it was a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) removal action and, therefore, could not be challenged before its implementation was completed.

Judge Kessler found, however, that although both the CERCLA Engineering Evaluation/Cost Analysis and the BNFL contract encourage recycling of the recovered metals, they do not require BNFL to do so. She ruled that an optional action is not an "organic element" of the remedial plan and that the same CERCLA bar would not, therefore, protect the recycling action from challenge. The judge is allowing the portions of the suit concerning the recycling action to proceed to discovery and trial to determine whether an EIS should be prepared.

WIPP SEIS-II Inadequate, Citizens Group Alleges

Citizens for Alternatives to Radioactive Dumping (CARD), a New Mexico organization, has moved to intervene in an existing lawsuit concerning the Waste Isolation Pilot Plant (WIPP).¹ CARD's motion and proposed complaint, filed June 9, 1998, alleges that the WIPP Disposal Phase Final Supplemental EIS (SEIS-II) is inadequate because it fails to:

- consider the feasibility of alternative disposal sites (e.g., long-term monitored retrievable storage facilities at transuranic waste generating sites);
- adequately consider that minority and low-income populations would bear a disproportionate share of

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¹ The original lawsuit, filed in 1991 by the States of New Mexico and Texas, three Members of Congress, and four environmental groups, challenged the DOE decision to begin a test program at WIPP. The original plaintiffs alleged violations of the Federal Land Policy and Management Act, NEPA (with respect to the first WIPP Supplemental EIS), and the Resource Conservation and Recovery Act. The court enjoined DOE from proceeding with WIPP until the land was properly withdrawn. Subsequently, Congress passed the WIPP Land Withdrawal Act, withdrawing the WIPP site from public lands for testing and disposal of defense transuranic waste. The lawsuit lay dormant until May 1998, when DOE filed a Motion for Expedited Status Conference. Further proceedings, including CARD's motion, followed.

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high and adverse environmental impacts from activities at WIPP and from transportation activities;

- adequately address the impacts of waste transportation, especially the consequences of intentional interference with waste shipments; and
- adequately consider the effect of the hydrology and geology of the WIPP site (especially the existence of karst formations) on the long-term performance of WIPP.


The Department's response to CARD's motion asks that the court not allow CARD to intervene, stating that CARD's intervention would bring completely new issues to the lawsuit, the motion is not timely, CARD's interests are adequately represented by existing parties in the lawsuit, and the resolution of the ongoing lawsuit would not impair CARD's legal right to challenge the adequacy of SEIS-II. The court has yet to rule on CARD's motion.

Group Alleges that Shutdown of EBR-II Requires EIS

On July 2, 1998, Coalition 21, an Idaho not-for-profit group, sued the Department, alleging that the proposed removal of the sodium from the primary cooling system of the Experimental Breeder Reactor-II (EBR-II) at Argonne National Laboratory-West requires DOE to prepare an EIS which would include an analysis of the complete decontamination and decommissioning of the reactor. (Coalition 21 is a group that, according to the complaint, "supports nuclear technologies and technological solutions to the problems facing Idaho, the nation, and the world.") DOE issued an EA and finding of no significant impact for the proposed shutdown of EBR-II in September 1997 (DOE/EA-1199).

Coalition 21 alleges that NEPA, the Council on Environmental Quality regulations implementing NEPA, and the DOE NEPA regulations require that DOE prepare an EIS for the decommissioning of a nuclear fuel reprocessing facility. Coalition 21 also alleges that DOE did not take a hard look at the environmental consequences of shutdown and decommissioning in the EA, including that the EA failed to:


- define the final state of EBR-II and fully discuss the impacts of final decommissioning;
- analyze the impact of "the elimination of a unique billion-dollar research facility and the loss of the 19.5 megawatt electrical power generated for" the Idaho National Engineering and Environmental Laboratory;
- analyze the full range of reasonable alternatives;
- assess "the environmental, social, and economic issues and the long-term losses involved in the decision to decommission the only facility in the United States that has the capability to recycle spent nuclear fuel, plutonium, and uranium;" and
- consider "the worldwide and long-range character of environmental problems that would result from depriving countries such as Japan, France, and Russia the research generated from EBR-II concerning the long-term use of nuclear energy."

Furthermore, Coalition 21 alleges that DOE has illegally segmented the decision making for the proposed action and prepared the EA only after having begun the process of decommissioning the EBR-II facility. As of this writing, DOE has not filed its answer to Coalition 21's complaint. 

Presidential Memorandum on Plain Language

President Clinton has directed heads of executive departments and agencies to use plain language in Federal government writing in an effort to make the government more responsive, accessible, and understandable to the public (63 FR 31883, June 10, 1998). By October 1, 1998, agencies are directed to use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement. By January 1, 1999, agencies must use plain language in all proposed and final rulemaking published in the *Federal Register*. The Presidential Memorandum also urges agencies to rewrite existing regulations in plain language. To help departments and agencies comply

with these directives, the National Partnership for Reinventing Government has issued guidance entitled *Practical Guidance on Clarity of the Written Word*.

Plain language documents are described as having logical organization and easy-to-read design features. Except for necessary technical terms, plain language writing uses common, everyday words; it also uses "you" and other pronouns and short sentences in the active voice. The Presidential Memorandum and the related guidance are accessible via the NEPA Tools module of the DOE NEPA Web (<http://tis.eh.doe.gov/nepa/>) or from the Plain Language Action Network web site (<http://208.204.35.97/>). 

Third Quarter FY 1998 Questionnaire Results

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between April 1 and June 30, 1998. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

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

Scoping

What Worked

- Tiering. *The EA tiered off the programmatic EIS, which provided the framework for the analysis strategy.*

What Didn't Work

- Miscommunication with the public. *The public misunderstood the intent of the scoping process and did not provide adequate input.*

Data Collection/Analysis

What Didn't Work

- Relying on another agency for data. *We relied on the other agency and their consultants for data that was not supplied to us in a timely manner.*

Schedule

Factors that Facilitated Timely Completion of Documents

- Dedicated staff. *I was able to focus nearly all of my time on this project.*
- Effective teamwork. *Concurrent reviews, teleconferences, e-mailing draft documents and comments, and good communication among team members facilitated timely completion of the EA.*
- Incorporation by reference. *The EA was kept to a minimum of pages by incorporating information by reference from other documents.*

Factors that Inhibited Timely Completion of Documents

- Extended public review. *Stakeholders requested an extension of the public review.*
- Disagreement on the determination. *Although the NEPA Compliance Officer (NCO) had determined with Field Counsel support that an EA was appropriate, the project manager, project proponents, and the contractor argued for about three months that the action could be categorically excluded.*
- Late determination. *The project manager did not advise the NCO of the project when it was first identified because the manager thought a NEPA review was not necessary.*
- Headquarters input. *A more timely response from Headquarters regarding our request for assistance would have helped us deal more efficiently with a situation that was new to our office.*

Factors that Facilitated Effective Teamwork

- Trust, commitment to quality, cost consciousness, and good communication.

Process

Successful Aspects of the Public Participation Process

- Clear and open communication. *Our success with the public was based on open lines of communication and a clear understanding of project and agency needs.*
- Project updates. *The state, stakeholders, and the public were routinely advised via letters of progress on the EA.*

Third Quarter FY 1998 Questionnaire Results

Unsuccessful Aspects of the Public Participation Process

- Mixed messages. *It was difficult to get an honest reading from the public on the process because some participants thought we did a good job communicating and responding, while others, who may not have liked the project, probably did not like or trust our process.*
- Misunderstandings by other agencies. *The amount of public participation sought, consistent with the DOE regulations and guidance, misled some of the commenting agencies to think that the proposed action was larger and more complex than it actually was.*

Usefulness

Agency Planning and Decision Making — What Worked

- Alternatives were improved. *The process allowed us to work closely with the cooperating agency and the public to develop alternatives that changed throughout the process and responded more to the needs of all parties involved while still meeting the purpose and need for the project. I continue to be sold on the value of the NEPA process!*
- Technical issues were addressed. *The NEPA process facilitated decision making by answering technical issues in a format that the public could understand.*

Agency Planning and Decision Making — What Didn't Work

- Treating NEPA as just mere paperwork. *A decision was made based on technical merits, and environmental aspects were not directly considered in the decision. Once the project was selected, the necessary "NEPA paperwork" was completed by the project manager.*

Cost

Factors that Facilitated Cost Savings — What Worked

- Dedicated staff. *Being able to focus nearly all of my time on this project turned out to be cost-effective in the long run.*

What Didn't Work

- Budgeting costs associated with other agencies. *Because I didn't have much experience with the cooperating agency, some cost items arose that I had not budgeted for.*

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 decision making.

- For this quarter, in which there were four EAs and one EIS, four of the six respondents (two people responded on one EA) rated the NEPA process as "effective."
- The respondents rating the process as "effective" stated that the process facilitated effective interaction with the cooperating agency and the public, that alternatives were improved, and that scoping helped community involvement, which made the decisions more meaningful.
- The two respondents who rated the process as "not effective at all" indicated that it was only a paperwork exercise for a decision already made.

NEPA Document Cost and Completion Time Facts

Cost Data

EISs

- For this quarter, one EIS was completed at a cost of \$578,000.
- Cumulatively, for the 12 months that ended June 30, 1998, the median cost for the preparation of four EISs was \$1,479,000; the average cost was \$2,903,000.

EAs

- For this quarter, the median cost for the four completed EAs was \$29,500 (the range was \$25,500 to \$102,000); the average cost was \$46,625.
- Cumulatively, for the 12 months that ended June 30, 1998, the median cost for the preparation of 27 EAs was \$28,000; the average cost was \$77,000.

Completion Time Data

EISs

- For this quarter, the completion time for the one EIS was 24 months.
- Cumulatively, for the 12 months that ended June 30, 1998, the median completion time for the preparation of five EISs was 25 months; the average completion time was 31 months.
- EIS Cohort Status: The March 2, 1998 *Lessons Learned Quarterly Report* (page 17) described a cohort of 23 EISs for which Notices of Intent were issued between July 1, 1994 and March 31, 1997. Fifteen of the cohort EISs have been completed through June 30, 1998, with a median completion time of 15 months, and an average of 16 months. See the March 1998 article for more details.

EAs

- For this quarter, the median completion time for four EAs was 5 months (the range was 2 months to 21 months); the average completion time was 8 months.
- Cumulatively, for the 12 months that ended June 30, 1998, the median completion time for 27 EAs was 7 months; the average completion time was 10 months.

NEPA Documents Completed Between April 1 and June 30, 1998

EISs

Bonneville Power Administration
Lower Valley Transmission Systems
Reinforcement Project, Wyoming
DOE/EIS-0267
Cost: \$578,000
Time: 24 months

EAs

Bonneville Power Administration
Grande Ronde Basin Endemic Spring Chinook
Salmon Supplementation Program
DOE/EA-1173
Cost: \$102,000
Time: 21 months

Golden Field Office/EE

Kotzebue Wind Installation Project
Kotzebue, Alaska
DOE/EA-1245
Cost: \$31,000
Time: 7 months

Right-of-Way Easement for Public Service Company
of Colorado at the South Table Mountain Site,
Golden, Colorado
DOE/EA-1254
Cost: \$25,500
Time: 2 months

Grand Junction Project Office/EM

Ground Water Compliance at the
Falls City, Texas, Uranium Mill Tailings
Remediation Action (UMTRA) Project Site
DOE/EA-1227
Cost: \$28,000
Time: 3 months

EIS-Related Documents Issued Between April 1 and June 30, 1998

Notices of Intent	DOE/EIS#	Date
Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico	DOE/EIS-0293	4/30/98 (63 FR 25022)
Griffith Power Plant and Transmission Line Project, Mohave County, Arizona	DOE/EIS-0297	4/3/98 (63 FR 16496)
Draft EISs		
Construction and Operation of a Tritium Extraction Facility at Savannah River Site	DOE/EIS-0271	April 1998
Site-wide EIS for Continued Operation of the Los Alamos National Laboratory, Los Alamos, New Mexico	DOE/EIS-0238	April 1998
Telephone Flat Geothermal Development Project, Siskiyou and Modoc Counties, California (BPA is a cooperating agency)	DOE/EIS-0298	May 1998
Surplus Plutonium Disposition	DOE/EIS-0283	June 1998
Supplement Analysis		
Tank Waste Remediation System, Richland, Washington (No further NEPA review required)	DOE/EIS 0189-SA2	May 1998

Recent EIS Milestones

Draft EISs

Production of Tritium in a Commercial Light Water Reactor (DOE/EIS-0288)
(August 20, 1998)

Advanced Mixed Waste Treatment Project, INEEL (DOE/EIS-0290) (July 9, 1998)

Final EIS

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (DOE/EIS-0277) (August 6, 1998)

Records of Decision

Waste Management Programmatic EIS, Hazardous Wastes (DOE/EIS-0200)
August 5, 1998 (63 FR 41810)

Storage and Disposition of Weapons Usable Fissile Materials Programmatic EIS, amended (DOE/EIS-0229), August 13, 1998
(63 FR 43386)

BPA/Lower Valley Transmission System Reinforcement Project, Wyoming (DOE/EIS-0267), August 21, 1998
(63 FR 44853)

Supplement Analyses

“Acceptance of Foreign Research Reactor Spent Nuclear Fuel Under Scenarios Not Specifically Mentioned in the EIS.”
Foreign Research Reactor Spent Nuclear Fuel Programmatic EIS
(DOE/EIS-0218-SA 2) (August 19, 1998)
(No further NEPA review required)

“AL-R8 Sealed Insert Container for the Pit Repackaging Program.”
EIS for the Continued Operation of the Pantex Plant (DOE/EIS-0225-SA1), August 5, 1998
(No further NEPA review required)

“Storing Plutonium in the Actinide Packaging and Storage Facility and Building 105-K at the Savannah River Site.”
Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS (DOE/EIS 0229-SA1), August 6, 1998
(Amended DOE/EIS-0229 Record of Decision;
no further NEPA review required)

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U.S. Department of Energy

1000 Independence Avenue, SW

Washington, DC 20585-0119