NEPA

National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

June 2, 2003; Issue No. 35 Second Quarter FY 2003

Responding to Comments Is Work, But It Makes the NEPA Process Work

Considering comments received on a draft EIS, and responding to those comments appropriately in the final EIS, can be a daunting task. Even a "great" draft EIS can generate lots of public comment. At times, the process of collecting, sorting, reviewing, and responding to public comments is complex and time-consuming.

"...expert agency comments and public scrutiny are essential to implementing NEPA" (40 CFR 1500.1(b))

Sometimes comments cause the Department to do more analytical work. Sometimes comments cause DOE to change direction. Because the comment-response process is such a crucial part of the NEPA process, and may presage the ultimate success of a proposal, it is prudent to examine how best to manage this effort.

DOE has responded to some 45,000 comments on draft EISs from about 19,000 commentors in the last five years. Comments range from statements of support for or opposition to DOE's proposed action, to detailed critiques of DOE's analyses and suggestions for new alternatives to study.

What did DOE get from all those comments? What did the public get from DOE's responses?

Comments on DOE's draft EISs have led the Department to revise or add alternatives, modify decision criteria, reevaluate impacts, better target mitigation plans, change its preferred alternative, and improve the completeness, clarity, and accuracy of final EISs.

A good example of comments on a draft EIS resulting in changes in the final EIS, as well as prompting DOE action, is illustrated in the 1999 Los Alamos National Laboratory (LANL) Site-wide EIS (DOE/EIS-0238). (See *LLQR*, June 2000, page 1.) In this case, comments from a local forester on the accident analysis in the draft EIS focused attention on the possibility of a wildfire. Not only was the analysis improved in the final EIS, but DOE also immediately began to take action to reduce the wildfire risks at certain key facilities. These actions reduced the severity of the impacts of the 2000 wildfire on LANL.

"When done well, the comment-response process is useful to the decisionmaker and the public," said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. "Thoughtful consideration of comments may

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Ray Berube Retires

Beverly Cook, Assistant Secretary for Environment, Safety and Health, wishes Deputy Assistant Secretary for Environment Ray Berube well on his retirement. See tribute on page 19.

Inside *LESSONS LEARNED*

Welcome to the 35th quarterly report on lessons learned in the NEPA process. We are pleased to include in this issue three new mini-guidance articles. Thank you for your continuing support of the Lessons Learned program.

Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report.* We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by August 1, 2003. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due August 1, 2003

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 2003 (April 1 through June 31, 2003) should be submitted by August 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at *tis.eh.doe.gov/nepa* under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

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

Printed on recycled paper

NAEP Conference to Feature 14th Annual NEPA Symposium

"No Borders: One Globe, One Environment" is the theme of this year's annual conference of the National Association of Environmental Professionals (NAEP). The conference, which always attracts a large contingent of NEPA practitioners, will be held June 22-25 in San Antonio, Texas.

The conference's NEPA Symposium includes 10 panel discussions, a poster session, and a luncheon with Horst Greczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality (CEQ), who will provide an update on CEQ's NEPA Task Force (*LLQR*, March 2003, page 8, and this issue, page 15).

Panel topics include *The 4Ps of NEPA: Policy, Program, Plan, and Project*; *NEPA and Homeland Security*; and *NEPA at DOE National Laboratories,* as well as the traditional *NEPA Lessons Learned*, *Innovative Approaches*, and *NEPA Legal Issues*. As a member of a panel on *30 Years of NEPA: Is It Time for a Change?*, Carolyn Osborne, Office of NEPA Policy and Compliance, will speak on *Exclusions and Assessments: How Much Is Enough?* In a session on *Innovative Approaches*, Jay Jones, Office of Civilian Radioactive Waste Management, will speak on *The Yucca Mountain Radioactive Waste Program: Status and Environmental Impacts*. Many DOE NEPA contractors will chair panels and serve as panelists.

Three half-day NEPA training courses also are offered during the conference: *Conducting Quality Cumulative Impact Analyses*, *NEPA for New Managers*, and *Tools and Techniques for Solving Problems in NEPA and Environmental Planning*.

Additional conference information, including a registration form, is available on the NAEP Web site at *www.naep.org*. LL

Abstracts are due August 31, 2003, for the 2004 NAEP conference, the theme of which is "Building Bridges in a Changing World." The event is scheduled for April 25-28 in Portland, Oregon. Further information is available at *www.naep.org* at the link to the 2004 conference page.

DOE NEPA Community Meeting Set for July 15-16
Focus: Are We There Yet?

The Office of NEPA Policy and Compliance will host a DOE NEPA Community Meeting on July 15 and 16 in Washington, DC, and telecast it to 21 remote DOE locations. The theme for the meeting – "Are We There Yet?" – focuses on whether the Department has largely achieved its goals in improving the NEPA process or whether further steps are needed to address inefficient or ineffective practices.

The agenda will likely include discussion of the recommendations of the Council on Environmental Quality NEPA Task Force, DOE performance metrics, comment-response guidance, handling security sensitive information, e-government opportunities, and the floodplain and wetland rule. Horst Greczmiel, the Council on Environmental Quality's Associate Director for NEPA Oversight and Director of the NEPA Task Force, will be a featured speaker.

This will be the first DOE NEPA meeting to offer the option of participating through teleconferencing. To accommodate four time zones, a four-hour session is planned for each day. Consistent with the Environmental Protection Agency's Green Meetings Conference Initiative, this format will be one of several features of the DOE NEPA meeting designed to limit travel costs and to use less paper and more technology to disseminate information.

NEPA Compliance Officers will coordinate the meeting attendance and participation planning for their office's NEPA Document Managers, Field Counsel, NEPA Contacts, and NEPA contractors. For additional information, contact Jim Sanderson at jim.sanderson@eh.doe.gov or 202-586-1402.

Responding to Comments

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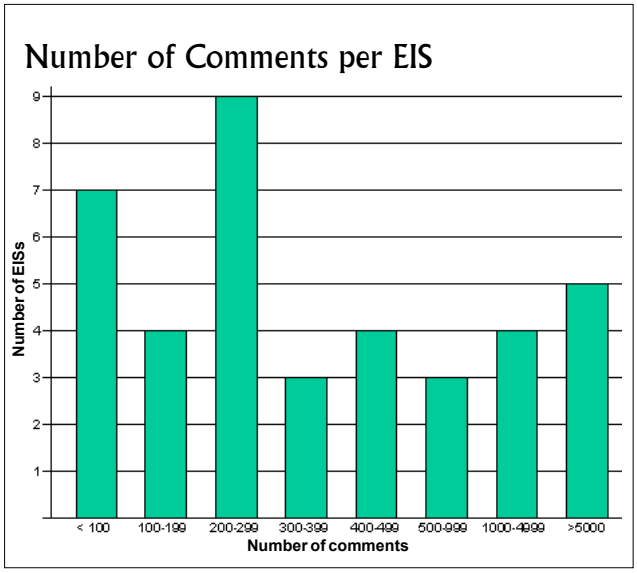
result in a better decision and improved DOE credibility with its stakeholders, increasing the likelihood of successful project implementation. Good responses help the public know its voices were heard and can enhance public understanding of DOE activities."

Review of Comments and Responses in Recent Final EISs

The Office of NEPA Policy and Compliance is reviewing comment-response sections in recent final EISs prepared by DOE and other Federal agencies and will use the findings to draft guidance to improve the efficiency and usefulness of the comment-response process.

The review includes 39 DOE final EISs (all final EISs issued by DOE since January 1, 1998, and two earlier programmatic EISs – for waste management and for stockpile stewardship and management). A dozen final EISs from other Federal agencies are also being reviewed. The review of other agency EISs has yet to reveal any approach that is sharply different from those used by DOE.

"We want to share techniques that have been successful," Ms. Borgstrom continued. "We also will address common questions, such as how to handle large numbers of comments generated by public campaigns and through the Internet. The diversity of DOE's NEPA activities doesn't permit a one-size-fits-all approach to



The NEPA Office is reviewing the comment-response sections of 39 DOE final EISs, which received a wide range of public comments.

responding to comments. Ultimately, NEPA Document Managers must tailor their approach to fit individual circumstances."

The DOE guidance will build upon NEPA regulations and guidance by the Council on Environmental Quality (CEQ). CEQ guidance explains that the final EIS must "contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes to the document itself, but specific answers to each significant comment should also be included." ("Forty

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Multiple RODs Offer Decisionmaking Flexibility

DOE occasionally issues more than one record of decision (ROD) for an EIS. This practice reflects the fact that some EISs result in multiple decisions, not all of which need be, or can be, made at the same time. Also, DOE may change a decision announced in a ROD based on new information or circumstances. A case in point is the EIS for Interim Management of Nuclear Materials (IMNM), for which DOE has published eight RODs. (The RODs for three EISs, including the IMNM EIS, are described in the table on page 5. These RODs illustrate several of the circumstances in which multiple RODs are appropriate.)

An advantage of multiple RODs is flexibility. NEPA does not require that the outcome of an EIS be a single, unchangeable decision.

For a given EIS, any ROD subsequent to the first one either changes some aspect of a prior ROD, adds to an earlier decision without changing a prior ROD, or both. Most often DOE has referred to this subsequent ROD as an "amended ROD" or "supplemental ROD," though the Department has also used "revision to the ROD" and "second ROD." The Office of NEPA Policy and Compliance recommends the consistent use of the terms amended ROD or supplemental ROD.

Supplemental and Amended RODs

The distinction between a supplemental and an amended ROD is whether the new ROD changes any aspect of a prior ROD. A supplemental ROD does not alter the original ROD for an EIS. A supplemental ROD announces one or more decisions that were not included in an earlier ROD or it adds to an earlier decision, building upon rather than altering the prior ROD. A supplemental ROD would announce a decision that was deferred in the original ROD, perhaps to allow time for the collection of additional information, such as cost or policy considerations. For example, five of the eight RODs for the IMNM EIS announced decisions regarding stabilization of materials that were deferred in the initial ROD.

An amended ROD reports a change in DOE's decision. The new decision might reflect changes in circumstances and priorities or new information. If DOE selects a different alternative to implement after issuing a ROD, an amended ROD would announce the new decision. For example, the National Nuclear Security Administration recently published an amended ROD for its Surplus Plutonium Disposition EIS to implement a change in the quantity of plutonium to be dispositioned by use as fuel in a nuclear reactor.

Other Types of RODs

DOE occasionally has reason to apply a different label to a ROD. For example, DOE published a "consolidated ROD" that announced related decisions associated with four NEPA documents regarding tritium production. One decision within this consolidated ROD supplemented an earlier ROD, while the others were the first decisions for their respective EISs (64 FR 26369; May 14, 1999). Another example is the waste management programmatic EIS, with its four RODs each labeled by waste type.

The EIS Still Defines Bounds

An amended or supplemental ROD announces a decision that remains within the parameters of a final EIS. For example, the alternative being selected was analyzed in the EIS, even though it was not selected in the initial ROD. In clear-cut cases such as this, the amended or supplemental ROD usually does not require further NEPA documentation. Further NEPA documentation would be required, however, when it is unclear whether the final EIS provides adequate evaluation, for example, of impacts from an alternative or from activities not explicitly presented in a final EIS. A supplement analysis would be prepared to determine if the existing analysis is adequate or if a new or supplemental EIS is required. Such determinations are made in accordance with the criteria in 10 CFR 1021.314(c).

Adapting in a Changing World

The ability to respond to new information and changing circumstances is at the heart of effective management. The NEPA process is not intended to lock DOE into decisions. It is a dynamic process, allowing decisions to be reconsidered as the need arises. The option to issue multiple RODs based on one or more NEPA documents is one mechanism for implementing effective and adaptive management in the NEPA process. (See a related article on adaptive management and NEPA in *LLQR*, December 2002, page 8.)

Examples of Multiple RODs from One EIS

Waste Management Programmatic EIS (DOE/EIS-0200, May 1997)	
Treatment and Storage of Transuranic Waste ROD (63 FR 3629; January 23, 1998)	Announces decisions for the management of one waste type. Published with a ROD for the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental EIS* (DOE/EIS-0026-FS2, September 1997).
Non-wastewater Hazardous Waste ROD (63 FR 41810; August 5, 1998)	Announces decisions for the management of one waste type.
Storage of High-Level Radioactive Waste ROD (64 FR 46661; August 26, 1999)	Announces decisions for the management of one waste type.
Treatment and Disposal of Low-Level Waste and Mixed LLW ROD (65 FR 10061; February 25, 2000)	Announces decisions for the management of two waste types. Includes an amended ROD for the *Final Environment Impact Statement for the Nevada Test Site and Off-Site Locations in Nevada* (DOE/EIS-0243, December 1996) with conforming changes.
Revision to the ROD* (65 FR 82985; December 29, 2000)	Based on a supplement analysis, changes the decisions regarding where and how some waste will be stored and treated.
Revision to the ROD* (66 FR 38646; July 25, 2001)	Based on a supplement analysis, changes the decisions regarding where and how some waste will be stored and treated.
Revision to the ROD* (67 FR 56989; September 6, 2002)	Referencing three NEPA documents, in addition to the WM PEIS, changes storage and transportation plans for managing some waste at two DOE sites.
** "Revision to the ROD" would be an "amended ROD" per currently recommended terminology.*	
Interim Management of Nuclear Materials EIS (DOE/EIS-0220, October 1995)	
ROD (60 FR 65300; December 19, 1995)	Announces decisions for means to stabilize some categories of material. Defers decisions on other categories pending further study. Announces a different preferred alternative for some material categories than was indicated in the final EIS and states that DOE will wait at least 30 days before making a decision on the new preferred alternative.
Supplemental ROD (61 FR 6633; February 21, 1996)	Selects new preferred alternative for two categories of material.
Supplemental ROD (61 FR 48474; September 13, 1996)	Announces a decision regarding stabilization of two categories of material.
Supplemental ROD (62 FR 17790; April 11, 1997)	Based on a supplement analysis, increases the amount of a particular material that will be stabilized using one of the alternatives described in the EIS.
Supplemental ROD (62 FR 61099; November 14, 1997), also serves as Amended ROD	Supplements a previous ROD by adding a method for stabilizing a particular material. Amends the initial ROD by changing the selected stabilization method for other materials, noting that the selected method was analyzed in the final EIS.
Amended ROD (66 FR 7888; January 26, 2001)	Based principally on cost analysis available after the initial ROD, changes the facility in which to perform certain stabilization activities.
Amended ROD (66 FR 55166; November 1, 2001)	Based on cost, schedule, and program requirements, changes the facility for stabilizing some materials and changes the decision for stabilization of other material.
Supplemental ROD (67 FR 45710; July 10, 2002)	Based on cost, schedule, and program requirements, selects an additional alternative to be implemented for stabilization of some materials.
Surplus Plutonium Disposition EIS (DOE/EIS-0283, November 1999)	
ROD (65 FR 1608; January 1, 2000)	Announces decisions regarding six aspects of the plutonium disposition program.
Amended ROD (67 FR 19432; April 19, 2002)	A single notice amends RODs for this EIS and the *Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environment Impact Statement* (DOE/EIS-0229, December 1996) to account for program changes involving storage and disposition options.
Amended ROD (68 FR 20134; April 24, 2003)	Based on a supplement analysis, the amended ROD changes the quantity of plutonium to be dispositioned as mixed oxide fuel rather than immobilized.

Effective and Efficient EIS Distribution

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

The utility of an EIS, like beauty, is in the eye of the beholder. It can be valuable to the issuing agency and its stakeholders; once access is granted, the reader, like Aladdin, can tap a wealth of project and environmental information. But an EIS may not always be well received; like water to the sorcerer's apprentice, documents may keep coming whether they are wanted or not. A resource that is valuable in targeted doses becomes burdensome when one would rather not receive it.

This observation is prompted in part by the experience of the DOE Office of NEPA Policy and Compliance. As DOE's corporate point of contact for NEPA matters, the NEPA Office receives each week from other agencies, a number of EISs and EAs, some quite hefty, often delivered by expensive express services. In the absence of DOE jurisdiction or special expertise with respect to environmental impacts or any other DOE interests in the action, resource constraints prevent DOE from doing more than discarding the document for recycling. This experience prompts us to consider how to ensure that all who are entitled or interested in receiving a NEPA document for review are given that opportunity, and at the same time avoid sending it to persons who do not wish to receive it.

To gain more insight into approaches to EIS distribution, the NEPA Office polled several DOE NEPA Document Managers. We also requested information from some other agency NEPA contacts. (See text box on page 7.) The responses described a range of approaches to EIS distribution. While the guidance in this article addresses EIS distribution, recommendations may also apply to EAs.

Tailor the Distribution List for the Specific Document

- ✓ EIS distribution typically includes Federal, state, and local government entities, tribes, organizations, and individuals. Most DOE Programs and sites have active public participation lists, and the NEPA Office provides a Stakeholders Directory. These are the starting points for every EIS. Even when there is a high level of confidence that a distribution list used for a recent EIS is still useful – for example, because of a geographically close location or similar subject matter – it is still appropriate to confirm that recipients of the past document are interested in the current document and to identify new interested or potentially affected parties.

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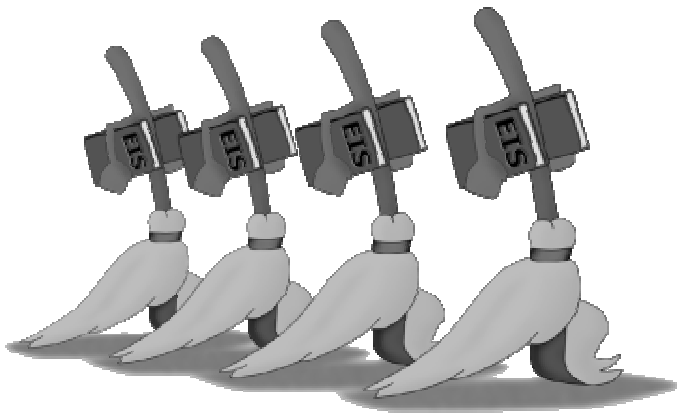

Circulation of the Environmental Impact Statement

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

CEQ NEPA Implementing Regulations, 40 CFR 1502.19

Effective and Efficient EIS Distribution

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Start Planning During Scoping

✓ Several agencies report using interactions with the public during the scoping period as the foundation of the distribution list. In the notice of intent, readers are invited to respond to an EIS contact with a request to be placed on the future distribution list, and sign-up sheets are provided at scoping meetings.

Confirm Interest in the Draft EIS and Verify Addresses

✓ Several offices responded that they send out postcards to individuals and organizations on a preliminary distribution list to ask whether they would like to remain on the distribution list and receive a copy of the document currently under preparation. This mailing also offers an opportunity to verify addresses of the existing distribution list. As appropriate, the postcard can offer the choices of receiving the summary or the full EIS, and as a paper copy or compact disk (CD). It helps to state the expected length of the EIS, and whether it will also be publicly available online. (See also below.)

✓ The number of copies of the document to be produced can be based on responses to the distribution list inquiry and partly on other factors influencing need, such as future public meetings and potential controversy.

✓ Particularly if significant time passes between scoping and the draft EIS, some agencies renew their efforts to compile the distribution list shortly before publishing the draft EIS.

Confirm Interest in Receiving a Final EIS

✓ Although any person, organization, or agency who submits substantive comments on a draft EIS must be sent the final EIS, it does not follow that parties who received the draft but did not submit comments should automatically receive the final EIS. Some agencies reported that substantial numbers of noncommentors on a draft EIS later asked not to receive the final.

Determine Preferences Regarding Summary/Full Document

✓ The CEQ regulations permit an agency to circulate an EIS summary, except to certain groups who must

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Lessons from Experience

Before distributing the 3,000-page Revised Draft Hanford Solid Waste EIS, we used sign-up sheets from public meetings and a postcard campaign to determine stakeholder interest in reviewing the EIS. Combining this information with our usual distribution list, we sent about 100 people a paper copy of the summary and 285 people a paper copy of the full EIS. We sent over 760 individuals a paper summary and a full EIS on CD, and only 5 of these then requested (and received) a paper copy of the full EIS.

Mike Collins, NEPA Document Manager
DOE Richland Operations Office

We develop a new distribution list for each EIS from a variety of sources, including individuals and organizations expressing previous interest in the EIS topic or similar topics, known stakeholder lists, contacts made through the scoping process, parties expressing interest in the EIS, participants in public meetings, and respondents to the *Federal Register* notice of intent or to the draft EIS. This list is developed and maintained by either the EIS project leader or the writer-editor. The list is, of necessity, dynamic and constantly changing.

A low-demand EIS may involve production of only 10 percent more documents than the original distribution list. A broad national programmatic EIS addressing complex and controversial issues may involve production of 40 to 50 percent more documents than the original distribution list.

David Bergsten, NEPA Coordination Contact
Animal and Plant Health Inspection Service

Prior to release of the draft EIS, we circulate an executive summary of the EIS (and the project) to those individuals on the project mailing list and ask if they wish to receive the draft EIS; oftentimes the summary is enough for most readers. A similar summary and notice is also published as a feature article in our monthly newsletter.

John Pelka, NEPA Compliance Manager
Presidio Trust

For some EISs, we send a letter back to those who received the draft but did not comment and provide a Web site where the final EIS is posted and a contact point for requesting a hard copy.

Kebby Kelley, U.S. Coast Guard

Effective and Efficient EIS Distribution

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receive the entire document. (See text box on page 6.) This approach can cause a 15-day delay, however, if a recipient of the summary then requests the full document. If this would inconvenience the Agency, to reduce the likelihood of this potential delay, an office should make advance inquiries of interested parties regarding their preference for receiving the summary or the full document. To allow for economy in printing, such a survey should optimally occur before deciding how many copies of the EIS are needed. The potentially interested party will be better able to respond if the inquiry includes information on the size of the document and whether a full copy will be posted online or in local information centers, such as a library.

Provide Options Regarding Paper Copy, Compact Disk, or Web Posting

- ✓ It is now feasible to make an EIS available in paper copy, CD, and Web publication. By some measures, the relative rankings of these alternatives is clear. It is most expensive to provide an additional stakeholder with a paper copy (the marginal cost is highest) due to printing and mailing costs, less expensive to provide a CD, and least expensive to provide access via the Web, which has a marginal cost of zero. In other measures, such as convenience to the reader, there is no such unequivocal ranking.
- ✓ Some stakeholders, including the U.S. Environmental Protection Agency when an EIS is filed, require paper copies. Others prefer CDs (or other electronic means) because of their compact size and transportability, and the reader's ability to search text electronically to find specific topics. The Department of the Interior, for example, requires one paper copy and allows the balance of the multiple copies it needs in either paper or CD. For documents available on the Internet, that Department requires one paper copy and the location on the Internet where the document can be found. Still other stakeholders are content to inspect a document online, although new procedures for security reviews may make this option less useful for providing review opportunities to the general public.
- ✓ Please note, however, that EPA and CEQ procedures have not changed regarding EIS circulation. Document preparers should not presume that electronic distribution of EISs alone is adequate to meet the EIS distribution requirements of 40 CFR §1502.19. A NEPA Document Manager should attempt to determine recipients' preferences. However, if no response is received to an inquiry of preferences for an EIS, the "default" option – that a paper copy is preferred – should be assumed.
- ✓ For the Yucca Mountain final EIS, DOE consulted with EPA on distribution procedures before circulating primarily summaries and CDs. DOE told people how to request copies of the entire document, with an option to call a toll-free telephone number, and waited an extra week before filing the EIS with EPA so that people who wanted the complete document could receive it before DOE filed the document and EPA published a Notice of Availability. EPA agreed that these distribution procedures met the CEQ requirements. (See *LLQR*, March 2003, page 9.)
- ✓ Each way of making an EIS available to an interested party has advantages and disadvantages. Agencies have noted that offering choices in distribution mode results in better stakeholder relations, and offering online access and/or CDs typically reduces the requests for paper copies.

Conclusion: Plan Ahead, Offer Options

A common thread in the responses to our inquiry is that DOE offices and other agencies' NEPA programs are trying new approaches to improve EIS distribution. Approaches that may have been adequate and appropriate in the past may not be optimal now because we have more options for fulfilling the distribution function, and because the identity and preferences of the recipients of EISs change over time. Being more responsive to recipients' preferences enhances the EIS review process and can result in significant savings, but requires advance planning and the additional steps needed to identify recipients' preferences.

Related LLQR Articles

March 2003, page 9: *Innovative, Efficient EIS Distribution Saves Yucca Mountain Project $200,000*

June 2002, page 8: *Interior Department Welcomes "Electronic" EISs*

March 2001, page 4: *$aving $ on EIS Distribution*

December 1999, page 8: *CD-ROM – A Useful Complement to Printed NEPA Documents?*

March 1996, page 4: *EIS Distribution: Common Sense Approaches*

Keep the Public Informed When EIS Plans Change

Keeping regulators, cooperating agencies, and the general public informed of the proposed schedule and status of EIS preparation is a good management practice, allowing participants in the NEPA process to plan for effective involvement. Occasionally, DOE's plans change after issuance of a Notice of Intent to prepare an EIS. Although there is no regulatory requirement to notify the public when plans for an EIS change, there are situations where NEPA Document Managers should ensure that the public is kept informed – EIS cancellations, suspensions, reactivations, or redirections in scope.

Notification of changing EIS plans promotes good public participation and good public relations and should be standard DOE practice.

In general, such notification promotes good public participation and good public relations and should be standard DOE practice. (Although the *Schedules of Key DOE EISs* are posted on the DOE NEPA Web site at *tis.eh.doe.gov/nepa* under Document Status and Schedules, this mechanism alone may not provide adequate notification to interested or affected parties.)

The mechanisms available for communicating changes such as these to the public are the same mechanisms as are used throughout the NEPA process. Notifications might involve *Federal Register* notices, notices in local publications and on DOE Web sites, and targeted mailings. In some instances, public notification is only one step in the public participation process accompanying changes to an EIS process. Substantial changes in the proposed action or alternatives or significant new information after a lengthy hiatus in EIS activity may call for additional scoping.

Following are descriptions of good practices and illustrations of how DOE has notified the public of such changes.

Cancelling an EIS

Two recent EIS cancellations illustrate different approaches to public notification. The National Nuclear Security Administration (NNSA) decided in July 2002 to cancel its *Wind Farm at the Nevada Test Site EIS* (DOE/EIS-0335; see *LLQR*, September 2002, page 25). NNSA issued a news release explaining that the cancellation was due to concerns raised by the U.S. Air Force that the wind turbines could interfere with radar. NNSA also wrote to interested stakeholders, including the State of Nevada and American Indian tribes with cultural affiliation to the Nevada Test Site. In January 2003, DOE published a notice of withdrawal of the notice of intent to prepare the wind farm EIS, which terminated the NEPA process (68 FR 1448; January 10, 2003).

In another case, the Bonneville Power Administration (BPA) cancelled an EIS on the proposed Blackfeet Wind Project that was to be located in Glacier County, Montana, because BPA decided not to purchase power from the project. BPA notified the public of the cancellation by letter, a copy of which was placed on BPA's Web site at *www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/blackfeet*. BPA committed to complete funding of biological studies begun during the EIS's preparation and to provide the resulting data to the Blackfeet Tribe.

Suspending and Reactivating an EIS

Sometimes, without actively deciding to suspend EIS preparation, an EIS process is delayed for consideration of scoping comments, comments received on a draft EIS, new information on technologies or cost, or other, unanticipated factors. It is good practice to keep stakeholders informed on a regular basis when delays are occurring.

Once an EIS process that had been suspended is resumed, it would be good practice to inform stakeholders of the status. Depending on the length of the hiatus in EIS activity, or if there have been many enquiries about the status of the EIS and the proposed action, it may be in DOE's best interest to reopen scoping for the EIS.

Redirecting an EIS after a Suspension or Cancellation

DOE recently notified stakeholders of a change in its approach for the NEPA review on the EIS for Depleted Uranium Hexafluoride Conversion Facilities. In an April 28, 2003, *Federal Register* notice (68 FR 22368), DOE explains that the change is in response to the *2002 Supplemental Appropriations Act* (Public Law 107-206). DOE initially planned to prepare a single EIS, but as a result of specific requirements in the Act directing DOE to build two plants, DOE decided to prepare two EISs, one for the plant proposed for the Paducah, Kentucky, site and one for the plant proposed for the Portsmouth, Ohio, site.

In another example, BPA started an EIS in 1993 on the Eastern Washington Main Grid Support Project, but cancelled the project in 1994 for fiscal reasons before issuing a draft EIS. When the project was reactivated

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DOE Updates Public Participation Policy

DOE has reaffirmed its commitment to public participation in its revised Public Participation and Community Relations Policy (DOE Policy 141.2), issued on May 2, 2003. The policy reinforces the importance of broad, ongoing dialogue between DOE and its host communities and replaces DOE Policy 1210.1, Public Participation.

"Because public participation is an important component of the NEPA process, DOE NEPA practitioners should be aware of Departmental policies and guidance on this subject," said Carol Borgstrom, Director, Office of NEPA Policy and Compliance.

"DOE has made real progress in developing effective public participation programs across the complex, and is recognized as a leader within the Federal government," said Betty Nolan, Office of Congressional and Intergovernmental Affairs, who has championed the Department's efforts since 1993. "The challenge now is to evolve our project-focused public participation activities into a broader-based, community dialogue that ensures that DOE is truly a good neighbor in the communities that support our missions," she added.

The revised policy authorizes Lead Program Secretarial Officers to designate senior site officials responsible for this policy. It also adds the goal of periodic review of site public participation and community relations efforts.

The guidance entitled "Effective Public Participation under the National Environmental Policy Act" (the "Gold Book," revised August 1998) was issued to help implement the Department's initial policy and remains applicable to the updated policy.

DOE Policy 141.2 is available on the Web at *www.directives.doe.gov* under DOE Directives. NEPA public participation guidance is available on the DOE NEPA Web site at *tis.eh.doe.gov/nepa* under Guidance. LL

Keep the Public Informed When EIS Plans Change

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and redirected in 2002, BPA published a notice of intent in the *Federal Register* that referred to the earlier NEPA activity and announced preparation of an EIS on the Grand Coulee–Bell 500 kV Transmission Project (67 FR 1746; January 14, 2002). BPA also posted a fact sheet on its own Web site that explained how the current EIS would build on the previous EIS studies and would be supplemented by new technical studies (*www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/GrandCouleeBell*). LL

Recommendations

When an EIS is cancelled, suspended, reactivated, or redirected, the NEPA Document Manager should:

- ✓ Consider timely publication of notices in the *Federal Register* and on DOE Web sites, and local announcements or mailings as a courtesy to all potentially affected and interested stakeholders.
- ✓ Consider rescoping when an EIS is reactivated after a long suspension or redirected after any suspension.

Observations on Annual NEPA Planning Summaries

One of the Department's most useful NEPA tools is the annual planning summary, in which each Program and Field Office charts its upcoming NEPA activities. The annual NEPA planning summary was intended to ensure that senior management officials are involved in their organization's NEPA planning process, help in allocating resources for timely NEPA compliance, and inform the public of DOE's NEPA plans. However, it appears that DOE is not taking full advantage of this tool.

DOE Order 451.1B, National Environmental Policy Act Compliance Program, paragraph 5a(7), provides that each Secretarial Office and Head of Field Organization shall, for matters under the Office's purview, submit an annual NEPA planning summary to the Assistant Secretary for Environment, Safety and Health (EH-1) by January 31 of each year and make it available to the public.

A total of 25 annual NEPA planning summaries were submitted to EH-1 in 2003. Based on the information presented in the summaries, there are 72 ongoing NEPA activities, 11 projected EISs (plus four supplement analyses), and 36 projected EAs. The Office of NEPA Policy and Compliance made this year's annual planning summaries available on the DOE NEPA Web site at *tis.eh.doe.gov/nepa* as they were received.

A number of procedural deficiencies were observed in this year's annual planning summaries. Of the 25 summaries submitted, 11 were transmitted under the signature of the NEPA Compliance Officer (NCO) or another individual rather than the Secretarial Officer or Head of Field Organization as intended by the Order. Only 18 of the 25 summaries were submitted by January 31. Three organizations have yet to finalize their planning summaries. Few summaries contained cost information, but most did contain schedule information.

> An annual NEPA planning summary must briefly describe:
>
> - The status of ongoing NEPA compliance activities
> - Any EAs expected to be prepared in the next 12 months
> - Any EISs expected to be prepared in the next 24 months
> - The planned cost and schedule for completion of each NEPA review identified.
>
> *DOE Order 451.1B, paragraph 4d*

The primary beneficiaries of the annual planning summaries are the program and field office managers and the public. In addition, knowing the schedules of all the EISs helps the NEPA Office manage its staff resources. Identifying all EAs and EISs being prepared or planned throughout the Department also helps the NEPA Office identify trends and crosscutting issues.

The Office of NEPA Policy and Compliance is continuing to analyze summary information and may issue guidance later this year. Two NCOs have suggested that guidance or a revision to the Order is warranted because of internal restructuring and reorganizations. For further information regarding annual NEPA planning summaries or assistance in preparing a summary, contact Lee Jessee at lee.jessee@eh.doe.gov or 202-586-7600.

Three Offices Join in Issuing "Brief Guide" to the DOE-wide NEPA Contracts

The Office of Environment, Office of Procurement and Assistance Management, and National Nuclear Security Administration (NNSA) Office of Procurement and Assistance Management jointly issued *Brief Guide: DOE-wide National Environmental Policy Act Contracts* on May 2, 2003. This guidance was prepared with the assistance of the NNSA Service Center (Albuquerque) and replaces a 1998 document of similar title. The Guide provides information about the contracts (e.g., why they were established, who may use them, what are the small business contracting considerations) and how to use them (e.g., preparing a statement of work, establishing a task under the contracts).

The Guide has been distributed to the DOE NEPA community and procurement directors and is available on the DOE NEPA Web site at *tis.eh.doe.gov/nepa* under a link entitled DOE-wide NEPA Contracting, along with other resources to aid potential users of these contracts. Additional information is available from the DOE-wide Contracts Administrator, David Gallegos, NNSA Service Center, at dgallegos@doeal.gov or 505-845-5849. (See *LLQR*, December 2002, page 24, for the announcement of the contract awards and March 2003, page 14, for information on DOE-wide NEPA contracting resources available online.)

Not Meeting CAA General Conformity Requirements Can Lead to Project Delays

By: Ted Koss, *Office of Environmental Policy and Guidance*

Under the Clean Air Act (CAA), Federal actions cannot thwart state and local efforts to remedy longstanding air quality problems that threaten public health (i.e., problems associated with the criteria pollutants – ozone, nitrogen dioxide, sulfur dioxide, particulate matter, carbon monoxide, and lead). To underscore DOE's responsibilities concerning compliance with the ambient standards for the criteria pollutants, the Office of Environmental Policy and Guidance recently issued the Information Brief, "Compliance with the General Conformity Regulations" (March 2003).

The Information Brief supplements the April 2000 DOE guidance, "Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process," to give further perspective on the conformity requirements and their importance when analyzing DOE proposed projects. The new Brief presents the overall requirements of the general conformity regulations and identifies the types of DOE actions that may be subject to conformity. Addressing conformity requirements is emphasized in the new DOE O 450.1, "Environmental Protection Program," as an element of DOE's Environmental Management System.

Because projects are vulnerable to legal challenges and delays if conformity is not appropriately addressed during the NEPA process, the Information Brief also highlights some litigation experiences of other agencies and some concerns expressed by the Environmental Protection Agency (EPA) in its review of draft EISs, as described below.

Potential Delays When Conformity Not Addressed During NEPA Process

These three examples illustrate the potential for delay from legal challenges.

- In March 1991, the U.S. Air Force closed Pease Air Force Base in New Hampshire. The Air Force had issued a draft EIS on the disposition and reuse of the base in February, a final EIS in June, and a record of decision containing a conformity determination in August 1991. In March 1992, the Air Force issued a memorandum that updated the conformity determination in light of new information. The Conservation Law Foundation then filed a citizen's suit under Section 304 of the CAA against the Air Force alleging, in part, that the final EIS was inadequate because it did not contain a conformity analysis. The Federal District Court agreed and directed the Air Force to prepare a supplemental EIS to address several CAA issues, including conformity. This case suggests that a general conformity compliance demonstration needs to be completed and taken into account in NEPA documentation.
- In 1996, the U.S. Marine Corps was planning to transfer aircraft from two locations to Air Station Miramar in southern California due to base realignment. The analysis of emissions for the conformity review for this relocation was contained in an appendix to the project's final EIS. Residents near the Miramar Station, concerned about potential safety and noise impacts of military helicopters flying near their homes and businesses, requested an injunction to halt the realignment, charging in part that the Marine Corps had not met general conformity requirements. Although the court denied the group's initial motion, the Marine Corps and community representatives settled out of court. One of the terms of the settlement was that the Marine Corps would reexamine and redo its conformity analysis for the Miramar realignment. More information is available at: *www.afcee.brooks.af.mil/ms/msp/center/VOL7No3/13.asp*.
- In 1997, the Las Vegas District Office of the Bureau of Land Management (BLM) was attempting to sell sand and gravel rights to BLM land. A lawsuit was filed contending that the proposed sale did not consider general conformity requirements. The sale was delayed until conformity was demonstrated in the EA for this BLM action.

EPA Raises Concerns in Reviews of EIS General Conformity Analyses

EPA reviews draft EISs prepared by Federal agencies under authority granted in Section 309 of the CAA. As a result of these reviews, EPA has in the past, with regard to other agency's actions:

- Expressed concerns that, for proposed aircraft facilities, air quality mitigation measures required under the conformity rule were conceptual in nature and lacked definitiveness (63 FR 12466; March 13, 1998)
- Urged finalization of a conformity review before completion of a final EIS for a proposed flood protection project (63 FR 27082; May 15, 1998)
- Objected to a proposed groundwater storage program based on potential significant air quality impacts and

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CAA General Conformity Requirements

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the lack of a conformity determination, and recommended that a draft determination be issued before issuing the final EIS (65 FR 11574; March 3, 2000)

- Expressed concern that a draft EIS for a proposed flood control project did not address air quality mitigation measures that may be necessary under the general conformity rule and recommended that the final EIS provide additional information concerning conformity with the State Implementation Plan (65 FR 57336; September 22, 2000)
- Stated the need for a conformity determination for a proposed flood control project (65 FR 64438; October 27, 2000).

For additional information on CAA general conformity requirements, contact Ted Koss, Office of Environmental Policy and Guidance (EH-41), at theodore.koss@eh.doe.gov or 202-586-7964. Mr. Koss has assisted a number of DOE organizations in addressing conformity, reviewed conformity studies in EAs and EISs, and provided interpretations of conformity regulatory issues.

Documents on the Web

The Information Brief is available on the DOE Office of Environmental Policy and Guidance Web site at *tis.eh.doe.gov/oepa/guidance/caa/conformbrf.pdf*.

The April 2000 guidance is available on the DOE NEPA Web site at *tis.eh.doe.gov/nepa/tools/guidance/caaguidance.pdf*; also see *LLQR*, June 2000, page 8.

Update on Revisions to Floodplain and Wetland Environmental Review Requirements

Office of NEPA Policy and Compliance staff is coordinating with General Counsel (GC) staff to obtain GC-1 concurrence in the final rulemaking, now that all other concurrences by Secretarial Officers and Heads of Field Organizations have been obtained. The NEPA staff is also coordinating with the Council on Environmental Quality (CEQ) concerning the conforming change to the DOE NEPA regulations. Coordination has been completed with the Federal Emergency Management Agency. Following CEQ coordination, GC concurrence, and approval by the Secretary, the Assistant Secretary for Environment, Safety and Health would issue the final rule, which would be effective 30 days after publication in the *Federal Register*. (See *LLQR*, December 2003, page 3, and September 2002, page 13.)

Comment Response Process Makes NEPA Work

(continued from page 3)

Most-Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," Question 25a; 46 FR 18026; March 23, 1981.)

DOE has received anywhere from a handful of comments on one draft EIS to some 11,000 comments on another. In nearly every final EIS, DOE provided commentors a specific reply to each of their individual comments. Usually, this was done by adding the response, or a code number associated with the response, to the reproduction of the original comment document. In half the EISs, DOE also separately summarized and responded to major themes repeated throughout the comments.

DOE's EISs make readers aware of changes made to the text of an EIS in several ways: by describing text changes in the response to individual comments, marking changes throughout the document with a vertical bar in the page margin, and summarizing changes in a single section, such as the introductory chapter of the final EIS. The latter approach makes it possible for readers to see the breadth of changes in one location.

Number of comments received is not a predictor for the length of time required to complete an EIS

DOE uses several techniques to help readers understand the comment-response process and find comments by particular individuals or organizations or on specific topics. The clearest approach, used in several EISs, is to briefly describe the process by which comments were received, providing a breakdown of comment formats (e.g., written, oral) and the source of comments (e.g., government agencies, individuals). Sometimes, a few paragraphs accompanied by one or two tables may be sufficient to convey the essential information about the process for receiving public comments on the draft EIS.

The most user-friendly EISs also provide clear guidance for how readers can find comments by particular individuals or organizations, or on specific topics. Comments are indexed by commentor name and also by topic.

Most EISs present some count of the number of comments and commentors, but do so differently. In some EISs, oral comments are lumped into a single summary of the public meeting, making the meeting count as a single commentor. In other EISs, the public meeting transcript is evaluated sentence-by-sentence in the same manner as written comments.

EISs differ, too, in whether they respond to a written comment read at a public meeting as a single comment or as two. In the latter case, DOE responds to the comment once among written comments and again with the public meeting transcript.

Another difference among EISs is the treatment of petitions, mass-produced postcards, and similar publicly organized comments. Generally, a single response is provided because the comment is the same. There is a difference, though, in how the number of commentors is counted. Some EISs attribute the comment only to the first signatory while others record the name of each signatory.

In reviewing estimates of the number of comments received on draft EISs, the NEPA Office found no correlation with the time of completion from draft to final EIS. A possible explanation for this lack of correlation is that even when the total number of comments runs into the thousands, after sorting, the number of unique issues that must be responded to is a typically less than a hundred. This highlights the importance of the sorting, or "binning," process, summarizing comments, and tailoring responses to comments.

Guidance in the Works

The NEPA Office will incorporate the results of its review of final EISs into draft guidance to be circulated to the DOE NEPA community for comment. The Office expects to address a broad range of topics from the tone of responses (e.g., writing responses that are not defensive) to what information to report (e.g., should an EIS report the total number of commentors and if so how should the number be counted) to strategies for sorting and summarizing comments.

Suggestions and questions about this guidance, or comment-response issues generally, should be directed to Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. LL

What's a comment?

In forthcoming guidance, the NEPA Office will encourage the consistent use of terms when describing public comments and DOE's responses, including:

- A **comment** is a discrete remark about a particular topic.
- A **commentor** is an individual or organization making one or more comments.
- A **comment document** is the written version of comments submitted by a commentor (e.g., a letter, postcard, e-mail, or transcript of oral comments).

CEQ NEPA Task Force Report Expected This Summer

The findings and recommendations of the Council on Environmental Quality (CEQ) NEPA Task Force will be available this summer, according to Horst Greczmiel, CEQ's Associate Director for NEPA Oversight and NEPA Task Force Director. The Task Force was created in April 2002 to seek ways to improve and modernize NEPA implementation. (See *LLQR*, March 2003, page 8.)

Mr. Greczmiel briefed Beverly Cook, Assistant Secretary for Environment, Safety and Health, and other DOE officials on May 6, 2003, providing a general overview of the Task Force's work and the status of its report. CEQ envisions the information gained and disseminated by the NEPA Task Force will help Federal agencies update their practices and procedures and better integrate NEPA into Federal agency decisionmaking. The report will soon undergo interagency clearance review by agencies represented on the Task Force, according to Mr. Greczmiel, prior to general distribution this summer.

Lee Jessee, Office of NEPA Policy and Compliance, served on the NEPA Task Force as Agency Representative from DOE and Web site administrator, focusing primarily on information management issues to enhance the efficiency and effectiveness of NEPA implementation. The Office of Environment, Safety and Health also provided technical computer support to the Task Force Web site. The Task Force report will be available on the Web site at *ceq.eh.doe.gov/ntf*.

DOE Submits Second Cooperating Agency Report

DOE responded on April 30, 2003, to the Council on Environmental Quality's (CEQ's) request for Federal agencies to report biannually on cooperating agency activities in new EISs and EAs. This second report covers DOE EISs and EAs initiated between September 1, 2002, and February 28, 2003. In that period, three EISs were initiated, including one with 12 cooperating agencies identified or invited, and 10 EAs were initiated, including four with one cooperating agency each.

In this second report, DOE also updated the status of cooperating agency activity reported earlier for NEPA documents initiated between March 1 and August 31, 2002, and added several EAs that were initiated during the period covered by the first report. The current profile of DOE EISs and EAs initiated between March and August 2002 is that three EISs were initiated, including one with two cooperating agencies and one with seven cooperating agencies, and 25 EAs were initiated, including one with four cooperating agencies and one with one. (This is a revision of data provided in DOE's first report; *LLQR*, December 2002, page 2.)

DOE NEPA document preparation teams are encouraged to consider including potential cooperating agencies in their NEPA process and to consult with their NEPA Compliance Officer if questions arise on this subject. (See *LLQR*, March 2002, page 1.) For information on cooperating agency reporting, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

NEPA Section 101 on Advisory Committee Agenda

The National Environmental Conflict Resolution (ECR) Advisory Committee of the U.S. Institute for Environmental Conflict Resolution will conduct its second meeting June 9-10, 2003, in Berkeley Springs, West Virginia. The meeting is open to the public. The advisory committee has three subcommittees, one of which is examining the relationship between Section 101 of NEPA and ECR. (See *LLQR*, December 2002, page 12, and June 2001, page 9.)

The NEPA Section 101 subcommittee will continue its examination of common principles between ECR and Section 101. The subcommittee also will discuss whether ECR helps achieve aspects of the goals laid out in Section 101, even if unintentionally, and will continue developing a protocol for case studies to explore this topic more thoroughly. Documents produced by the subcommittee will be placed on the advisory committee's Web site at *www.ecr.gov/necrac/index.html*.

The other two subcommittees are addressing ways to broaden public participation from among affected communities and best practices in ECR. For further information about the advisory committee, contact Melanie Emerson at memerson@ecr.gov or 520-670-5299.

e-NEPA: Are We Meeting Our Web Posting Goals?

By: Denise Freeman, Webmaster

The Department is much closer to meeting its Web publishing goals now than it was two years ago. But we are not there yet.

We (the DOE NEPA community) need to continue to improve if we are to meet our goals of Web publishing 100 percent of our EAs and EISs, and doing so in a timely manner. Our specific timeliness goals, which the Office of NEPA Policy and Compliance established in 2000 (*LLQR*, June 2000, page 11), are to post:

- Full texts of EISs when the Environmental Protection Agency (EPA) publishes the notice of availability in the *Federal Register*
- EAs and Findings of No Significant Impact within a week after the NEPA Office receives electronic files, which should be within two weeks of their availability (per DOE O 451.1B)
- Announcements and links to Notices of Availability, Notices of Intent, and Records of Decision on the same day that they are published in the *Federal Register*.

Why These Goals Are Important

Our 100 percent Web publication goal is based in the DOE NEPA Order, under which NEPA Compliance Officers (NCOs) have the responsibility to submit electronic files for completed NEPA documents. The DOE NEPA community relies on the electronic NEPA document archive on the NEPA Web site for many purposes. Documents in the archive are used for research and are frequently referenced in other NEPA documents. Maintaining a complete archive can streamline the process of preparing a new NEPA document. Moreover, posting a document in a timely manner facilitates the public participation process, especially the public comment process for a draft EIS. Stakeholders often search the DOE NEPA Web site, so it is important to post a document there in a timely manner even if a Program or Field Office posts the document on its own Web site.

Web Publishing Performance Metrics

Note: The following Web publication statistics refer to all EAs and EISs on the NEPA Web site, but not all of these documents are available online to members of the public. In response to security concerns in late 2001, we blocked access to all NEPA documents archived on the NEPA Web site. We have since restored online access to DOE personnel and, via a password system, to DOE contractors and state, local, and tribal governmental officials. (See related articles in LLQR*, December 2002, March 2002, and December 2001.) We have not restored online public access to any of the documents originally blocked in 2001 because security reviews have not been completed for them. However, all newly completed EAs and EISs submitted to us since December 2001 are publicly available online (with the exception of an appendix for each of two EISs). Currently, of documents posted, 12 out of 77 final EISs and 31 out of 366 EAs are publicly available online.*

EISs: Regarding the percentage of completed EISs that are Web published, we are doing well. Although we are missing one draft EIS issued in 2002, which NEPA Office staff intends to capture, we otherwise have posted all of the Department's draft and final EISs issued since January 2000 (see Table). This recent performance reflects continual improvement since we started Web publishing NEPA documents in 1994. From 1994 to 1998, we were posting only about 50 percent of our final EISs and very few draft documents. By 1998 we were posting about 90 percent of our EISs, and now we are posting essentially all of them.

Regarding timeliness, however, we need to improve if we are to meet our goals, especially for draft EISs. More often than not, draft EISs are not posted on the DOE NEPA Web site when EPA publishes the notice of availability. This happens because NCOs often do not submit a timely and complete Web publication package. In most cases,

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Recent Performance in the Number of EAs and EISs Web Published

	EAs			Draft EISs			Final EISs		
	No. Issued	No. Posted	% Posted	No. Issued	No. Posted	% Posted	No. Issued	No. Posted	% Posted
2000	20	18	90	2	2	100	6	6	100
2001	27	24	85	8	8	100	5	5	100
2002	31	24	77	4	3	75	8	8	100
2003*	10	5	50	4	4	100	2	2	100

** Through June 2, 2003*

e-NEPA: Are We Meeting Our Web Posting Goals?

(continued from previous page)

draft EISs are posted within a week of the EPA Notice. In a few cases, a draft EIS was not posted until after the public comment period closed.

EAs: Regarding the percentage of EAs posted, we are not doing as well as we are with EISs. Although we have improved since 1998, when we were Web publishing only about 50 percent of completed EAs, recent performance has worsened. From January 2000 through December 2002, the number of EAs posted decreased from 90 percent to about 75 percent. The problem is a simple failure of NCOs to submit EAs for Web publication, as required by DOE O 451.1B. In 2002, no Web publishing package was submitted for seven out of 31 EAs, and, so far in 2003, only five of 10 completed EAs have been submitted for Web publication.

Regarding timeliness, when a complete Web package is submitted to the NEPA Office, the average time to post an EA is about 10 days, slightly exceeding our seven-day goal.

Announcements: With few exceptions, we are meeting our goal to post announcements and links on the NEPA Web site on the same day as *Federal Register* publication. We post such announcements under "What's New."

Reasons for Web Publishing Delays

- *Incomplete document package*. Most publication delays result from an incomplete Web publication package. The NEPA Office cannot publish documents on the NEPA Web site without a complete document package, which contains three elements: electronic file, NEPA Document Certification Form, and paper copies. The most frequently omitted element is the document certification form, which is needed to ensure the integrity of posted documents and for homeland security purposes, i.e., to identify whether some or all of the document should not be publicly available on the Internet.
- *Late submission (of a complete package)*. On average, the NEPA Office requires about one week to process a complete package for an EIS. It is especially important to submit a draft EIS for Web publication early enough so that it can be posted before the start of the public comment period.
- *Failure to submit a package at all*. In some cases (especially EAs), no package is submitted.
- *Wrong address*. In a few cases, Web publication packages were sent to an incorrect mailing address. The correct address is in the text box, which summarizes e-file submittal procedures.

We urge NCOs and Document Managers to think of Web publication as an integral part of the NEPA document preparation process, and to build Web publication requirements into document milestone schedules.

Please address any comments or questions about Web publication or other comments regarding the DOE NEPA Web site to Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879.

e-file Submittal Procedures

For draft and final EISs, After consulting with Office of NEPA Policy and Compliance staff, send the following as soon as available (preferably when the document is sent to the printer, but no later than seven days before EPA publishes a notice of availability) by overnight courier service to:

Attn: Ms. Rhonda Toms
ES&H Information Center
EH-72 270CC
1000 Independence Avenue, SW
Washington, DC 20585-0270

- ✓ *One* paper copy of the EIS*
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form (available at: *tis.eh.doe.gov/nepa* — click on the pull-down menu).

* Also send *two* paper copies of the EIS as soon as available to Carol Borgstrom at the Office of NEPA Policy and Compliance.

For EAs, FONSIs and other NEPA documents, send the following within two weeks of their availability to the Office of NEPA Policy and Compliance:

- ✓ *Three* paper copies of the EA and FONSI
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form.

DOE Celebrates Earth Day with an Emphasis on Pollution Prevention

Energy Secretary Spencer Abraham's Earth Day message this year focused on Environmental Management Systems (EMSs) and Pollution Prevention (P2). In his message to the Department, the Secretary stated, "DOE is committed to protecting the environment while conducting its important national security and energy-related missions. In support of this commitment, we are implementing formal environmental management systems at our facilities, thereby reducing the amount of waste we produce and release into the environment."

On Earth Day (April 22), Beverly Cook, Assistant Secretary for Environment, Safety and Health, presented the DOE 2003 P2 Awards. (See photo below.) The winning projects were submitted for the White House Closing-the-Circle Awards pollution prevention competition. There were 210 nominations from 19 Federal agencies in eight categories. A distinguished panel of judges from academia, industry, and government organizations selected a total of 26 winners. DOE was a winner in the category, "Sustainable Design/Green Buildings." The winning DOE entry was Sandia National Laboratory's "Sustainable Buildings Design Team, Incorporating Sustainability for New Buildings."

The Office of NEPA Policy and Compliance has long advocated the incorporation of pollution prevention principles into DOE's planning and decisionmaking. This is clearly stated in a 1992 memo on "Integrating Pollution Prevention with NEPA Planning Activities." DOE's memo was a precursor to the Council on Environmental Quality's guidance on pollution prevention (58 FR 6478; January 29, 1993), which encourages all Federal agencies to incorporate pollution prevention principles, techniques, and mechanisms into their NEPA planning, decisionmaking, and document preparation. In addition, in 1993 the Environmental Protection Agency issued guidance on "Incorporating EPA's Pollution Prevention Strategy into the Environmental Review Process" (EPA Memorandum, dated February 24, 1993).

Seventeen projects sponsored by Environmental Management, Science, and the National Nuclear Security Administration were selected as winners of a 2003 DOE P2 Award. Beverly Cook, Assistant Secretary for Environment, Safety and Health, presented the awards to Raymond Orbach (on left), Director, Office of Science, and Brig. Gen. Ronald Haeckel, NNSA, Principal Assistant Deputy Administrator for Military Application, Defense Programs.

From left to right, Steve Woodbury, Don Lentzen, Larry Stirling, Beverly Cook, Jane Powers, Ray Berube, Andy Lawrence, and Tom Traceski, all of the Office of Environment, Safety and Health, demonstrate their commitment to Environmental Management Systems and Pollution Prevention in an Earth Day display.

"Incorporating pollution prevention into the NEPA process is a good practice," according to Jane Powers, Pollution Prevention Team Leader for DOE's Office of Environmental Policy and Guidance. "If pollution prevention approaches are considered in the early planning stages, it is more likely that they will be designed in once the environmental and economic benefits are understood," said Powers.

There are many ways that one can incorporate pollution prevention into the NEPA process, such as including it as a scoping topic in an EIS notice of intent, designing the proposed action and alternatives with pollution prevention approaches incorporated as project features, identifying recycling and energy recovery options that would be employed if the proposed action or alternatives were implemented, and identifying pollution prevention approaches that could be mitigation measures in an EA or EIS (*LLQR*, December 1999, page 9). LL

Tribute to Raymond P. Berube
Retired Deputy Assistant Secretary for Environment

After 34 years of Federal government service, Deputy Assistant Secretary for Environment Raymond P. Berube retired on May 2, 2003, leaving a legacy of outstanding environmental stewardship that was well-grounded in NEPA experience. Ray's first government position was with the Federal Highway Administration where he applied his education in civil engineering to NEPA reviews for highway proposals. He came to the Department of Energy soon after its creation and worked on the Department's NEPA implementing guidelines, floodplain and wetland regulations, and EISs for such critical projects as the restart of L-Reactor at the Savannah River Site and the Strategic Petroleum Reserve.

Ray became the Deputy Assistant Secretary for Environment in 1987, a new position created to respond to a wide range of complex environmental policy and implementation issues and a position that he held until his retirement. He applied strong leadership and problem solving skills to improve the Department's environmental compliance and credibility. Starting at Rocky Flats in 1989, he directed a series of Tiger Teams in independent assessments of environmental compliance at DOE sites. Ray retained strong technical skills and frequently was asked by senior management to participate in special projects. For example, he contributed to the Report to Congress on the Viability Assessment for the Yucca Mountain Site, particularly the review of the engineered barrier system.

Beverly Cook, Assistant Secretary for Environment, Safety and Health, presented Ray with a plaque upon his retirement that praised his "sound judgment, integrity, and initiative in accomplishing the Department's goals and objectives." His career success is evidenced by many awards and commendations, including a Distinguished Presidential Rank Award, two Secretary of Energy Gold Medals, and a Silver Medal for Meritorious Service.

Ray frequently credited his early NEPA experience for the valuable knowledge it gave him of all environmental statutes and requirements. And he never lost sight of the essential role of NEPA in decisionmaking. One of his favorite stories concerns a proposal in the early 1990s to select and implement a new tritium production technology (the "new production reactor"). Then-Secretary James Watkins, after initially expressing some resistance to the NEPA process and especially the need to analyze a no-action alternative, exclaimed at a House Armed Services Committee meeting – "**Thank God for NEPA**, because there were so many pressures to make a selection for a technology that it might have been forced upon us and that would have been wrong for the country."

Under Ray's leadership, the NEPA process was streamlined, saving the Department $25 million over five years. He inspired "NEPA Ninjas" throughout the Department to strive to make the process work better, cost less, and be more useful to decisionmakers and the public.

Ray will also be remembered for his prodigious institutional memory and comprehensive files. More than 60 boxes of handwritten notes, faxes, memorandum, and reports have been dubbed the "Berube Collection" by the DOE Historian.

We will miss Ray's stories, guidance, perspectives, and leadership.

Note: Andrew Lawrence, Director, Office of Environmental Policy and Guidance, has been named Acting Deputy Assistant Secretary for Environment.

Carl Sykes Included in Secretary's Project Management Awards

The Office of NEPA Policy and Compliance congratulates its staff member Carl Sykes on being recognized in the 3rd Annual Secretary's Project Management Awards, in which three winning teams were identified. In a ceremony on May 20, Deputy Secretary Kyle McSlarrow presented Carl and nine others with the Secretary's Award of Achievement for demonstrating "significant" results in completing a project within cost and schedule. Carl's contribution included his efforts while working at Rocky Flats earlier in his career and, more recently, his review of the amended records of decision related to the Rocky Flats Building 371 Closure Project. The citation honors his "contribution to the successful planning, innovative, creative, and effective project leadership, and teamwork demonstrated on the Building 371 Closure Project that resulted in the successful completion ahead of schedule and more than $11 million under budget."

Litigation Updates

Lawsuit Over Permits for U.S.-Mexico Transmission Lines

The U.S. District Court for the Southern District of California on May 2, 2003, found violations of NEPA and the Administrative Procedure Act in a suit brought by the Border Power Plant Working Group against DOE and the Bureau of Land Management (BLM). This case challenged the adequacy of DOE's EA and FONSI for permits for two transborder electric power transmission lines, *Presidential Permit Applications for Baja California Power, Inc., and Sempra Energy Resources* (DOE/EA-1391, December 2001; *LLQR*, June 2002, page 13). The transmission lines would allow power from new power plants in Mexico to be imported into the United States. BLM was a cooperating agency in preparation of the EA. The Court invited the parties – that is, the plaintiffs, DOE and BLM, and the defendant-intervenors, Baja California Power, Inc. and Sempra Energy Resources – to provide briefs on the question of an appropriate remedy or remedies and will hear argument on June 16, 2003.

The Court granted that part of plaintiff's motion for summary judgment "arising from the EA and FONSI's inadequate analysis of the following issues: (1) the potential for controversy; (2) water impacts; (3) impacts from ammonia and carbon dioxide; (4) alternatives; and (5) cumulative impacts." With regard to potential controversy, the Court referred to a recent case involving the Department of Transportation (see related article, page 22) and found that "the EA inadequately considered whether the substantial questions" raised in public comments "made the proposed actions controversial for purposes of determining the potential significance of the actions." The Court characterized the response to comments in the EA as rejecting the commentors' assertions without explaining "why the comments do not suffice to constitute a public controversy." It is the agencies' burden, the Court concluded, to demonstrate "the absence of a substantial public disagreement when they choose not to prepare an EIS."

The Court concluded that the EA's determination that water impacts would be insignificant was inadequate, in large measure because the affected resource is an "ecologically critical area" (the Salton Sea) already threatened from other sources, and the Court found the EA's analysis unconvincing. While accepting the adequacy of the EA's analysis of some potential air impacts, the Court faulted the EA for not analyzing potential impacts from ammonia and carbon dioxide even though the document acknowledges that these gases will be emitted.

The Court sided with plaintiffs that the EA could have evaluated an alternative, which was suggested in public comments, of conditioning the permits upon the ability of the power plants to meet certain air quality standards. The EA had rejected this alternative as outside the agencies' regulatory authority. The Court also found that the EA should have considered the combined impacts of future, specific power plants proposed for the region (which the EA considered to be "rumors") and cumulative impacts on water resources.

The Court found for DOE and BLM in regard to the other challenges to the adequacy of the EA and FONSI. The Court agreed that the scope of the EA appropriately included potential impacts in the United States from the operation of the Mexican power plants, even though the construction and operation of those plants was not part of the proposed action.

No decision will be made regarding a potential appeal of the District Court's ruling until the Court has decided upon a remedy.

[Case No. 02-CV-513-IEG (POR)] LL

Litigation Updates, continued:
Other DOE NEPA-Related Litigation in Brief

Preliminary Injunction Issued Against Transuranic Shipments to Hanford: In response to requests filed by the State of Washington and several environmental groups, Senior Judge Alan McDonald of the Eastern District of Washington on May 9, 2003, granted a preliminary injunction against the Department, prohibiting shipments of additional transuranic (TRU) waste to the Hanford Nuclear Reservation. The injunction prevents the resumption of shipments of TRU waste from Battelle Columbus Laboratories to Hanford. Claims for injunctive relief relating to shipments of TRU waste to Hanford from the Energy Technology Engineering Center in California, which had been completed before the plaintiffs filed their complaints, were moot.

In short, the Court found there were "serious questions" about whether the draft *Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement* (DOE/EIS-0286) for waste disposal at the Hanford site represented implicit acknowledgment by DOE that additional site-wide or project level NEPA analysis is required before off-site TRU waste can be stored and treated at Hanford, and whether reevaluation of transportation risk is required. The Court found the plaintiffs have raised "serious questions" whether there is a NEPA violation and "have at least a 'fair' chance of success on the merits" on their NEPA claims. The Court further found, however, that the State's chance of success in alleging potential violations of state law relating to the applicability of land disposal restrictions under the Resource Conservation and Recovery Act to TRU mixed waste to be less than "fair." The government's answer to the State of Washington's complaint is due June 5, 2003.

Benton County v. DOE (E.D. Wash): After the District Court issued a written opinion in favor of DOE in March of this year, Benton County filed an appeal and a motion seeking an extension of the injunction to prevent DOE from deactivating the Fast Flux Test Facility (FFTF) pending the outcome of its appeal. The District Court denied the motion, and Benton County subsequently filed an emergency motion for an injunction pending appeal in the Ninth Circuit Court of Appeals. The Appeals Court denied the emergency motion and set a schedule for briefing the case on appeal. On May 8, 2003, Benton County dropped its appeal, noting that the fact that DOE had already begun draining the liquid sodium from the FFTF made it unlikely that the Court would be able to address its claims before they become moot. (See *LLQR*, December 2002, page 22, and March 2003, page 12.)

Nevada v. DOE (D.C. Cir.) concerning the recommendation of Yucca Mountain to Congress as a geologic repository, DOE's site suitability guidelines, and DOE's final EIS: The State of Nevada, et al., filed their final reply brief on the consolidated case on May 13. Oral arguments are scheduled on September 19, 2003. (See *LLQR*, March 2002, page 19, and December 2002, page 22.)

NRDC v. Abraham (D. Idaho) challenging DOE Order 435.1 on Radioactive Waste Management: DOE filed its reply memorandum in support of its cross-motion for summary judgment on May 16, 2003. The reply memorandum argues that the plaintiffs cannot demonstrate that the issuance and use of the order are arbitrary and capricious or in violation of existing law. Oral argument will be held June 23, 2003. The reply memorandum and other documents filed in this case are available online at *www.id.uscourts.gov* under Case Files, District, nonrestricted cases, case number 01-413. (See *LLQR*, March 2000, page 16; June 2000, page 17; and September 2002, page 19.) LL

Transportation EA, Categorical Exclusion Rejected

The U.S. Court of Appeals for the Ninth Circuit ruled on January 16, 2003, that the Department of Transportation (DOT) must complete an EIS for three safety and inspection rules that must be in place before certain Mexican trucks can operate in the U.S. beyond specified border zones. DOT's Federal Motor Carrier Safety Administration (FMCSA) had prepared an EA and finding of no significant impact (FONSI) on two of the rules and considered the third to be categorically excluded. The Court rejected these NEPA reviews, basing much of its ruling on the question of significance and evaluating significance in terms of the context and intensity of potential impacts.

Significance in Terms of Context

For context, the Court looked at the question of national, regional, and local impacts and also at short- and long-term effects. DOT concluded in its EA that potential increases in emissions attributed to the Mexican trucks would be "very small relative to national levels of emissions." The Court criticized DOT for failing to analyze the potential for localized impacts near likely destinations and pointed out that comments submitted to the FMCSA during its rulemaking included analysis of publicly available data to predict the cities where impacts likely would be highest.

"The fact that commenters performed such an analysis does not indicate that their analysis was correct," the Court wrote, "but rather that it was possible to conduct such an analysis. DOT's failure to do so indicates that it did not take a sufficiently 'hard look' at the environmental effects of its actions or at the public comments it received."

The Court also criticized DOT for failing to "address adequately the long-term effects of its actions" in that the agency limited its analysis to impacts during a single year. Here again, the Court pointed out that public commentors had submitted long-term analysis, which should have prompted DOT, the Court wrote, to conduct its own long-term analysis or convincingly explain its absence.

Significance in Terms of Intensity

Regarding the intensity of potential impacts, the court examined four questions: public health and safety, uncertainty, threat of illegality, and controversy. In considering the effect on public health and safety, the Court wrote that even a "'marginal degradation' of the quality of the air we breathe" could be said to be "environmentally significant for purposes of this regulation." Also, it criticized "DOT's failure even to consider whether any negative health effects could be associated with increased diesel exhaust emissions."

The Court found uncertainty in the EA's assumptions regarding the number of Mexican trucks that would cross the border and the percentage of those that would meet U.S. air quality standards. The Court criticized DOT for failing to explain its underlying rationale and appearing to randomly select one value, "citing no authority or study for that number."

The Court then turned to the threat of illegality, where it concluded that DOT should have examined whether the proposed action might violate state air emissions regulations that are more stringent than Federal standards, as well as applicable Federal law (the Clean Air Act (CAA)).

On the question of the intensity of potential impacts, the Court concluded that public comment provided evidence of controversy. "A substantial portion of the negative comments offered real criticism of DOT's action," wrote the Court. "Because many of these criticisms have merit, and DOT failed to adequately account for its failure to act on them, its action is 'controversial' under the CEQ regulations and requires preparation of an EIS."

The Court's analysis of significance in terms of context and intensity was central to its decision against DOT on the adequacy of the EA and FONSI, which covered two proposed rules. DOT believed the third proposed rule could be categorically excluded. The Court found, though, that DOT could not identify any particular CX applicable to the third proposed rule and that the agency could not exempt the rule from the requirement to prepare an EA or EIS simply on the claim that it has no significant environmental impact. These findings were central to the Court's order that DOT prepare an EIS.

Conformity Determination Needed

In the same decision, the Court also found that DOT must prepare a conformity determination under the CAA. This determination would evaluate whether the proposed action conforms to state plans for implementing the CAA. DOT had argued that the EA provided evidence that emissions were below levels specified in regulations, but the Court rejected the adequacy of air emissions analysis in the EA. DOT also argued that rulemaking is exempt from the requirement to prepare a conformity determination, to which the Court replied that such an exemption would only apply to the "'development and issuance' of regulations, not the substantive results of their promulgation and implementation." The conformity determination should draw upon the analysis to be prepared for the new EIS.

[Public Citizen v. Department of Transportation, 316 F.3d 1002 (9th Cir. 2003)] LL

Training Opportunities

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

- **NEPA Three-Day Workshop**
  San Francisco, CA: June 10-12
  Fee: $525

  Natural Resources Regulations and Permitting One-Day Workshop
  San Francisco, CA: June 13
  Fee: $195

  Tetra Tech, Inc.
  877-468-3872
  www.ttsfo.com/services/nepa/news.htm

- **How to Manage the NEPA Process and Write Effective NEPA Documents**
  4-Day Course
  Philadelphia, PA: June 24-27
  San Diego, CA: September 9-12
  Memphis, TN: October 7-10
  Las Vegas, NV: October 21-24
  Fee: $995

  3-Day Course
  Logan, UT: September 15-17
  Fee: $795

  Reviewing NEPA Documents
  Jackson, WY: July 15-18
  Fee: $595

  Clear Writing for NEPA Specialists
  Charlotte, NC: July 29-31
  Fee: $795

  Overview of the NEPA Process
  Orlando, FL: August 14-15
  Anchorage, AK: August 21-22
  Fee: $595

  Cumulative Impact Analysis and Documentation
  Boise, ID: September 2-3
  Logan, UT: October 27-28
  Fee: $595

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

- **Making the NEPA Process More Efficient: Scoping and Public Participation**
  Durham, NC: August 6-8
  Fee: $750

  Preparing and Documenting Environmental Impact Analyses
  Durham, NC: September 15-19
  Fee: $1090

  Implementation of NEPA on Federal Lands and Facilities
  Durham, NC: November 3-7
  Fee: $1090

  Nicholas School of the Environmental and Earth Sciences
  Levine Science Research Center
  Duke University
  919-613-8082
  sea3@duke.edu
  www.env.duke.edu/cee/NEPA.html

- **NEPA Toolbox™ Training**
  Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including those from other agencies. Services are available through GSA Contract No. GS-10F-0163L (899-3).

  Environmental Training & Consulting International Inc.
  720-859-0380
  info@envirotrain.com
  www.envirotrain.com

EAs and EISs Completed January 1 to March 31, 2003

EAs

Grand Junction Project Office/ Environmental Management
DOE/EA-1458 (3/13/03)
Groundwater Compliance at the Slick Rock, Colorado, UMTRA Project Site, Slick Rock, Colorado
Cost: $38,000
Time: 10 months

Oakland Operations Office/Office of Science
DOE/EA-1441 (3/7/03)
Molecular Foundry Nanoscale Science Research Center at Lawrence Berkeley National Laboratory, California
Cost: $40,000
Time: 11 months

Oak Ridge Operations Office/ Environmental Management
DOE/EA-1394 (2/24/03)
Authorizing the Puerto Rico Electric Authority to Allow Public Access to the Boiling Nuclear Superheat (BONUS) Reactor, Roncon, Puerto Rico
Cost: $39,000
Time: 23 months

Sandia Site Office/National Nuclear Security Administration
DOE/EA-1457 (3/31/03)
Center for Integrated Nano Technologies, Sandia National Laboratories, Albuquerque, New Mexico
Cost: $60,000
Time: 6 months

DOE/EA-1446 (1/31/03)
Testing Capabilities Revitalization, Sandia National Laboratories, Albuquerque, New Mexico
Cost: $118,000
Time: 8 months

EISs

Bonneville Power Administration
DOE/EIS-0325 (1/28/03)
(EPA Rating: EC-2)
Schultz-Hanford Transmission Line Project, Hanford, Washington
Cost: $1,030,000
Time: 25 months

DOE/EIS-0333 (1/3/03)
(EPA Rating: LO)
Maiden Wind Farm Project, Benton and Yakima Counties, Washington
Cost: $855,000
Time: 19 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

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

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

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

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost of 5 EAs completed was about $40,000; the average was $44,000.
- Cumulatively, for the 12 months that ended March 31, 2003, the median cost for the preparation of 26 EAs for which cost data were applicable was $79,000; the average was $97,000.
- For this quarter, the median completion time of 5 EAs was 10 months; the average was 11 months.
- Cumulatively, for the 12 months that ended March 31, 2003, the median completion time for 31 EAs was 10 months; the average was 12 months.

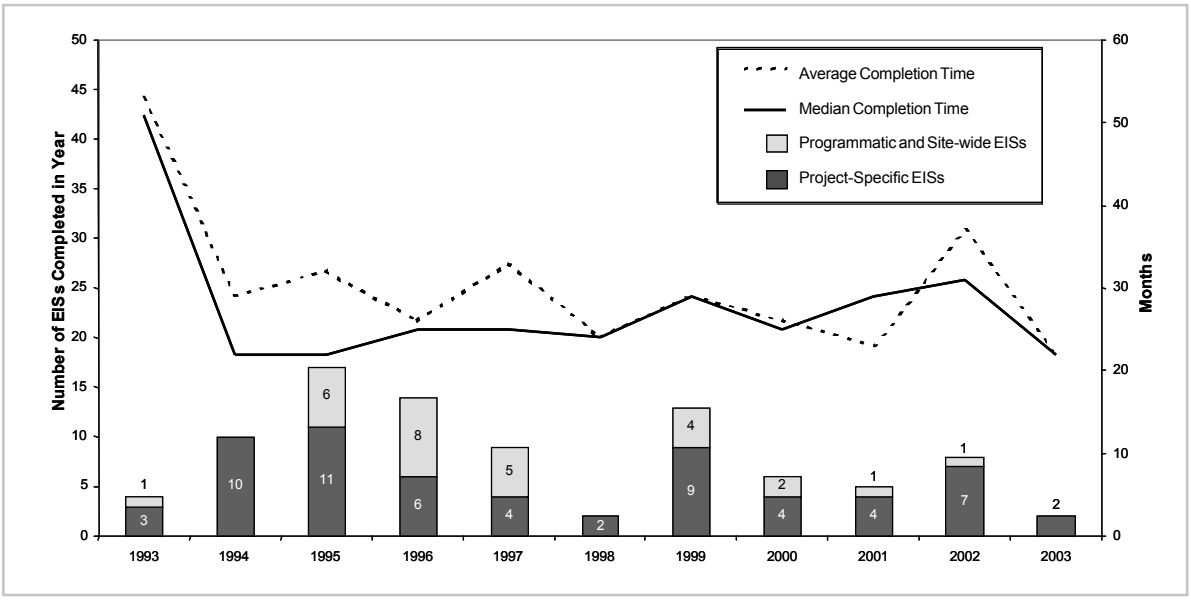
EIS Costs and Completion Times

- The costs for 2 EISs completed this quarter were $1,030,000 and $855,000.
- Cumulatively, for the 12 months that ended March 31, 2003, the median cost for the preparation of 7 EISs for which cost data were applicable was $1,030,000; the average was $9,207,000.*
- The preparation times for 2 EISs completed this quarter were 25 and 19 months.
- Cumulatively, for the 12 months that ended March 31, 2003, the median completion time for 9 EISs was 29 months; the average was 36 months.*

* *Note: These statistics should be interpreted with caution, in light of the small number of documents, because a single document (the Yucca Mountain EIS) significantly affected the values.* *See page 26 for a long-term view.*

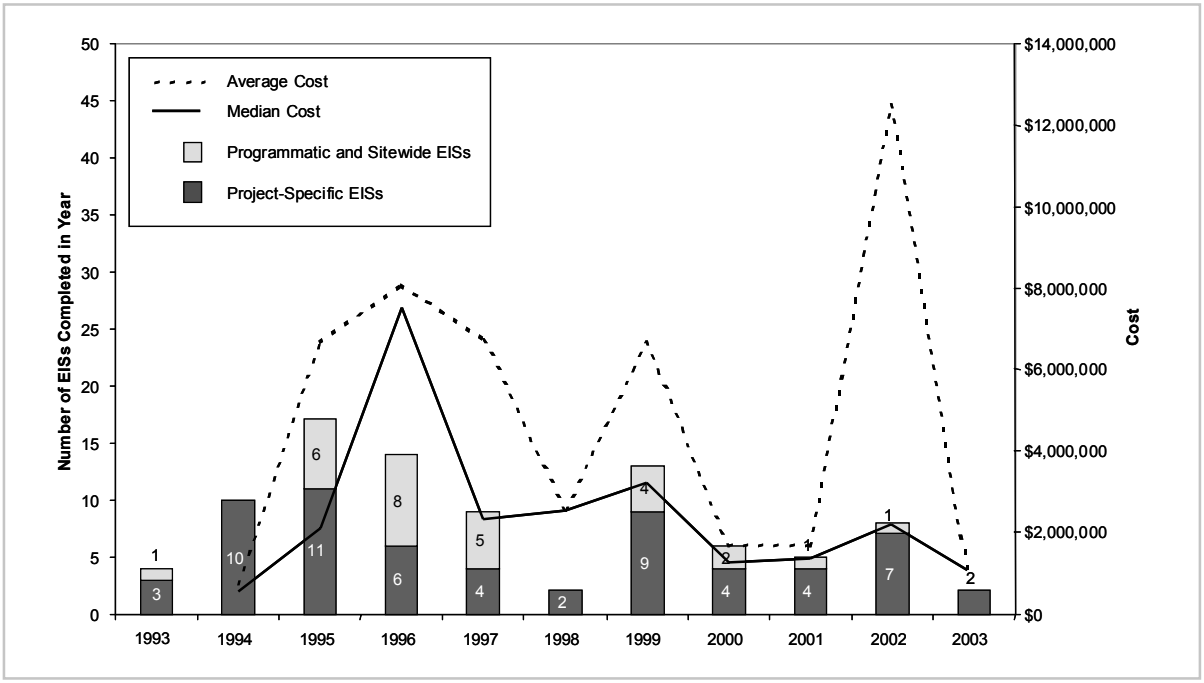
DOE EIS Metrics 1993 - Present*

EIS Completion Times and Number of EISs



After peaking in 1993, EIS completion times decreased and remained about the same. Since 1993, the average of the annual median completion times has been about 25 months.

EIS Costs and Number of EISs



DOE started compiling cost data for its EISs in 1994. From 1994 to 2002, costs varied widely. The average EIS cost of about $8 million per EIS in 1996 reflects eight extraordinary programmatic EISs. Recent project-specific EIS costs are typically between $1 million and $2 million. (The high average cost in 2002 reflects the completion of a single document, the Yucca Mountain EIS.)

* Does not include adopted or cooperating agency EISs. Data through June 2, 2003.

Recent EIS-Related Milestones (March 1 to May 31, 2003)

Notices of Intent

Bonneville Power Administration
DOE/EIS-0353
South Fork Flathead Watershed/Westslope Cutthroat Trout Conservation Program, Montana
May 2003 (67 FR 23705, 5/5/03)

Environmental Management/Ohio Field Office
DOE/EIS-0226-R
Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, West Valley, New York
March 2003 (68 FR 12044, 3/13/03)

Fossil Energy/National Energy Technology Lab
DOE/EIS-0357
Gilberton Coal-to-Clean Fuels Power Project, Gilberton, Pennsylvania
April 2003 (68 FR 17608, 4/10/03)

Other Notice

Environmental Management
DOE/EIS-0329
Depleted Uranium Hexafluoride Conversion Facilities, Paducah, Kentucky and Portsmouth, Ohio
April 2003 (68 FR 22368, 4/28/03)
This notice announces DOE's decision to prepare two separate EISs for the Depleted Uranium Hexafluoride (DUF6) Conversion Facilities Project, one for the plant proposed for the Paducah, Kentucky, site (DOE/EIS-0359) and a second for the Portsmouth, Ohio, site (DOE/EIS-0360).

Draft EISs

Bonneville Power Administration
DOE/EIS-0340
Grande Ronde-Imnaha Spring Chinook Hatchery Project , Wallowa County, Oregon
May 2003 (68 FR 28212, 5/15/03)

Environmental Management/Ohio Field Office
DOE/EIS-0337D
West Valley Demonstration Project Decontamination and Waste Management, West Valley, New York
May 2003 (68 FR 26587, 5/16/03)

Environmental Management/ Richland Operations Office
DOE/EIS-0286
Hanford Solid (Radioactive and Hazardous) Waste Program EIS, Richland, Washington (Revised Draft)
April 2003 (68 FR 17802, 4/11/03)

National Nuclear Security Administration/ Los Alamos Site Office
DOE/EIS-0350
Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico
May 2003 (68 FR 26296, 5/15/03)

Department of Defense/Defense Logistics Agency
DOE/EIS-0347
Mercury Management
April 2003 (68 FR 17786, 4/11/03)
DOE is participating as a cooperating agency.

Records of Decision

Bonneville Power Administration
DOE/EIS-0325
Schultz-Hanford Transmission Line Project, Washington
March 2003 (68 FR 14412, 3/25/03)

DOE/EIS-0330
Wallula Power Project, Walla Walla County, Pasco, Washington
March 2003 (68 FR 13696, 3/10/03)
On March 14, 2003, BPA notified the public that "construction of this project is currently on hold due to current market conditions."

National Nuclear Security Administration
DOE/EIS-0283
Surplus Plutonium Disposition Program Amended Record of Decision
April 2003 (68 FR 20134, 4/24/03)

Supplement Analysis

National Nuclear Security Administration

Surplus Plutonium Disposition EIS
(DOE/EIS-0283)

DOE/EIS-0283-SA1
Supplement Analysis for Changes Needed to the Surplus Plutonium Disposition Program
(Decision: No further NEPA review required)
April 2003

What Worked and Didn't Work in the NEPA Process

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

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

Scoping

What Didn't Work

- *Establishing alternatives.* Determination of reasonable alternatives for this EA was particularly hard due to sensitive issues associated with the proposed action and disagreement among stakeholders.

Data Collection/Analysis

What Worked

- *Satisfying stakeholder concerns*. Conducting data collection during time periods when local stakeholders felt the natural habitat would be less impacted by data collection activities (even though our science said otherwise) appeased them and reinforced our initial findings.
- *Contractor interaction*. The contractor acted as a liaison between different players to ensure timely and accurate data were collected for the EA.

What Didn't Work

- *Loss of data*. A fire destroyed part of the data and made analyses difficult.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Cooperative planning*. Coordination among headquarters staff, site offices, and contractors helped keep the document on schedule.
- *Timely reviews*. Adequate responsiveness to short turn-around times facilitated timely production of the EIS.
- *Effective meetings*. Meetings involving all project participants were held. By working through comment resolution and integration together, this part of the process ran efficiently.

Factors that Inhibited Timely Completion of Documents

- *Complex subject matter*. The complexity of the analyses and multiple comments from various stakeholders impacted timely completion.
- *Disregard for response procedures*. Public groups ignored the intended public procedure by focusing comments on the documents related to the EA, but not necessarily on the EA itself.
- *Length of public comment period*. The EA comment period was extended due to numerous requests for additional time, which resulted in additional comments that needed to be resolved.
- *Numerous modifications to draft document.* A major rewrite was needed between the initial and final drafts. By the time the EIS was actually ready for review, the reasons for doing the project nearly disappeared and there was no rush to get it done.
- *Opposing viewpoints.* Working with five different cooperating agencies and three tribes made completing the EIS on time complicated due to varying opinions.
- *Document translation*. Significant effort and time were required to ensure that translation of the FONSI and EA was consistent with the English version.

Teamwork

Factors that Facilitated Effective Teamwork

- *Inclusive team*. Teamwork was successful because it included the DOE NEPA Compliance Officer, legal counsel, and project staff.

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What Worked and Didn't Work in the NEPA Process

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- *Subject matter expertise*. Several additional people with NEPA knowledge were hired to work on the project just as it began. This created a working environment where staff members did not become overloaded; instead everyone received sufficient support.
- *Site office responsiveness*. Site offices responded quickly to facilitate the review process between all parties by covering all aspects of the EIS, from its initial draft through the resolution of the public comments and the final document preparation.
- *Distribution of resources*. The principal investigator was able to draw upon staff to provide the information required and worked well with the contractors to analyze the materials.
- *Established relationships*. Because headquarters and the contractors had worked together in the past, good relations were already established, which made working together easy.
- *Responsiveness*. The DOE NEPA Compliance Officer and the legal staff were cooperative and quick to respond to the project office's needs. This led to effective collaboration.
- *Detailed responses*. The contractor was willing to respond in great detail to any strongly held opinions until an issue was resolved.

Factors that Inhibited Effective Teamwork

- *Personality conflicts*. The combination of differing personalities and lack of experience working together created conflict. The EIS contractor was defensive when DOE staff asked for changes to their analyses. Keeping the document preparation in-house could avoid this problem next time around.

Process

Successful Aspects of the Public Participation Process

- *Customizing public meeting format.* The plan for the style of public meetings was changed so that attendees could speak one-on-one with project representatives. This kept the meeting much more orderly and less stressful.
- *Additional comment time*. Even though the decision to grant additional public review time delayed completion of the EA, this decision did not ultimately delay the project.
- *Open houses*. The open houses that were conducted during the process were successful tools in keeping the public informed.
- *Information exchange*. This project involved five cooperating agencies which were involved early and kept involved throughout the process.
- *Document translation.* The EA and FONSI were translated into Spanish.

Unsuccessful Aspects of the Public Participation Process

- *Competing documents*. The process was complicated by the fact that there was both a NEPA EA and a similar state document. The public groups focused their comments on the state document, rather than the EA. Therefore, the issuance of the EA was delayed somewhat to make sure that no changes to it were precipitated by the comments on the state's document.
- *Ineffective outreach*. Several attempts were made to reach out to the public by presenting information about the EA at existing citizen group meetings; however, there was little success.
- *Notification/distribution issues*. Despite the fact that project information was sent out in mass mailings to neighborhoods adjacent to the affected environment, commentors still asserted that public notification was inadequate.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Evaluation of results*. The EA process was used to assess the condition of the site and confirm the previous analysis that the cleanup level proposed is protective of human health and environment.

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What Worked and Didn't Work in the NEPA Process

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- *Sound decisionmaking*. By using the EA process to evaluate certain design decisions, the project was forced to consider broad consequences of project alternatives. Rigorous analysis and documentation were used.
- *Complete participation*. The EA process ensured full and appropriate involvement by DOE, the contractor, and the public.

What Didn't Work

- *Low priority*. There was little funding for the EA because it was not directly tied to the organization's other activities. This resulted in low attention given to the project compared to other projects with regulatory milestones.

Enhancement / Protection of the Environment

- Though negotiating habitat mitigation with the state wildlife agency was difficult, if the project goes forward, the habitat will be replaced at a ratio much higher than through other projects of its kind.
- Many cultural resource sites were located and identified during this process, and the information was provided to Native American tribes and the state.
- The process confirmed previous assessments that DOE's proposed plan was protective of human health and the environment at the project site.
- Additional mitigations for habitat impact were identified through the EA process.

Other Issues

Guidance Needs Identified

- One respondent noted that there is no conceptual guidance in the 1993 guidance pamphlet that addresses the methodology or parameters that DOE considers important in preparing accident impact analyses involving biological materials.
  [Note: "Recommendations for Analyzing Accidents under NEPA," issued in 2002, provides a conceptual framework for DOE accident analysis, but does not specifically consider biological materials.]

Effectiveness of the NEPA Process

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

For the past quarter, in which 4 questionnaire responses were received for EAs and 5 responses were received for EISs, 7 out of 9 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that the NEPA process was highly constructive for a large number of project staff by adequately preparing them for other projects of this kind.
- A respondent who rated the process as "5" stated that the agency realizes the importance of NEPA and uses it as a true tool for decisionmaking. By joining the project engineering and design with the NEPA process, the project is anticipated to be a successful one.
- A respondent who rated the process as "3" stated that even though there was a solid effort to work with the stakeholders to find out if they had any issues with the project area in the beginning, it is still of utmost importance to collaborate very early on (even before the EIS process starts) to get a clear understanding of all concerns.
- A respondent who rated the process as "3" stated that even though this was a small project, the EA process affected the design and biological mitigation.
- A respondent who rated the process as "3" stated that to a certain extent, key decisions affecting the project were already made. However, the process required that the facts and analyses be documented and the case be made to support these decisions.
- A respondent who rated the process as "2" stated that the rating was not a reflection on the NEPA process, but rather a reflection of the project's low potential for affecting the human environment.