

LESSONS LEARNED

December 5, 2005; Issue No. 45

Fourth Quarter FY 2005

NEPA 35: Back to Basics, Back to the Future

The enduring value of the National Environmental Policy Act (NEPA) shone at *NEPA 35: Spotlight on Environmental Excellence*, a conference hosted by the Department of Energy (DOE) in partnership with the Council on Environmental Quality (CEQ) in Washington, DC, on November 2 and 3, 2005. More than 260 NEPA practitioners from DOE and over 20 other Federal agencies, state agencies, and local, tribal, and other organizations gathered to mark the 35th anniversary of the nation’s landmark environmental legislation.

“There is no question that the nation has benefited from the analysis and public dialogue that NEPA set in motion,” said John Spitaleri Shaw, DOE’s Assistant Secretary for Environment, Safety and Health. “Simply stated, the value of NEPA is this: It is much easier to protect environmental resources at the outset of an action than to go back after the fact and try to remedy the situation.”

NEPA practitioners were encouraged to pursue this forward-thinking approach to environmental protection by looking “back to the future,” in the words of CEQ Chairman James Connaughton, to discover how to apply

the core values of NEPA to tomorrow’s decisions. He challenged conference participants to look beyond NEPA’s primary tool, the environmental impact statement (EIS), and to embrace NEPA’s central philosophy of seeking a productive harmony between humans and our environment.



“The core of NEPA still resides in Section 101,” James Connaughton, CEQ Chairman, told conference attendees. One way back to this core, he said, is through integration of NEPA and Environmental Management Systems.

Make NEPA A Better Tool

U.S. Representatives Cathy McMorris and Tom Udall, Chair and Ranking Member, respectively, of the Congressional Task Force on Updating the National Environmental Policy Act, told conference participants via video that some witnesses at Task Force hearings attributed delays and financial hardship to NEPA implementation, while others recounted ways NEPA has empowered citizens and helped protect the environment. Conference participants found that, even in the face of ongoing examination of NEPA and criticism of its implementation, there remains a very positive attitude about its values.

Throughout a half-day of training, two afternoon plenary sessions, and a morning of 13 breakout sessions, participants explored practical ways to make better use of NEPA’s tools. Recognized NEPA experts and practitioners from organizations such as the U.S. Environmental Protection Agency, the National Tribal Environmental

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Carol Connaughton

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by February 1, 2006. Contact Yarden Mansoor at yarden.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due February 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2006 (October 1 through December 31, 2005) should be submitted by February 1, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web site at www.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 www.eh.doe.gov/nepa. Also on the Web site is a cumulative index of the *Lessons Learned Quarterly Report*. The index is updated quarterly on the Web and printed in the September issue each year.

Printed on recycled paper



NAEP Environmental Excellence Award Nominations Due January 15

The National Association of Environmental Professionals (NAEP) is seeking nominations for its annual National Environmental Excellence Awards. A nomination describes outstanding environmental contributions from a project or program that:

- Represents a national or major achievement involving national organizations, Federal, state, local agencies, or companies
- Represents a national or international contribution to the environment



- Achieves innovation in compliance methodology and/or integration of decisionmaking with environmental regulatory processes.

NAEP offers Environmental Excellence Awards in eight categories: NEPA, Education, Environmental Management, Planning Integration, Public Involvement/Partnership, Environmental Stewardship, Conservation, and Best Available Environmental Technology. The nomination form, which must be received by January 15, 2006, and additional information are available on the NAEP Web site at www.naep.org under Environmental Excellence Awards. 

Congressional NEPA Task Force Ends Hearings, to Report Soon

The House Resources Committee's Task Force on Improving the National Environmental Policy Act held one more hearing this fall (its fifth) on "The Role of NEPA" for the Mid-Atlantic States (September 17, 2005, Norfolk, Virginia) before being re-chartered as the Task Force on Updating the National Environmental Policy Act. The re-chartered Task Force held two hearings last month in Washington, DC, and is building upon the previous work to put forth recommendations on updating NEPA.

The first hearing of the re-chartered Task Force (November 10) was on the "Causes, Effects and Solutions" to NEPA litigation, focusing on issues related to grazing permits and the 1977 lawsuit *Save Our Wetlands v. U.S. Army Corps of Engineers*, which some say contributed to the failure of the flood walls in New Orleans after Hurricane Katrina. The second hearing (November 17) on "Lessons Learned and Next Steps" featured witnesses with practical and academic NEPA experience.

Following the November 17 hearing, Representative Cathy McMorris, Task Force Chair, said, "Today we heard from many experts with combined decades of experience dealing with NEPA procedures. And although I saw a wide variance in opinions, every single witness told me he saw some way NEPA procedures should be improved." The Task Force expects to issue its report in December 2005. (Task Force Web site, under Press Releases, November 17.)

Testimony from 20 witnesses from various professions and industries is excerpted below. In selecting excerpts, we have tried to illustrate the variety of opinions presented, but have not captured all of the topics or the complexity of views expressed. The complete written testimony of each witness is available on the Task Force Web site (<http://resourcescommittee.house.gov/nepataskforce.htm>, under Schedule). (See *LLQR*, June 2005, page 3, and September 2005, page 14, for information on the first four hearings.)

Mid-Atlantic States Hearing

"... NEPA ... is being used successfully to block most new energy projects. The proof of this lies in our failure to permit new, clean nuclear electric generation and new Liquefied Natural Gas ... terminals. ... I believe existing NEPA laws can and will have a negative impact on the environment. ... I believe through the well intentioned efforts of some in the environmental community, using NEPA laws and other regulatory blocking actions, the stage has been set for a record in worst air pollution ever. ... In order to achieve an optimum condition for the environment, NEPA must look at the environmental impacts of not permitting a facility."

Senator Frank Wagner
Virginia Beach, VA

"... NEPA is a good program providing it is used for its intended purpose. We cannot continue to let hundreds of acre timber sales turn into a 3 ft. stack of paperwork, as a result, ending up in the courts because of litigations."

"... We face an uphill battle because of the cost of growing imports and the strict environmental laws in the United States. ... We ask federal and state governments to help us to remain competitive in a global market. When the companies we work for decide that it is no longer profitable to operate in the United States, they will move overseas and by the way some companies already have."

Alverce Holloway, Jr.
Pulp and Paperworkers Resource Council Member

"An amendment to NEPA should establish that the lead agency has overall authority to establish a time schedule for review and all cooperating agencies must act within that time frame. ... [T]he ability to set a deadline should be coupled with a way to enforce the deadline ..."

"An amendment to NEPA could ... establish the opportunity for a developer to engage a lead agency, other regulatory stakeholders, and interested parties in an open process in which all NEPA issues could be identified and dealt with to the satisfaction of those involved. ... [O]n a voluntary basis ... the lead agency would notify all potential cooperating agencies of the opportunity to join this collaborative and advisory 'Team Permitting Group.' ... A schedule for review and processing of all permits would be developed by the lead agency and the Team Permitting Group and all milestone dates for processing would be met by the applicant as well as the agencies involved."

John H. Shafer
Interstate Natural Gas Association of America

"In NAEP's view, many of the allegations raised against NEPA in recent years stem not from either NEPA or the CEQ Regulations, but from government agencies having failed to follow adequately the clear language and intent of both these documents. Nothing in either NEPA or the CEQ Regulations requires agencies to take years to complete environmental studies, or to produce multi-volume documents, or to spend millions of dollars to do so. Furthermore, the record of NEPA litigation shows that in most of the court cases that agencies have lost, the root cause has been their failure to perform the basic

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NEPA 35 *(continued from page 1)*

Council, and the National Environmental Conflict Resolution Advisory Committee encouraged participants to continually strive to better define the scope of analysis, identify alternatives that reduce environmental impacts, involve the public, and monitor the results of actions taken subsequent to NEPA reviews.

The DOE Office of NEPA Policy and Compliance distributed copies of a compact disk containing the updated *DOE NEPA Compliance Guide* and printed copies of other guidance documents at its “Guidance-to-Go” exhibit, where it also unveiled its new brochure, *DOE, NEPA, and You: A Guide to Public Participation*. The NEPA Office demonstrated the DOE NEPA Web site, presented a selection of published resources at a “NEPA Practitioner’s Bookshelf” display, highlighted the *Lessons Learned Quarterly Report*, and gave participants a chance to relive the past 35 years of NEPA through a 5-panel, 15-foot-long NEPA timeline (copy attached to this issue). A NEPA Office-sponsored exhibit on Native Americans and Environmental Justice complemented a panel discussion during the conference and a post-conference tour of the National Museum of the American Indian.

Other exhibitors at the conference were the National Association of Environmental Professionals, Parametrix (which displayed an award-winning EIS), Oak Ridge National Laboratory, and four of DOE’s nationwide NEPA contractors (Battelle Memorial Institute; Potomac-Hudson Engineering, Inc.; Science Applications International Corporation; and Tetra Tech, Inc.).

The conference, the dialogue it generated, and the thought and effort that continue to be put into making NEPA more effective, efficient and timely are a tribute to your environmental management and stewardship. My staff and I brought back several concepts and a lot of practical input that will help us realize innovative approaches and develop practical guidance that will bring NEPA “back to the future” by providing a process with a goal of making better decisions that strike a balance and strive to achieve the productive harmony envisioned in NEPA section 101.

– James Connaughton
 Letter to Assistant Secretary Shaw
 November 7, 2005

Several participants reported that, amid all the thoughtful and inspiring information, they appreciated the time during breaks to discuss current NEPA issues with colleagues, to meet newcomers to the NEPA community, and to renew old acquaintances. “I get jaded day-to-day,” said NEPA Compliance Officer Drew Grainger, “then I come here. It’s inspiring. It gets your interest level back up.” Similarly, participants from outside DOE reported a new-found appreciation for DOE and its NEPA implementation. “I realized at this conference the importance of NEPA to DOE,” said Sarah Fields from Moab, Utah. “It was made very clear.” 



Our hats are off to DOE’s NCOs! Andy Lawrence, Deputy Assistant Secretary for Environment, recognized the hard work of DOE’s NEPA Compliance Officers by awarding them each a hat with the NEPA 35 logo and NCO designation. “Wear these hats with pride,” he told them, “and if anybody questions your advice, just point to the hat.”

CEQ Chair Connaughton Promotes “Productive Harmony”

CEQ Chair James Connaughton, in his keynote address, called on NEPA practitioners to go “back to the future” in search of ways to improve NEPA implementation. “Think about that original intent of NEPA, as described in Section 101,” he said. “The challenge of NEPA over the last 35 years has not been a rejection of this central philosophy. It has been a tension of how to successfully fulfill it That is what we are celebrating here today.”

NEPA compliance “is not the compliance of deadlines and documents,” said Mr. Connaughton. “It is the compliance of fulfilling the fundamental balance that the statute describes as productive harmony, which is a phrase I love.” He described productive harmony as “adding economic well-being, adding social well-being, and, in the process, also adding to the overall welfare of our environment and natural resources.”

DOE’s mission to “secure cleaner, safer, more affordable, more reliable, innovative sources of energy that are the very foundation of human welfare” puts DOE in a position to embrace the principle of productive harmony and use NEPA to make smart decisions, Mr. Connaughton said.

Future Trends for NEPA Implementation

Mr. Connaughton next focused on the future of NEPA implementation. “The last 35 years have seen us get really good in America at public input,” he said, but he foresees “public input transforming into public involvement. Section 101 actually called for public involvement, not just input – not just, ‘Thank you for your comments, we’ll get back to you with our decision.’”

CEQ Chairman Connaughton read Section 101(a) of NEPA to conference participants as a reminder of its continuing importance as an expression of the philosophy of sustainable development and personal stewardship:

The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, . . . declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, . . . to create and maintain conditions under which man and nature can exist in productive harmony

Earlier, more reliable, more informed public involvement reduces conflicts at the back end of the process, or at least narrows the areas of potential controversy.

– James Connaughton

Mr. Connaughton highlighted two recommendations from the September 2003 *NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA Implementation*. (See *LLQR*, December 2003, page 1.) First, drawing on 35 years of NEPA experience, Federal agencies should create categorical exclusions for those activities that have no significant impacts. He emphasized that a categorical exclusion must be supported by sound analysis.

Second, agencies should make increased use of Environmental Management Systems (EMSs), “as a tool not just of NEPA compliance, but as a tool of actually meeting the fundamental charge of Section 101 of NEPA.” He said that EMS and NEPA work well together. Information is gathered through the NEPA process, he said, and then EMS provides for monitoring during implementation to check expectations and make adjustments to achieve continuous improvement. He lauded DOE for its EMS leadership within the Federal government.

Global Leadership, Back to the Future

Mr. Connaughton reminded participants that NEPA plays a significant role in U.S. leadership internationally. “We have dozens and dozens of countries around the world that are now implementing a process similar to NEPA,” he said. He recounted recent meetings in which senior environmental officials pointed out their environmental review processes for strategies related to energy development. “Now that is because of us,” Mr. Connaughton said. “That is the leadership that comes out of the United States because of the power of this tool.”

In closing, Mr. Connaughton said that “if I go back to the future on NEPA, NEPA itself demands continual improvement.” CEQ’s mission is to “enable your own creativity, further enable your own innovation, further enable your own experience in finding a better way of accomplishing the nation’s business, the people’s business, in achieving the fundamental goals of this statute.” 

Plenary Sessions Highlight NEPA Successes and Challenges

Plenary sessions at *NEPA 35* brought forth three recurring themes: the strength of the values expressed in Section 101 of NEPA, the procedural flexibility inherent in Section 102, and the practical benefits of early, ongoing public involvement. In his keynote address, Council on Environmental Quality (CEQ) Chairman Connaughton set forth the vision that we can do better with NEPA implementation by embracing its core values. (See page 5.) Representatives of tribal organizations spoke of the importance of advancing environmental justice and seeking ongoing stakeholder involvement. (See page 12.) Thomas Jensen called for collaborative approaches to public involvement in summarizing the final recommendations of the National Environmental Conflict Resolution Advisory Committee. (See page 9.)

In other plenary sessions, summarized below, some of NEPA's most experienced practitioners encouraged participants to take advantage of NEPA's flexibility to provide better support to decisionmakers. Stakeholders reminded participants that communication needs to take place at the local level. CEQ's Associate Director for NEPA Oversight described guidance in the works to help NEPA practitioners deliver better products. In video presentations, the Chair and Ranking Member of the Congressional NEPA Task Force described their work.

35 Years of NEPA Experience: What We've Learned

C. Russell H. Shearer, Principal Deputy Assistant Secretary for Environment, Safety and Health, said that during his years at DOE and as an attorney in private practice, his appreciation of NEPA as a planning tool has grown. He encouraged participants to reevaluate EISs periodically to "make sure that we're doing what we said we would do" and to "look at how we might improve our performance and perhaps even mitigate further the risks or the impacts."



Russell Shearer told participants that "NEPA is not a tool for justifying preconceived notions and conclusions that you've already reached."

Mr. Shearer called on three NEPA veterans for their suggestions on improving

NEPA implementation: Dinah Bear, General Counsel, CEQ; Anne Norton Miller, Director, Office of Federal Activities, Environmental Protection Agency (EPA); and Chris Kearney, Deputy Assistant Secretary, Policy and International Affairs, Department of the Interior (DOI).



"The paperwork is important," said Dinah Bear, "because it is documentation of the process." However, she added, "The documentation, I think, often can be simpler than some want to make it."

better information and training about dispute resolution processes early and often," she continued, "and better ways to manage the paperwork."

Ms. Bear closed by pointing out that analyses of social and economic effects can be improved. "The requirement in our regulations is not to provide a data dump," she said. "The actual requirement is more sophisticated than that. It's figuring out what the social and economic effects are that are interrelated with the environmental effects." She also called attention to Section 101(c) of NEPA, reminding the audience that each person has a responsibility to contribute to the enhancement of the environment.

As Director of the EPA Office responsible for reviewing and commenting on EISs, Ms. Miller said that Federal agencies do a good job with NEPA analyses of projects, but they do less well with reviews of policies, plans, and programs. Similarly, she noted that generally agencies analyze direct impacts well, but have a more difficult time with indirect and cumulative impacts. Problems arise in analysis and in how, when, and who tries to mitigate those impacts, she said.

Pointing to the importance of public involvement, Ms. Miller said that "Collaboration takes time, and so people get frightened by it, but in a very weird way, collaboration streamlines the process." Collaboration

Ms. Bear, who has served at CEQ since 1981, said that "The provisions of the NEPA regulations that deal with the legally enforceable requirements get more attention from agencies than provisions that are intended to promote collaboration, intergovernmental cooperation, and simply management, per se, of the process." To counter this situation, she explained that CEQ has promoted cooperating agency relationships. "We need better

coordination. We need

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Plenary Sessions *(continued from previous page)*

entails early involvement, concurrent reviews, proper scope of review, and availability of all relevant information, she said.

Ms. Miller emphasized two reasons why there is a continued need for paper copies of NEPA documents. “The digital divide is still real,” she said, referring to many Americans’ limited access to computer technology and the Internet. She added that technology changes so that “in 50 years, we’re not going to know how to access” some electronic media currently in use.

Mr. Kearney described what DOI is doing to try to improve its NEPA implementation and maximize the flexibility inherent in NEPA. A 2004 DOI review concluded that “the original purpose and intent of NEPA remains elusive,” he said. He added that focus on the NEPA *process* often has overshadowed problem solving. In response, he said, “We came up with a framework of administrative efforts that sought to promote collaborative efforts and partnerships.” He described DOI guidance on consensus-based management, adaptive management, the use of tiering to build on existing analyses, and how to involve cooperating agencies. (DOI incorporated this guidance into Part 516 of its Departmental Manual; see 69 FR 10866, March 8, 2004, and <http://elips.doi.gov>.)

Productive Harmony: Putting People First

Mr. Shearer asked a panel of three stakeholders “to be frank with us on how we’re doing on working with our stakeholders and tell us how we can improve the substance of our recent NEPA activities.” Sharon Buccino, Senior Attorney, Natural Resources Defense Council; Todd Martin, Chairman, Hanford Advisory Board; and Kathleen Trever, Coordinator-Manager, Idaho National Laboratory Oversight and Radiation Control Program, State of Idaho, responded with candid criticisms of DOE’s NEPA implementation and constructive suggestions for improvement.

“We need to show the leaders in Washington how well NEPA can work,” said Ms. Buccino, offering three suggestions for improving NEPA implementation. First, provide easy access to information, she said, including making documents available online with links to the underlying data and analysis. Second, Ms. Buccino said that the effective use of programmatic EISs can help address cumulative impacts and pointed to the programmatic EIS on corridor rights-of-way being prepared by DOE and DOI. [This was a reference to the EIS on *Designation of Energy Corridors on Federal Land in the 11 Western States* (DOE/EIS-0386), for which DOE and DOI recently

published a notice of intent, 70 FR 56647, September 28, 2005.] She said the approach of identifying transmission and pipeline corridors up front is a very good idea in theory, but the challenge is putting it into practice, especially on a tight timeframe and with limited resources. Finally, she urged improvements in monitoring and data quality, especially when relying on mitigation.

Using handouts of a map modeled after a popular children’s board game, Mr. Martin presented a tour of “NEPALand” to illustrate successful and not-so-successful aspects of public experiences with the NEPA process. The journey begins, he explained, with two “Happy Stakeholders” (one representing the public, the other DOE) embarking on a colorful, curving pathway ultimately leading to “Record of Decision Castle.” If scoping is well conducted, the stakeholders can shortcut via “Scoping Trail;” otherwise, they enter the “Peppermint Public Involvement Forest” where negative public attention about an inadequate NEPA process grows.

He continued describing the trail toward completion of an EIS, pointing out the many areas where perilous terrain can delay the travelers – stops in “Peanut Brittle Analysis House” and “Gramma NEPA Contractor’s House” are necessary when difficulties with transparency and accuracy in the analyses raise issues among stakeholders. Mr. Martin pointed out that, although the Hanford Advisory Board has an excellent rapport with developers of the Hanford Tank Closure EIS, stakeholders are concerned that it is internally delayed in “Mystery Molasses Swamp,” where the cause of an apparent delay in its progress is not clear to them.

In a lively presentation at the end of the day, Ms. Trever also used creative visual aids in her presentation, which centered on

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When the NEPA process does not go well, said Todd Martin, the public and DOE can be detained by “Litigation Lord Licorice.”



“Don’t be a bucket head,” said Kathleen Trever, who encouraged participants to seek ongoing, effective communication with local stakeholders.

Plenary Sessions *(continued from previous page)*

effective communication with the local public. She said that when people in a public hearing are angry and confused, they are unable to clearly process information. “Basically, they are operating like they have a bucket on their head,” she explained. She demonstrated by placing a blue, plastic bucket over her head, confessing that she has been a “bucket head” herself at times. “At public hearings, we tend to throw more information at the public at precisely the time they are least able to process it,” she emphasized.

“It’s time to rethink how we use NEPA as a communications tool,” she said. Ms. Trever encouraged the audience to recognize that communication should take place at the local level and to build partnerships or coalitions on controversial issues. Early in the process, make sure people in the local community know why you are doing the project, she said.

The Role of NEPA in a Changing World

“NEPA is in deep trouble,” said Ray Clark, former Associate Director for NEPA, CEQ, referring to proposed changes being discussed in Congress. “NEPA is not at fault. We are,” he continued. “The people who have managed this process have let this statute down.”

“The bridge for us to really change the dynamics is adaptive management,” Mr. Clark said. Everything we do to the land is an experiment, he said, and so environmental impacts are unknowable. It does not matter “how many pages you put in an EIS,” he said. “Documents are not going to help. . . . We have to rethink environmental impact analysis.” He added that, “The one thing we have to do to make this jump into adaptive management in EISs is to figure out how to fund monitoring. . . . If you don’t do monitoring, you cannot get to adaptive management.”

Mr. Clark emphasized that Federal agencies need to take more control of the NEPA process. Too much money is going to too few large NEPA contractors, he said, feeding the idea of “Go get me a NEPA.” The NEPA process must be managed from inside Federal agencies, he said. Contract out specific tasks, he recommended, but maintain Federal control of the NEPA strategy and management of the document.

Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, said that CEQ is working to provide additional guidance and support to the NEPA community to improve the quality of analysis and documentation. CEQ aims to

help NEPA practitioners produce work that the project or program manager uses in decisionmaking, he said.

Mr. Greczmiel recalled three trends in NEPA implementation identified at the time of NEPA’s 25th anniversary that remain relevant. First, he pointed to the growth in the number of environmental assessments (EAs) being prepared. Federal agencies prepare more than seven EAs for every EIS, he said. The Work Groups that CEQ has set up to help implement recommendations from the CEQ NEPA Task Force are developing guidance on the preparation of EAs, he said, to help ensure that EAs are a quality product that informs decisionmaking.



Ray Clark (left) and Horst Greczmiel encouraged participants to use adaptive management in conjunction with NEPA to improve environmental protection.

Second, NEPA work is becoming less analytical and more public relations oriented, he said, and added that there is one part of every “thick study” that every senior decisionmaker will read: the Summary. “Why do they read it? Because it’s in plain English; it distills the key points that they need to be aware of, provides them options, and makes a recommendation on how they should proceed. That sounds an awful lot like what a good NEPA document should do,” he said.

Third, Mr. Greczmiel underscored the importance of “reaching out to the publics that we serve.” CEQ has focused attention in recent years on involving cooperating agencies, he said, because “the sooner you engage the people who are going to be affected . . . the better off you will be as you go through the process.” Early involvement does not guarantee that an agency decision will not be challenged, he said, but “you’ll get a lot more support and, more importantly, you’ll get a lot better product because you’re focusing on the things that matter to the people on the ground.”

(continued on page 10)

NEPA Priorities: Policy, Analysis, and Public Engagement

NEPA Section 101 and Environmental Conflict Resolution

“There is a reason to do NEPA that is completely separate from, much better than, and entirely more important than mere compliance,” said Thomas Jensen, Chair, National Environmental Conflict Resolution Advisory Committee, in a plenary session at the *NEPA 35* conference.

In the preface to the Committee’s April 2005 *Final Report*, he and Dinah Bear, Vice Chair, say that the Committee’s call is this: Take to heart and take advantage of Section 101 of NEPA.

- Why take NEPA’s Section 101 to heart? Because it articulates a national policy for the environment that is an elegant and compelling philosophy of balance, innovation, and personal responsibility.
- How to take advantage of Section 101? Use the diverse tools of environmental conflict resolution to find solutions rooted in shared values. NEPA Section 101 and environmental conflict resolution are mutually reinforcing tools.

Background on Congressional Request

In 2000, a bipartisan group of U.S. Senators asked the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation to investigate “strategies



Thomas Jensen, Advisory Committee Chair, told participants in the plenary session that “NEPA, used right, is entirely in sync with our best political traditions.”

Federal actors become partners in a [NEPA] process where the issue is “owned” by all participants without the forfeiture of government’s legal limits and responsibilities.

– Advisory Committee Final Report

for using collaboration, consensus building, and dispute resolution to achieve the substantive goals” of NEPA. The Institute, a Congressionally-established Federal program, conducted initial analytical work in response to the inquiry and, in 2002, created the National Environmental Conflict Resolution Advisory Committee to advise the Institute on how to address its statutory mandates to assist the Federal government in preventing and resolving environmental conflicts and in implementing Section 101 of NEPA.

Environmental conflict resolution, as understood by the Institute, is the use of interest-based, agreement-seeking processes to improve environmental decisionmaking by directly engaging the interested parties in creative problem-solving. These processes include case evaluation by a neutral experienced party, collaborative monitoring, conflict assessment, consensus building, and mediation.

Advisory Committee Recommendations

The Committee’s key recommendations include that the Institute should:

- Develop a “toolkit” of environmental conflict resolution management approaches for Federal executives
- Foster networks and partnerships that promote best practices and promote use of technology for sharing lessons learned
- Obtain funding for and implement the Institute’s participation grant program for communities affected by Federal decisions related to the environment.

Mr. Jensen provided a compact disk with the Advisory Committee’s *Final Report* to conference participants. The Committee’s report, its charter (which expired on April 30, 2005), and other materials are posted on the Institute’s Web site at www.ecr.gov/necrac. (See also *LLQR*, December 2004, page 2 (Draft Report); December 2003, page 12 (DOE’s response to the Institute’s NEPA Section 101 survey); and June 2001, page 9 (the Institute’s pilot projects).) 

Plenary Sessions *(continued from page 8)*

How DOE Senior Managers Use NEPA to Accomplish Missions

As several participants recognized throughout the conference, the importance of senior managers' involvement in the NEPA process cannot be overemphasized. The three senior managers on this panel all agreed, and each underscored that the NEPA process is valuable to their decisionmaking.

Tom D'Agostino, Acting Deputy Administrator for Defense Programs, National Nuclear Security Administration (NNSA), described what he wants to gain from the NEPA process, but he noted that it is important to engrain the NEPA principles of full disclosure, public participation, and alternatives analysis into all decisions, even those that do not require NEPA analysis. "These are sound principles," he said, "and a sound approach to moving forward on all of our decisions."



Tom D'Agostino said that NNSA is focusing on quality assurance in the NEPA process because of the importance of sound analysis as a foundation for decisionmaking.

NNSA is planning to make several major decisions about the future of the nuclear weapons complex, he said, that need to be based on technical, programmatic, and cost factors and impacts on the environment and communities. He said that to use the NEPA process as

a decisionmaking tool, senior managers must be aware of the human and financial resource needs and the time necessary to support a balanced decision.

Leah Dever, Associate Director, Office of Laboratory Policy and Infrastructure, Office of Science, described how NEPA reviews (most often EAs) help inform decisions by the Office of Science on construction projects, research programs, experiments, and land use issues. The Office of Science incorporates NEPA compliance into its project management, she said. "Before we start projects, we start thinking about NEPA, we start thinking about the impacts of what we might be doing," she said.

Ms. Dever described the value she places on public involvement. "It's just a lot of fun, I think, when you have the public meetings or you get the public comments in, and you get to see what the real person out there is



Leah Dever described how NEPA has permeated her career from collecting field data for NEPA analysis to relying on NEPA documents for program decisionmaking.

thinking about with respect to your project," she said. "I will admit that in my past it has caused me to change some decisions, and it has caused me to look at things a little differently. If there's one thing we don't want to ever lose from NEPA, it's the public aspect."

NEPA Compliance Officers (NCOs) have "one of the most important jobs" in DOE, said Ines Triay, Chief Operating Officer, Office of Environmental

Management. "If you, as a senior executive, will share a brain with your NCO, I can assure you that you will be making better decisions."

For environmental cleanups, she said, "The recipe for success is this partnership among the Federal government, the states, the tribal communities, and other interested stakeholders." Therefore,



Ines Triay told participants: "I have found my involvement as a senior executive in the NEPA process probably the most rewarding and eye opening experience that I have had, and probably the one that has taught me the most."

public involvement in the NEPA process is the most important area for senior executives to concentrate on, she emphasized. "The value of cooperating agencies is realizing that, at the end of the day, whether all the cooperating agencies agree with a particular decision or not, we can agree on the way the analysis was conducted."

The NEPA process is "the planning tool" to consider what alternatives go into the

baseline for managing environmental cleanups, Ms. Triay said. "For critical decisions, it is essential that, before we engage in final decisions, we have performed a very thorough analysis of alternatives" with agreement among stakeholders as to how that analysis was conducted. Analytical tools need to be of the highest quality, transparent, and easy to understand, she said.

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Plenary Sessions *(continued from previous page)*

Congressional NEPA Task Force: What Can Be Improved?

Representative Cathy McMorris, Chair, Congressional NEPA Task Force, said via video that hearings held around the country have “let us see first hand how local groups and the Federal government were trying to balance the NEPA procedure while protecting their communities and the environment.” (See related article, page 3.) This input, she said, will help identify “ways Congress can improve the NEPA process so we can devote more time and resources to protecting the environment.” NEPA has a “major impact on our country on an everyday basis. We must review its effects to ensure the best outcome for the environment and for our economy,” she added.

“What started out as an overly vague, single paragraph statute is now many, many pages of regulations, 1,500 court cases, and hundreds of pending lawsuits that are blocking important projects and economic growth in our country,” she said. “We can and must do better.”

“The Task Force does not intend, in any way, to do away with NEPA or environmental safeguards. Yet, projects should not be delayed nor have added costs when it does not result in better environmental decisionmaking,” she said.

Representative McMorris concluded by listing three of the recommendations presented at Task Force hearings: “clearly defining significant environmental impacts, establishing mandatory timeframes, and including environmental benefits, in addition to environmental impacts, for consideration in the NEPA process.”

Representative Tom Udall, Ranking Member of the Task Force, also speaking via video, said that NEPA “has fundamentally served to make our democracy work better by greatly enhancing citizen participation in the process of Federal agency decisionmaking.”

“Too many people try to characterize NEPA as designed simply to protect the environment from harm caused by development or, as some might phrase it, to stand in the way of development,” he said. “Testimony provided to the Task Force, however, has shown that this definition is, at best, incomplete and, at worst, one-sided and inaccurate.”

He expressed concern about attempts in Congress to make piecemeal changes to NEPA requirements before completion of the Task Force’s work. “If there is a problem with NEPA,” Representative Udall said, “I would argue that it lies more in its implementation than within the Act itself.”

Representative Udall called for more consistent application of NEPA across agencies, better training of agency personnel responsible for NEPA implementation, better and more consistent use of technology to increase public participation, and up-to-date resources for citizens and local governments involved in the NEPA process.

Recalling Two Days Focused on NEPA

Assistant Secretary Shaw closed the conference by highlighting some of the themes that were repeated throughout the two days. “We need to remind ourselves that the fundamental purpose of NEPA is embodied in Section 101, which asks us, in part, to ‘create and maintain conditions under which man and nature exist in productive harmony’”

He reminded participants of the need for active public involvement and avoidance of the potential pitfalls found in NEPALand. “Senior managers need to ensure that there is top to bottom agency commitment and engagement in the NEPA process from start to finish,” he said.

Mr. Shaw said that NEPA professionals’ “understanding of environmental management systems [EMSs] can help plug the biggest gaps in NEPA, such as mitigation measurement, monitoring, and, especially, oversight. And you can achieve EMS and NEPA synergies with good communication between the EMS and NEPA communities.”



John Spitaleri Shaw said, “The keys to success in timely decisionmaking are early and continuous communication among agencies and the public.” He closed the NEPA 35 conference with a sincere “Thank You” to all participants for attending this very important event.

The Office of Environment, Safety and Health offered its appreciation to the Offices of Science; Nuclear Energy, Science and Technology; Environmental Management; and Fossil Energy; and the National Nuclear Security Administration for their financial support of NEPA 35: Spotlight on Environmental Excellence. LL

Environmental Justice, NEPA, and Indian Country: Modern Perspectives on Tribal Issues

Native Americans are important stakeholders in DOE decisions, and NEPA analyses must consider potential environmental justice impacts. The *NEPA 35* conference, which was held during National American Indian Heritage Month, focused on these issues in a plenary discussion, through an interactive Native American and Environmental Justice exhibit, and during a tour of the Smithsonian's National Museum of the American Indian.

Environmental Justice on Native American Lands

Environmental justice “touches on practically every aspect of the work that tribal governments do – the provision of health, safety, welfare, technological development, and economic opportunities,” Geoff Blackwell, Director, Strategic Relations and Minority Business Development, Chickasaw Nation Industries, Inc., said in his opening remarks as the moderator of the plenary session.

“When tribes talk about environmental justice, they’re talking about understanding tribes as stakeholders in the sense that other governments are also stakeholders in seeking to protect the environment,” explained David Conrad, Executive Director, National Tribal Environmental Council (www.ntec.org). He indicated that tribes also are concerned about “equity in funding – leveling the playing field for tribes to be able to participate in these processes.”

Referring to keeping the spirit of Section 101 of NEPA alive and well, Mr. Conrad said, “It rings true in tribes that

you have to go out and consult.” However, he added, the process in Section 102 of NEPA does not necessarily fit with traditional tribal institutions for decisionmaking. He encouraged participants to look for flexibility and ways to “embrace how tribes make decisions, combining their modern constitutional government structure and their ancient traditions.” Mr. Conrad noted a provision in the Energy Policy Act of 2005 which creates a national NEPA tribal training center. (See Section 503 of the Act, available at www.gpoaccess.gov/plaws by searching for “Pub.L. 109-058”.) This would provide opportunities for DOE to help build tribal capacities to establish and carry out tribal environmental programs in support of energy-related activities, he said.

“Often we focus too much on the procedural elements of Section 102 as opposed to the policy aspects of Section 101 of NEPA,” said Merv Tano, President, International Institute for Indigenous Resource

Management (www.iiirm.org). By the time those procedural elements are triggered, he explained, NEPA can “only be used as a shield” to protect a tribe’s interests from the encroachments of a proposed Federal activity. He asked the audience to consider how to use NEPA not only as a shield, but also as a sword to advance tribal interests. He suggested that DOE and tribes should view NEPA “not as a process,” but as the way to achieve “development that is culturally appropriate, economically sustainable, environmentally sound, and supportive of the tribes’ political integrity and the tribes’ social fabric.”

Mr. Tano commended DOE for efforts to involve stakeholders in many of its environmental management decisions through cooperative agreements, community networks, and other mechanisms. He said that such efforts often are



“As a core value, environmental justice is pervasive to the tribal world,” said Geoff Blackwell. He moderated the panel discussion during the second day’s plenary and led participants on a tour of the National Museum of the American Indian after the conference (text box, next page).



Nicolas Targ (left) summarized court decisions upholding the need to include environmental justice analysis in NEPA documents. David Conrad (middle) emphasized the need to enhance tribal capacity to participate in the NEPA process. Merv Tano (right) said that if agencies fulfill the spirit of Section 101 of NEPA, they will achieve environmental justice.

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Environmental Justice and Indian Country

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truer to the spirit of NEPA than DOE's implementation of the EIS process.

Nicolas Targ, Associate Director for Environmental Justice Integration, Office of Environmental Justice, U.S. Environmental Protection Agency (EPA), identified common issues affecting Native American populations, such as unique exposure pathways and scenarios, cumulative risks and impacts, population vulnerabilities, and the lack of meaningful participation in the decisionmaking process. He reviewed the history of Federal environmental justice policy, pointing out that courts have upheld the need to include an adequate environmental justice analysis in NEPA reviews.

He described EPA resources for environmental justice analysis, including the *Environmental Justice Geographic Assessment Tool* (formerly called *EnviroMapper for Environmental Justice*), which provides information relevant to assessing health, environmental, cumulative, and other impacts. These resources are available on the Web at www.epa.gov/compliance/environmentaljustice.

Interactive Exhibit Links DOE Facilities and Indian Sacred Sites

When evaluating a proposed action with the potential to impact places held as sacred by Native Americans, consider that the areas of potential impact could extend well beyond the boundaries of the proposed action and that the affected populations could include persons far removed geographically from the site of the proposed



At the exhibit on "Native Americans and Environmental Justice," participants viewed resources to help them prepare NEPA analyses.

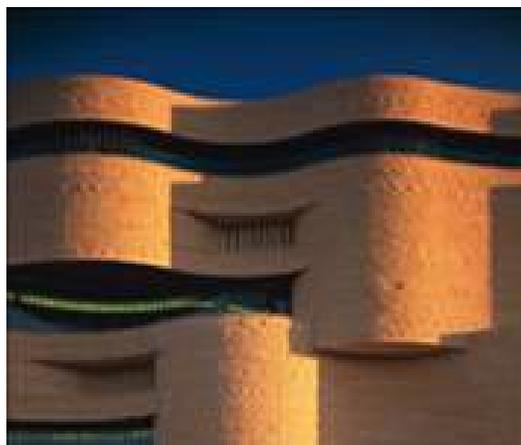
action. This was one of the messages in an interactive exhibit entitled "Native Americans and Environmental Justice" sponsored by the NEPA Office. The exhibit also emphasized that, whereas NEPA practice includes delineation of an area of impact and mitigation to reduce impacts, disclosure and delineation of sacred places and the offer of mitigation can be an affront to Native Americans.

The exhibit included two posters: one showing Indian Country as defined by the 2000 Census and one showing DOE facilities with an overlay of sacred places. A computer display enabled the user to scroll over a map to identify sacred places in close proximity to DOE sites. 

Museum Tour Reinforces Learning Experience

On the day after the *NEPA 35* conference, some participants joined Geoff Blackwell, Chickasaw Nation Industries, Inc., on a tour of the Smithsonian's National Museum of the American Indian (www.nmai.si.edu). Participants enjoyed the museum's permanent exhibitions, *Our Universes*, *Our Peoples*, and *Our Lives*, which present important ideas and experiences in Native American life and history. Tour participants viewed a segment from the award-winning film *Homeland: Four Portraits of Native Action*, highlighting environmental justice issues associated with energy-related undertakings in Indian Country. The museum's Library Director, Dr. Christopher Turner, then provided an overview of Federal agency research resources on tribal environmental justice issues and a related bibliography.

To cap off the tour, lunch was available at the museum's Mitsitam Native Foods Café, which features Native American cuisine. The tour provided a valuable learning experience and opportunity to see one of Washington's newest and most popular museums.



Smithsonian's National Museum of the American Indian, the last museum to be constructed on the National Mall in Washington, DC, opened in September 2004.

NEPA 35 Provided Valuable Training for Conference Participants

“If you can’t teach it, take it,” was the advice given when the NEPA 35 training classes were announced. More than 150 participants took advantage of this opportunity on the first day of the conference, filling each class. Participants included most of the DOE NEPA Compliance Officers (NCOs) and NEPA Document Managers attending the conference, as well as persons from DOE program offices, other Federal agencies, and non-Federal agencies and organizations.

Each person could attend two of the five courses designed and presented by staff from the DOE Office of NEPA Policy and Compliance:

- DOE Supplement Analysis (SA) Process
- NEPA Fundamentals: Principles and Process
- Using the *Green Book* to Avoid NEPA Pitfalls (offered twice)
- Effective Leadership: NEPA Compliance Officers and NEPA Document Managers
- EIS Comment Response and EIS Distribution

All five courses received high marks (average of 4 on a scale of 1–5) for being very useful and relevant. “Our site is going through the supplement analysis process right now,” said one NCO. “I attended the class this morning; it was very helpful.”

Another NCO said, “The NCO training class [Effective Leadership] was great because I’m new. I just wish it could have been a whole day long!”

While most participants said the length of the training sessions was “just right,” several participants echoed the

As a final check on the readability of your EIS – read it.

– Carol Borgstrom, Green Book training



Participants viewed a flowchart in the class on the DOE Supplement Analysis Process taught by Jeanie Loving, Office of NEPA Policy and Compliance (left).

call for more in-depth training, and some requested that multiple levels of training be offered to accommodate different levels of experience and skills. Several participants also suggested that training be offered again in other formats and venues. In response, the Office of NEPA Policy and Compliance is exploring further training opportunities for 2006.

Each participant who successfully passed a written test received a Certificate of Training. (If you attended one of the sessions, passed the test, and have not yet received your certificate, please contact Jim Daniel at james.daniel@eh.doe.gov or 202-586-9760.) The courses were based, for the most part, on NEPA guidance and requirements documents available on the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide. 

True or False

Following are sample test questions from each of the five courses taught at NEPA 35. Answers are below.

- | | |
|---|-----|
| 1. If done properly, an SA can substitute for a supplemental EIS. (SA Process) | T F |
| 2. All environmental issues in an EIS should be analyzed at the same level of detail. (NEPA Fundamentals) | T F |
| 3. The statement of the agency’s purpose and need is critical to identifying the range of reasonable alternatives. (<i>Green Book</i>) | T F |
| 4. DOE should ensure that NEPA support service contractors have and apply QA/QC procedures. (Effective Leadership) | T F |
| 5. When presenting responses to comments on a draft EIS in a final EIS, each comment submitted on a draft EIS must be responded to individually or by reference to another response (an individual response or response to a summary comment). (EIS Comment Response) | T F |

Answer Key: 1-5 1-7 1-3 3-2 3-1

Breakout Sessions Tackle Timely Issues

In 13 breakout sessions divided among three time slots, presenters from DOE, other Federal agencies, state agencies, NEPA contractors, and the general public offered participants in-depth analyses of timely NEPA issues.

Cooperating Agency Involvement: What's in It for Me?

Like a marriage, cooperating agency relationships have benefits and challenges, concluded a panel moderated by Shane Collins, Natural Resources Manager, Western Area Power Administration (Western). She provided an overview of Western's experiences as both a cooperating and a lead agency, noting that Western uses the scoping process to identify potential cooperating agencies. "Engaging a cooperating agency or becoming a cooperating agency can result in better decisions, streamlined processes, and elimination of duplicative efforts," she said.

"As a state agency, you can have the best of all worlds. You get to assist in guiding the development of the EIS, as well as to provide comments on the document," said Suzanne Dahl, Project Manager, Department of Ecology, State of Washington. She discussed the State's cooperation with DOE on Hanford site issues and the importance of all states' involvement in NEPA, especially those states that have their own version of NEPA because they usually adopt the Federal EIS. To make the cooperating agency relationship work, Ms. Dahl suggested nurturing the relationship with constant care and attention, defining roles and responsibilities up front, and establishing dispute resolution processes at the start.

Cynthia Moses-Nedd, Liaison, National Association of Counties, Bureau of Land Management, Department of the Interior (DOI), outlined procedures to effectively establish a cooperating agency relationship. "A local or state agency should choose the projects to cooperate on carefully and cautiously," she said, and only after "serious consideration of the cost in both personnel time and support dollars." She compared the relationship between cooperating and lead agencies to a marriage: "Open and early communication, full disclosure between parties, and trust can be the result of successful cooperation, but counseling may be needed to work out disagreements."



During two well-attended breakout sessions, Ted Boling explained why the "cumulative impact analysis should be the most important and interesting part of a NEPA document."

Cumulative Impacts

Agencies must consider the broader context for environmental impacts of proposed actions in addition to their direct incremental impacts, said Ted Boling, Deputy General Counsel, CEQ. In that regard, he noted, actions that by themselves would not result in significant environmental impacts may be the "tipping point" for potential significant cumulative impacts, which is why cumulative impacts are sometimes referred to as "the straw that breaks the back of the environmental camel."

After capturing participants' attention with his rendition of Sam Cooke's "Wonderful World (Don't Know Much)," Mr. Boling kept their attention as he reviewed relevant history, case law, regulations, and key content of two CEQ resources regarding cumulative impact analysis: *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997), and *Guidance*

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* presented twice	

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on the Consideration of Past Actions in Cumulative Effects Analysis (June 2005). (Both documents are available on the DOE NEPA Web site, www.eh.doe.gov/nepa, under NEPA Compliance Guide.)

CEQ NEPA regulations state: “Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . .” (40 CFR 1508.7). Mr. Boling observed, however, that CEQ regulations might have been clearer had the words “impacts of” been added so that the statement would read: “. . . when added to the *impacts of* other past, present, and reasonably foreseeable future actions . . .” The existing wording, he surmised, may have misled the Ninth Circuit Court of Appeals in *The Lands Council et al. v. Powell et al.* (395 F.3d 1015, 9th Cir. 2005) to conclude that an adequate cumulative impacts analysis in an EIS generally must include a detailed catalogue of past, present, and future projects without first determining that such information is relevant and useful for evaluation of specifically-identified cumulative effects of a proposed action.

CEQ’s June 2005 guidance, however, makes it clear that such cataloging of past actions is not required unless the information is relevant and useful to decisionmakers, Mr. Boling said. Further, he noted that agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions. (See *LLQR*, September 2005, page 40, for further details on the June 2005 guidance.)

Emphasizing the importance of scoping to identify cumulative effects issues, assessment goals, time frame, geographical scope, and other factors of concern, Mr. Boling strongly recommended reading CEQ’s 1997 handbook for further insights into cumulative effects analyses. In particular, he referred to Figure 2.2 as a useful graphic for explaining concepts such as time frames and thresholds of significance in cumulative impacts analyses.

Environmental Management Systems, Adaptive Management, and NEPA

Although Environmental Management Systems (EMSs) and NEPA were developed separately, they are similar in philosophy – both promoting and working toward good environmental values, explained Ed Piñero, Federal Environmental Executive. “There is a natural synergy between EMSs and NEPA,” he said, specifying that the strongest synergy can occur in the monitoring and oversight of mitigation measures, where NEPA is weak but EMS is strong.

The key to integrating the two, Mr. Piñero explained, is effective communication between the EMS and NEPA programs within an agency, which DOE already is doing. “DOE has been very progressive in getting NEPA folks and EMS folks communicating,” Mr. Piñero said.

Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, said, “If NEPA is to realize its full potential, it needs to move forward into adaptive management.” He explained that the idea of adaptive management has been around for a long time and has the backing of CEQ and several Executive Orders, such as E.O. 13148, *Greening the Government Through Leadership in Environmental Management*.

Mr. Greczmiel described a NEPA/EMS cycle with four key points:

- Look at NEPA as a facet of the EMS
- Get training, resources, and management backing
- Look at the “significant aspects” of the EMS when conducting a NEPA analysis
- After impacts are identified through the NEPA analysis, track them through the EMS.

He explained that monitoring and oversight leads to the idea of adaptive management. If mitigation measures are not working, the EMS would catch those impacts early, he said, enabling the agency to respond more quickly.

Examining Excellence in an Award-winning EIS

*Tell a story, engage the reader,
make it visual, make it brief.*

This mantra is the key to writing NEPA documents that are more useful to decisionmakers and the public, according to Stephanie Miller, Senior Environmental Planner,

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Reader-Friendly Tool Kit

The Washington State Department of Transportation has compiled recommendations for preparing environmental documents, based in part on experience preparing the Alaskan Way Viaduct EIS. The *Reader-Friendly Document Tool Kit* is available on the Web at www.wsdot.wa.gov/environment/compliance/ReaderFriendly.htm. The tool kit provides recommendations and examples for document organization, text, tables, graphics, and technical appendices. Chapter 4, Tools for Developing the EIS/EA, may be of particular interest to NEPA practitioners.

Breakout Sessions (continued from previous page)

Parametrix. She presented techniques used to prepare the *Alaskan Way Viaduct and Seawall Replacement Project EIS*, which examines alternatives for replacing a central highway in downtown Seattle. This multibillion dollar project would have major impacts on safety, traffic, and the urban environment.

Earlier this year, this draft EIS – issued by the Federal Highway Administration, Washington State Department of Transportation, and City of Seattle – earned the National Association of Environmental Professionals (NAEP) President’s Award for NEPA Excellence. (See *LLQR*, June 2005, page 18; also see page 2 of this issue for the 2006 call for NAEP award nominations.)



Steve Miller, Office of the General Counsel, examines the award-winning EIS as Stephanie Miller, Parametrix, describes how the document’s large format and visual design contribute to its readability.

The EIS uses a question-and-answer format to help “tell a story” and “engage the reader,” Ms. Miller said. This provides context and explains the relevance of each section of the EIS. “Making it visual” involves using well-designed graphics in place of or in addition to tables wherever possible; “making it brief” is achieved by placing technical analysis in appendices, she said.

Keeping the main body of the EIS focused on a concise comparison of impacts of the alternatives, Ms. Miller observed, saved time and effort, minimized last-minute changes, improved consistency, enhanced credibility, and elicited more informed public comment. (The Draft EIS and related information are available on the project Web site at www.wsdot.wa.gov/projects/viaduct.)

Robert Cunningham, Assistant Director, National Forest System, Land and Realty, U.S. Forest Service, Department of Agriculture, said that budgets and schedules must be flexible so that information gained through an environmental review can lead to meaningful action. “A clear and easy-to-read environmental document improves our understanding, increasing the likelihood we can find workable solutions to complex problems,” he added.

Getting More from the DOE-Wide NEPA Contracts

Contractor representatives exchanged views on how DOE could be more effective in managing the six task-order contracts (indefinite delivery/indefinite quantity) that DOE has in place for NEPA document preparation and related environmental tasks. The session was moderated by Donald Garcia, Acting Manager, Acquisition Department, NNSA Service Center, which administers the contracts on behalf of DOE. He gave an overview of contract features, emphasizing the speed with which task orders can be issued and the independence of program and site contracting officers in so doing.

The contract managers discussed improving the statement of work that DOE provides in requests for task orders. Charlotte Johnson, Science Applications International Corporation, and Lucy Swartz, Battelle Memorial Institute, provided handouts on the ideal statement of work to focus the discussion with Jeff Lawrence, AGEISS Environmental, Inc.; Joseph Rivers, Jason Associates Corporation; Fred Carey, Potomac-Hudson Engineering; Jay Rose, Tetra Tech, Inc.; and session participants. (Mr. Rose provided a sample Quality Assurance Program Plan for an EIS, and the other managers confirmed that their firms use quality assurance plans.)

The contract managers emphasized the need for upfront planning of the scope of an EIS with senior management as well as NEPA Document Managers to try to minimize “scope creep.” They agreed that contractors guard against this by increasing cost estimates when features of the EIS scope are vague.

Along these lines, the contract managers stressed the importance of putting as much information as possible into a statement of work. They pointed out that when information on alternatives and locations, or assumptions to use, are not provided, it is likely that different contractors will provide and base their proposals on different assumptions. They urged DOE to specify the maturity of data that are available for analysis in the EIS and the contractor’s role in supporting public meetings, and they emphasized that DOE should estimate the number and schedule of internal reviews as realistically as possible.

Some expressed concern that NEPA Document Managers (i.e., those evaluating the contractor proposals) often do not have experience in estimating costs, although this is often an evaluation criterion in awarding a task order. All agreed that DOE should consider providing contractors a

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Breakout Sessions (continued from previous page)

draft statement of work for comment, before requesting proposals, to identify features that contractors find uncertain and to help provide a consistent basis for work proposals.

Getting Senior Managers Involved in the NEPA Process

Three DOE managers spotlighted the importance of getting senior managers involved in the NEPA process. Gary Lanthrum, Director, Office of National Transportation, Office of Civilian Radioactive Waste Management; Howard Gnann, Senior Technical Advisor to the Manager, Office of River Protection; and Alice Williams, Director, Office of Environmental Projects and Operations, and Deputy Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration (NNSA), offered valuable insights on how to make it happen.

Mr. Lanthrum explained that senior DOE managers learned through the NEPA process that a new rail line needed to support the proposed Yucca Mountain repository may disrupt cattle grazing. Such stakeholder issues exemplify the importance of NEPA to senior managers because, he noted, a project manager would not necessarily think of cattle grazing as an issue to be addressed.

DOE senior managers are required to complete NEPA training under DOE Order 361.1A, Chapter IV, *Acquisition Career Development Program*, “Department of Energy Project Management Career Development Program Module.”

Mr. Gnann explained that senior management involvement in the planning and preparation of an EIS is always necessary – and is essential at a complex site such as Hanford. “Senior managers need to take the time to understand the issues,” he said, “whether they’re rooted in technical detail or exist in the perspectives of our stakeholders, in order to make the hard choices sometimes necessary to produce a high quality NEPA foundation for our program decisions.”

Session moderator Alice Williams encouraged NEPA Compliance Officers and NEPA Document Managers to “make it their business to be the first in line to brief new senior managers.” Ms. Williams emphasized the importance of ensuring that NEPA staff at Headquarters and in the field work together throughout the NEPA process, especially in getting early concurrences on NEPA documents.

Panelists emphasized that senior management attention and engagement is a two-way street. On one hand, senior managers should learn about the NEPA process and issues important to the public, as well as provide guidance and resources to their document preparation teams. On the other hand, NEPA Compliance Officers and NEPA Document Managers should seek and maintain active senior management involvement. Simple measures, such as regularly-scheduled meetings among senior managers, document preparation teams, and cooperating agencies, can go a long way toward ensuring support optimum for a NEPA review, panelists agreed.

In addition, panelists pointed out the benefit of including, not only the analysts and writers, but also the NEPA Compliance Officer and staff from cognizant Headquarters Program Offices, the Office of NEPA Policy and Compliance, and the Office of the General Counsel as fully participating members of the NEPA document preparation team throughout the process.

The Green Book: An Essential Tool

Jim Daniel, Office of NEPA Policy and Compliance, provided an overview of the second edition of *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (December 2004), also known as the *Green Book*. He explained that the new version updates and expands the original guidance document issued in 1993. The changes reflect DOE’s experience implementing NEPA and topic-specific guidance issued by DOE and CEQ in the intervening years.

Recommendations in the *Green Book* focus on document preparation, not the NEPA process, he said, and all the recommendations require good judgment and should be applied according to the sliding scale. “Focus on what’s important,” Mr. Daniel said.

The revised *Green Book* addresses ten topics not included in the first edition. Mr. Daniel summarized the new recommendations regarding analysis of biological impacts, environmental justice, cumulative impacts, and mitigation. He also summarized new recommendations regarding integration of NEPA with environmental review requirements concerning endangered species, clean air, floodplain and wetlands protection, and historic preservation. Two other new topics address responses to comments on a draft EIS and inclusion of a glossary in an EIS, he explained.

Mr. Daniel emphasized steps to ensure the quality of information relied upon in an EA or EIS. “Provide

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sufficient data and references to allow independent review of analytical methods and results,” he said, and “always ensure that the information and conclusions in the EA or EIS are consistent throughout the document and with referenced documents.”

The *Green Book* is available on the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide.

Lessons to Learn from NEPA Litigation

How can agencies avoid NEPA litigation, and how can they prevail when litigation is unavoidable? Bruce Diamond, Assistant General Counsel for Environment, DOE, moderated a panel of two distinguished NEPA specialists: Wells Burgess, Assistant Chief, Natural Resources Section, Environment and Natural Resources Division, Department of Justice, and Robert Dreher,* Deputy Executive Director, Georgetown Environmental Law and Policy Institute.



Wells Burgess, Bruce Diamond, and Robert Dreher (left to right) said that the lead agency should carefully address dissenting internal views and controversies among agencies.

For perspective, the panel presented some statistics: Federal agencies prepare about 50,000 EAs and 500 EISs annually. About 100 of these documents are challenged in court (about 0.2 percent of

the total), and about 20–30 of these challenges result in injunctions. The panelists explained that, although the government prevails in the majority of NEPA lawsuits, agencies consider NEPA litigation such a significant threat because of the adversarial nature of the experience and the potential for delay.

To avoid litigation, the panel advised engaging stakeholders to be involved beginning with scoping, fully disclosing impacts, and addressing stakeholders’ concerns (including acknowledging those concerns that are not specific to environmental impacts). “Reasonableness is the touchstone of the entire process,” said Mr. Dreher

* Mr. Dreher is author of *NEPA Under Siege: The Political Assault on the National Environmental Policy Act* (Georgetown Environmental Law and Policy Institute, Georgetown University Law Center, 2005), which was made available at the breakout session. For copies, e-mail gelpi@law.georgetown.edu or call 202-662-9850.

The panel advised not to use the NEPA process as a technique for justifying the agency’s predetermined preferences by narrowing the statement of purpose and need to the point where meaningful alternatives are eliminated. Also, panelists cautioned that agency failure to carry out mitigation commitments in a finding of no significant impact is a growing area of NEPA litigation. (DOE’s NEPA regulations (10 CFR 1021.331) require a mitigation action plan for certain mitigation commitments, and DOE Order 451.1B, *National Environmental Policy Act Compliance Program*, requires an annual progress report on implementation of such mitigation commitments.)

NEPA 101: Catch the Spirit

This session continued Mr. Connaughton’s emphasis on Section 101 of NEPA expressed during his keynote address. (See page 5.) Panelist Drew Grainger, NEPA Compliance Officer, Savannah River Operations Office, explained that Section 101 is “an inspiring statement on environmental policy, but it’s been largely ignored.” Mr. Grainger suggested two things that NEPA practitioners nonetheless can do to further Section 101 goals: look at indirect and cumulative impacts, and focus more attention on mitigating unavoidable impacts.

Similarly, panelist Ellen Smith, Environmental Sciences Division, Oak Ridge National Laboratory, stated that “the real purpose of Section 101 is to mitigate and minimize adverse impacts.” She suggested four ways to champion Section 101: (1) look as hard as possible at mitigating impacts, (2) make NEPA an educational process since Section 101 “pushes us to be responsible about providing leadership in environmental quality,” (3) ensure that agencies regularly review their lists of categorical exclusions and actions normally requiring an EA or EIS, and (4) extend NEPA methods to all spheres of society.

“Section 101 is truly the heart and soul of NEPA,” said panelist Kathy Pierce, NEPA Compliance Officer, Bonneville Power Administration. She provided the audience with a comprehensive history of Section 101 and stated that more than 100 countries have adopted their own versions of NEPA – based largely on Section 101.

Programmatic and Site-wide EISs

Making effective use of programmatic and site-wide EISs has been a longstanding practice at DOE, enabling the Department to implement a wide range of missions, observed panel moderator Eric Cohen, Office of NEPA Policy and Compliance. To illustrate, Mr. Cohen circulated *(continued on next page)*

Breakout Sessions (continued from previous page)

a list of the 54 programmatic EISs (PEISs), including 11 site-wide EISs, that DOE has completed since 1978. He noted the Department's significant investment in these analyses, including 26 PEISs issued since 1994. These PEISs addressed some of the Department's most technically complex and controversial programs, including defense activities, waste management, and spent nuclear fuel disposal. Review of lessons learned from DOE's and other agencies' experience preparing PEISs will help DOE continue to make effective use of PEISs, he said.

To that end, Jay Rose, former DOE NEPA Compliance Officer and Document Manager for NNSA, described major defense complex PEISs, including the Stockpile Stewardship and Management PEIS (DOE/EIS-0236, 1996) and the Tritium Supply and Recycling PEIS (DOE/EIS-0161, 1995). Mr. Rose noted that these documents supported real decisions, and he described how subsequent EISs were effectively tiered from them. For example, site-wide EISs for four defense complex facilities were tiered from the Stockpile Stewardship and Management PEIS. Three EISs (the "tritium trilogy") were tiered from the Tritium PEIS, ultimately enabling the Department to decide how to meet tritium production needs, he said.

Crate Spears, Missile Defense Agency (MDA), Department of Defense, also noted that tiering from PEISs can be effective. MDA is preparing a PEIS on the Ballistic Missile Defense System, which will update the PEIS issued in 1994 by MDA's predecessor, the Ballistic Missile Defense Organization. The Draft PEIS was issued in September 2004. (See MDA's PEIS Web site at www.mda.mil/peis/html/home.html.)

Heino Beckert, Document Manager for DOE's ongoing Carbon Sequestration PEIS (DOE/EIS-0366), explained that the PEIS will focus on research and development to promote commercialization of technologies to help the nation meet carbon reduction goals. The PEIS will be generic in nature, analyzing "model projects" rather than site-specific proposals. The advantage of this approach, Mr. Beckert said, is more efficient analysis of cumulative impacts, which will support effective tiering of project-specific NEPA documents.

Stakeholder Perspectives: How Are We Doing?

NEPA would not be possible without public participation, said moderator Betty Nolan, Senior Advisor for Intergovernmental and Community Integration, DOE Office of Congressional and Intergovernmental Affairs before she introduced a panel of three DOE stakeholders who have been involved in the NEPA process

(Sarah Fields, resident, Moab, Utah; Lorraine Anderson, Member, Arvada (Colorado) City Council; and Susan Gawarecki, Executive Director, Oak Ridge Reservation, Local Oversight Committee).

Ms. Fields, who was very active throughout preparation of the EIS for the *Remediation of the Moab Uranium Mill Tailings* (DOE/EIS-0355, August 2005), explained that the key to the success of Moab's NEPA process was coming to an agreement on what action needed to be taken (i.e., moving the tailings pile). She recalled, however, a public scoping meeting at which there were no Native American interpreters or transcripts provided, and she suggested that DOE base its public participation approach on a dedication to fairness and impartiality.

The cleanup of DOE's Rocky Flats plant in Colorado involved an agreement between DOE, EPA, and the State. Ms. Anderson explained that the local community was concerned about the cleanup, especially about future land use issues and downstream water quality. DOE, EPA, and the State responded to this concern by ensuring that site cleanup goals were consistent with the community's priorities. She noted that the partnership between the government and the local community was key to building trust and accountability and indicated that this experience is relevant to DOE NEPA processes.

Ms. Gawarecki presented some challenges encountered in preparing EISs for the Oak Ridge Reservation. The most significant concern with regard to public participation, she explained, was that difficult issues were not discussed with the public because of the pressure to meet deadlines. There also were problems with the EIS analyses and the lack of realistic alternatives, she said.

Views from the EPA Review

Robert Hargrove, Director, NEPA Compliance Division, Office of Federal Activities, EPA, provided an overview of the system EPA uses to review draft and final EISs. Pursuant to Section 309 of the Clean Air Act, EPA is required to review all EISs and publish its findings in the *Federal Register*. Mr. Hargrove explained that the most important issues identified during an EPA review typically are related to water quality, air quality, groundwater, sole source aquifers, wetlands, hazardous waste, environmental justice, or cumulative impacts.

In existence for 20 years, EPA's system rates both the proposed project and the EIS itself. Therefore, he said, it is possible to have a good project but an inadequate document. Mr. Hargrove said that, overall, ratings of draft and final EISs have been getting better. He reported that

(continued on next page)

Breakout Sessions (continued from previous page)

EPA has rated 62.8% of DOE's final EISs as "LO" (Lack of Objections) and only 2.3% as "EO" (Environmental Objections). (The EPA rating of recent DOE draft EISs is included in each issue of *LLQR* under "EAs and EISs Completed." See page 39, which also includes EPA's rating definitions.)

Mr. Hargrove explained that a final EIS may be referred to CEQ (pursuant to 40 CFR Part 1504) if the action is environmentally unacceptable because of possible violations of national environmental standards or policies; severity, geographical scope, or duration of impacts; importance as a precedent; or availability of environmentally preferable alternative(s). Possible actions that CEQ may take upon referral include concluding the matter has been resolved, sending the matter back for further coordination, publishing findings or recommendations, and submitting the matter to the President for resolution. There have been 27 referrals since 1970, Mr. Hargrove said, none of which involved a DOE EIS.

Who, What, When, Where Why, and How? Integrating NEPA with Other Environmental Requirements

The CEQ regulations direct Federal agencies to prepare EISs "concurrently with and integrated with" other environmental reviews to the fullest extent possible (40 CFR 1502.25 (a)). Moderated by James "Bo" Saulsbury, Oak Ridge National Laboratory, subject matter experts addressed the best ways to coordinate NEPA reviews. A common element in their discussions was that early and continual discussions among agencies is key to good coordination, and it is particularly important for agencies to agree early on the alternatives to be analyzed.

Tom McCulloch, Advisory Council on Historic Preservation, emphasized that it is important to notify in advance the Advisory Council, the State Historic Preservation Officer, and the Tribal Historic Preservation Officer, as appropriate, when an agency intends to comply with Section 106 of the National Historic Preservation Act through NEPA. Once adverse impacts to historic properties are identified, consultation is needed to determine how to resolve them. Resolution can range from full preservation to total loss of historic properties, he said.

Jim Serfis, Fish and Wildlife Service (FWS), and Craig Johnson, National Marine Fisheries Service (NMFS), addressed implementation of Section 7 of the Endangered Species Act. Both FWS and NMFS provide early technical assistance in identifying potentially affected species, and Mr. Serfis advised that an EA or EIS should always address endangered species, if only to state that none are potentially affected. FWS prefers formal consultation on a well-defined project, e.g., the preferred alternative between the draft and final EIS, he said. While early involvement is emphasized by both agencies, Mr. Johnson described how NMFS is directing more time and energy earlier in the NEPA process through informal consultation, as a proposed action and the suite of alternatives to be analyzed are developed. The aim, he explained, is for the NMFS "reasonable and prudent alternative" to be encompassed in the NEPA review.

Pamela Stephenson, Federal Highway Administration, described that agency's "NEPA-404 Merger Process" for the NEPA process, the Army Corps of Engineers' permitting process under Section 404 of the Clean Water Act, and a state's permit application to the Corps. The aim, she explained, was for the Army Corps of Engineers' "Least Environmentally Damaging Practicable Alternative" to be considered by all involved agencies at the earliest possible time. 



Did you get your "Guidance to Go" at NEPA 35?

Caroline Polanish, new NEPA Compliance Officer, Brookhaven Site Office, picked up copies of NEPA guidance from the "Guidance to Go" exhibit. It's never too late to get your NEPA guidance. Drive by the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide or e-mail your request to askNEPA@eh.doe.gov.



The Participants Made NEPA 35 a Success

“I came to meet other people who have been doing this longer. I am the first NCO at my site,” said one of the more than 40 DOE NEPA Compliance Officers participating in NEPA 35. For many participants, meeting with other NEPA practitioners will be among the most memorable aspects of the conference. And for the speakers, the “commitment and hard work” of the participants were apparent and appreciated.

More than 260 people from over 50 government agencies and other organizations participated in NEPA 35. This diversity of people, each with an interest in improving NEPA implementation, made the conference a success.

Federal Government

- U.S. Congress
- Advisory Council on Historic Preservation
- Council on Environmental Quality
- Department of Agriculture (Forest Service)
- Department of Commerce (National Oceanic and Atmospheric Administration, National Marine Fisheries Service)
- Department of Defense (Missile Defense Agency, U.S. Navy, U.S. Army Corps of Engineers)
- Department of Energy
- Department of Health and Human Services (Food and Drug Administration)
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of Justice
- Department of the Interior (Bureau of Land Management, Fish and Wildlife Service)
- Department of Transportation (Federal Highway Administration)
- Department of Veterans Affairs
- Environmental Protection Agency
- General Services Administration
- National Aeronautics and Space Administration
- National Environmental Conflict Resolution Advisory Committee
- National Indian Gaming Commission
- National Science Foundation
- Nuclear Regulatory Commission
- Small Business Administration
- U.S. Agency for International Development
- U.S. Postal Service

Other Agencies, Organizations, and Others

- City of Arvada (Colorado)
- DOE National Laboratories
- Georgetown Environmental Law and Policy Institute
- Hanford Advisory Board
- International Institute for Indigenous Resource Management
- Moab, Utah, resident
- National Association of Environmental Professionals
- National Tribal Environmental Council
- Natural Resources Defense Council
- Oak Ridge Reservation Local Oversight Committee
- State of Idaho
- State of Washington

Private Companies

- AGEISS Environmental, Inc.
- Alion Science and Technology
- Analytical Services, Inc.
- Battelle Memorial Institute
- BWXT Pantex, LLC
- Chickasaw Nation Industries, Inc.
- Dyn McDermott Petroleum Operations Co.
- EG&G
- Honeywell International, Inc.
- Fluor Hanford, Inc.
- ICF Consulting
- Jason Associates Corporation
- Navarro Research and Engineering, Inc.
- Parametrix, Inc.
- Potomac-Hudson Engineering, Inc.
- Project Performance Corporation
- Science Applications International Corporation
- Sentech, Inc.
- S.M. Stoller Corporation
- Technology and Management Services, Inc.
- Tetra Tech, Inc.

I've been doing NEPA for 25 years. I still have my "NEPA Ninja" pin from a previous conference. I had to be here. I couldn't miss it. I couldn't NOT come!

– DOE NEPA Compliance Officer

NEPA 35: Spotlight on Environmental Excellence



This conference makes me realize that, day-to-day, I take my responsibility for granted. Listening to the speakers, I see that people are really counting on me. There is a lot of responsibility in this position.

– DOE NEPA Compliance Officer

Excerpts from Congressional Testimony *(continued from page 3)*

planning functions that NEPA requires. . . . Attempts to defend such failures have often consumed more time and funds than it would have taken to produce at the outset the NEPA analysis and documents that the courts eventually required.”

“Any objective Congressional review of NEPA should include an evaluation of the professional staff levels, funding, opportunities for training and advancement, and work loads in ‘front line’ NEPA offices, and should make appropriate recommendations for improving their capabilities. . . . Agency officials responsible for NEPA compliance need support and encouragement to do objective, professional work from the outset, rather than more pressure to rush through the process in order to meet rigid deadlines or to support predetermined decisions.”

Gary F. Kelman, C.E.P., President
National Association of Environmental Professionals

“A significant issue with the current NEPA process is that there is no clear end point. . . . There need to be specific, prescribed time frames for completion of the various aspects of the NEPA process, including agency review and decision making.”

“NEPA needs to be revised to provide a clear definition of the types and number of alternatives that must be considered . . . [and] to prevent project opponents from extending the process by suggesting alternatives as a stalling tactic.”

Charles J. Spainhour
Corporate Manager of Environmental Services
Vulcan Materials Company

“Adequate review of projects at the front end saves time and money in the long run, since it lessens the need for difficult remedies to fix big mistakes. Because NEPA ensures balance, common-sense and openness in federal decision-making, it is an effective tool to keep ‘Big Government’ in check. . . . On the heels of Hurricane Katrina, when there is widespread distrust as to whether government can protect the public, it is vital that we have in place mechanisms to hold government accountable. There are right ways and wrong ways to design a highway or even build a levee. By ensuring that there is good science and local input, the government is much more likely to get it right.”

“. . . [U]nder the guise of speeding up projects, some want to waive environmental review requirements and shut people out of the decision-making process. As Americans committed to a democratic process, we can’t let that happen.”

Glen Besa
Appalachian Regional Director, Sierra Club

“NEPA provides a safety net, a guarantee that any significant federal action, or federal action taken on behalf of private industry, will require analysis, public notice, and comment. To ‘streamline’ NEPA is to threaten the guarantee that our region’s citizens, even if excluded from legislative decisions affecting our natural resources . . . will always be included in the final decision on permitting the use of those natural resources.”

“I am left to conclude that if we had done all that NEPA required, we would have made different decisions along the way . . . that would have lessened the bills we are paying today.”

William A. Stiles, Jr.
Vice President, Wetlands Watch

NEPA Litigation: The Causes, Effects and Solutions

“I believe that the problem with NEPA lies in four areas: The first of which is litigation abuse. . . . The second problem with NEPA results from excessive demands for information – much in the form of ‘modeling’ in [EIS] proceedings. . . . The problem here is that when you are seeking a permit and agencies must sign off on that permit, the applicant is not in a good position to object to excessive demands of those agencies. . . . The third problem is simple delay. Agencies often do not adhere to the deadlines that they set for themselves. When the government wants a delay, it simply ‘stops the clock’ Finally, there is a recurring problem of recalcitrance on the part of a few Federal employees who happen to oppose a project and use their power inappropriately to deny the permit. . . . [R]einstating the [White House] Task Force [on Energy Projects], an overseer, or an ombudsman could prove helpful.”

Former U.S. Senator J. Bennett Johnston

“The law should be reconsidered to provide protection against the misuse of procedural provisions. At the very least, the required cost/benefit analysis should require a broader and more comprehensive weighing of costs and benefits. . . . Somewhere, somehow, the law must insure a full assessment of damages and potential consequences to include such potential benefits as the protection of the lives and property of the people”

Robert E. Winn
Partner, Sessions, Fishman & Nathan, LLP

“I do not believe that NEPA was ever intended to halt natural resource use . . . or to deprive families and rural economies of livelihoods. . . . [T]oday’s interpretation by the courts and regulatory regime have made NEPA one

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Excerpts from Congressional Testimony *(continued from previous page)*

of two primary federal environmental laws that are the vehicles for environmental elitists to stop use of federal lands, causing great harm and destruction along the way. A whole cottage industry of so-called environmental groups has sprung up using the courts for the admitted purpose of eliminating land use.”

“Even more disturbing is the fact that while land and wildlife management agencies and land users are devoting resources, manpower and funding to NEPA compliance and litigation, fewer and fewer resources are available to enhance the land. . . . [T]here must be revision of NEPA to relieve the burden imposed by litigation or the threat of litigation.”

Caren Cowan, Executive Director
New Mexico Cattle Growers' Association

“ . . . [A] more sensible balance must be struck between environmental paperwork and actual conservation as this dynamic relates to grazing. Given the scarce financial resources land managing agencies have to carry out their important work, it only makes sense for funding to be focused as much as possible on producing tangible results by managing the resource on the ground.”

“Part of the agencies' challenge in completing environmental documentation can be addressed by more closely tailoring the paperwork requirements to the actual environmental profile presented by grazing or an activity ancillary to grazing. For example, it seems irrational to produce full-scale NEPA documentation for longstanding continuing activities that have long-ago made their imprint on the landscape”

Brenda Richards
Federal Lands Committee Chairman
Idaho Cattle Association
Idaho Director, Public Lands Council

“Litigation is not cheap, and private entities and public interest groups generally employ it only as a last resort. Although the pace of NEPA litigation has increased somewhat during the last four years, there is no evidence that any of this increased litigation is ‘frivolous’”

“The lawsuit [*Save Our Wetlands v. U.S. Army Corps of Engineers*] brought by local fishermen and a local environmental group was entirely justified, because the EIS filed by the Corps was clearly inadequate. The court found that ‘the picture of the project painted in the FEIS was not in fact a tested conclusion but a hope by the persons planning the project that it could in fact be constructed so as to meet the environmental objectives set out in the FEIS.’”

“Although some recent commentators have stated unequivocally that the court's injunction prevented the barrier project from going forward, the injunction should

have delayed the barrier option only for as long as it took the Corps to remedy the problems that the court had identified in the EIS. The court would have lifted the injunction as soon as the Corps simply updated the EIS with adequate hydrologic modeling, conducted a more thorough biological assessment, and considered a few reasonable alternatives.”

Thomas O. McGarity
President, Center for Progressive Reform

“The Task Force is to be commended for seeking public input However, . . . the 5 hearings it has held to date do not begin to provide a comprehensive picture of the public's experience with NEPA and its implementation, nor can they offer an accurate reflection of the many positive experiences and broad support for NEPA among private citizens and public officials. Unfortunately, several of the hearing venues were changed at the last minute, moving from centrally located population centers to more isolated communities, in some cases changing from weekend to weekday schedules. In some cases proponents of NEPA were denied an opportunity to offer testimony.”

“More often than not NEPA litigation does not prevent projects from happening; it only provides insurance that all alternatives are considered and the best information is available and utilized. It allows the public an opportunity to voice concerns and be part of the democratic process.”

“In 1977, . . . Save Our Wetlands filed suit and secured an injunction . . . [which] concluded that the region ‘would be irreparably harmed’ if the barrier project was allowed to continue and chastised the . . . Corps . . . for a shoddy job. The Judge required the Corps to properly study its proposed massive new levee construction project before moving forward. The Corps eventually decided on its own to pursue an alternative plan.”

Debbie Sease
Legislative Director, Sierra Club

“What does the New Orleans experience tell us about NEPA? The Act treats a project such as the Lake Pontchartrain project, critical to the survival of hundreds of thousands of people, in the same way as one . . . with no immediate impact on life or death issues. In New Orleans, it gave environmental zealots who, hopefully, may not have understood the consequences of their actions, a weapon with which to endanger the survival of the people of a major American city.”

“I believe NEPA must be fine tuned. But we must be careful not to throw out the baby with the bathwater. . . . In the case of projects involving immediate life or death considerations like Lake Pontchartrain and Vicinity, the balancing and disclosure principles of NEPA should still apply but the power of the courts to enjoin such projects

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Excerpts from Congressional Testimony *(continued from previous page)*

should be abrogated. . . . [A] certification program could be enacted into law wherein an agency head could certify such a project as critical to the preservation of human life and thus exempt . . . from the threat of injunction”

Joseph A. Towers*
Ret. U.S. Army Corps of Engineers

NEPA: Lessons Learned and Next Steps

“NEPA is a landmark statute that is as relevant today as when Congress passed it in 1969. At its core, Section 101 of NEPA lays out a clear bipartisan vision of sustainable development [W]e continue to encourage agencies to be proactive in engaging the public in NEPA activities at all levels. Early involvement by a better informed public narrows potential conflicts – we know this from 35 years of practice and experience.”

“One fact stands clear, the challenges, hurdles, or barriers to effective NEPA implementation typically are not with the Act. In fact, it is how NEPA regulations are implemented that most needs improving and modernization. . . . [W]e must also ensure that interested parties participate in the ongoing dialogue and are closely associated with our decisions. In doing so, we ensure that interested parties have a sense of ownership of the outcome, even if the outcome is not exactly as they want.”

“It is a testament to the vitality of NEPA that the statute has not been changed in 35 years in any substantial measure. . . . We take great pride at the federal level that 20 states have adopted a State-level environmental planning process that is similar to NEPA. Furthermore, many countries around the world have taken NEPA as a model for their own environmental review practices. But we can and we must do better. We must renew our efforts to provide decision makers and the public with relevant and timely environmental analyses that add value to the way federal agencies go about their business. . . . Senator John Chafee, one of the greatest environmental statesmen of the Senate, described NEPA as a ‘tall order, but an important one.’ I agree and look forward to the Committee’s report and recommendations.”

James L. Connaughton
Chairman, Council on Environmental Quality

“. . . I make specific *proposals to reduce delay*, which include . . . expediting judicial review, . . . statutes of limitations, expediting preparation of the administrative record, priority for NEPA suits, and the joinder of NEPA and comparable state claims.”

* Witness was not present but his testimony was submitted for the record.

“About half of the states have some sort of statute or order based on NEPA, and a smaller number of these states have analogous laws whose reach is more pervasive than NEPA”

“There are . . . measures . . . which should *not* be adopted to deal with issues of delay. These proposals cut not fat but muscle. They imperil NEPA and all the good that it does. Congress should not exempt actions from NEPA. A proposed action either does or does not significantly impact the environment.”

“Congress should not eliminate or reduce the obligation to consider alternatives. The alternatives analysis is what NEPA is about – looking for better ways of doing things”

“Congress should not squeeze the public out of the NEPA process. The public plays a major role in the NEPA process [C]itizens . . . can have real-world observations to make which can beneficially influence the decision.”

“Congress should not curtail judicial review. . . . [T]he courts . . . review Federal agency actions under NEPA under the highly deferential ‘arbitrary or capricious standard,’ which gives the agency the benefit of the doubt. This opportunity for judicial review should not be curtailed. Congress . . . provided no alternate enforcement mechanism for NEPA. Only judicial review under the Administrative Procedure Act (the same statute under which most Federal agency action is reviewable) insures the enforcement of NEPA.”

Nicholas C. Yost
Former General Counsel
Council on Environmental Quality

“The Task Force received a letter this fall from every living former chair of [CEQ], respected environmental leaders who served Presidents Nixon, Ford, Carter, George H.W. Bush, and Clinton. That letter identified three basic principles underlying NEPA: (1) ‘consideration of the impacts of proposed government actions on the quality of the human environment is essential to responsible government decision-making,’ (2) ‘analysis of alternatives to an agency’s proposed course of action is the heart of meaningful environmental review,’ and (3) ‘the public plays an indispensable role in the NEPA process.’”

“Unfortunately, the Task Force to date has focused on a narrow, and almost uniformly negative, set of concerns: complaints raised by representatives of businesses that use federal public lands and natural resources for economic benefit that compliance with the Act’s procedures imposes burdens and delays on their activities. The Task Force has shown little apparent interest in how NEPA protects *environmental values*, in fulfillment of Congress’s original

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Excerpts from Congressional Testimony *(continued from previous page)*

goals for the Act. Perhaps for that reason, the Task Force appears not to have been particularly interested in the views of conservationists and recreationists who, not surprisingly, see the value of NEPA and other environmental laws in a very different light from business users of federal lands and resources. Moreover, the Task Force virtually ignored the people with the most hands-on experience in implementing NEPA: federal officials responsible for complying with the Act.”

“Although much criticism of NEPA is unwarranted, there are important improvements that can and should be made to the NEPA process to better protect environmental values, in fulfillment of Congress’s purposes. None of these improvements would require legislation

First, agency promises during the course of the NEPA review process to mitigate the adverse effects of federal actions should be recognized by the agencies as binding commitments A second useful reform would be to enhance monitoring of the environmental effects of projects after they are completed. . . . A meaningful effort to improve NEPA’s implementation thus must include commitments of additional resources so that agencies can carry out their responsibilities . . . effectively and efficiently.”

Robert G. Dreher, Deputy Executive Director
Georgetown Environmental Law and Policy Institute
Georgetown University Law Center

“NEPA was never meant to be a statute that enabled delay, but rather a vehicle to promote balance However, in its current state, NEPA generates far more documents than it does actual decisions The area of the NEPA process which would yield the greatest reduction in project delay is frivolous and malicious litigation which subverts the NEPA process [W]hen abused, NEPA litigation allows a small minority of individuals to hijack the NEPA process in an attempt to perpetually delay projects simply for the sake of delaying them.”

[Recommendations include:]

- A set time limit on project related NEPA lawsuits
- Consideration of the environmental benefits of proposed projects as opposed to just their impacts. Also, the environmental consequences of not undertaking a project should also be considered.
- NEPA litigation should be limited to only those issues that have been fully raised and discussed during the public comment period for a project
- Establishment of a dispute resolution process
- In compliance with President Bush’s executive order on environmental streamlining, the NEPA review process must be shortened and coordinated among the various federal agencies that take part in it.

- Where possible, duplicative review and analysis should be eliminated”

Nick Goldstein, Staff Attorney
American Road and Transportation Builders Association

“Public outcry should be eliminated as a determinant for a decision on whether an EA or an EIS is the appropriate vehicle for NEPA compliance, and judicial review should not be the primary mechanism for ensuring NEPA compliance. To minimize legal maneuvering, CEQ, as an independent agency with NEPA expertise, should be empowered to resolve most NEPA disputes administratively prior to court action, and a time limit for filing litigation should be established.”

“. . . NEPA should not force the equal inclusion of alternatives throughout the analysis process regardless of feasibility.”

“We should not be distracted by the self-serving arguments of narrow special interests. The fundamental issue is not the battle between environmental protection and economic development; it is the inherent conflict between long-term and short-term decision-making. A longer, broader perspective realizes that what is good for the environment is also good for the economy – and by definition, good for people.”

Alan Harwood, AICP
Principal and Vice President, EDAW, Inc.

“My suggested legislative amendments fall into the following four over-arching categories:”

- Clarify and revise the scope of agencies’ NEPA obligations (clarify the alternatives an agency must analyze, provide for short form EISs, impose timelines and cost caps on NEPA documentation, make use of adaptive management techniques, expand the use of categorical exclusions, clarify that agencies need not examine impacts that are not reasonably foreseeable).
- Impose requirements on NEPA plaintiffs to discourage frivolous lawsuits (require exhaustion of administrative remedies, strengthen bond requirements for plaintiffs seeking injunctions, impose a 180-day statute of limitations on NEPA claims, provide for responsibility for attorneys’ fees).
- Permit increased participation in litigation by project proponents and other interested parties
- Provide courts with more guidance (establish a standard of review within the NEPA statute, clarify remedies when a NEPA violation is found).

John C. Martin
Patton Boggs LLP



Got a General Question About the DOE NEPA Process?

askNEPA@eh.doe.gov

The Office of NEPA Policy and Compliance now maintains an e-mail address to receive general inquiries regarding DOE NEPA guidance or procedures from members of the DOE NEPA Community and the public. (Inquiries regarding a specific EA or EIS, however, should continue to be directed to the NEPA Document Manager identified for the respective NEPA document.) Messages received will be acknowledged promptly and forwarded to NEPA Office staff for appropriate action.

Do you want copies of the new public participation brochure *DOE, NEPA, and You*; the November 2005 *DOE NEPA Compliance Guide*; or other DOE NEPA guidance material? ***askNEPA@eh.doe.gov***

Do you want follow-up materials from the *NEPA 35* conference? ***askNEPA@eh.doe.gov***

Do you have a DOE NEPA question and don't know which staff member to contact? ***askNEPA@eh.doe.gov***

Are you preparing a notice that identifies a contact for general information on DOE's NEPA process? Use this text:

For general information on the DOE NEPA process, write to Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0119; call 202-586-4600 or leave a message at 800-472-2756; fax to 202-586-7031; or send an e-mail to ***askNEPA@eh.doe.gov***. 

EH Launches E-mail Document Notification Service

The Office of Environment, Safety and Health (EH) now provides e-mail notification as certain documents are published on an EH Web site, such as the DOE NEPA Web site. The EH Document Notification Service announces *Lessons Learned Quarterly Report*, Schedules of Key Environmental Impact Statements, Notices of Intent, EISs, Records of Decisions, and EH publications on topics other than NEPA.

Interested persons may subscribe through the EH Web site (*www.eh.doe.gov*) under EH Document Notification System. Subscribers must provide their name, organization, telephone number, and e-mail address and select publications of interest.

For comments or questions regarding the Service, contact Marian Carter at *marian.carter@eh.doe.gov* with a copy to Teresa Peacher at *teresa.peacher@eh.doe.gov*. 

DOE-wide NEPA Contracts Update

Agustin Archuleta: DOE-wide NEPA Contracts Administrator

Agustin Archuleta, the new DOE-wide NEPA contract administrator, has assumed the responsibilities formerly held by Mary Henry. Mr. Archuleta is a Level III certified acquisition professional with the National Nuclear Security Administration. He transferred from the Air Force Research Laboratory in January 2005 and has over 20 years of professional experience in the Federal government and private industry.

The following tasks have been awarded recently under the DOE-wide NEPA contracts. Mr. Archuleta can be contacted at *aarchuleta2@doeal.gov* or 505-845-4686. NEPA Document Managers should provide him with copies of all new task awards and modifications as they are issued and contractor performance evaluations after task completion. 

Description	DOE Contact	Date Awarded	Contract Team
Supplement Analysis: Sandia National Laboratory Site-wide EIS	Susan Lacy <i>slacy@doeal.gov</i> 505-845-5542	9/30/2005	Tetra Tech, Inc.
Biosafety Level 3 Laboratory, Los Alamos National Laboratory	Lisa Cummings <i>lcummings@doeal.gov</i> 505-667-4667	11/28/2005	Tetra Tech, Inc.

On the January To-Do List: Prepare Annual NEPA Planning Summary



It's that time of year again – time for DOE top managers to prepare their annual NEPA planning summaries. A NEPA planning summary is a tool that promotes attainment of project schedule and budget goals, helps avoid duplicative analyses, and identifies sources of information for cumulative impact analyses. It helps get senior managers involved early in the NEPA process through their allocation of financial and staff resources, and

enhances public involvement by providing consolidated information on a Program or Field Office's NEPA activities and plans.

Access to the schedules for all EISs helps the Office of NEPA Policy and Compliance in its planning to make staff resources available for EIS review and approval. Knowledge of all EAs and EISs being prepared or planned throughout the Department also helps the NEPA Office identify trends and crosscutting issues.

The NEPA Office will continue to post Program and Field Office annual NEPA planning summaries on the DOE NEPA Web site as they are received to assist in making them available to the public. Preparation guidance and electronic report forms are available on the DOE NEPA Web site at www.eh.doe.gov/nepa/summaries.html.

For further information, contact Lee Jessee, NEPA Office, at lee.jessee@eh.doe.gov or 202-576-7600.

DOE Order Requirements

Among the responsibilities listed in DOE O 451.1B, *National Environmental Policy Act Compliance Program*, each Secretarial Officer and Head of a 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 by January 31 of each year and make it available to the public (paragraph 5.a.(7)).

An annual NEPA planning summary (paragraph 4.d) describes briefly: (1) the status of ongoing NEPA compliance activities, (2) any EAs expected to be prepared in the next 12 months, (3) any EISs expected to be prepared in the next 24 months, and (4) the planned cost and schedule for completion of each NEPA review identified. Every three years (next in 2007), the summary for each Field Organization will include an evaluation of whether a site-wide EIS would facilitate future NEPA compliance efforts.

Transitions

New NEPA Compliance Officer

National Nuclear Security Administration: Alice C. Williams

Alice Williams, recently designated as the NEPA Compliance Officer for the National Nuclear Security Administration (NNSA), has many years of NEPA-related experience as a senior DOE manager. She worked in the field for EG&G Idaho (contractor) for 11 years before joining DOE's Idaho Operations Office where she served for 13 years. Her work at the Operations Office included many aspects of the NEPA process (e.g., the draft New Production Reactor EIS, DOE/EIS-0144, 1991, and the Spent Nuclear Fuel Programmatic EIS, DOE/EIS-0203, 1995), and she held the position of Deputy Assistant Manager for environmental activities. Ms. Williams then served as Site Manager for the West Valley Demonstration Project in New York for three years, where she oversaw the initiation of the Site Decommissioning EIS (DOE/EIS-0226).

Her field experience taught her the importance of early involvement of staff from Headquarters' Program Offices and the Office of Environment, Safety and Health, as well as the importance of effective stakeholder involvement and the necessity for a robust Administrative Record.

She joined the Office of Environmental Management in the fall of 2003 as Associate Deputy Assistant Secretary for Waste Disposition and Logistics. In 2004, she transferred to NNSA and currently serves in a dual capacity as Director for Environmental Projects and Operations and as Deputy Associate Administrator for Infrastructure and Environment.

Ms. Williams received her bachelor's degree in Chemistry from Montana State University and a master's degree in Chemical Engineering from the University of Idaho.

CEQ Addresses Katrina Emergency Actions and NEPA

The Council on Environmental Quality (CEQ) reacted quickly to assist Federal agencies dealing with the need to take emergency actions in the aftermath of Hurricane Katrina. In a September 8, 2005, memorandum, *Emergency Actions and NEPA*, CEQ provided information on how to comply with NEPA during emergencies. An attachment to the CEQ memorandum reviews the CEQ NEPA regulatory provisions (40 CFR 1506.11) and guides NEPA practitioners on how to determine whether NEPA is triggered. The advice emphasizes that agencies should not delay immediate actions necessary to secure lives and the safety of citizens, but should consult with CEQ about alternative arrangements for NEPA compliance as soon as feasible. A second attachment provides advice on preparing focused, concise, and timely EAs, including examples of a brief statement of purpose and need, description of existing conditions, and other elements of an EA.

CEQ's memorandum also announces the establishment of two groups that will distribute information at a later time: a White House interagency group on policies to guide long-term rebuilding efforts and a National Response Plan environmental coordination group on long-term recovery.

In addition, on September 14, 2005, CEQ forwarded guidance from the U.S. Fish and Wildlife Service Southeast Regional Director (Atlanta) on ensuring compliance with the Endangered Species Act and the National Historic Preservation Act in agency actions after the hurricane.

The DOE NEPA Compliance Guide (www.eh.doe.gov/nepa under NEPA Compliance Guide) contains the September 8 memorandum, and CEQ's NEPA net (<http://ceq.eh.doe.gov/nepa/nepanet.htm>) provides both these communications on emergency actions and NEPA.



After Katrina, DOE Extends Scoping for Site Selection for Strategic Petroleum Reserve Expansion EIS

Due to the extraordinary circumstances created by Hurricane Katrina in the region of the candidate sites for the expansion of the Strategic Petroleum Reserve, DOE revised the schedule for the public scoping period announced in the notice of intent to prepare an EIS for site selection (70 FR 52088; September 1, 2005). DOE extended the scoping period by two weeks and announced it would hold one meeting as scheduled, reschedule one to a later date, schedule one meeting in a new location, and cancel two previously announced meetings (70 FR 56649; September 28, 2005).

The three scoping meetings were held and scoping closed on October 28, 2005. During this period, the Governor of Mississippi asked DOE to consider an additional site for new storage capacity. In light of this request, DOE scheduled another scoping meeting near the proposed new site for December 7, 2005, and reopened the public scoping period to December 19, 2005 (70 FR 70600; November 22, 2005).

DOE's NEPA regulations (10 CFR 1021.311(d))* address such schedule changes. DOE provided the required 15 days notice before the dates of the rescheduled meeting and the newly scheduled meetings.

Under Section 303 of the Energy Policy Act of 2005, DOE has one year to complete a proceeding to select sites for expansion and new storage to accommodate the Strategic Petroleum Reserve's authorized volume of one billion barrels, up from the current storage capacity of 727 million barrels. (See *LLQR*, September 2005, page 3.) Accordingly, DOE is planning to issue the draft EIS in February, the final EIS in July, and a record of decision in August 2006.

For additional information, see the project Web site at www.fe.doe.gov/programs/reserves/SPR_Expansion_EIS/expansion_eis.html or contact Donald Silawsky, NEPA Document Manager, Office of Petroleum Reserves, at donald.silawsky@hq.doe.gov or 202-586-1892.



* DOE's NEPA regulations (10 CFR 1021.311(d)) state that "... DOE shall announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the *Federal Register*, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date, or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the *Federal Register* or in other ways as appropriate."

NEPA and the Flooding of New Orleans

In the search for answers to the question why New Orleans flooded after Hurricane Katrina, some observers have pointed to a NEPA lawsuit, *Save Our Wetlands v. U.S. Army Corps of Engineers*. On December 30, 1977, the U.S. District Court for the Eastern District of Louisiana found a 1974 EIS prepared by the U.S. Army Corps of Engineers to be inadequate and enjoined the Corps of Engineers from continuing construction of the hurricane protection project for New Orleans until it issued a revised EIS that satisfied the requirements of NEPA.

The court was critical of modeling used in preparation of the EIS. "As written the EIS actually precludes both public and governmental parties from the opportunity to fairly and adequately analyze the benefits and detriments of the proposed plan and any alternatives to it," the court concluded.

By 1985, the Corps of Engineers had completed a revised EIS that recommended a different alternative than that envisioned in the 1974 EIS. In recent Congressional testimony, the Government Accountability Office (GAO) said, "These changes are not believed to have had any role in the levee breaches recently experienced as the high-level design selected was expected to provide the same level of protection as the original barrier design."

Reviews are ongoing to better understand all the causal factors and identify potential changes to New Orleans' levee system.

The GAO testimony, *Army Corps of Engineers: Lake Pontchartrain and Vicinity Hurricane Protection Project* (GAO-05-1050T, September 28, 2005), discusses the history of the hurricane protection project, which was authorized in 1965. The testimony is available on the GAO Web site at www.gao.gov. 

NCO Served with FEMA in Mississippi

Elizabeth Withers, NEPA Compliance Officer for the Los Alamos Site Office, answered the call from the Federal Emergency Management Agency (FEMA) for Federal agency volunteers to assist in Hurricane Katrina Disaster Relief. In late October, Ms. Withers accepted a 30-day field assignment to work in southern Mississippi. At the Disaster Recovery Center in Beaumont, she assisted county residents in filing claims with FEMA.

After 10-hour days filled with paper, computer, and telephone tasks, she volunteered on her day off with the nearby Best Friends animal humane center. That center was accepting rescued pets from New Orleans, and Ms. Withers soon realized that owner-pet connections could be increased by matching the FEMA database of resident addresses and current telephone numbers to the Best Friends' records of locations where cats and dogs were rescued.

Although we missed Ms. Withers at the NEPA 35 conference, we applaud her work with FEMA.

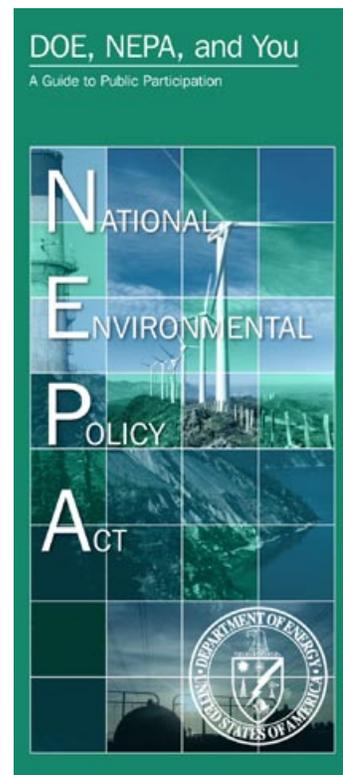


Helping the Public Help Us: *DOE, NEPA, and You: A Guide to Public Participation*

Public participation in the NEPA process works best when the individuals involved understand the purpose of NEPA and are familiar with the procedural steps of the NEPA process, including their opportunities to become involved through activities such as scoping and document review. Seeking to encourage effective public participation, the Office of NEPA Policy and Compliance, in consultation with the Office of Congressional and Intergovernmental Affairs and the Office of the Assistant General Counsel for Environment, developed *DOE, NEPA, and You: A Guide to Public Participation* to provide this information to the public in a concise, reader-friendly form.

This tri-fold brochure, first distributed to the DOE NEPA Community at the *NEPA 35* conference, highlights opportunities for the public to be involved in DOE's NEPA process. It depicts the EIS process graphically and describes each step in the preparation of an EIS. Helpful tips are included, such as "During the scoping process, tell DOE what EIS information you would like to receive (e.g., a summary of the EIS or the full document on CD or on paper)." The brochure's question and answer format also describes environmental assessments and categorical exclusions and directs readers to sources of additional information on DOE's NEPA program.

Designed to fit in a standard #10 envelope, the brochures can be easily distributed by mail or at public meetings or hearings. Bulk copies of the brochure are available to NEPA Compliance Officers, NEPA Document Managers, and Public Affairs officials for use in their public outreach efforts. The brochure also is available electronically on the DOE NEPA Web site at www.eh.doe.gov/nepa under Selected Guidance Tools. To obtain copies, send complete mailing information and number requested to askNEPA@eh.doe.gov. For further information, contact Denise Freeman, Office of NEPA Policy and Compliance, at denise.freeman@eh.doe.gov or 202-586-7879. 



Guidance on EIS Distribution Coming Soon

Have you written an EIS and then wondered whether to print it or issue it on compact disk? Have you been uncertain to whom to send the EIS? Do you understand when and how to "file" the EIS with the U.S. Environmental Protection Agency and what the filing accomplishes?

DOE's Office of NEPA Policy and Compliance is preparing guidance on EIS distribution to help DOE NEPA practitioners, particularly its NEPA Document Managers and NEPA Compliance Officers, in efficient and effective distribution of a draft, final, or supplemental EIS, and other NEPA documents as appropriate. The guidance will present strategies for success, focusing on key elements of initial planning, and will address the opportunities and challenges posed by the electronic age. Templates for EIS distribution-related communications, a timeline of EIS distribution activities, and excerpts from

regulations and other guidance related to EIS distribution will be included in the guidance.

The NEPA Office provided a preliminary draft of the guidance to the DOE NEPA Community for its information in October 2005 and presented key elements of the guidance in one of the training sessions at the *NEPA 35* conference (see page 14). Following minor changes to this early version in December 2005, the NEPA Office will seek comments on the draft guidance from the DOE NEPA Community, including the Offices of the General Counsel, Congressional and Intergovernmental Affairs, and Public Affairs, and plans to then issue the guidance in early 2006. Contact Carolyn Osborne, Office of NEPA Policy and Compliance, at carolyn.osborne@eh.doe.gov or 202-586-4596, with any questions on this guidance effort. 

New DOE NEPA Compliance Guide Issued on Compact Disk

If you attended the NEPA 35 conference, you already have a copy of the November 2005 DOE NEPA Compliance Guide issued by the Office of NEPA Policy and Compliance. Almost all you need to know about NEPA at DOE is at your command on this single compact disk: a compendium of laws, executive orders, regulations, policies, guidance, and other information relevant to NEPA compliance. Replacing the August 1998 edition, the new DOE NEPA Compliance Guide is intended to assist NEPA practitioners by providing a comprehensive reference collection of directives and guidance.

The DOE NEPA Compliance Guide is organized into three volumes.

- *Volume 1: General NEPA References* includes laws, environmental executive orders, Council on Environmental Quality regulations and guidance, and NEPA-related policies from other Federal agencies.
- *Volume 2: DOE NEPA Regulations and Guidance* includes the DOE's regulations, orders, and policy. DOE NEPA guidance is organized by topic: NEPA document preparation, site-wide NEPA reviews, public participation, and other aspects of the NEPA process.



- *Volume 3: Related Environmental Review Requirements* provides regulations for environmental review and consultation requirements – concerning air quality, biota, cultural resources, and land use and special land and water designations – that should, to the fullest extent possible, be conducted concurrently with and integrated with the NEPA process. This is a new volume not included in previous editions of the Guide.

The DOE NEPA Compliance Guide is linked from the main page of the DOE NEPA Web site at www.eh.doe.gov/nepa under NEPA Compliance Guide. Also posted with the Guide is a “Companion to Compact Disk,” which contains the preface and detailed contents of the three volumes.

The DOE NEPA Compliance Guide was distributed at the NEPA 35 conference and is being mailed to members of the DOE NEPA Community. To request (additional) copies of the compact disk, send your complete mailing address to askNEPA@eh.doe.gov. For more information, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE Guidance Documents Updated

Two DOE guidance documents were updated in October 2005 for inclusion in the new DOE NEPA Compliance Guide. These two references are quite useful, although they may have a low profile within the DOE NEPA Community. The NEPA Office encourages NEPA practitioners to reacquaint themselves with *The Environmental Style* (Volume 2: 2-12) and *Mini-Guidance Articles from Lessons Learned Quarterly Reports* (Volume 2: 5-7).

The Environmental Style

Both General Counsel and NEPA Office staff seek clarity in DOE's EAs and EISs. “Our NEPA documents must be well reasoned and well written,” advises R.P. (Paul) Detwiler, Deputy General Counsel, National Nuclear Security Administration (formerly of the Office of Assistant General Counsel for Environment), in his newly revised *The Environmental Style: Writing Environmental Assessments and Impact Statements*.

In this 11-page guide, he provides suggestions for presenting the required content of an EA or EIS and addresses word usage practices that cause recurring problems in NEPA documents. For example, he advises writers to avoid “freight trains” of three or more nouns and adjectives – a hallmark of technical jargon. *The Environmental Style* serves as a good companion to the *Green Book* as a practical guide to writing readable NEPA documents.

More Mini-Guidance

On occasion, *LLQR* includes articles that contain procedural interpretations and recommendations developed by the Office of NEPA Policy and Compliance in consultation with the DOE NEPA Community, including the Office of the Assistant General Counsel for Environment. These mini-guidance articles address problems identified in the course of preparing, reviewing, and issuing NEPA documents – often in response to specific requests from DOE's diverse group of NEPA practitioners.

The Office of NEPA Policy and Compliance has updated the collection of *Mini-guidance Articles from Lessons Learned Quarterly Reports* to now include those from December 1994 to September 2005. (The previous edition was issued in November 2000.)

Nature of Comments on Draft EIS Allows Comment-Response Addendum as Final EIS

DOE received three oral comments at one of two public hearings and six comment letters as a result of a recent 45-day public comment period for the *Bangor Hydro-Electric Company Northeast Reliability Interconnect Draft EIS* (DOE/EIS-0372). Although the small number of comments received is noteworthy for an EIS, it was the nature of the comments and responses needed that was the critical factor in allowing DOE to prepare a Comment-Response Addendum for the Draft EIS, rather than rewriting it as a Final EIS.

Bangor Hydro-Electric Company has applied to DOE for an amendment to a Presidential permit for a 345-kilovolt electric transmission line from near Bangor, Maine, to cross the international border near Baileyville, Maine, where the line would connect to electric transmission facilities in New Brunswick, Canada. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service were cooperating agencies in DOE's preparation of the EIS. Comments received included corrections of species and wetlands locations, and requests for more information on mitigation actions committed to by the applicant and on the rationale for DOE's preferred alternative.

Responses Limited to Factual Corrections, Clarifications

Under the Council on Environmental Quality regulations (40 CFR 1503.4) if changes in a draft EIS in response to comments are minor and confined to making factual corrections and explaining why the comments do not warrant further agency response, agencies may write the responses on errata sheets and attach them to the draft EIS instead of rewriting it. In such cases only the comments,

the responses, and the changes and not the final statement need be distributed. However, the entire document with a new cover sheet is to be filed with EPA as the final EIS.

It is worthwhile to consider whether the nature of comments received on an EIS would allow a comment-response addendum to be prepared, as this approach to a final EIS can save time and money, by avoiding both rewriting the draft EIS and printing the rewritten EIS for distribution to the public.

However, while the potential to save time and money in final EIS preparation is tempting, undue focus on trying to follow the comment-response addendum approach for some situations can be counterproductive. For example, if indeed responses are simple corrections and clarification, but the number of responses is so voluminous that errata apply to most of the pages, the EIS would be rendered unreadable and preparation of a comment-response addendum would be inappropriate.

DOE has rarely issued a comment-response addendum, rather than rewriting the draft EIS. Two such cases were for Hanford EISs: *Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, WA* (DOE/EIS-0119, 1991) and *Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, WA* (DOE/EIS-0245, 1996). A third was for *Sale of Naval Petroleum Reserve No.1 (Elk Hills), Kern County, CA, Supplemental EIS/Program Environmental Impact Report* (DOE/EIS-0158-S2, 1997).

For information on the Bangor Hydro-Electric EIS, contact Jerry Pell, NEPA Document Manager, at jerry.pell@hq.doe.gov or 202-586-3362. 

Minerals Management Service to Complete EIS on Offshore Wind Park



Based on expanded authority provided in the Energy Policy Act of 2005, the Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, has replaced the U.S. Army Corps of Engineers as lead agency for preparing an EIS on the Cape Wind Project. The proposed 454-megawatt wind-powered electrical generating facility, located on Horseshoe Shoals in Nantucket Sound, Massachusetts, could be the first offshore wind energy project in Outer Continental Shelf (OCS) waters, and has been featured in two previous *LLQR* articles.

The Corps of Engineers began work on the EIS following receipt of an application by Cape Wind Associates, LLC, for the project in November 2001 and issued a Draft EIS in November 2004. (See *LLQR*, December 2004, page 10.) MMS was one of 17 cooperating agencies in preparing the Draft EIS. DOE also was a cooperating agency, with the Office of Energy Efficiency and Renewable Energy providing technical support. The Corps of Engineers accepted public comments on the Draft EIS through February 24, 2005.

The Corps of Engineers received more than 5,000 comments on the Draft EIS, including from the Department of the Interior. Many comments challenged the adequacy of the EIS scope and analysis and recommended issuance of a revised Draft EIS. The U.S. Environmental Protection Agency rated the document as “inadequate,” citing concerns about the range of alternatives considered and the analysis of avian and other impacts. (See *LLQR*, June 2005, page 11.)

MMS will build upon the analysis conducted by the Corps of Engineers and plans to issue its own Draft EIS in spring 2006. First, MMS expects to publish a notice in the *Federal Register* this month to solicit additional public comments. MMS will address any additional comments received and incorporate data collected by the applicant over the past year in its Draft EIS. Among the issues MMS has identified for additional analysis are newly identified alternatives to the proposed action, air emissions from construction activities, operational safety,

and long-term monitoring through decommissioning. In addition, according to MMS Environmental Division staff, MMS will apply principles of adaptive management to the Draft EIS in keeping with the agency’s cradle-to-grave management approach. For example, MMS will explore the monitoring of avian impacts to help assess any appropriate mitigation opportunities.

Congress Expands MMS Authority

Since its establishment in 1982, MMS has been responsible for managing natural gas, oil, and other mineral activities on offshore Federal lands, including the OCS. The Energy Policy Act of 2005 expands this authority to include activities that would “produce or support production, transportation, or transmission of energy from sources other than oil and gas.” (See Section 388 of the Act, available at www.gpoaccess.gov/plaws by searching for “Pub.L. 109-058”.)

This change makes MMS the lead Federal agency for permitting the Cape Wind Project, as well as other offshore wind energy projects under Federal jurisdiction, including the proposed Long Island (New York) Offshore Wind Park (www.lipower.org/cei/offshore.html). This Park would consist of 40 offshore wind turbine generators with a combined generating capacity of about 140 megawatts and be located 3.7 miles southeast of Jones Beach State Park. MMS plans to begin the scoping process for this project in January 2006.

The Energy Policy Act directs MMS to issue regulations by May 2006, as necessary to carry out its new responsibilities.

Additional information on MMS’s renewable energy projects is available on the Web at www.mms.gov/offshore/RenewableEnergy/RenewableEnergyMain.htm. For more information on the Cape Wind EIS, contact Rodney Cluck, MMS Environmental Division, at rodney.cluck@mms.gov or 703-787-1087.

Additional Information on Offshore Wind Power

- DOE Office of Energy Efficiency and Renewable Energy Web site (www.eere.energy.gov) under Wind & Hydropower Technologies Program.
- *A Framework for Offshore Wind Energy Development in the United States*, a report issued in September 2005 by the Massachusetts Technology Collaborative (a state agency), DOE, and GE, available on the Web at www.mtpc.org/offshore/final_09_20.pdf.



Litigation Updates

DOE NEPA Litigation in Brief

Border Power Plant Working Group v. Department of Energy et al. (S.D. Calif.): The plaintiffs allege that DOE and the Bureau of Land Management violated the Clean Air Act and NEPA in an *EIS for the Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004), prepared after the court found the agencies' 2001 EA inadequate. After a conference with a magistrate to explore the possibilities for settlement failed to lead to such discussions, the court scheduled a case management conference for February 17, 2006. A hearing on the intervenor utilities' pending motion to dismiss the Clean Air Act claim is scheduled for January 23, 2006. (See *LLQR*, September 2005, page 25; June 2004, page 16; December 2003, page 7; and September 2003, page 22. This case was previously cited as *Border Power Plant Working Group v. Abraham et al.*) [Case No.: 02-CV-513]

Center for Biological Diversity et al. v. Department of Energy et al. (N.D. Calif.): A hearing is scheduled for March 2, 2006, on the plaintiffs' claim that 15 government agencies are not in compliance with various alternative fuel vehicles purchasing and reporting requirements contained in the Energy Policy Act of 1992. The complaint states that DOE violated NEPA when it promulgated a rule in which it determined not to adopt "a regulatory requirement that owners and operators of certain private and local government fleets acquire alternative fueled vehicles" (69 FR 4219; January 29, 2004). (See *LLQR*, June 2005, page 23.) [Case Nos.: 02-00027 and 05-01526]

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The court granted the Government's request for an extension until December 7, 2005, to answer the plaintiff's complaint that DOE is in violation of NEPA and a stipulation settling a prior lawsuit. The plaintiffs claim DOE segmented the analysis of the proper response to the waste at the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): The plaintiffs

allege that DOE's cleanup activities at the Energy Technology Engineering Center (ETEC) are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. The lawsuit challenges the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated finding of no significant impact. The EA sets forth a path to remediate and close ETEC. (See *LLQR*, December 2004, page 16.) Parties engaged in settlement negotiations under the court's Alternative Dispute Resolution program but were unable to reach an agreement. The case will be referred back to the court. [Case No.: 04-04448]

State of Washington v. Department of Energy (E.D. Wash.): Parties are to submit a joint status report to the court by January 10, 2006. The court has granted an extension of the discovery period until January 12, 2006. (See *LLQR*, September 2005, page 24.) [Case No.: 03-5018]

State of Nevada v. Department of Energy (D.C. Cir.): This case involves the State of Nevada's challenge to DOE's record of decision on the mode of transportation and selection of the Nevada rail corridor for use in the disposal of spent nuclear fuel and high-level nuclear waste at Yucca Mountain. (See *LLQR*, December 2004, page 17.) Oral argument was held October 18, 2005. The case is fully briefed, and DOE is awaiting the court's ruling. [Case No.: 04-1082]

Touret et al. v. NASA et al. (D. R.I.): The plaintiffs filed a motion on November 21, 2005, to supplement the Administrative Record. Defendants NASA and DOE have until December 12, 2005, to file a response. The plaintiffs, individuals living near Brown University, allege that the *Environmental Assessment for the Partial Funding of a Proposed Life Sciences Building at Brown University, Providence, Rhode Island* (NASA/03-GSFC-02/DOE/EA-1473, July 2003) is inadequate and that an EIS is required. DOE was a cooperating agency in preparation of the EA. [Case No.: 04-00198]

Training Opportunities

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

- **FED104: Cumulative Impacts Assessment**

Washington, DC: January 17-19

No fee

Environmental Protection Agency
Office of Federal Activities
202-564-7164
totten.arthur@epa.gov
www.netionline.com

- **OEJ901: Introduction to Environmental Justice**

Web-based: Various times

No fee

Environmental Protection Agency
Office of Federal Activities
202-564-2606
ali.mustafa@epa.gov
www.netionline.com

- **Reviewing NEPA Documents**

Logan, UT: December 7-9

Fee: \$885 (GSA contract: \$795)

Las Vegas, NV: March 13-15

Fee: \$885 (GSA contract: \$795)

until March 3

- **NEPA Effects Analysis and Documentation**

Las Vegas, NV: December 13-15

Fee: \$885 (GSA contract: \$795)

San Diego, CA: February 7-9

Fee: \$830 (GSA contract: \$745)

until December 7

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Las Vegas, NV: January 24-27

Fee: \$1,110 (GSA contract: \$995)

until January 14

Salt Lake City, UT: March 27-29

Fee: \$835 (GSA contract: \$745)

until December 6

- **Overview of the NEPA Process Environmental Compliance Overview**

Phoenix, AZ: February 7-9

Fee: \$835 (GSA contract: \$745)

until December 7

- **Emergency Actions and NEPA**

Houston, TX: March 7-9

Fee: \$835 (GSA contract: \$745)

until January 7

- **Reviewing NEPA Documents/ NEPA Writing Workshop**

Las Vegas, NV: March 13-17

Fee: \$1,210 (GSA contract: \$1,095)

until March 3

- **NEPA Writing Workshop**

Las Vegas, NV: March 16-17

Fee: \$660 (GSA contract: \$595)

until March 6

- **Cumulative Impact Analysis and Documentation**

Salt Lake City, UT: March 30-31

Fee: \$635 (GSA contract: \$565)

until December 9

- **Clear Writing for NEPA Specialists**

Salt Lake City, UT: April 3-5

Fee: \$835 (GSA contract: \$745)

until January 3

The Shipley Group

888-270-2157 or 801-298-7800

shipley@shipleygroup.com

www.shipleygroup.com

- **NEPA Certificate Program**

Conducted through Utah State University.

Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later may be applied toward the certificate. Also requires completion of course exams and a final project.

Fee: \$4,955 (includes tuition, course fees, and all materials)

Natural Resources and

Environmental Policy Program

Utah State University

435-797-0922

judy.kurtzman@usu.edu

www.cnr.usu.edu/policy/nepa.html

Training Opportunities

(continued from previous page)

- **Socioeconomic Impact Analysis Under NEPA**

Durham, NC: February 15-17

Fee: \$750

- **Implementation of the National Environmental Policy Act**

Durham, NC: March 13-17

Fee: \$1,100

- **Accounting for Cumulative Effects in the NEPA Process**

Durham, NC: April 5-7

Fee: \$750

Nicholas School of the Environment
and Earth Sciences

Duke University

919-613-8082

del@nicholas.duke.edu

www.env.duke.edu/del/continuinged/courses.html

- **Certificate in the National Environmental Policy Act**

Requires successful completion of one core and three elective Duke University NEPA short courses. A paper also is required. Previously completed courses may be applied toward the certificate. Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses.

del@nicholas.duke.edu

www.env.duke.edu/del/continuinged/certificates.html

- **National Environmental Policy Act From Nuts and Bolts to New Legislation—Everything You Need to Know**

Tampa, FL: January 20

Fee: \$395 (GSA contract: \$345)

- **NEPA: Your Definitive and Practical Guide**

Tucson, AZ: January 20

Fee: \$395 (GSA contract: \$345)

- **NEPA—National Environmental Policy Act Turning Complexities Into Strategies**

San Francisco, CA: February 13

San Diego, CA: March 17

Fee: \$495 (GSA contract: \$445)

Continuing Legal Education (CLE)

800-873-7130

www.cle.com

- **NEPA Toolbox™ Training**

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

Environmental Training & Consulting
International, Inc.

503-274-1790

info@envirotrain.com

www.envirotrain.com

- **Environmental Impact Training**

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

Environmental Impact Training

830-596-8804

info@eiatraining.com

www.eiatraining.com

EAs and EISs Completed July 1 to September 30, 2005

EAs

Naval Petroleum and Oil Shale Reserves/

Office of Fossil Energy

DOE/EA-1544 (8/1/05)

Salt Creek 3D Project, Naval Petroleum Reserve #3 (NPR-3), Wyoming

Cost: EA was adopted from the Bureau of Land Management; therefore, no funds were needed to complete this EA.

Time: 3 months

Pantex Site Office/

National Nuclear Security Administration

DOE/EA-1533 (8/30/05)

Proposed Gas Main and Distribution System Upgrade for Pantex Plant, Amarillo, Texas

Cost: \$100,000

Time: 7 months

Western Area Power Administration

DOE/EA-1395 (8/24/05)

Right-of-Way Maintenance in the California Sacramento Valley, Sacramento, California

Cost: \$422,000

Time: 55 months

DOE/EA-1524 (7/25/05)

East Side Peaking Project, South Dakota

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

Time: 5 months

DOE/EA-1542 (8/26/05)

Burleigh County Wind Energy Project, North Dakota

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

Time: 1 month

EISs

Bonneville Power Administration

DOE/EIS-0353 (70 FR 48704, 8/19/05)

(EPA Rating: LO)

South Fork Flathead Watershed Westslope Cutthroat Trout Conservation Project, Montana

Cost: \$56,000

Time: 27 months

Office of Environmental Management/

Grand Junction Office

DOE/EIS-0355 (70 FR 45389, 8/5/05)

(EPA Rating: EC-2 for preferred alternative)*

Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah

Cost: \$3,282,000

Time: 32 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.)

* See LLQR, June 2005, page 8, for EPA ratings of the other alternatives.

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median and average costs of 2 EAs for which cost data were applicable were \$261,000.
- Cumulatively, for the 12 months that ended September 30, 2005, the median cost for the preparation of 19 EAs for which cost data were applicable was \$60,000; the average was \$105,000.
- For this quarter, the median completion time for 5 EAs was 5 months; the average was 14 months.
- Cumulatively, for the 12 months that ended September 30, 2005, the median completion time for 26 EAs was 7 months; the average was 13 months.

EIS Costs and Completion Times

- For this quarter, the median and average costs of 2 EISs for which cost data were applicable were \$1,700,000.
- Cumulatively, for the 12 months that ended September 30, 2005, the median cost for the preparation of 3 EISs for which cost data were applicable was \$3,300,000; the average was \$2,800,000.
- For this quarter, the median and average completion times for 2 EISs were 30 months.
- Cumulatively, for the 12 months that ended September 30, 2005, the median completion time for 5 EISs was 32 months; the average was 30 months.

Recent EIS-Related Milestones (September 1 to November 30, 2005)

Notices of Intent

National Nuclear Security Administration/ Los Alamos National Laboratory

DOE/EIS-0388

Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, New Mexico

November 2005 (70 FR 71490, 11/29/05)

National Nuclear Security Administration/ Y-12 National Security Complex

DOE/EIS-0387

Site-wide Environmental Impact Statement for the Y-12 National Security Complex, Oak Ridge, Tennessee

November 2005 (70 FR 71270, 11/28/05)

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0386

Designation of Energy Corridors on Federal Land in the 11 Western States

September 2005 (70 FR 56647, 9/28/05)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0382

Mesaba Energy Project Integrated Gasification Combined Cycle (IGCC) Demonstration Plant Northern Minnesota Iron Range, Itasca County, Minnesota

October 2005 (70 FR 58207, 10/5/05)

Office of Fossil Energy/

Strategic Petroleum Reserve Office

DOE/EIS-0385

Site Selection for the Expansion of the Strategic Petroleum Reserve, Louisiana, Mississippi, and Texas
September 2005 (70 FR 52088, 9/1/05)

[DOE issued two additional notices. The first extended the scoping period (70 FR 56649), and the second reopened the scoping period to consider an additional site (70 FR 70600). See related article, page 30.]

Draft EIS

Western Area Power Administration

DOE/EIS-0358*

Construction and Operation of the Proposed Wellton-Mohawk Generating Facility, Yuma County, Arizona
October 2005 (70 FR 42318, 7/22/05)

Final EIS

Office of Fossil Energy

DOE/EIS-0372

Presidential Permit Application, Northeast Reliability Interconnect (Bangor Hydro-Electric), Bangor, Maine
November 2005 (70 FR 71139, 11/25/05)

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (September 1 to November 30, 2005)

(continued from previous page)

Records of Decision

Bonneville Power Administration

DOE/EIS-0183

Business Plan: Goodhoe Hills and White Creek Wind Energy Projects, Klickitat County, Washington
November 2005 (70 FR 71113, 11/25/05)

National Nuclear Security Administration/ Lawrence Livermore National Laboratory

DOE/EIS-0348 and DOE/EIS-0236-S3

Final Site-wide Environmental Impact Statement for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic Environmental Impact Statement, Alameda County and San Joaquin County, California
November 2005 (70 FR 71491, 11/29/05)

Office of Environmental Management/ Grand Junction Office

DOE/EIS-0355

Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah
September 2005 (70 FR 55358, 9/21/05)

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0200

Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste
October 2005 (70 FR 60508, 10/18/05)

[Regarding Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio; see DOE/EIS-0200-SA-02, next page.]

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program Environmental Impact Statement (DOE/EIS-0246)

DOE/EIS-0246-SA-48*

Sand Creek Property Transfer, Bonner County, Idaho
(No further NEPA review required)
August 2005

Watershed Management Program Environmental Impact Statement (DOE/EIS-0265)

DOE/EIS-0265-SA-224*

Protect and Enhance John Day Anadromous Fish Habitat - Oxbow Mine Tailings Restoration, Grant County, Oregon
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-225*

North Fork John Day Anadromous Fish Habitat Enhancement Project, Grant and Umatilla Counties, Oregon
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-226*

Satus Creek Watershed Restoration Project, Yakama Reservation, Washington
(No further NEPA review required)
August 2005

DOE/EIS-0265-SA-227

Tucannon River Model Watershed-Broughton Land Company Irrigation Efficiency/Flow Enhancement, Columbia County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-228

Tucannon River Model Watershed - Hovrud Irrigation Efficiency/Flow Enhancement, Columbia County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-229

Implement Fisheries Enhancement Opportunities on the Coeur d'Alene Reservation (2006 SOW), Coeur d'Alene Indian Reservation, Benewah County, Idaho
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-230

Yakima Tributary Access and Habitat Program - South Fork Cowiche Creek - Thornton Property, Yakima County, Washington
(No further NEPA review required)
September 2005

(continued on next page)

* Not previously reported in LLQR

Recent EIS-Related Milestones (September 1 to November 30, 2005)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-231

Yakima Tributary Access and Habitat Program - Garretson Fish Passage and Screening - Cowiche Creek, Yakima County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-232

Tucannon River Model Watershed - Turner Farms Alternative Livestock Watering Project, Columbia County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-233

Twisp/Methow Salmon Recovery Foundation (MSRF) Side Channel Reconnection Project - Phase 1, Okanogan County, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-234

Ahtanum Creek Watershed Restoration Project, Yakama Reservation, Washington
(No further NEPA review required)
September 2005

DOE/EIS-0265-SA-235

Haskill Creek Restoration Project, Whitefish, Flathead County, Montana
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-236

Chewuch Diversion Dam Fish Passage Renovation Project, Okanogan County, Washington
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-237

Marracci/WDFW (Washington Dept. of Fish and Wildlife) Diversion Dam Fish Passage Renovation and Ditch Piping Project, Twisp and Okanogan County, Washington
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-238

Walla Walla River Basin Fish Habitat Enhancement, Walla Walla County, Washington
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-239

Protect and Restore the Lapwai Creek Watershed, Nez Perce Reservation, Nez Perce County, Idaho
(No further NEPA review required)
October 2005

DOE/EIS-0265-SA-240

Yakima Tributary Access and Habitat Program - Wilson Creek - Eaton Property Instream Habitat Improvements, Kittitas County, Washington
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-241

Idaho Model Watershed Projects for FY05, Lemhi County, Idaho
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-242

SWSC-01, Warm Springs - Fish Screen, Custer County, Idaho
(No further NEPA review required)
November 2005

DOE/EIS-0265-SA-243

Yakima Tributary Access and Habitat Program - Snow Mountain Ranch - South Fork Cowiche Creek Dam Removal and Creek Restoration, Yakima County, Washington
(No further NEPA review required)
November 2005

Office of Environmental Management

Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/EIS-0200)

DOE/EIS-0200-SA-02

Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio
(No further NEPA review required)
September 2005 (70 FR 53353, 9/8/05)
[See related Amended Record of Decision, previous page.] 

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 July 1 and September 30, 2005.

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

Scoping

What Worked

- *Communication.* Quarterly public and cooperating agency meetings kept all informed of progress.
- *Meetings with cooperating agencies.* Areas of analytical disagreement and consequences of differing opinions were formally identified.
- *Coordination and communication with interested parties.* Coordination and communication with tribes, property owners, and agencies prior to beginning the NEPA process improved awareness of the project.
- *Sensitivity to tribal cultures.* When planning a public hearing on a Native American Reservation, be aware of the cultural sensitivities of that particular tribe. Be prepared to adapt to tribal customs. The local DOE Tribal liaison should be present at all Native American interactions.
- *Poster session.* Because public outreach was minimal and the emotional fervor against the proposed action was elevated, we found it helpful to have a public meeting format that provided an informal component such as an upfront poster session.
- *Education.* The focus of the public meeting was more on the educational aspect of the program to avoid an "us versus them" scenario.

Data Collection/Analysis

What Worked

- *Agency interest.* Twelve cooperating agencies were vested in supplying data.
- *Early data collection.* The proponent collected a great deal of data prior to the NEPA process, helping DOE expedite EA completion.

What Didn't Work

- *Old records.* Data collection was more difficult and time consuming than expected. Since this was a unique project, we used approaches that we had not used before. Some of the research material dated back to the 1940s and 1950s. Also, there were land use searches involving the county courthouse.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Secretarial priority and real time involvement.* Secretarial priority and real time involvement of all field and Headquarters personnel helped facilitate the timely completion of the EIS.
- *Constant communication.* Maintaining good communication between the project contacts and the NEPA team was very advantageous to the EA process.
- *Management involvement.* Strong commitment from management and proponents facilitated timely completion of the EA.
- *Team member participation.* Meetings were held with participation from the project team, NEPA team, and DOE NEPA Compliance Officer. There were no surprises during any version of the EA, and the finding of no significant impact was signed without major delay.

Factors that Inhibited Timely Completion of Documents

- *Unrealistic deadline.* The completion deadline was overly ambitious.
- *Level of NEPA review.* The NEPA documentation for this project could have been approved at a lower level of documentation (i.e., categorical exclusion rather than an EA) and completed earlier.

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What Worked and Didn't Work

(continued from previous page)

Teamwork

Factors that Facilitated Effective Teamwork

- *Management commitment.* Management commitment to the project made resources available.
- *Frequent communication.* Frequent communication helped facilitate effective teamwork.
- *Team meetings.* Meetings were held as necessary to discuss issues as they arose. The EIS preparation team made joint decisions and changes as appropriate.

Factors that Inhibited Effective Teamwork

- *Management changes.* There were several changes in management at the Field Office and Headquarters over the life of the project.
- *Failure to involve Headquarters.* Failure to routinely and actively involve the Office of Environment, Safety and Health and the Office of the General Counsel delayed EIS approval.

Process

Successful Aspects of the Public Participation Process

- *Frequent public meetings.* Quarterly public meetings kept the public informed and aided the Department's credibility.

Unsuccessful Aspects of the Public Participation Process

- *Failure to identify preferred alternative.* Failure to identify a preferred alternative in the draft EIS challenged the Department's credibility and markedly increased the number of comments on the draft EIS.
- *Lengthy decision process.* The public was dissatisfied with the length of the Federal government's decision process.

- *Late public notification.* Although public participation was successful in the EA notification phase, it should have been done much earlier than it was.
- *No public feedback.* We had no feedback from the public on the EA process.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *Influence on decisionmaking.* The EIS process helped to promote informed and sound decisionmaking. Public comments on the draft EIS clearly influenced DOE's decision.
- *Planning process.* The NEPA planning process assisted in ensuring a better project.
- *Environmental issues brought to light.* The NEPA process identified several environmental issues that had not been considered by the project people. These issues were addressed in the EA, and mitigation was proposed, including the timing for part of this project, that would avoid adverse impacts.
- *Use of M&O contractor.* Costs were kept to a minimum by using the M&O contractor's NEPA team to prepare the EA as part of its regular duties.
- *Use of Federal staff.* The EIS was prepared mostly "in house," which kept the costs down.

What Didn't Work

- *Better criteria needed.* Better criteria should be used for including or excluding cooperating agencies. Better criteria also should be used for eliminating alternatives from further consideration once identified in a notice of intent.
- *Delay to consider new alternative.* There was a six-month delay during completion of the draft EIS to consider a new alternative that DOE ultimately determined was not reasonable.

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What Worked and Didn't Work

(continued from previous page)

Enhancement/Protection of the Environment

- *Reduced risk.* The outcome of the EIS was that long-term risk to the environment will be significantly reduced.
- *Enhanced environment.* Two commentors noted that the environment was protected as a result of the EA process.

Effectiveness of the NEPA Process

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

For the past quarter, in which 3 questionnaire responses were received for EAs and EISs, 3 out of 3 respondents rated the NEPA process as “effective.”

- A respondent who rated the process as “5” stated that without the draft EIS and public comment, the ROD would have been different.
- A respondent who rated the process as “4” stated that, although it appeared a decision had been made about the project, the EA brought out environmental issues and assisted decisionmakers on location and timing for the project, based on input from the environmental resources subject matter experts.
- A respondent who rated the process as “3” stated that project proponents understood agency requirements and presented a project that would meet criteria. **LL**