

LESSONS LEARNED

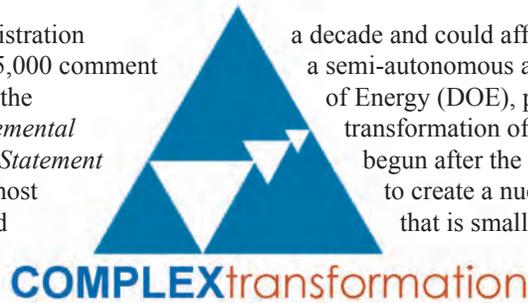
March 3, 2008; Issue No. 54

First Quarter FY 2008

Programmatic EIS on Nuclear Weapons Complex Draws National Interest, Many Comments

The National Nuclear Security Administration (NNSA) has already received about 35,000 comment documents, most via email, regarding the *Draft Complex Transformation Supplemental Programmatic Environmental Impact Statement* (SPEIS; DOE/EIS-0236-S4). With almost half the 90-day public comment period remaining, “We expect comments from thousands more people,” said Ted Wyka, Complex Transformation SPEIS Document Manager. NNSA published a notice of availability for the Draft SPEIS on January 11, 2008 (73 FR 2023), and the public comment period continues through April 10, 2008.

The SPEIS represents the first nationwide review of alternatives for the nuclear weapons complex in more than



a decade and could affect facilities in six states. NNSA, a semi-autonomous agency within the Department of Energy (DOE), proposes to continue the transformation of the nuclear weapons complex begun after the end of the Cold War in order to create a nuclear weapons infrastructure that is smaller, safer, more secure, and less expensive to operate.

“I feel a sense of urgency,” said Thomas P. D’Agostino, NNSA Administrator, in releasing the Draft SPEIS. “We must act now to adapt for the future security needs of the country, and stop pouring money into an old, Cold War-era nuclear weapons complex that is too big, too expensive, and doesn’t offer updated and safer ways of maintaining our nuclear stockpile.”

(continued on page 3)



*Dinah Bear, General Counsel
Council on Environmental Quality*

Two of NEPA’s Best Retire
See pages 16 and 17 for more . . .

*Anne Norton Miller, Director
Office of Federal Activities
Environmental Protection Agency*



Inside **LESSONS LEARNED**

Welcome to the 54th quarterly report on lessons learned in the NEPA process. As noted in articles on recently issued DOE EISs (Complex Transformation, Yucca Mountain Repository and Railroad, and Western Energy Corridors), DOE has received and is responding to extensive public comment. This issue also pays tribute to two women who have made extraordinary contributions to NEPA implementation. As always, we welcome your suggestions for further improvement.

Restructured Approach to FutureGen	4
Yucca Mountain Final EISs on Track	5
Highly Enriched Uranium Disposition Supplement Analysis.....	6
DOE 2007 Cooperating Agency Report	7
CEQ <i>Citizen's Guide</i> Enhances Public Involvement	8
CEQ Workshop Focuses on Collaboration in NEPA.....	10
DOE Loan Guarantee Applicants Briefed on NEPA.....	11
Corridor Designations under Energy Policy Act of 2005	12
Outer Continental Shelf Program EIS	13
Cape Wind Energy Project Draft EIS	14
<i>Public Connect</i> Online Public Comment System	15
Transitions	16
Litigation Updates.....	19
Training Opportunities	21
EAs and EISs Completed This Quarter.....	23
Cost and Time Facts	24
DOE-wide NEPA Contracts Update.....	24
Recent EIS Milestones	25
First Quarter FY 2008 Questionnaire Results	27

Carol Sorgetron

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 May 1, 2008. Contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326.

Quarterly Questionnaires Due May 1, 2008

Lessons Learned Questionnaires for NEPA documents completed during the second quarter of fiscal year 2008 (January 1 through March 31, 2008) should be submitted by May 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@hq.doe.gov or 202-586-1771.

LLQR Online

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

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This icon indicates that LLQR online (www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports) provides a link to a referenced web page whose URL is too long to be useful when printed.

Upcoming Conferences

- ▶ **Third Annual Tribal Energy Policy Roundtable** – Denver, CO, March 18–20. The International Institute for Indigenous Resource Management will bring together tribal, industry, and government leaders for dialogues examining the emerging environment in which tribal energy and development policies will be made, including climate change and increased global competition for energy resources. More information is available at www.iiirm.org.
- ▶ **Fifth National Conference on Environmental Conflict Resolution** – Tucson, AZ, May 20–22, www.ecr.gov. For additional information, see related article on page 10.
- ▶ The following conferences were described in the December 2007 issue of LLQR. Additional information has since been posted on the respective conference websites.

National Association of Environmental Professionals – San Diego, CA, March 25–28, www.naep.org under Annual Conferences.

State of Environmental Justice in America 2008 – Washington, DC, May 21–24; note new dates, www.ejconference2008.org.

2008 Federal Environmental Symposia – East: Bethesda, MD, June 2–4 and West: Big Sky, MT, June 17–19, www.fedcenter.gov/calendar/conferences/symposium2008. 

Complex Transformation (continued from page 1)

SPEIS Evaluates Programmatic and Project-Specific Alternatives

The Draft Complex Transformation SPEIS analyzes both programmatic and project-specific alternatives. (See *LLQR*, December 2006, page 1, and March 2007, page 3.) The programmatic alternatives involve restructuring major manufacturing and research and development (R&D) facilities that use plutonium and highly enriched uranium to produce nuclear components for the weapons stockpile. These alternatives include combinations of new and existing facilities at Los Alamos National Laboratory (LANL) in New Mexico, the Nevada Test Site in Nevada, the Pantex Plant in Texas, the Savannah River Site in South Carolina, and the Y-12 National Security Complex in Tennessee. The programmatic alternatives also include consolidating storage of significant quantities of plutonium and highly enriched uranium. Implementation of programmatic decisions related to these alternatives could require future site-specific NEPA review.

The most substantial change from the SPEIS as described in the notice of intent (71 FR 61731; October 19, 2006) is the addition of a “Consolidated Centers of Excellence” programmatic alternative, which includes options to locate all major manufacturing functions at either one or two of the five sites. Another major change is the addition of a qualitative discussion of a smaller nuclear weapons stockpile and lower manufacturing capability. In addition, NNSA added an alternative to produce up to 80 plutonium “pits” per year at LANL, which currently is part of NNSA’s preferred alternative. A pit is the core of a nuclear weapon.

Project-specific alternatives in the Draft Complex Transformation SPEIS include the consolidation of R&D and testing facilities for tritium R&D, high explosives R&D, hydrodynamic testing, major environmental testing, flight test operations, and other weapons support functions. These alternatives could affect operations at the five sites evaluated for programmatic alternatives (identified above) and at Lawrence Livermore National Laboratory in California, Sandia National Laboratories in New Mexico and California, the Tonopah Test Range in Nevada, and the Department of Defense’s White Sands Missile Range in New Mexico. NNSA expects that implementation of decisions related to the project-specific alternatives likely would not require additional NEPA reviews.

Web Enhances Information Access

The web is an important part of NNSA’s strategy for facilitating public involvement in the Draft SPEIS.



The Draft Complex Transformation Supplemental Programmatic EIS consists of three volumes totaling about 1,800 pages.

Upon approval of the Draft in December 2007, NNSA announced its plans for public participation and made the Summary of the Draft Complex Transformation SPEIS, as well as several fact sheets, available on its website (www.nnsa.doe.gov/complextransformation.htm). Also, NNSA has since posted the complete Draft SPEIS (except for a classified appendix), most reference documents, and materials prepared for the public hearings on a separate website (www.ComplexTransformationSPEIS.com). Security concerns prevented some reference documents from being made available on the web. Those have been placed in reading rooms around the country, along with a CD of those reference documents available on the web, or are available upon request.

Public Comments by Email and at Hearings

The web also is being used by organizations outside NNSA to encourage public participation in the Draft SPEIS. National and local organizations have generated thousands of email messages from individuals across the country. “We started receiving public comments by email during the first week of the comment period,” said Mr. Wyka. Comments received to date via email primarily express opposition to nuclear weapons.

During February, NNSA held public hearings in South Carolina, Tennessee, and Texas. Total participation ranged from less than 20 people to almost 400, and the number of people providing comments from a dozen to approximately 80. “We begin each hearing with an open house session. Subject matter experts are available near poster displays to answer questions,” said Mr. Wyka. “This allows for productive interaction with the public, thanks to the great support from the local site offices and contractors.”

(continued on page 11)

DOE Announces a Restructured Approach to FutureGen

Following issuance of the FutureGen Final EIS in late 2007, DOE announced a revised (“restructured”) approach to the FutureGen project that aims to demonstrate carbon capture and sequestration (CCS) technology at multiple commercial-scale integrated gasification combined cycle (IGCC) clean coal power plants.

The fundamental goals of the FutureGen project remain the same – to ensure a clean, reliable, and affordable energy future by demonstrating advanced clean coal power plants that capture and sequester carbon dioxide. However, the revised approach, announced in a DOE press release on January 30, 2008, differs from the original FutureGen concept in several ways:

- The original FutureGen project, a \$1 billion Presidential initiative announced in 2003, envisioned a single 275-megawatt (MW) IGCC power plant that would produce electricity and hydrogen, and feature a demonstration of CCS technology.

Under the revised approach, DOE envisions multiple commercial-scale (i.e., at least 300-MW) IGCC plants integrated with CCS technology without hydrogen production.

- The original FutureGen facility was structured as a research and development project.

The revised approach eliminates the “living laboratory” aspects of the project and emphasizes instead early commercial demonstrations of IGCC-CCS technology.

- Under the original approach, DOE would have provided cost shared funding of 74 percent of total project costs.

Under the revised approach, DOE would fund only the incremental cost of CCS technology for a single power train per facility of at least 300 MW.

Cost Concerns

In announcing the revised approach, Secretary of Energy Samuel W. Bodman noted that the total estimated cost of the original FutureGen project had nearly doubled to about \$1.8 billion. “We are eager to demonstrate CCS technology on commercial scale plants that, when operational, will be the cleanest coal-fired plants in the world. Each of these plants will sequester at least one million metric tons of carbon dioxide annually and help

This restructured FutureGen approach is an all-around better investment for Americans.

***– Samuel W. Bodman, Secretary of Energy
January 30, 2008***

meet our nation’s rapidly growing energy demand,” Secretary Bodman said.

Status of the Original FutureGen EIS

DOE issued the Final EIS for the original FutureGen project (DOE/EIS-0394) in November 2007 (*LLQR*, December 2007, page 10). Completed in 16 months at a cost of \$5.2 million, the EIS evaluated four alternative sites to host the FutureGen project. DOE has not issued a Record of Decision to announce its decision on whether to fund the original FutureGen project and, if so, which of the alternative sites, if any, would be acceptable to DOE. However, the FutureGen Industrial Alliance, DOE’s industrial partner for the original FutureGen project, announced in December 2007 that the Alliance had selected the site in Mattoon, Illinois.



*Artist's conception of the original FutureGen project.
(Source: DOE Office of Fossil Energy)*

Next Steps

DOE also issued on January 30, 2008, a Request for Information (RFI) regarding DOE’s plans to restructure the FutureGen project. The RFI summarized key project technical goals (the emissions targets are essentially the same as the original FutureGen project); stated that DOE anticipates that up to \$1.3 billion will be available to fund multiple CCS demonstration projects; and solicited expressions of interest from power producers who would consider participating in the revised FutureGen project. The comment period on the RFI ends March 3, 2008.

According to the RFI, three months after the comment period closes, DOE would issue a competitive Funding Opportunity Announcement and complete evaluation of proposals submitted in response to that Announcement by the end of December 2008. The RFI also states that DOE expects commercial operations could begin in 2015, after completion of the NEPA process.

Further information about the FutureGen project, including a copy of the RFI and DOE’s press release, can be found at www.fossil.energy.gov/programs/powersystems/futuregen. 

Yucca Mountain Final EISs on Track; Rail EIS Adds Cooperating Agencies

After an extraordinary effort enabling the issuance in October 2007 of draft NEPA documents regarding the proposed Yucca Mountain repository in Nevada (*LLQR*, December 2007, page 8), the EIS preparation and review team had little time to catch its breath before tackling the next steps in preparing the final documents.

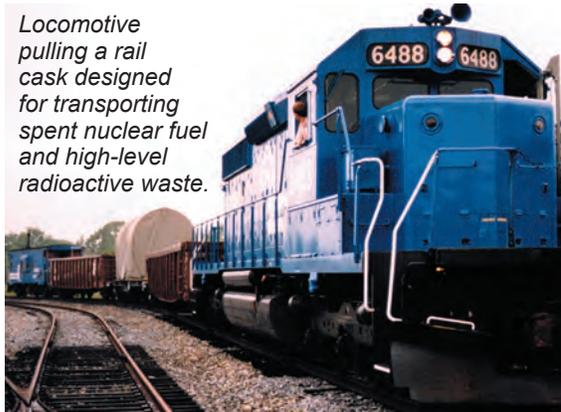
The first step was to plan and conduct integrated public hearings on the Draft Repository Supplemental EIS (SEIS)¹ and Draft Nevada Rail Corridor SEIS/Rail Alignment EIS.² Dr. Jane Summerson, Office of Civilian Radioactive Waste Management, led the DOE team in conducting eight public hearings in California, Nevada, and Washington, DC. Approximately 520 people attended the hearings and 125 people provided oral comments.

The 90-day comment period ended January 10, 2008, and the team is now responding to public comments and preparing the Final EISs. In addition to oral comments provided at the hearings, DOE received nearly 1,100 comment letters. All together, DOE received a total of about 4,000 comments. The Office of Civilian Radioactive Waste Management has posted these comments on its website at www.ocrwm.doe.gov/ym_repository/seis/index_comments.shtml.

Efficient Comment-Response Process

The team is preparing three sets of comment-responses, one each for the Repository SEIS, Nevada Rail Corridor SEIS, and the Rail Alignment EIS. A key step is sorting the comments into the appropriate comment-response set. Because the distribution and public hearing processes for the documents were integrated, some comment documents contained comments that may apply to more than one EIS. To ensure an adequate consideration of comments for each EIS, some comments may be responded to in more than one set of comment-responses (e.g., in cases where a comment may apply to or have been intended for more than one EIS).

Other steps underway include categorizing (“binning”) comments by topic, identifying major issues and frequently recurring topics, and developing proposed responses in coordination with document reviewers. Developing “agreed-upon” responses to these comments has been shown to foster consistency and efficiency in the comment-response process. (See *The EIS Comment-Response Process*, October 2004, page 11, available on



Locomotive pulling a rail cask designed for transporting spent nuclear fuel and high-level radioactive waste.

the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools.)

Cooperating Agencies Add Expertise

Nye County is a cooperating agency for the Repository SEIS (*LLQR*, June 2007, page 10), and the U.S. Air Force, Bureau of Land Management, and Surface Transportation Board are cooperating agencies for the Nevada Rail Corridor SEIS and Rail Alignment EIS.

Recently, in response to a request from Lincoln County, DOE invited the County, as well as three other localities in Nevada (Esmeralda County, Nye County, and the City of Caliente), to participate as cooperating agencies in the Nevada Rail Corridor SEIS and Rail Alignment EIS. Portions of DOE’s preferred rail corridor (the Caliente Corridor) pass through lands within these units of local government. In inviting their participation, DOE recognized their special expertise regarding the relationship of DOE’s proposed action to regional and local interests, such as land use plans, policies, and controls, and current and planned infrastructure (e.g., public services, traffic conditions) in the region.

The preparation team is coordinating with DOE program offices preparing other EISs, including the Global Nuclear Energy Partnership Programmatic EIS and the Greater-Than-Class-C EIS. DOE plans to issue the Yucca Mountain Final EISs in June 2008. For further information, contact Dr. Summerson, NEPA Document Manager and NEPA Compliance Officer, at jane_summerson@ymp.gov or 702-794-1493. **LL**

¹ Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County Nevada (*DOE/EIS-0250F-S1D*) (*Repository SEIS*).

² Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor (*DOE/EIS-0250F-S2*) (*Nevada Rail Corridor SEIS*) and Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada (*DOE/EIS-0369D*) (*Rail Alignment EIS*). (Note: these two EISs are combined in a single document.)

SA Evaluates Highly Enriched Uranium Disposition Impacts

By: Hitesh Nigam, NCO, NNSA Office of Fissile Materials Disposition,
and Robert Hoffman, Science Applications International Corporation

The National Nuclear Security Administration (NNSA) recently completed a Supplement Analysis that served as an effective mechanism to compare actual performance to impact estimates in an existing EIS, as well as to assess proposed changes to an ongoing program. We began preparing the *Disposition of Surplus Highly Enriched Uranium Supplement Analysis* (HEU SA; DOE/EIS-0240-SA1, October 2007) in late 2006 to evaluate the potential impacts of continued implementation of the HEU disposition program. We soon expanded the scope to address new proposals related to the program that could affect environmental impacts.

Our starting point was the analysis in the 1996 *Disposition of Surplus Highly Enriched Uranium EIS* (DOE/EIS-0240), which analyzed alternatives for the disposition of up to 200 metric tons of HEU declared surplus from the weapons program. Disposition options include down-blending HEU (greater than 20% U-235) to low-enriched uranium suitable for fabrication into fuel for commercial reactors (about 3–5% U-235), or to a lower enrichment level (less than 1% U-235) to enable disposal as low-level radioactive waste. The Record of Decision for the HEU EIS (61 FR 40619; August 5, 1996) identified four sites where down-blending would be conducted: NNSA's Y-12 National Security Complex, Oak Ridge, Tennessee; Savannah River Site, Aiken, South Carolina; Babcock and Wilcox, Lynchburg, Virginia; and Nuclear Fuel Services, Erwin, Tennessee. These remain the only facilities appropriate for down-blending.

Focus on Changed Conditions

In comparing the assumptions relied upon for the HEU EIS to current conditions and program plans, we identified five changes that could affect the analysis of potential environmental impacts.

- Increase in the expected average enrichment level of future HEU
- Additional chemical forms of the uranium for down-blending
- Change in the number of workers at the affected sites
- Increase in surrounding (50-mile radius) population at the affected sites
- Change in the DOE-recommended dose conversion factor used to estimate the risk of latent cancer fatalities from radiation exposure (*LLQR*, March 2003, page 9)

We also evaluated three new proposals related to the disposition program: potential new end users (foreign reactor operators as part of NNSA's Reliable Fuel Supply

What Is an SA?

A Supplement Analysis provides the information and analysis to determine whether a supplement to an EIS is necessary to meet the requirements of 40 CFR 1502.9(c). The DOE regulations at 10 CFR 1021.314(c) provide considerable flexibility in preparing SAs. See *Recommendations for the Supplement Analysis Process* (July 2005) on the DOE NEPA website under Selected Guidance Tools, as well as a related article on DOE guidance on preparing SAs (*LLQR*, September 2005, page 6).

Initiative), new disposal pathways (direct disposal as spent nuclear fuel or low-level waste without down-blending), and down-blending additional quantities of HEU.

Next, we completed an initial screening of all resource areas addressed in the HEU EIS to determine which could be affected by these changes. We worked with each site to understand its experience implementing the HEU disposition program to identify potential concerns relative to facility resource requirements, throughputs, and emissions. Based on this screening, we identified the analyses in the HEU EIS warranting evaluation in greater detail: human health risk, facility accidents, transportation risk, and waste management. Also, we evaluated potential impacts from sabotage or terrorist attack in the SA, consistent with DOE guidance issued since completion of the HEU EIS. (See *Need to Consider Intentional Destructive Acts in NEPA Documents* (December 2006), available on the DOE NEPA website under Selected Guidance Tools.)

Based on analyses in the SA, NNSA determined that continued implementation of ongoing disposition activities and the addition of new disposition initiatives would not substantially change the environmental impacts from those described in the HEU EIS. Although some large percentage increases were identified (e.g., a 50 percent increase in risk to workers and a 20 percent increase in risk to the public), the risks remain small in absolute terms. NNSA decided not to issue an amended record of decision based on the SA because ongoing activities are adequately covered by the original record of decision and the new proposed initiatives are not expected to be implemented for many years.

The SA is available on the DOE NEPA website (www.oh.doe.gov/nepa). For further information, contact Hitesh Nigam at hitesh.nigam@nnsa.doe.gov or 202-586-0750. 

Cooperating Agencies Continue to Play Important Role in DOE NEPA Process

More than two-thirds of the EISs listed in DOE's 2007 *Cooperating Agency Report to the Council on Environmental Quality* (CEQ) – 21 out of 30 – were or are being prepared with cooperating agencies. The report, submitted to CEQ on December 28, 2007, covers EISs whose notices of intent were issued on or after October 1, 2005, and that were completed during Fiscal Year 2007 or were still ongoing as of September 30, 2007. For three ongoing EISs, DOE added new cooperating agencies since last year's report. Additionally, 4 of the 22 EAs that DOE completed during Fiscal Year 2007 were prepared with cooperating agencies.

As part of its report to CEQ, each Federal agency must identify the reasons for not establishing cooperating agency status or for terminating an established cooperating agency relationship before completion of a NEPA review. Generally, the DOE EISs without cooperating agencies had no candidates identified with special expertise or jurisdiction by law (40 CFR 1501.6), or the agencies invited as potential cooperating agencies preferred instead to participate informally in the NEPA process, for example, through consulting or commenting. For one DOE EIS, several cooperating agencies ended their formal participation when an alternative that affected their interests was identified as “nonpreferred.”

Recommendation: Identify Cooperating Agencies in an EA

The CEQ NEPA regulations (at 40 CFR 1502.11(a)) specify that an EIS cover sheet shall identify “the lead agency and any cooperating agencies.” While there is no explicit instruction on this matter for an EA, it is appropriate to identify any cooperating agencies on an EA cover or early in the document.

The report was submitted in response to CEQ's ongoing efforts to encourage Federal agencies to involve Federal, state, tribal, and local governmental organizations as cooperating agencies in NEPA reviews, promote early involvement of cooperating agencies, and track such involvement. The CEQ memoranda relating to cooperating agencies may be found in the DOE NEPA Compliance Guide, Volume 1, Section 4-13, at www.eh.doe.gov/nepa under NEPA Compliance Guide. For further information, contact Yardena Mansoor at yardena.mansoor@hq.doe.gov or 202-586-9326. 

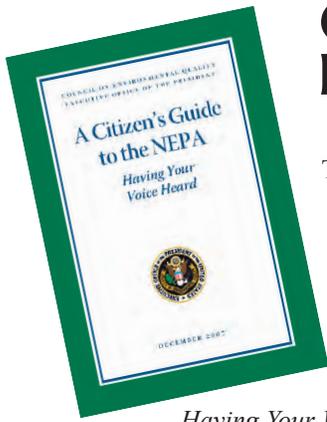
And the winner is . . .

The record-holder for most cooperating agencies in the 2007 DOE Cooperating Agency Report to CEQ is *Designation of Energy Corridors on Federal Land in the 11 Western States*, DOE/EIS-0386, for which DOE is co-lead agency with the Bureau of Land Management. This programmatic EIS has 13 cooperating agencies: 3 Federal agencies, 1 state, 2 state commissions, 3 counties, 3 county conservation districts, and 1 tribe.



NEPA Document Manager Laverne Kyriss (on detail to the Office of Electricity Delivery and Energy Reliability from the Western Area Power Administration) offers advice on coordinating with so many cooperating agencies:

- ✓ Keep cooperating agencies involved in deliberations on policy issues, so they can keep their staffs and decisionmakers informed. This promotes consensus within and among agencies.
- ✓ Address cooperating agency concerns when they are first raised. This is much more efficient than trying to resolve issues just before the draft EIS is completed – or worse, after the draft has been issued for public comment.
- ✓ Build a detailed record of the EIS interagency team's decisions so they do not have to be revisited when a key person retires or moves on to a new job before the EIS is completed.
- ✓ Plan to provide the complete EIS – not just individual EIS sections – to cooperating agencies for internal review before it is issued to the public, so they have an opportunity to evaluate context.



CEQ Issues *Citizen's Guide* To Enhance Public Involvement in NEPA Process

To help individuals and organizations who are concerned about the environmental effects of Federal decisions to participate effectively in the NEPA process, the Council on Environmental Quality (CEQ) has issued *A Citizen's Guide to the NEPA:*

Having Your Voice Heard (December 2007).

Developed by an interagency Work Group, the *Guide* responds to requests from stakeholders.

How Citizen Comments Can Be Effective

The *Citizen's Guide* provides useful suggestions on when and how the public can be involved in the NEPA process. It points out a range of opportunities spanning the entire NEPA process: when an agency promulgates its NEPA procedures, initiates scoping and development of an impact analysis, issues a NEPA document for public review, and monitors decision implementation and mitigation effectiveness.

The *Citizen's Guide* provides advice on making comments that are useful – that is, clear, concise, and relevant – to the agency conducting the NEPA process. Commenting is not a form of “voting,” the *Guide* notes, and “numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively.”

Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project.

– *A Citizen's Guide to the NEPA*

What If Involvement Isn't Going Well?

The *Citizen's Guide* suggests that when public involvement appears insufficient, unconstructive, or contentious, citizens should not wait too long to contact the individual designated by the agency. If further assistance is needed, citizens should consider engaging in collaboration or mediation, such as through the U.S. Institute for Environmental Conflict Resolution, suggests the *Guide* (related article page 10). For citizens seeking information on legal requirements, the *Guide* suggests contacting a lead agency General Counsel, the CEQ Associate Director for NEPA Oversight, a private attorney, or a public interest organization's attorney.

NEPA Orientation Is Provided

Who is responsible for implementing NEPA? To what do the procedural requirements of NEPA apply? When does NEPA apply? Who oversees the NEPA process? For the newcomer to NEPA, the *Guide* opens by answering these questions, summarizing the history and purpose of the Act and its procedures, and orienting the reader to roles and requirements.

In addition, appendices provide information on using the *Federal Register* and CEQ's *NEPAnet*, interpreting the Environmental Protection Agency's EIS rating system, obtaining agency NEPA contact information, and understanding the terms used in CEQ's NEPA regulations.

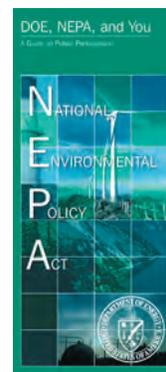
To help readers better navigate through the NEPA process and better understand the roles of the various actors, the *Guide* provides a flowchart that details the steps in the NEPA process (next page).

Promote the *Citizen's Guide*

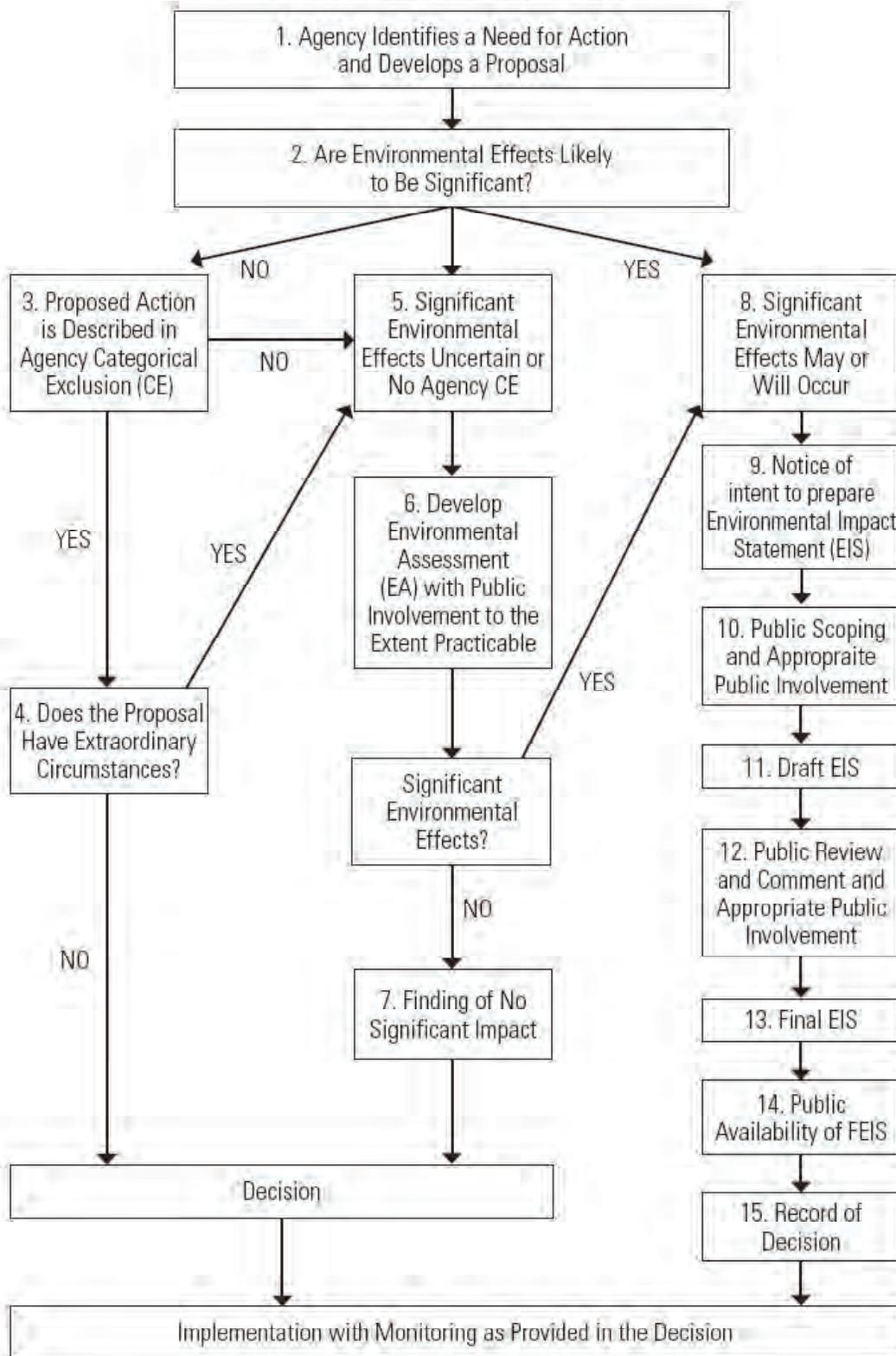
Because the potential benefits to an agency from receiving timely and appropriate information start at scoping, DOE NEPA practitioners should alert stakeholders early to the availability of the *Guide*. Information on how stakeholders can obtain copies could be included in a notice of intent to prepare an EIS and announcements of scoping meetings by directing them to the CEQ and DOE websites (www.nepa.gov and www.eh.doe.gov/nepa under New Guidance Tools, respectively). Copies could also be made available at scoping meetings. Some NEPA Compliance Officers have already printed a supply for their use.

Use the *Guide* as a Complement to “DOE, NEPA, and You” Brochure

DOE NEPA practitioners could also alert stakeholders to DOE's tri-fold brochure *DOE, NEPA, and You: A Guide to Public Participation* at NEPA meetings and hearings to highlight public involvement opportunities in DOE's NEPA process. The brochure is available electronically on the DOE NEPA website at www.eh.doe.gov/nepa under Selected Guidance Tools. For copies of the brochure, send complete mailing information and number requested to askNEPA@hq.doe.gov. For further information on the DOE brochure, contact Denise Freeman, Office of NEPA Policy and Compliance, at 202-586-7879 or denise.freeman@hq.doe.gov. 



The NEPA Process



The Citizen's Guide contains this user-friendly flowchart of possible pathways through the NEPA process, accompanied by an explanation of each decision point and step in the process. The numbers refer to discussion in the Guide.

Need Help Building More Effective Collaboration into the NEPA Process?

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



How can a Federal agency find out which citizens, businesses, governmental agencies, and other groups are interested in a proposed project? How can collaboration help an agency find out about the effects of a proposal on the human environment? How can an agency bring the best science to bear on impacts analysis? What legal or other parameters need to be considered when dealing with various groups? How should an agency plan to resolve differences among various interests?

I joined other agency NEPA liaisons and points of contact for environmental conflict resolution to wrestle with these and other questions at a Council on Environmental Quality (CEQ) Workshop on Collaboration in NEPA on December 5, 2007, in the Washington, DC, area. Divided into small discussion groups, the 60 participants from about 25 agencies shared experiences on the benefits and challenges of collaboration. We then considered the need for and the best way to design collaboration into the NEPA process for two scenarios – a proposal for cell phone tower installation in a park known for sensitive resources, but where some felt the need to report crimes and accidents immediately; and a proposal to replace an historic bridge, revered by local citizens, to accommodate increased tourist traffic. Similar issues were raised among the discussion groups, with particular emphasis on the need for an agency to be transparent, i.e., to be clear on why it wants to collaborate and what possible outcomes it seeks to achieve.

Plan for Collaboration, Conflict Resolution in the NEPA Process¹

 The stage for group discussion was set by review of CEQ's guidance, *Collaboration in NEPA, A Handbook for NEPA Practitioners* (2007),² and the joint Office of  Management and Budget (OMB) and CEQ *Memorandum on Environmental Conflict Resolution* (2005).³ Horst Greczmiel, CEQ Associate Director for NEPA Oversight, emphasized the need to invest resources early in the NEPA process to identify potential information needs and conflicts and then take every opportunity to consult with others to help address them.

The task of dealing with conflicts and hardened positions can be alleviated or avoided by use of a third party, as advocated in the joint OMB and CEQ *Memorandum*, advised Anne Norton Miller, Director of the Office of

Federal Activities, Environmental Protection Agency. U.S. Institute for Environmental Conflict Resolution representatives, Kirk Emerson and Michael Eng, emphasized that use of a third party in collaboration does not mean that an agency cedes its decisionmaking authority.

Manage Expectations in Collaboration

A key lesson for me that came out of workshop discussions is the importance of managing the expectations of those interested in or invited to participate in a NEPA process. Benefits of wide participation in a NEPA process are that an agency may learn all points of view and possibly achieve broad buy-in to the outcome of the NEPA process. It is challenging, however, to both build trust that divergent views are being considered fully and fairly and build acceptance that a lead agency retains decisionmaking authority.

To manage expectations, participants advise an agency to:

- Be transparent, both with other agencies and the public brought into the NEPA process.
- Begin collaboration by defining what the agency can and cannot do when the NEPA process ends.
- Establish ground rules and respective roles for the stakeholders.
- Be clear about who has been “invited to the table” and why.
- Consider separating stakeholder roles relating to process (e.g., how many public meetings to hold) and content (e.g., interpreting analytical results).
- Prioritize requests made of stakeholders, because not all can be involved all the time or on every matter.

Participants acknowledged that interagency Federal collaboration can be as challenging as that with external stakeholders, and the same principles apply. Agencies may differ in basic terminology, internal review and approval practices, and priorities. For example, DOE, the Bureau of Land Management, and the Forest Service dealt with such issues in preparing the Draft Programmatic EIS for designation of energy transport corridors in the Western United States (related article, page 12).

(continued on next page)

¹The June 2007 issue of LLQR focused extensively on collaboration in the NEPA process.

²See LLQR, December 2007, page 14.

³See LLQR, March 2006, page 13.

Collaboration *(continued from previous page)*

Share Experiences, Learn More

CEQ plans to conduct more workshops on collaboration in the NEPA process. In addition, CEQ aims to develop a database of examples – both successes and failures – to help all agencies understand what works and does not work and why, so that more can succeed in collaborative efforts. Part of this database will be based on agencies' annual reports to OMB and CEQ on environmental conflict resolution activities (required by the 2005 *Memorandum* referred to above) (related article, page 7).

A near-term opportunity to learn more about collaboration in the NEPA process is offered by the U.S. Institute for

Environmental Conflict Resolution at its Fifth Annual National Conference, May 20–22, 2008, in Tucson, Arizona. The Institute is an independent, neutral entity chartered by Congress to help citizens and representatives of Federal agencies find common ground in environmental disagreements (*LLQR*, December 2005, page 9). The Institute will sponsor training workshops and breakout sessions related to NEPA and conflict resolution, including “Collaboration in NEPA” and “NEPA Comment Analysis: Formalized War or Opportunity to Increase Capacity.” More information is available at www.ecr.gov under Announcements. 

“Sweet 16” Briefed on DOE’s NEPA Process for the Loan Guarantee Program

The 16 sponsors of innovative clean energy projects invited by DOE to submit a full application for a loan guarantee (*LLQR*, December 2007, page 25) have indicated their intent to do so. Termed the “Sweet 16,” these project sponsors recently met individually with representatives of DOE’s Loan Guarantee Program Office and the Office of NEPA Policy and Compliance to provide updates on their proposed projects since pre-applications were submitted to DOE in the fall of 2006. In turn, sponsors learned details of DOE’s loan guarantee process, including the NEPA review that DOE would conduct before deciding whether to provide a loan guarantee.

In applicant processes, where DOE’s proposed action is to provide financial assistance, the costs for contractor preparation of EAs and EISs is normally paid for by the

applicant, but the contractor is selected and its work is directed by DOE. Such contracting is referred to as “third party contracting,” and discussion is provided under Question 16 in the Council on Environmental Quality’s “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (available at www.eh.doe.gov/nepa under NEPA Compliance Guide). DOE anticipates working with applicants and potential contractors to establish memoranda of understanding for NEPA document preparation.

DOE is planning new solicitations in the near term for additional loan guarantees. Information on DOE’s Loan Guarantee Program is available at www.lgprogram.energy.gov. 

Complex Transformation *(continued from page 3)*

“We follow the open house with a formal presentation on the draft SPEIS and then provide an opportunity for everyone to offer oral comments on the record.” Many commentors have stated their opposition to nuclear weapons production, while others have supported NNSA’s proposals. Public hearings continue through March in Nevada, New Mexico, California, and Washington, DC.

NNSA anticipated a large number of comment documents, after having received more than 33,000 during the scoping period last year. Mr. Wyka explained that he prepared by working with computer support staff to ensure that a large volume of email could be received efficiently and

by establishing a team early to review public comments. The team includes a core group to coordinate and integrate the review, as well as headquarters and site staff with expertise in technical and policy questions. “We systematically log receipt of each comment document and have begun sorting them for review,” said Mr. Wyka. “We will consider each comment individually and collectively and take the appropriate action, such as improving the analyses or making factual corrections.”

For additional information, contact Ted Wyka at theodore.wyka@nnsa.doe.gov or 202-586-3519. 

EPAct 2005 §368 Corridors vs. §1221 Corridors: What's the Difference?

DOE has engaged in two different processes for designation of energy corridors under the Energy Policy Act of 2005 (EPAct 2005) that involve different NEPA compliance requirements and strategies. One process, under Section 368 of the Act, is to establish energy transport corridors on Federal land in 11 western states for oil, natural gas, and hydrogen pipelines, and electricity transmission and distribution facilities, in which right-of-way grants may be expedited. The other process, under Section 1221, involved a nationwide study of electric transmission congestion, followed by designation of National Interest Electric Transmission Corridors. National Corridors are geographic areas encompassing private and public land, in which under certain circumstances the Federal Energy Regulatory Commission (FERC) may authorize the construction or modification of electric transmission facilities.

Section 368 Update – Public Comments Received on Draft Programmatic EIS

The 90-day public comment period recently ended on the *Draft Programmatic EIS Designation of Energy Corridors on Federal Lands in the 11 Western States* (DOE/EIS-0386), jointly prepared by DOE and the Bureau of Land Management (BLM) as co-lead agencies, with input from 13 cooperating agencies (related article, page 7, and *LLQR*, December 2007, page 12). The Programmatic EIS identifies approximately 6,000 miles of proposed energy transport corridors, the largest percentage of which is on BLM land, with a smaller percentage on Forest Service and other Federal agency land.

DOE's Office of Electricity Delivery and Energy Reliability (OE) and BLM conducted 15 public hearings in 11 states and Washington, DC. Approximately 625 persons attended the hearings and 125 submitted oral comments; in addition, about 600 organizations and individuals submitted written comments. Comments ask for clarification of the purpose and need for agency action, analysis of additional alternatives, rerouting of certain corridor segments, and consideration of impacts on non-Federal lands adjacent to the proposed corridors and overlap with corridors designated under Section 1221. Webcasts and transcripts of the hearings and written comments are posted on the Programmatic EIS website, www.corridoreis.anl.gov.

The Final Programmatic EIS is scheduled to be issued mid-2008. Section 368 requires a second round of corridor designations on Federal lands in the remaining 39 states. For additional information on the ongoing Programmatic EIS or the second Section 368 corridor designation process, contact Brian Mills, NEPA Compliance Officer for OE, at brian.mills@hq.doe.gov or 202-586-8267.

Section 1221 Designation – Does Not Trigger NEPA

Section 1221(a) of EPAct 2005 requires the Secretary of Energy, in consultation with the states, to conduct a study of electric transmission congestion every three years. After considering alternatives and recommendations from interested parties (including the states), the Secretary is to issue a report that may designate “national interest electric transmission corridors” – geographic areas with electric transmission constraints that adversely affect consumers.

DOE provided wide public involvement activities in conducting the first congestion study and in designating two National Corridors – the Mid-Atlantic Area National Corridor¹ and the Southwest Area National Corridor² – in its Report and Order issued October 5, 2007 (72 FR 56992). Commentors had questioned why DOE did not conduct a NEPA review for the designations. In its Report and Order, DOE explained that “The Department's designation of National Corridors itself has no environmental impact: It neither permits nor precludes the construction of any transmission projects or any other ground-disturbing activity.” DOE also stated that “the Department does not believe that the designation of National Corridors, in itself, is a major Federal action significantly affecting the quality of the human environment requiring NEPA review.”

In designating the National Corridors, DOE explained that, under certain circumstances, FERC may authorize construction or modification of electric transmission facilities in the corridors, and stated that “Any commitment to groundbreaking activities with environmental impacts is made only after FERC authorizes construction. Before that point, FERC will have conducted a full NEPA review of the proposed project.” See related litigation article, page 19, and further information at www.nietc.anl.gov. 

¹ Includes all or parts of Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

² Includes parts of the states of California and Arizona.



Tiered NEPA Strategy Supports MMS Outer Continental Shelf Program

The Minerals Management Service (MMS), an agency within the Department of the Interior, issued a Record of Decision (ROD) on December 21, 2007,¹ establishing an alternative energy and alternate use program on the Outer Continental Shelf. Under this program, MMS may issue leases, easements, and rights-of-way for activities on the Outer Continental Shelf, pursuant to MMS's authority under Section 388 of the Energy Policy Act of 2005 and codified in the Outer Continental Shelf Lands Act (*LLQR*, December 2005, page 35). DOE NEPA practitioners may be interested in MMS's NEPA strategy for the program, which includes completion of a Programmatic EIS, adoption of interim policies and best management practices, and subsequent tiered NEPA analyses to support a rulemaking and project-specific proposals.

In the ROD, MMS selected the Preferred Alternative identified in its *Final Programmatic EIS for Alternative Energy Development and Production and Alternate Use Facilities on the Outer Continental Shelf* (2007) (Final PEIS). Under its decision, MMS will conduct a separate NEPA analysis to support a rulemaking that would establish a framework for issuing leases, easements, and rights-of-way for program activities on the Outer Continental Shelf. As part of that effort, MMS will publish a proposed rule in the *Federal Register*, seeking public comments on associated processes and procedures. In addition to establishing the alternative energy and alternate use program, MMS's decision provides it the option to authorize, on a case-by-case basis and subject to project-specific NEPA analyses, individual projects that are in the national interest prior to promulgation of the final rule.

ROD Adopts Interim Policies, Best Management Practices

In the ROD, MMS also adopted as "initial mitigation measures" certain interim policies and best management practices (BMPs) that were developed as mitigation measures in the Final PEIS. The ROD states that the interim policies will guide and inform MMS's decisionmaking when considering any proposal for an alternative energy and alternate use project on the Outer

Continental Shelf. In addition, MMS will consider and, on a case-by-case basis, may select one or more of the BMPs as appropriate to be included as a binding stipulation in any lease, easement, or right-of-way for alternative energy and alternate use program activities that MMS issues.

Emphasis on Consultation

In the ROD, MMS adopted 15 interim policies and 52 BMPs. Approximately half of the interim policies entail consultation with Federal, state, and local agencies for siting, construction, operation, and decommissioning projects, or coordination required by Federal regulations (e.g., MMS must consult with the National Marine

Fisheries Service when a marine mammal species may be potentially affected to determine whether protection under the Marine Mammal Protection Act is required). One of the policies requires implementation of adaptive management strategies to ensure that potential adverse impacts of Outer Continental Shelf alternative energy development are avoided, minimized, or mitigated. Another states that MMS will "consider the visual and scenic resource value of the [Outer Continental Shelf] and coastal

waters involved in proposed wind energy development projects" and "work . . . to minimize potential visual impacts."

The BMPs apply to various aspects of proposed projects, including transportation and vessel traffic, and several resource areas, including seafloor and coastal habitats, marine mammals, fish, fisheries, essential fish habitat, sea turtles, and avian resources.

Further Information

For information on this Programmatic EIS go to <http://ocseenergy.anl.gov> or contact Mary Boatman, MMS's Environmental Assessment Branch, at mary.boatman@mms.gov or 703-787-1662. For more information on the Alternate Energy-Related Use Program and Rule, contact Maureen Bornholdt, Chief of MMS Marine Minerals Branch, at maureen.bornholdt@mms.gov or 703-787-1300.

Examples of activities on the Outer Continental Shelf that MMS may authorize:

Alternative Energy Projects

- Wind energy
- Wave energy
- Ocean current energy
- Solar energy
- Hydrogen production

Alternate Uses of Existing Facilities (e.g., Oil and Gas Platforms)

- Offshore aquaculture, research, education, recreation, telecommunications facilities, and other offshore operations

¹ MMS published a notice of availability of the ROD in the Federal Register on January 10, 2008 (73 FR 1894).

Second Wind: MMS Issues Draft EIS for Cape Wind Energy Project

For the second time in the proposed project's NEPA history, a Draft EIS has been issued for the Cape Wind Associates, LLC, Cape Wind Energy Project – this one prepared by the Department of the Interior's Minerals Management Service (MMS), which was given authority over the proposed project and lead agency responsibility for the EIS in 2005.



The proposed turbines would be 258 feet tall from the surface of the water to the center of the blades. (Photo: Cape Wind Associates, LLC)

The project would involve construction and operation of a wind farm almost 5 miles off the shore of Cape Cod, Massachusetts. Connecting to the New England Power Pool grid, the project's 130 wind turbine generators would provide approximately 468 megawatts of electric output per year, enough to satisfy 75 percent of the electricity demands of Cape Cod and the islands of Martha's Vineyard and Nantucket. The Cape Wind Energy Project EIS may be of interest to NEPA practitioners both for its subject matter as the nation's first Federal environmental review for an offshore wind energy project and procedurally as a result of Congressional reassignment of lead agency responsibility.

Unique "NEPA Path"

Originally, the project was under the U.S. Army Corps of Engineers' authority because of its jurisdiction under Section 10 of the Rivers and Harbors Act, which provides for Federal regulation of any work in or affecting navigable waters of the United States. After issuing its notice of intent in January 2002, the Corps spent almost three years researching and analyzing the Cape Wind proposal and preparing a Draft EIS. In November 2004, the Corps issued its Draft EIS (*LLQR*, December 2004, page 10), and received more than 500 oral and 5,000 written comments. However, lead agency authority to prepare the Cape Wind EIS was transferred to MMS (*LLQR*, December 2005, page 35) when the Energy Policy Act of 2005 amended the Outer Continental Shelf Lands Act, granting the Department of the Interior authority to authorize alternative energy projects on the Outer Continental Shelf. (See related article, previous page.)

In May 2006, MMS initiated its own NEPA process and issued its notice of intent as part of a "renewed scoping process," collecting more than 1,300 public scoping comments. In preparing its Draft EIS, MMS considered these scoping comments, along with all comments on the Corps' 2004 Draft EIS, including the Environmental Protection Agency's rating comments, which found the Corps' Draft EIS to be "inadequate."

Major Issues and EIS Findings

The scope of the MMS Cape Wind Draft EIS (January 2008) differs significantly from the Corps', largely as a result of responding to comments. In contrast to the Corps' Draft EIS, which primarily considered geographic alternatives, the MMS Draft EIS has an expanded scope in that it analyzes three "non-geographic alternatives" at the proposed location.

Areas of controversy identified during the EIS process include potential impacts on aesthetics (i.e., visibility from shore), navigation, fishing and boating, and avifauna.

The new Draft EIS documents a potential for "moderate" impacts on fisheries, coastal and marine birds, benthic communities, and visual resources. It concludes that the majority of the proposed action's potential impacts on other resources would be "negligible" or "minor."

For the construction phase, the Draft EIS states that "moderate long-term (permanent) impacts related to the installation of the pilings that support the wind turbine towers and the [electrical service platform] would be

(continued on next page)

MMS Cape Wind Draft EIS Alternatives

1. No Action

Three geographic alternatives

2. Horseshoe Shoal (proposed action)
3. Monomoy Shoals
4. South of Tuckernuck Island

Three non-geographic alternatives at Horseshoe Shoal

5. Smaller Project (half the megawatt capacity)
6. Condensed Array (same number of wind turbines but closer together)
7. Phased Development (two phases of 65 wind turbines each)

Cape Wind Draft EIS (continued from previous page)

anticipated to affect the soft-bottom benthic communities [such as clams, worms, snails, crustaceans] in the area of the proposed action.” In addition, the Draft EIS states that “although the risk of [avian] collision [with wind turbines] during construction is anticipated to be low,” any collision mortality “would represent a more substantial impact.”

For the operations phase, the Draft EIS documents potential “moderate” impacts on two areas: avifauna (primarily, coastal and marine birds) and visual resources. Responding to concerns raised during scoping, the Draft EIS states that “the proposed action would have moderate visual impacts to recreational resources, with major visual impacts limited to boaters that are transiting near or within Horseshoe Shoal since they would be located close to the structures.” However, the Draft EIS suggests that the potential visual impacts are “unlikely to affect the viability of the recreational areas.”

EMS To Be Used To Track Mitigation

The Draft EIS discusses lessons learned from European offshore wind projects and documents a number of mitigation measures that the applicant has committed to implement to reduce potential impacts. For example, the Draft EIS states that, in order to minimize the potential for injury or mortality to sensitive fish species, the applicant has committed to avoid in-water construction in a local watershed during the colder winter months when fish have a slower avoidance response.

Furthermore, the Draft EIS reflects an MMS requirement that if the proposed action is selected, mitigation measures will be incorporated into an Environmental Management System (EMS) that would remain in effect throughout the life of the project. Any mitigation and monitoring commitments in the record of decision may be incorporated into the EMS, which would serve as a tool to implement, track, and monitor the commitments. Because the EMS would remain in place from construction through decommissioning of the project, it “would allow for an adaptive management approach for dealing with the environmental impacts.” (See *LLQR*, June 2007, page 17.)

Next Steps

Beginning on March 10, 2008, MMS will conduct a series of four public hearings in Massachusetts to receive comments on its Draft EIS. In addition, MMS is soliciting written comments via its online commenting system, *Public Connect*, its preferred method for receiving comments (below). The 60-day public comment period ends March 20, 2008.

Additional information on the Cape Wind Energy Project is available at www.mms.gov/offshore/RenewableEnergy/CapeWind.htm or by contacting James F. Bennett, Environmental Assessment Branch, at 703-787-1656 or Dr. Rodney E. Cluck, Alternative Energy Program, at 703-787-1300 – both at MMS. 



Benefits of Online Public Comment Systems

An online public comment system offers advantages as a supplemental – or even preferred – method for receiving public comments on a NEPA document. Such a system can be designed to also give the public access to regulatory, scientific, planning, and other Departmental information.

The Department of the Interior’s Minerals Management Service (MMS) is using an online public comment system, *Public Connect*, as its preferred method for receiving comments. The system (ocsconnect.mms.gov/pcs-public) allows a user to search, view, and comment on EISs, proposed regulations, lease sales notices, operational plans, environmental reports, and related documents that are open for comment. *Public Connect* accommodates comments of up to 2,000 characters (about as long as this textbox), and attachments may be used for longer comments. The system may be set to allow public users to search and view submitted comments, for example, after a comment period has closed.

Public Connect makes it easy for commentors to access information, explained Barry Obiol, the NEPA Coordinator for MMS. “This results in more substantive comments received from the public.” The system also typically results in fewer “campaign” or form-letter comment documents because, unlike email, comments must be entered on the webpage, not simply forwarded.

Comments submitted through the system are entered into a database, which allows for easy retrieval and collation by document preparers. This is especially beneficial when large numbers of comments are received, said Mr. Obiol. Additionally, preparers can search the database based on specific parameters, such as all comments from a particular region or from state agencies or non-governmental organizations. The system does not collate comments by subject, however. Mr. Obiol can be reached at barry.obiol@mms.gov or 504-736-2786.

Transitions

Dinah Bear Honored upon Her Retirement from the Council on Environmental Quality



Dinah Bear is “practically perfect,” proclaimed James Connaughton, Chairman, Council on Environmental Quality (CEQ). Her approach as General Counsel of CEQ, he explained, was always to ask – how do we solve the problem? Referring to Ms. Bear as a “lawyer’s lawyer,” Mr. Connaughton recounted her work on the Presidential proclamation establishing the Papahānaumokuākea Marine National Monument in Hawaii. When others said it could not be done, she found a solution and made it happen.

Dinah Bear served four Presidents and always worked to find an outcome that everyone can embrace.

– James Connaughton
Chairman, Council on Environmental Quality

Ms. Bear is well known to the DOE NEPA Community, having participated in NEPA 35, NEPA 25, and other DOE NEPA conferences, as well as providing helpful advice on specific DOE NEPA issues for many years. Ms. Bear joined CEQ as Deputy General Counsel in 1981, was appointed General Counsel in 1983, served in that capacity through September 1993, and resumed that position in January 1995. She retired from CEQ at the end of 2007, and was lauded at a reception on February 7, 2008, attended by many who have worked on NEPA and other environmental issues with her.

Dinah Bear is the world's definitive expert on NEPA.

– Michael Deland, Former Chairman
Council on Environmental Quality

Former CEQ Chairmen also praised Ms. Bear. Michael Deland, Chairman of CEQ in the early 1990s, referred to her as “Ms. CEQ,” noting that she was the “guardian of CEQ,” the “dispenser of sage legal advice,” and the “savior of CEQ” in countering legislation to abolish CEQ. George Frampton, Chairman of CEQ in the late 1990s, referred to Ms. Bear as the “ballast in the keel” of CEQ.

“Your contributions have made our environment cleaner, healthier and safer,” read Mr. Connaughton from a letter to Ms. Bear signed by President George W. Bush. Mr. Connaughton then emphasized the words “productive harmony” in Section 101 of NEPA. To commemorate her approach to environmental issues, CEQ staff gave Ms. Bear a Tiffany “Harmony Bowl.”

“It has been a wonderful 25 years,” said Ms. Bear at her reception. She praised Federal employees, saying that she did not work alone and emphasizing that most Federal employees work to serve the public and do the best job they can. She recounted nine serious attacks on the existence of CEQ and described the challenge of getting people to understand its role. Ms. Bear plans to remain in the Washington, DC, area, support the work of Humane Borders, and keep abreast of environmental issues.

Edward “Ted” Boling, Deputy General Counsel of CEQ since August of 2000, is now General Counsel of CEQ and can be reached at eboling@ceq.eop.gov. 

When you asked Dinah Bear for advice, she'd start by telling you what the right thing to do is.

– George Frampton, Former Chairman
Council on Environmental Quality



Dinah Bear participated in a Ministerial Conference on Europe and North Asia Forest Law Enforcement and Governance in Russia in 2005.

Anne Norton Miller Retires from EPA after Long Service



Anne Norton Miller “had the Right Stuff,” complimented her staff when recounting her career and the qualities that contributed to her success at a reception on February 27, 2008, marking her March 2008 retirement after 38 years of Federal service. A charter employee of the Environmental

Protection Agency (EPA), in 1970 she joined EPA at its Region 2 Office (New York), having begun her career as a microbiologist for the Federal Water Pollution Control Board’s Lake Erie Basin Office the year before. Ms. Miller served in the Office of Federal Activities at EPA Headquarters since 1984 and was its Director beginning in 2001.

At the reception, Ms. Miller was recognized for her “pioneering leadership in the field of environmental impact assessment and her visionary leadership in international environmental protection” and received a Distinguished Career Award. Stephen Johnson, EPA Administrator, thanked Ms. Miller for “serving the Nation so well.” “What a great impact she made,” he said, adding “she made a difference.”

Anne Norton Miller’s work demonstrates that the NEPA process produces improvements to the environment. She used the NEPA process to get incredible environmental gain.

*– Granta Nakayama, Assistant Administrator
EPA Office of Enforcement and Compliance Assurance*

Noting Ms. Miller’s strong belief in collaboration, Granta Nakayama, Assistant Administrator for the EPA Office of Enforcement and Compliance Assurance, commended her work to bring Tribes into NEPA and other environmental processes. EPA staff, commenting on Ms. Miller’s qualities that contributed to her success as a protector of human health and the environment, said she was “an environmental tiger” that was “well ahead of her time.” Other characterizations ranged from “she actualized the inspiration found in NEPA Section 101” to “she had eagle-eye editorial skill.”

*There will always be a need for science,
partnerships, regulations, and enforcement.*

– Anne Norton Miller

“Working at EPA has been a great honor and a lot of fun,” said Ms. Miller. She reflected that her first EIS review was for the Sports Complex in the Hackensack Meadowlands, New Jersey, but that her greatest challenge was establishing EPA’s Indian program and bringing the agency’s technical and financial expertise to it. She emphasized that she believes in the dedicated people at EPA, working together for the common goal of a healthy environment. She plans to keep in touch with EPA issues and staff, but also will continue international travel and docent work at the National Air and Space Museum.

Susan Bromm, currently Director, Office of Site Remediation Enforcement, has been named Acting Director, Office of Federal Activities, and can be reached at bromm.susan@epa.gov. 



DOE’s NEPA Community has benefitted from Anne Norton Miller’s (right) strong guidance on collaboration with stakeholders, other agencies, and Tribes at DOE’s NEPA Community Meetings and Conferences, such as the NEPA 35 Conference, November 2005 (with Yardena Mansoor, DOE Office of NEPA Policy and Compliance).

New NEPA Compliance Officer

Carlsbad Field Office: Susan McCauslin

Susan McCauslin recently joined the Carlsbad Field Office and was designated its NCO, following the retirement of Harold Johnson. Ms. McCauslin will tackle her new responsibilities with the benefit of more than 20 years of experience in managing environmental compliance programs and remediation projects, including almost 5 years as a Regulatory Compliance Specialist for the Carlsbad Field Office's Technical Assistance Contractor supporting DOE's Waste Isolation Pilot Plant.



Susan McCauslin, NCO

"Harold was a tremendous asset to the Carlsbad Field Office," she said. "After supporting his NEPA work, I know that filling his shoes here at Carlsbad will be

challenging, but he helped by sharing his lessons learned as NCO!" (For his advice to new NCOs, see *LLQR*, December 2007, page 18.)

Before going out West in 2003, Ms. McCauslin served as a contractor manager for remedial projects at a Defense Department facility in Ohio and supported the facility's NEPA reviews. She started her career as an Environmental Scientist in the Public Drinking Water and Hazardous Waste sections of the Ohio Environmental Protection Agency. We welcome

Ms. McCauslin to the DOE NEPA Community. She can be reached at susan.mccauslin@wipp.ws or 575-234-7349.

Beverly K. Stephens, 1961–2008 NEPA Office Associate

Beverly K. Stephens, former Special Assistant to the Deputy Assistant Secretary for Environment, lost a valiant battle with cancer on February 13, 2008. Beverly, known to many in the DOE NEPA Community, attended several NEPA community meetings and authored the mini-guidance, "Adopting Another Agency's EIS or EA" (*LLQR*, June 2000, page 13) while on detail to the Office of NEPA Policy and Compliance. Her commitment and support of DOE environmental programs will be missed by her colleagues in the NEPA office.

Brian Costner Recognized for Leadership

The work of Brian Costner, Office of NEPA Policy and Compliance, has earned him the General Counsel's 2008 Award for Leadership. This award may be granted annually to recognize extraordinary contributions or achievements that significantly improve the operations or productivity of the Office of the General Counsel or client DOE organizations, significantly reduce the cost of operations, or help attain a major goal of the General Counsel or Department. Brian was honored at a ceremony on January 10 for his simultaneous reviews of two significant, highly complex, and potentially controversial programmatic EISs: Complex Transformation (Draft EIS issued January 11, 2008) and the Global Nuclear Energy Partnership (in preparation).

Congratulations, Brian! 



DOE General Counsel David Hill (right) observed that Brian Costner not only identifies problems, but finds solutions.



Litigation Updates

These articles are not intended to be comprehensive legal summaries, but rather emphasize the lessons that may be of broadest use to DOE's NEPA practitioners. The links to opinions or, in some cases, the full docket in the online version of LLQR are provided so the interested reader can gain a more complete understanding.

What Constitutes an Emergency under NEPA?

In a high-profile case involving marine mammals, national security, and the emergency provisions of the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1506.11), the U.S. Court of Appeals for the Ninth Circuit on February 29, 2008, affirmed a District Court's preliminary injunction. The preliminary injunction disagreed with CEQ's and the Navy's determination (January 15, 2008; www.whitehouse.gov/ceq/Letter_from_Chairman_Connaughton_to_Secretary_Winter.pdf) that an emergency exists for purposes of allowing "alternative arrangements" to replace the normal NEPA process for eight major naval training exercises to be conducted off

the southern California coast through next January, when an EIS now in progress for the training program is expected to be completed.

An appeal to the Supreme Court is possible. *LLQR* will provide a more detailed summary of this case and report on any further developments. See www.ca9.uscourts.gov, Case No.: 08-55054, *Natural Resources Defense Council (NRDC) et al. v. Winter, Secretary of the Navy*.



DOE Sued on National Interest Electric Transmission Corridor Designations

Pursuant to Section 216(a) of the Federal Power Act, promulgated by Section 1221 of the Energy Policy Act of 2005, DOE designated two National Interest Electric Transmission Corridors within which, under certain circumstances, the Federal Energy Regulatory Commission may authorize the construction and modification of electric transmission facilities (72 FR 56992; October 5, 2007). (See related article, page 12.) The Mid-Atlantic Area Corridor covers all or parts of Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and the District of Columbia. The Southwest Area Corridor covers large areas of southern California and parts of Arizona.

DOE's designation of the Mid-Atlantic Area National Interest Electric Transmission Corridor is the subject of three civil suits filed in the District Court for the Middle District of Pennsylvania. In February 2008, suits filed by the National Wildlife Federation and Piedmont Environmental Council were consolidated into the suit filed by the Pennsylvania Public Utility Commission.

The Pennsylvania Public Utility Commission claims that DOE interpretations of the Federal Power Act, as amended by the Energy Policy Act, are in conflict with Congressional intent and DOE's corridor designation conflicts with state permitting and regional planning authorities. The complaints filed by the National Wildlife Federation and Piedmont Environmental Council both claim that DOE violated NEPA by failing to prepare an EIS or an EA that supports a finding of no significant impact. They claim further that DOE violated the Endangered Species Act and the National Historic Preservation Act by failing to conduct consultations required under these Acts, and the Federal Power Act, as amended by the Energy Policy Act of 2005, by not meeting the requirements for corridor designation.

Separately, the Center for Biological Diversity has sued DOE for violating NEPA and the Federal Power Act, as amended by the Energy Policy Act of 2005, in designating the Southwest Area National Interest Electricity Corridor.

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NRC Grants Hearing on Analysis of Potential Terrorist Acts

In a case involving the potential consequences of a terrorist attack on a proposed nuclear facility, the Nuclear Regulatory Commission (NRC) will consider two contentions filed by San Luis Obispo Mothers for Peace challenging the adequacy of a supplement to an environmental assessment (EA Supplement) that NRC staff prepared last year in response to a court order [Ninth Circuit; Case No.: 03-74628]. The EA Supplement addresses the proposed independent spent fuel storage installation at the Diablo Canyon nuclear power reactor in California. Following a hearing to be scheduled no sooner than April 2008, the NRC could determine that the EA Supplement is adequate, that it must be revised, or, as Mothers for Peace has requested, that an EIS must be prepared.

In a January 15, 2008, Memorandum and Order, the NRC agreed with Mothers for Peace that there are indications in the EA Supplement that the list of references is incomplete. “While the unlisted documents may be general background references – as the [NRC] Staff suggests – the Staff has identified no applicable FOIA [Freedom of Information Act] exemption(s) to justify excluding any documents from the reference list. Nor is it clear whether any withheld documents, even if they include safeguards information or classified national security information, might be redacted, with portions released.” Thus, the NRC directed its staff to “prepare a complete list of the documents on which it relied in preparing its environmental assessment,” together with an index of documents for which the staff claims a FOIA exemption.

Second, the NRC agreed that the EA Supplement is “silent” on the possibility of both land contamination and non-fatal health effects from a terrorist attack. “The Staff may be able to easily explain how such issues were addressed by reference to source documents, including the 2003 environmental assessment [on the proposed storage installation], or how such issues are bounded and were implicitly addressed by the very low dose estimates and other considerations, but we believe further inquiry is appropriate,” the NRC wrote.

The NRC rejected other contentions made by Mothers for Peace, including that the EA Supplement failed to: define terms and explain methodology, consider credible threat scenarios with significant environmental impacts, address the National Infrastructure Protection Plan (which provides a coordinated national approach to protection roles and responsibilities for critical infrastructure and key resources), and consider vulnerability of the proposed storage installation in relation to other spent fuel storage at Diablo Canyon.

The NRC Memorandum and Order (Docket No. 72-26-ISFSI) is available on its website.  Additional information on the proposed Diablo Canyon storage installation is available at www.nrc.gov/waste.html under “Diablo Canyon ISFSI License Application” and in *LLQR*, September 2007, page 8, and September 2006, page 19. 



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.

- DOE Project Management Career Development Program (PMCDP)
For more information, contact the DOE Office of Human Capital Management (HC-21), Enterprise Training Services training consultant assigned to your DOE organization.
NEPA and Environmental Laws and Regulations (PMCDP-Level 2)
Nevada Site Office, NV: July 1-3
Code: 001046; Session 0014
Fee assessed to organization's Working Capital Fund account
- USDA Graduate School
202-314-3300 or 888-744-4723
customerservicecenter@grad.usda.gov
grad.usda.gov
NEPA: Policy, Procedure and Science/Art
Washington, DC: April 14-June 23 (3 hours per week for 10 weeks)
Fee: \$365
Search under code ENVS4435E
- Continuing Legal Education (CLE)
800-873-7130
www.cle.com
NEPA SuperConference
San Francisco, CA: March 6-7
Fee: \$795 (GSA contract: \$695)
Multiple registration discount available
Los Angeles, CA: March 17-18
Fee: \$795 (GSA contract: \$695)
Multiple registration discount available
NEPA
Reno, NV: March 27-28
Fee: \$695 (GSA contract: \$595)
Multiple registration discount available
- International Institute for Indigenous Resource Management
303-733-0481
www.iiirm.org
A Workshop on NEPA in Indian Country
Denver, CO: March 24-25
Fee: \$495
- ICF Jones & Stokes
916-737-3000
www.jonesandstokes.com
NEPA Overview and Refresher
UC Davis, Sacramento, CA: May 8
Fee: \$290
Portland State University, Portland, OR: May 30
Fee: \$265
Introduction to NEPA
UC Irvine, Orange, CA: May 14
Fee: \$235
Effective Public Communication and Participation for CEQA and NEPA
UC Davis, Sacramento, CA: May 16
Fee: \$290
- 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
Socioeconomic Impact Analysis Under NEPA
Durham, NC: March 12-14
Fee: \$750
The Law of NEPA
Durham, NC: April 30-May 2
Fee: \$750 until 4/9/08
Preparing and Documenting Environmental Impact Analyses
Durham, NC: May 19-22
Fee: \$1,150 until 4/28/08
Implementation of NEPA
Durham, NC: June 2-6
Fee: \$1,150 until 5/12/08
Certificate in NEPA
Requires successful completion of one core and three elective Duke University NEPA short courses. Co-sponsored by the Council on Environmental Quality.
Fee: Included in registration for constituent courses.

(continued on next page)

Training Opportunities

(continued from previous page)

- Northwest Environmental Training Center
206-762-1976
www.nwetc.org

NEPA: Writing the Perfect EA/FONSI or EIS

Reno, NV: April 1-2

Fee: \$495 (Government employee: \$395)

Dallas, TX: June 4-5

Fee: \$495 (Government employee: \$395)

- Resource Training Institute
706-951-5685
registrar@rtii.org
www.rtii.org

Environmental Laws and Regulations

Las Vegas, NV: March 11-13

Fee: \$895

Clean Air Act

Las Vegas, NV: June 2-4

Fee: \$1,095

- SWCA Environmental Consultants
800-828-7991
training@swca.com
www.swca.com/jsp/training

Introduction to Professional Practice under Section 106 of the National Historic Preservation Act

Mesa, AZ: March 25-27

Fee: \$795 (10% GSA discount available)

- The Shipley Group
888-270-2157
shipley@shipleygroup.com
www.shipleygroup.com

NEPA Cumulative Effects Analysis and Documentation

Salt Lake City/Park City, UT: March 11-13

Fee: \$934 (GSA contract: \$844)

Jackson Hole, WY: May 6-8

Fee: \$894 (GSA contract: \$804) until 3/19/08

NEPA Climate Change Analysis

Nashville, TN: March 18-19

Fee: \$734 (GSA contract: \$644)

Environmental Conflict Management

Salt Lake City, UT: April 1-3

Fee: \$934 (GSA contract: \$844)

How to Manage the NEPA Process and Write Effective NEPA Documents

San Francisco, CA: April 1-4

Fee: \$1,134 (GSA contract: \$1,044)

Baltimore, MD: May 13-16

Fee: \$1,094 (GSA contract: \$1,004)

until 3/26/08

Cultural and Natural Resource Management/ Endangered Species Act Overview

Albuquerque, NM: April 15-17

Fee: \$955 (GSA contract: \$865)

Integrating Federal Environmental Laws into NEPA

San Antonio, TX: April 15-17

Fee: \$955 (GSA contract: \$865)

Clear Writing for NEPA Specialists

Las Vegas, NV: April 22-24

Fee: \$894 (GSA contract: \$804) until 3/5/08

Adaptive Management

Salt Lake City/Park City, UT: May 1-2

Fee: \$694 (GSA contract: \$604) until 3/12/08

Overviews of the NEPA Process/ Endangered Species Act/Section 106 of the National Historic Preservation Act

Missoula, MT: May 13-15

Fee: \$894 (GSA contract: \$804) until 3/26/08

NEPA Certificate Program

Requires successful completion of four core and three elective courses offered by The Shipley Group and a final project.

Fee: \$5,450 (includes course fees)

Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922;

judy.kurtzman@usu.edu;

www.cnr.usu.edu/htm/students/graduate_programs/nepa

EAs and EISs Completed October 1 to December 31, 2007

EAs

Office of Energy Efficiency and Renewable Energy

DOE/EA-1463 (11/1/07, FONSI 1/11/08)
*10 CFR Part 433, "Energy Efficiency Standards
for New Federal Commercial and High-Rise Multi-
Family Residential Buildings" and 10 CFR Part 435,
"Energy Efficiency Standards for New Federal
Residential Low-Rise Residential Buildings"*

Cost: \$10,000
Time: 62 months

DOE/EA-1530 (EA/FONSI 11/7/07)
*Proposed Energy Conservation Standards for
Residential Furnaces and Boilers*

Cost: \$37,000
Time: 46 months

DOE/EA-1565 (10/12/07, FONSI 11/9/07)
*Energy Conservation Standards for Distribution
Transformers*

Cost: \$15,000
Time: 84 months

Golden Field Office/ Office of Energy Efficiency and Renewable Energy

DOE/EA-1597 (10/15/07, FONSI 10/18/07)
*Construction and Operation of a Proposed Cellulosic
Ethanol Plant, Range Fuels, Inc., Treutlen County,
Georgia*

Cost: \$160,000
Time: 3 months

Western Area Power Administration

DOE/EA-1586 (11/29/07, FONSI 1/2/08)
*Interconnection Request for the Happy Jack
Wind Project, Laramie County, Wyoming*
Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.

Time: 10 months

DOE/EA-1587 (EA/FONSI 11/30/07)
*Northern Arizona Energy Project, Mohave County,
Arizona*

Cost: The cost for this EA was paid by the applicant;
therefore, cost information does not apply to DOE.
Time: 9 months

DOE/EA-1595 (EA/FONSI 11/5/07)
*Mead/Davis 230 kV Transmission Line Reconductor,
Arizona and Nevada*

Cost: \$57,000
Time: 27 months

EISs

Bonneville Power Administration/ Office of Electricity Delivery and Energy Reliability

DOE/EIS-0378 (72 FR 58081, 10/12/07)
(EPA Rating: EC-2)

*Port Angeles-Juan de Fuca Transmission Project,
Clallam County, Washington*

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

Time: 29 months

Office of Fossil Energy/ National Energy Technology Laboratory

DOE/EIS-0357 (72 FR 62229, 11/2/07)
(EPA Rating: EC-2)

*Gilberton Coal-to-Clean Fuels and Power Project,
Schuylkill County, Pennsylvania*

Cost: \$1,182,000
Time: 55 months

DOE/EIS-0361 (72 FR 63579, 11/9/07)
(EPA Rating: EC-2)

*Western Greenbrier Co-Production Demonstration
Project, Greenbrier County, West Virginia*

Cost: \$1,960,000
Time: 53 months

DOE/EIS-0394 (72 FR 64618, 11/16/07)
(EPA Rating: EC-2)

FutureGen Project

Cost: \$5,200,000
Time: 16 months

Western Area Power Administration

DOE/EIS-0389 (72 FR 67723, 11/30/07)
(EPA Rating: LO)

*Construction and Operation of the Trinity Public
Utilities District Direct Interconnection Project,
Trinity County, California*

Cost: \$982,000
Time: 17 months

ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

Environmental Impact of the Action

- LO – Lack of Objections
- EC – Environmental Concerns
- EO – Environmental Objections
- EU – Environmentally Unsatisfactory

Adequacy of the EIS

- Category 1 – Adequate
- Category 2 – Insufficient Information
- Category 3 – Inadequate

(For a full explanation of these definitions, see the EPA website
at www.epa.gov/compliance/nepa/comments/ratings.html.)

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- For this quarter, the median cost for the preparation of 5 EAs for which cost data were applicable was \$37,000; the average was \$56,000.
- Cumulatively, for the 12 months that ended December 31, 2007, the median cost for the preparation of 19 EAs for which cost data were applicable was \$80,000; the average was \$159,000.
- For this quarter, the median completion time for 7 EAs was 27 months; the average was 34 months.
- Cumulatively, for the 12 months that ended December 31, 2007, the median completion time for 21 EAs was 16 months; the average was 26 months.

EIS Costs and Completion Times

- For this quarter, the median cost for the preparation of 4 EISs for which cost data were applicable was \$1,571,000; the average was \$2,331,000.
- Cumulatively, for the 12 months that ended December 31, 2007, the median cost for the preparation of 5 EISs for which cost data were applicable was \$1,378,000; the average was \$2,140,000.
- For this quarter, the median completion time for 5 EISs was 29 months; the average was 34 months.
- Cumulatively, for the 12 months that ended December 31, 2007, the median completion time for 7 EISs was 18 months; the average was 29 months.

NEPA Contracting Update



Pre-solicitation Announcements

The Integrated Project Team for DOE-wide NEPA support services acquisition, led by the National Nuclear Security Administration (NNSA) Service Center and including NEPA Compliance Officers, recently issued pre-solicitation announcements indicating the Acquisition Strategy for DOE-wide NEPA contracting.

The February 5, 2008, announcements (amended February 7, 2008) indicate that two competitive solicitations will be issued – one will be a set aside for small business concerns, and the other will be under full and open competition. Under each of the solicitations, up to four Indefinite Delivery Indefinite Quantity contracts could be issued. The contracts, to be offered under NAICS code 541712, are anticipated to be 5-year contracts with a base period of performance of 2 years and three 1-year options.

Information on this acquisition, including the pre-solicitation announcements, is available at www.doeal.gov/nepa. The point of contact is Francis Ting, fting@doeal.gov or 505-845-4912.

DOE-wide NEPA Contracts Extended

The NNSA Service Center has again extended the DOE-wide NEPA Contracts, and all six – those awarded under full and open competition and those awarded to small businesses – are extended through September 30, 2008. Information on the contracts and how to issue task orders under them is available on the DOE NEPA website at www.eh.doe.gov/nepa under DOE-wide NEPA Contracting or by contacting David Nienow, Contract Administrator, NNSA Service Center, at dnieow@doeal.gov or 505-845-6072. Tasks issued before the expiration dates need not be completed before the expiration dates.

Recent EIS-Related Milestones (December 1, 2007, to February 29, 2008)

Draft EISs

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0399

*Montana Alberta Tie Ltd. (MATL) 230 kV
Transmission Line, Great Falls, Montana*
February 2008 (73 FR 8869, 2/15/08)

National Nuclear Security Administration

DOE/EIS-0236-S4

*Complex Transformation Supplemental
Programmatic Environmental Impact Statement*
January 2008 (73 FR 2027, 1/11/08)

Notice of Cancellation

Office of Fossil Energy

DOE/EIS-0284

*Low-Emission Boiler System Project,
Elkhart, Illinois*
February 2008 (73 FR 11101, 2/29/08)

Notice of Additional Public Hearing

Office of Electricity Delivery and Energy Reliability

DOE/EIS-0386

*Designation of Energy Corridors on Federal Land
in 11 Western States*
January 2008 (73 FR 2905, 1/16/08)

Notice of Extension of Comment Period

Western Area Power Administration

DOE/EIS-0377

*Big Stone II Power Plant and Transmission Project,
Proposed Power Plant, South Dakota and Minnesota*
January 2008 (73 FR 861, 1/4/08)

**Not previously reported in LLQR*

Final EIS

Western Area Power Administration

DOE/EIS-0323-S1

*Sacramento Area Voltage Support Project,
Sacramento, Sutter, and Placer Counties, California*
February 2008 (73 FR 8869, 2/15/08)

Record of Decision and Floodplain Statement of Findings

Western Area Power Administration

DOE/EIS-0389

*Construction and Operation of the Trinity Public
Utilities District Direct Interconnection Project,
Trinity County, California*
January 2008 (73 FR 5184, 1/29/08)

Amended Record of Decision

Office of Environmental Management

DOE/EIS-0355

*Remediation of the Moab Uranium Mill Tailings,
Grand and San Juan Counties, Utah*
February 2008 (73 FR 11103, 2/29/08)

Supplement Analyses

Bonneville Power Administration

Transmission System Vegetation Management Program

Environmental Impact Statement (DOE/EIS-0285)

DOE/EIS-0285-SA-345*

*Olympia - Shelton No. 3, Olympia - Kitsap No. 3,
Towers 18/5 to 20/5 Transmission Line
Corridor Vegetation Management, Thurston
and Mason Counties, Washington*
(Decision: No further NEPA documentation
is required)
October 2007

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

DOE/EIS-0285-SA-346*

Vegetation Management along North Bonneville - Troutdale No. 2, 230 kV Transmission Line Corridor from North Bonneville Substation to Troutdale Substation, Skamania and Clark Counties, Washington

(Decision: No further NEPA documentation is required)

October 2007

DOE/EIS-0285-SA-347*

Vegetation Management along the Shelton - Kitsap Transmission Line Corridor from the Shelton Substation to the Kitsap Substation, Thurston, Mason and Kitsap Counties, Washington

(Decision: No further NEPA documentation is required)

October 2007

DOE/EIS-0285-SA-348*

Vegetation Management along the Chehalis - Raymond No. 1, Chehalis - Olympia No. 1, Chehalis - Mayfield No. 1, Chehalis - Centralia No. 2, Chehalis - Covington No. 1, and the Raymond - Cosmopolis No. 1 Transmission Line Corridors, Lewis, Pacific, and Thurston Counties, Washington

(Decision: No further NEPA documentation is required)

November 2007

DOE/EIS-0285-SA-349*

Santiam - Alvey No. 1 and 2 Transmission Line Vegetation Management, Linn and Lane Counties, Oregon

(Decision: No further NEPA documentation is required)

November 2007

DOE/EIS-0285-SA-350*

Vegetation Management along the Chief Joseph - Sickler No. 1, 500 kV Transmission Line Corridor Right of Way from Structure 36/3 to 38/5, Douglas County, Washington

(Decision: No further NEPA documentation is required)

November 2007

DOE/EIS-0285-SA-351

Vegetation Management along the Satsop Park - Cosmopolis No. 1, 115 kV Transmission Line Corridor between Structures 14/2 to 14/4, Grays Harbor County, Washington

(Decision: No further NEPA documentation is required)

December 2007

DOE/EIS-0285-SA-352

Vegetation Management along the John Day - Marion No. 1 Transmission Line Corridor from Structures 1/1 to 56/1, Wasco County, Oregon

(Decision: No further NEPA documentation is required)

December 2007

DOE/EIS-0285-SA-353

Vegetation Management along the Jones Canyon - Santiam Transmission Line Corridor from Structures 92/2 to 102/2, Wasco County, Oregon

(Decision: No further NEPA documentation is required)

December 2007

**Not previously reported in LLQR*

What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports.

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

Scoping

What Worked

- *Coordinated effort with applicant.* The applicant held the scoping meeting for the EA. DOE followed up by providing additional information about the project to the state, local agencies, and landowners.

What Didn't Work

- *Existing resources not used.* Existing staff resources and expertise were not fully utilized, which inhibited the EA scoping process.

Data Collection/Analysis

What Didn't Work

- *Contractor not onsite.* The applicant's environmental contractor was located far from the project location. This made it difficult for the contractor to describe site-specific needs in the EA.
- *Lack of understanding of EA process.* The applicant did not understand that an EA should not make conclusions regarding the significance of impacts. Several iterations of draft reviews were needed to obtain a correct understanding of the EA process.

Schedule

Factors that Facilitated Timely Completion of Documents

- *Quick turn around.* Prompt DOE reviews contributed to the timely completion of the EA.

Factors that Inhibited Timely Completion of Documents

- *Inadequate drafts.* The applicant's submission of poorly-written documents inhibited timely completion of the EA.

- *Disregard for DOE guidance.* The applicant did not follow the DOE guidance it received, which inhibited timely completion of the EA.
- *Lack of coordination.* Ineffective internal coordination of the project schedule with NEPA process requirements inhibited timely completion of the EA.
- *Unrealistic schedule.* The EA schedule was developed in response to the proponent's construction schedule and was not realistic.
- *Schedule planned too early in advance.* The proponent's project schedule was developed prior to selection as a candidate for a financial assistance award. DOE became involved in the project at a point where NEPA instantly became a critical path to construction.

Teamwork

Factors that Facilitated Effective Teamwork

- *Project awareness.* A clear understanding of the project scope facilitated effective teamwork.
- *Common goals.* The team exhibited a collective sense of urgency to complete the EA in order to determine whether DOE would or would not provide financial assistance to the project. NEPA was a priority for all involved.

Factors that Inhibited Effective Teamwork

- *Applicant confusion.* The applicants were confused by DOE's EA requirements.
- *Inadequate knowledge of resources available.* An incomplete understanding of options available to minimize delays and promote effective coordination inhibited effective teamwork on the EA.
- *Miscommunication.* Poor communication among EA team members inhibited effective teamwork.

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What Worked and Didn't Work

(continued from previous page)

Process

Successful Aspects of the Public Participation Process

- *Multiple meetings.* Public meetings and subsequent meetings with the state, local agencies, and landowners facilitated understanding and acceptance of the EA.
- *No adverse public reaction.* There were no significant adverse reactions or comments presented to DOE on the EA.
- *Prior public awareness.* The public was largely aware of and in support of the proposed project prior to the EA process.
- *Use of existing process.* Utilizing the rulemaking process for public review and comment on the draft EA facilitated the public participation process.

Unsuccessful Aspects of the Public Participation Process

- *No substantive public comments received.* Despite notices and opportunities to provide comments, only wildlife agencies provided substantive comments.
- *Lack of publicity.* The EA public participation process was not very aggressive. As a result, there was no public reaction.

Usefulness

Agency Planning and Decisionmaking: What Worked

- *External agency input on mitigation measures.* Several mitigation measures were identified through coordination with other agencies.
- *Best practices.* The EA process effectively ensured the inclusion of best practices in facility design, construction, and operation.

Enhancement/Protection of the Environment

- *Mitigation measures.* Several mitigation measures were identified and adopted as a result of the EA process.
- *Early identification of protection measures.* Wetland and species protection measures were identified early and included in the proposed action.

Other Issues

- *Clear direction to applicants.* Provision of solid direction, firmness, and reminders to applicants regarding DOE's ownership of the EA was essential.
- *Use of staff resources.* A very large NEPA workload could have hindered document preparation, but due to applicant delays on several action items, DOE completed the EA in time.

Guidance Needs Identified

- *Integrating NEPA and rulemaking processes.* Guidance on how to integrate an EA into a technical support document for a rulemaking process that complies with all NEPA requirements is recommended.

Effectiveness of the NEPA Process

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

For the past quarter, in which 4 questionnaire responses were received for EAs, 2 out of 4 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that without successful completion of the EA, DOE would not have signed a financial assistance award with the proponent, and the proponent likely would have constructed the facility on a much delayed schedule.
- A respondent who rated the process as "3" stated that there was an apparent lack of interest in the EA by the public, which supported the project. Also, the resource agencies chose to get involved, but other agencies did not.
- A respondent who rated the process as "2" stated that the EA was based on a congressionally-mandated rulemaking and did not influence decisionmaking.
- A respondent who rated the process as "0" stated that the decision had already been made prior to the EA.