

# LESSONS LEARNED

September 1, 2010; Issue No. 64

Third Quarter FY 2010

## DOE Uses e-NEPA To Enhance Public Participation

The Department of Energy (DOE) is continuing its efforts to foster transparency and facilitate public participation in the NEPA process through the effective use of the Internet. DOE now publishes on its NEPA website all draft environmental assessments (EAs) for which the Department seeks public comments and electronically notifies interested parties who have asked to be informed of EA comment opportunities. These measures implement a new DOE policy established by Deputy Secretary Daniel B. Poneman in a July 16, 2010, [memorandum](#), which became effective immediately.



“A primary purpose of NEPA is to inform the public about the environmental implications of Federal agency decisions before they are made,” noted Deputy Secretary Poneman in establishing the new policy. In his memorandum, Mr. Poneman encouraged DOE Offices to continue to make draft EAs available for public comment whenever possible. “When the Department seeks public comment on draft EAs, online publication and electronic



notification will make the opportunity to comment more effective,” he advised.

“**This new policy is the right thing to do,**” said DOE General Counsel Scott Blake Harris. “It increases transparency and enhances opportunities for public input. The policy builds on several notable steps that DOE recently has taken to enhance public awareness of, and participation in, DOE’s NEPA process, such as posting categorical exclusions online and creating a centralized database of categorical exclusion determinations.” (See [LLQR, December 2009, page 1](#), and [March 2010, page 1](#).)

*(continued on page 8)*



## Lessons from Oil Spill Review Apply Broadly

The Council on Environmental Quality (CEQ) recently issued its report on the NEPA process related to drilling of the Macondo well, which was the source of the April 20, 2010, accident and subsequent oil spill in the Gulf of Mexico. The report contains useful reminders to all NEPA practitioners of the importance of transparency and accountability in the NEPA process. It also encourages Federal agencies to participate in each other’s NEPA reviews.

“Every agency in the executive branch of the Federal Government has a responsibility to apply NEPA when making decisions that could impact our environment,”

said Nancy Sutley, CEQ Chair, in a [news release](#) announcing the report. “The recommendations in this report are targeted to ensure robust environmental reviews for future oil and gas exploration and development.”

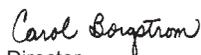
CEQ makes seven recommendations divided among four topic areas: Tiering and Site-Specific Analysis; Transparency, Public Accountability, and Sound Decisionmaking; Categorical Exclusions; and Changed Circumstances. (See text box, page 7.) The recommendations “call for efficient preparation and utilization of broad programmatic reviews, fully integrated with site-specific assessments and mitigation approaches.”

*(continued on page 6)*

## Inside **LESSONS LEARNED**

Welcome to the 64<sup>th</sup> quarterly report on lessons learned in the NEPA process. In this issue, we feature reflections on the 40<sup>th</sup> Anniversary of NEPA from the DOE NEPA Community. We also continue to report on activities to enhance transparency in the NEPA process, including a new DOE policy and recent recommendations from CEQ. Thank you for your continuing support of the Lessons Learned program. As always, we welcome your suggestions for improvement.

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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 November 1, 2010. Contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

### Quarterly Questionnaires Due November 1, 2010

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2010 (July 1 through September 30, 2010) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA Website at [nepa.energy.gov](http://nepa.energy.gov) under Lessons Learned. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@hq.doe.gov](mailto:vivian.bowie@hq.doe.gov).

### LLQR Online

The Office of NEPA Policy and Compliance notifies the DOE NEPA Community and other interested parties by email when each new quarterly issue is posted on the DOE NEPA Website (above) under Lessons Learned. DOE provides paper copies only on request. Send distribution requests to [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov).

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## Mark Your Calendars: Upcoming Conferences



### NAEP 2011 Conference

*Seventh Generation Thinking: Learning from the Past – Planning for the Future* is the theme of the National Association of Environmental Professionals (NAEP) 2011 conference, to be held April 26–29 in Denver. Abstracts for presentations and nominations for National Environmental Excellence Awards to recognize outstanding achievements in NEPA excellence are due September 30. Instructions for submitting abstracts and award nominations can be found at [www.naep.org](http://www.naep.org).



### GreenGov Symposium

The Council on Environmental Quality will hold the 2010 GreenGov Symposium in Washington, DC, October 5–7, focusing on the performance goals set by Executive Order 13514. (See *LLQR, December 2009, page 9*, and *June 2010, page 16*.) Symposium topics include clean energy, getting to zero waste, greening the supply chain, and sustainable communities. See [www.gwu.edu/greengov](http://www.gwu.edu/greengov).



### Climate Change and Impact Assessment Symposium

The International Association for Impact Assessment will host its Climate Change and Impact Assessment Symposium in Washington, DC, November 15–16. The symposium will emphasize practical examples and guidance regarding infrastructure likely to be affected by climate change, and application of strategic environmental and cumulative effects assessment. See [www.iaia.org/iaia-climate-symposium-dc](http://www.iaia.org/iaia-climate-symposium-dc).

# Reflections on NEPA at 40 – from the DOE NEPA Community

***Dr. Raj Sharma is a “survivor” – the only current NEPA Compliance Officer who has served continuously since the position was established in 1990.***

The last 40 years since the enactment of NEPA have provided excellent experience in balancing programmatic needs and environmental values. Program managers and decisionmakers are increasingly much more attuned to critical examination of alternative courses of action and the consequences of their decisions. Because of the nature of its programs, DOE has prepared and continues to prepare the most technologically complex NEPA documents. However, no matter how simple or complex the technology, it is the consumption of resources and physical and/or chemical alteration of the environment that has positive or negative consequences. Therefore, the focus in NEPA documents should be on physical disturbances, consumptive use of resources, effluents, emissions, and generation of waste rather than on detailed, elaborate description of the technology or facilities.

In the next 10 years, before we celebrate the half-century mark of NEPA, I hope we can learn how to describe the complex technological aspects and facilities in simple language and in detail sufficient to explain the potential for environmental impacts. With this approach, we will come closer to meeting the requirement of the Council on Environmental Quality regulations at 40 CFR 1502.7 – EIS page limits of 150 pages (normally) to less than 300 pages (unusual scope or complexity). Such focused and simple NEPA documents will enhance public comprehension of DOE programs and generate more meaningful discussion of relevant issues.

*Raj Sharma, Ph.D.  
Office of Nuclear Energy*

***Ted Wyka took on his first NEPA project as Document Manager for the National Nuclear Security Administration’s Complex Transformation Supplemental Programmatic EIS, which he completed on schedule in 24 months.***

NEPA is a management process that, if done right, leads to better and more informed decisions. It should not be seen as a hurdle to get over, but as critical input to the decisionmaking process. This effort requires senior management involvement from the onset. It also requires line management involvement in the development and subsequent analysis of alternatives. Given the public nature of this work, this is a process where corners cannot be cut. These efforts can be completed on schedule and within budget if done right the first time.

On a personal note, given my inexperience when called to serve as Document Manager for the Complex Transformation Supplemental Programmatic EIS, I relied greatly on advice and assistance from the NEPA Office. They will help you succeed if you work with them closely during all phases of the project. The questions asked and comments provided by the NEPA Office prepared me and the document well for the intensive public review of this document and for the 37 public meetings.

*Ted Wyka  
Director, Office of Security Operations and Performance Assurance  
National Nuclear Security Administration*

***Matt Urie has worked on wide-ranging NEPA issues for the National Nuclear Security Administration, and previously in the DOE Office of the General Counsel. He has been practicing environmental law as a Government attorney since 1987.***

The EAs and EISs prepared during the last 40 years pursuant to NEPA have provided Federal decisionmakers and project managers with valuable short-term and long-term information upon which to base important decisions. In addition, the preparation of these documents has motivated Federal decisionmakers and members of the public to interact in a way that ensures all interested parties have a stake in the outcome of the decisionmaking process. The NEPA process provides another window into the workings of the Federal government and the way in which our tax dollars are spent, and an opportunity for interested members of the public to directly interact with Executive agency decisionmakers at a national and local level.

*Matt Urie  
National Nuclear Security Administration*

## Reflections on NEPA at 40 – from the DOE NEPA Community

*As an Attorney-Advisor in the Office of the Assistant General Counsel for Environment, Dean Monroe has supported many NEPA reviews.*

Although it is known by the name “National Environmental Policy Act of 1969,” it was actually signed into law in 1970. Other than that, however, everything else about it seems to be fairly simple or as someone here once said “common sense,” right down to the citation, 42 U.S.C. 4321 *et seq.* I think it’s no coincidence that roughly 75 percent of the countries of the world have a NEPA statute; at one international conference I attended, they all did. All of them have a need to protect their environmental heritage and to ensure public support for public actions (or “major Federal actions”) that affect human health and the environment.

For us at DOE, it has become the way that we make decisions in a manner that will be acceptable to the public – “running things up the flagpole” if you will. It has also become a method of achieving sufficient consensus internally to face public resistance (if any). Mostly it does as the sponsors intended – allows the public to know the potential environmental impacts of what their government proposes to do before they do it and that seems to be a good thing.

There are challenges, to ensure that our stated “purpose and need” reflects a valid “purpose and need,” to show that cumulative impacts are, in fact, cumulative, and to make sure that the format of the documents is sufficiently clear to allow the public to make comparisons among alternatives. Still, it is a helpful exercise to make decisions in a way that appears most publicly acceptable.

*Dean Monroe  
Office of the Assistant General Counsel for Environment*

*Reflecting the interdisciplinary approach required for preparing an EIS (40 CFR 1502.6), the NEPA Office staff is an interdisciplinary team with diverse educational qualifications and professional experiences. Jeff Dorman and Connie Chen are some of the “younger than NEPA” staff members; Yardena Mansoor recalls studying NEPA when it was news.*

I saw only seven of NEPA’s first 40 years as a professional, but I expect to see most of its next 40. What has concerned me most so far, and what I expect will change most in the future, is how we prepare and distribute NEPA documents to the public. Videos embedded in text, public hearings available via webcast, things we can’t even imagine today will find their way into our NEPA process. Some NEPA practitioners will resist these changes because they are not required by NEPA or will be perceived as making the NEPA process longer and more expensive. However, history shows they will happen anyway, and the process will be better for it.

The first DOE EIS, 500 pages of black and white, was completed in January 1977. Six years and 89 EISs later, blue lettering and outlines drawn over reddish-brown monochromatic aerial photos marked the first use of color figures in a DOE EIS. They seem crude by today’s standards, but these figures were literally years ahead of their time. Color figures next appeared in the mid-1980s, and only a couple more times by the early 1990s, before becoming more common in the late 1990s and 2000s.

The transition to color happened without being required by NEPA, and despite the time and expense of color, because color improves the documents and the public expects us to use it. The advances of the next 40 years will be similar, and we should embrace them. They are inevitable.

*Jeff Dorman  
Office of NEPA Policy and Compliance*



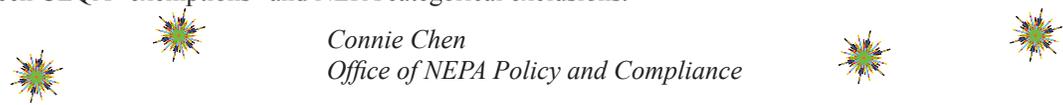
## Reflections on NEPA at 40 – from the DOE NEPA Community



**M**y environmental planning experience began with the California Environmental Quality Act (CEQA) process and documentation. My exposure to NEPA had been working on joint NEPA and CEQA documents for projects in California with Federal involvement, for example, Caltrans projects or renewable energy projects on Bureau of Land Management land. My introduction to the NEPA process by itself is the current DOE categorical exclusion rulemaking effort.

A key difference between CEQA and NEPA is the provision of categorical exclusions. Under CEQA, public agencies can request “categorical exemption” additions, modifications, or deletions from the Governor’s Office of Planning and Research. Only 30 classes of projects are exempted under CEQA. Initially, in reviewing DOE’s list of categorical exclusions, I was surprised by the range and number of actions that could be categorically excluded.

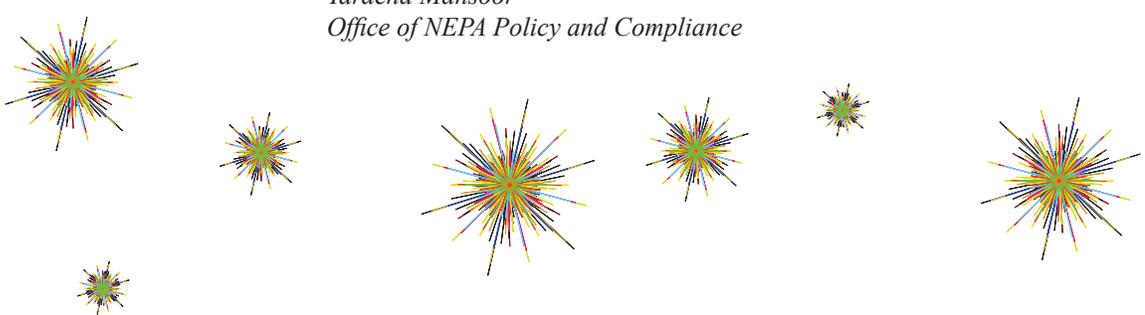
As a participant in the development of the rulemaking, I am witnessing the extensive coordination and discussion among the DOE Program and Field Offices, and the NEPA Office and the Office of the Assistant General Counsel for Environment, as well as solicitation of input from outside interested parties. The effort agencies make to support conclusions that certain actions can be categorically excluded based on past experience, institutional knowledge, and review of literature and other agencies’ environmental documents highlighted for me the main difference between CEQA “exemptions” and NEPA categorical exclusions.



*Connie Chen*  
*Office of NEPA Policy and Compliance*

**W**hen I took a team-taught interdisciplinary course in environmental policy, in my junior year of college while on the path to a degree in economics and math, I had no idea that NEPA would play such a major role in my professional future. The statute, which one professor called “the full employment act for environmental scientists,” was only 3 years old. The ink had barely dried on the Calvert Cliffs litigation decision – that regulatory compliance is not equivalent to the environmental impact analysis required in an EIS.

One of the lecturers led us in exploring a locally-based case study, the defeat of a proposal to build a nuclear power plant using a nearby lake for cooling water intake and discharge. Examining the perspectives of environmentalists, university scientists, utility representatives, state officials, and local residents, she concluded that the controversy reflected “not so much substantive disagreement as concern with the mode of presentation of scientific data, the appropriate behavior of scientists with respect to public issues, and the effect of publicity on the scientific dimensions of the problem.” This class raised my consciousness about the need to consider not just the accuracy, adequacy, and relevance of technical information, but issues of presentation, communication, advocacy, and consensus building. These lessons still resonate for me in my daily work at DOE.



*Yardena Mansoor*  
*Office of NEPA Policy and Compliance*

# Oil Spill Review (continued from page 1)

The Department of the Interior (DOI), which has responsibility for permitting offshore drilling activities, has begun implementing the recommendations among other changes it is making in response to the oil spill.

CEQ intends the recommendations to promote “robust and transparent implementation” of NEPA and to help ensure that analysis provides decisionmakers and the public with a complete picture of the potential environmental consequences of a proposed action. “CEQ firmly believes that this complete picture is needed to adequately inform agency decisions,” the report states.

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***NEPA was designed to impart transparency and accountability in Federal decisionmaking. These basic principles inform the review and reforms articulated in this report.***

***– Council on Environmental Quality  
August 16, 2010, Report***

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## Transparent Tiering

DOI’s decision process for oil and gas leasing begins with programmatic NEPA reviews, such as for a regional leasing program, and then moves toward site-specific reviews, such as for a particular drilling permit. CEQ affirmed that this tiered approach is appropriate and helps the agency focus on the issues that are ripe for decision.

It is important that the programmatic analyses and decision documents “remain readily available to the public for as long as they are relied upon in subsequent decisions,” CEQ wrote. Moreover, decisionmakers should be “made aware of the relevant portions of the previous NEPA environmental analysis to inform their subsequent decisions.”

CEQ noted that DOI is reexamining its NEPA implementation to ensure that tiering does not “limit site-specific environmental analysis that may be appropriate in certain circumstances, despite the availability of major, prior environmental reviews and studies.” This issue can arise, for example, when new information becomes available or circumstances change after completion of the programmatic NEPA analysis. In addition, as “decisionmaking proceeds to examine a narrower geographic scope, tiered analysis calls for the assessment of environmental impacts to be more specific to the particular activity, geography, and impacts presented by the proposal at hand.” CEQ also addressed mitigation in the context of tiered NEPA analysis, emphasizing the need to consistently reference and carry through mitigation commitments into subsequent documents and decisions.

## Sound Decisionmaking

To foster transparency, public accountability, and sound decisionmaking, CEQ explained that clearly documented reasoning needs to be accessible to decisionmakers and the public. CEQ recommended providing “well-documented connections between the facts found in prior decisions and the conclusions drawn in subsequent decisionmaking.”

CEQ also underscored that through NEPA analysis “an agency must foresee those consequences which have a low probability of occurrence but could be potentially catastrophic based on credible scientific support.” This is not to be a “worst case analysis” based on conjecture, but should be grounded in scientific opinion. CEQ added that whether potential impacts are “highly uncertain or involve unique or unknown risks” is a factor in evaluating potential significance when determining whether to prepare an environmental impact statement (EIS) (40 CFR 1508.27(b)(5)).

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***It is essential to ensure that information from one level of review is effectively carried forward to – and reflected in – subsequent reviews, that the agencies independently test assumptions, and that there is appropriate evaluation of site-specific environmental impacts***

***– Council on Environmental Quality  
August 16, 2010, Report***

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## Updated Categorical Exclusions

DOI recognizes the need to reexamine its categorical exclusions (CXs) in light of changes over time, CEQ wrote. Deepwater drilling has expanded substantially since DOI established its CXs in the 1980s. The report noted that establishment of a CX requires a “reasoned decision based on all the relevant factors and information” as to whether the category of actions would have individually or cumulatively significant effects on the environment. “This may require a cumulative impact analysis,” CEQ wrote.

CEQ also addressed the need for transparency in applying CXs. In addition to documenting a CX determination “where a record is necessary for agency, public, or judicial review,” CEQ wrote, “The agency must be prepared to furnish a documented explanation for why the action does not fall within any of its identified extraordinary circumstances.” DOI has a CX review process for this purpose, which the agency is emphasizing as part of its current reforms.

*(continued on next page)*

# Oil Spill Review (continued from previous page)

## CEQ Recommendations to DOI's Bureau of Ocean Energy Management, Regulation and Enforcement:

### Tiering and Site-Specific Analysis

- Perform careful and comprehensive NEPA review of individual deepwater exploration, operation, development, production, and decommissioning activities, including site-specific information where appropriate.
- Track and take into account all mitigation commitments made in NEPA and decision documents that are relied upon in determining the significance of environmental impacts, from the initial Programmatic EIS through site-specific NEPA analyses and decisions.

### Transparency, Public Accountability, and Sound Decisionmaking

- Ensure that NEPA analyses fully inform and align with substantive decisions at all relevant decision points; that subsequent analyses accurately reflect and carry forward relevant underlying data; and that those analyses will be fully available to the public.
- Ensure that NEPA documents provide decisionmakers with a robust analysis of reasonably foreseeable impacts, including an analysis of reasonably foreseeable impacts associated with low probability catastrophic spills for oil and gas activities on the Outer Continental Shelf.

### Categorical Exclusions

- Review the use of categorical exclusions for Outer Continental Shelf oil and gas exploration and development in light of the increasing levels of complexity and risk – and the consequent potential environmental impacts – associated with deepwater drilling. Determine whether to revise these categorical exclusions.
- Continue to seek amendments to the Outer Continental Shelf Lands Act to eliminate the 30-day decisional timeframe for approval of submitted Exploration Plans.

### Changed Circumstances

- Consider supplementing existing NEPA practices, procedures, and analyses to reflect changed assumptions and environmental conditions, due to circumstances surrounding the BP Oil Spill.

Source: CEQ's Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development (August 16, 2010)

## Supplementing Analyses

CEQ encouraged DOI to consider “supplementing existing NEPA practices, procedures, and analyses to reflect changed assumptions and environmental conditions” due to circumstances surrounding the oil spill. CEQ emphasized the need to update analyses, such as through preparation of a supplemental EIS, to account for new information.

## Federal Agency Involvement

CEQ concluded its report with a recommendation to all Federal agencies. “Ultimately, the goals under NEPA will not be achieved without the full participation of other Federal agencies. . . . Because NEPA mandates an open and inclusive process, relevant information that might otherwise be overlooked by an action agency is brought to the table and an invaluable opportunity to exchange and address contrasting points of view is realized. Better project decisions and better environmental decisions are made as a result,” CEQ wrote.

“The Administration encourages Federal agencies to review their NEPA programs to ensure that they

have the resources and institutional support needed to maintain a strong involvement in Federal action agency decisionmaking and that those Federal agencies ensure that NEPA resources are available to fulfill this effort.”

CEQ's *Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development* (August 16, 2010) is available on CEQ's website.

Recommendations in the report reflect discussions with DOI staff; an internal review of NEPA practices and procedures by the Bureau of Ocean Energy Management, Regulation and Enforcement (one of three bureaus that replaced the Minerals Management Service); and actions DOI intends to take as part of its ongoing reorganization. CEQ also solicited (75 FR 29996; May 28, 2010) and considered public comments, which are available at [www.whitehouse.gov/administration/eop/ceq/initiatives/nea/comments](http://www.whitehouse.gov/administration/eop/ceq/initiatives/nea/comments). 



# e-NEPA Enhances Public Participation (continued from page 1)

DOE's longstanding policy is, whenever possible, to provide opportunities for interested parties to review EAs before DOE approval (concurrent with state/tribal review under 10 CFR 1021.301).<sup>1</sup> This is consistent with Council on Environmental Quality NEPA regulations, which require agencies to involve the public, to the extent practicable, in the preparation of EAs (40 CFR 1501.4(b)).

The new policy requires that, when an Office makes a draft EA available for public review, in addition to its usual manner of doing so, the Office shall ensure that the draft EA is posted on the DOE NEPA Website ([nepa.energy.gov](http://nepa.energy.gov)) before the start of the public review period. In turn, the Office of NEPA Policy and Compliance has established an electronic notification system to provide timely notice of draft EA review opportunities. Through the DOE NEPA Website, interested parties can subscribe to receive email notification when a draft EA is posted. Interested parties also may subscribe to another email list to receive email notices of *NEPA Updates*, which include NEPA public participation opportunities, general NEPA news, notices, and recently posted NEPA documents. The NEPA Office notified all of the nongovernmental organizations and state NEPA points of contact listed in the *Directory of Potential Stakeholders for DOE Actions under NEPA* (July 2010) of the availability of this system (related article, page 10).

## Procedures Facilitate Implementation

The new policy supplements the notification procedures of DOE Program and Field Offices, which are responsible for preparing EAs. Many DOE Offices post draft EAs on their websites; some, such as the Bonneville Power

Administration, use several means to notify interested parties of EA review opportunities. Given a range of procedures among Offices, the new policy provides Offices with flexibility in ways to post their draft EAs on the DOE NEPA Website. When an Office makes a draft EA available for public review, the Office may either (1) post the draft EA (with review instructions) on its own website and inform the DOE NEPA Webmaster that the EA is available for central posting or (2) provide an electronic file of the draft EA (with review instructions) to the DOE NEPA Webmaster for posting on the DOE NEPA Website.

"Review instructions are simply the basic information people need to comment on a draft EA: when are comments due? how do I submit comments? who can I contact for further information?" said Denise Freeman, DOE NEPA Webmaster. To promote consistency and avoid potential for EA process delays, Ms. Freeman circulated a review instructions template to NEPA Compliance Officers for their optional use. Review instructions are posted with the draft EA and provided to subscribers by email.

"Depending on the number of subscribers and level of interest, we are considering other ways to notify people of draft EA comment opportunities and other *NEPA Updates*, such as through the use of 'RSS feeds' (Really Simple Syndication feeds) and social media sites. As always, we welcome feedback on ways to make the website more useful," Ms. Freeman said. "We are especially interested in comments and suggestions for making effective use of social media sites throughout the NEPA process."

Comments and questions may be addressed to Ms. Freeman at [denise.freeman@hq.doe.gov](mailto:denise.freeman@hq.doe.gov). 

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<sup>1</sup> DOE NEPA regulations require that DOE shall provide the host state and host tribe with an opportunity to review and comment on any DOE EA prior to DOE's approval. At DOE's discretion, this state/tribal review period shall be from 14 to 30 days; however, DOE may proceed to approve or take other appropriate action on an EA before the end of the review period if all host states and tribes waive their review opportunity or provide a response before the end of the review period (10 CFR 1021.301(d)).

# Is a Categorical Exclusion Determination a NEPA Review or a NEPA Exemption?

Recently categorical exclusions (CXs) have been frequently mentioned in the media, especially in connection with the Minerals Management Service approval of certain deepwater drilling permits. (See related article, page 1.) Often the application of a CX is characterized incorrectly as an “exemption” or “waiver” from NEPA review.

The Council on Environmental Quality (CEQ) defines a CX as a category of actions that a Federal agency has determined, under its NEPA procedures, do “not individually or cumulatively have a significant effect on the human environment . . . and for which, therefore, neither an environmental assessment nor an environmental impact statement is required” (40 CFR 1508.4).

CEQ NEPA regulations also state that agencies shall reduce excessive paperwork and delay in the NEPA process by, among other things, using CXs and findings of no significant impact (FONSI) to determine that actions are “. . . exempt from the requirement to prepare an environmental impact statement . . .” (40 CFR 1500.4(p and q) and 1500.5(k and l)). Incorrect interpretation of these provisions may contribute to a mischaracterization of a CX as an exemption from NEPA. An exemption from the requirement to prepare an EIS is not an exemption from all NEPA review. An EA and FONSI clearly involve substantive environmental review; a CX also involves environmental review, though to a lesser degree.

A CX must be established through rulemaking or another public process outlined in an agency’s NEPA procedures. An agency considers certain actions as a “class” to determine whether their environmental impacts have potential to be significant and identifies any appropriate limitations on the scope of such actions to ensure insignificant impacts. The agency must present sufficient data and analysis to support its conclusion that the class of actions is one that normally would not result in significant environmental impact.

Once a CX is established by an agency, that agency may apply it to an individual proposal. Under its regulations, DOE must determine that the proposal fits within the class of actions, there are no extraordinary circumstances that may affect the significance of the environmental effects of the proposal, and the proposal is not connected to other actions with the potential for significant impact (10 CFR 1021.410(b)). A CX determination may involve a quick

confirmation of relevant aspects of the proposed action or may require data collection to determine whether there are any extraordinary circumstances.

The CX determination process is a powerful tool for efficiency, as recognized by CEQ in its draft guidance on establishing and applying CXs ([February 18, 2010](#); [LLQR, March 2010, page 3](#)). CXs “allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive [EAs or EISs]. . . . Categorical exclusions are the most frequently employed method of complying with NEPA . . . .”

A CX determination thus is not an exemption or waiver from NEPA compliance, but rather an efficient approach to performing environmental review under NEPA. 



## Next Steps in DOE’s NEPA CX Rulemaking

DOE is now reviewing its existing CXs to revise and add to those CXs listed in the DOE NEPA regulations (10 CFR Part 1021, Subpart D, Appendices A and B) to more fully account for the Department’s current activities and advances in technology since DOE last revised its CXs in 1996 ([LLQR, March 2010, page 19](#)).

DOE intends to issue a notice of proposed rulemaking for public comment in the fall of 2010. The notice will be published in the *Federal Register* and made available through the DOE NEPA Website ([nepa.energy.gov](#)), the DOE NEPA email notification system, and the DOE CX rulemaking docket at [Regulations.gov](#) (Docket ID: DOE-HQ-2010-0002). DOE will consider comments received during preparation of a final rule.

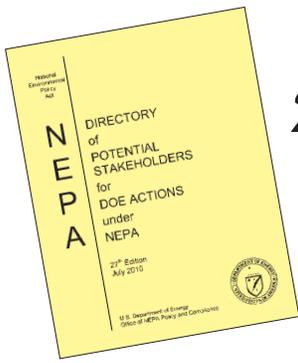
## DOE CX Database Update (as of August 24, 2010)

- 3,420 CX determinations from 45 DOE offices
- 2,131 of those are related to Recovery Act projects

The most frequently invoked CXs are:

- B5.1 – Actions to conserve energy (1,772)
- A9 – Information gathering/data analysis/document preparation/dissemination (1,479)

The CX Database is available at [cxnepa.energy.gov](#).



## 2010 Stakeholders Directory Issued: Use It!

The 27<sup>th</sup> Edition of the *Directory of Potential Stakeholders for DOE Actions under NEPA* (July 2010)

has been posted on the DOE NEPA Website under Guidance

([nepa.energy.gov/documents/StakeholdersDirectory.pdf](http://nepa.energy.gov/documents/StakeholdersDirectory.pdf)). Updated annually,

the *Directory* is intended to supplement Program and Field Office distribution and notification lists for NEPA documents of national interest or broad geographic scope. This responds to a provision of the Council on Environmental Quality NEPA regulations (40 CFR 1506.6(b)(2)) that states: “In the case of an action with effects of national concern notice shall include publication in the *Federal Register* and notice by mail to national organizations reasonably expected to be interested in the matter . . . Agencies shall maintain a list of such organizations.”

The 2010 *Directory* identifies more than 250 potential NEPA document reviewers in Federal agencies, states, and national and regional nongovernmental organizations. DOE Offices are encouraged to be inclusive in providing potentially interested parties with opportunities to review DOE NEPA documents, consistent with the Presidential memorandum on *Transparency and Open Government* (January 21, 2009). To further this aim, for each listed nongovernmental organization with regional, state, or

local chapters, the *Directory* provides a webpage link to such additional contacts. For convenience, appendices list DOE contacts who may be involved in certain aspects of NEPA document coordination and distribution – NEPA Compliance Officers, public affairs directors, and points of contact for tribal issues – and public reading rooms where DOE Program and Field Offices typically make NEPA documents available for review.

### More and More Stakeholders Look Online for Documents

Updating the *Directory* includes asking stakeholders their preferences for receiving NEPA documents as paper copies, compact disks, or notification of the document’s web address. A trend identified in past years continues: a growing number of contacts prefer not to receive a full paper copy. Approximately 40 percent of the *Directory’s* contacts request only notification of the web address for a posted EA or EIS, and 30 percent prefer to receive only a compact disk. To meet these preferences, and to realize savings in printing, packaging, and mailing, NEPA Document Managers should plan ahead for the timely notification and posting of NEPA documents online.

For additional information, contact Yardena Mansoor at [yardena.mansoor@hq.doe.gov](mailto:yardena.mansoor@hq.doe.gov) or 202-586-9326. 

## DOE NEPA Order Updated

The Deputy Secretary of Energy issued DOE Order 451.1B, Change 2, *National Environmental Policy Act Compliance Program* (June 25, 2010), to incorporate DOE’s recent policy on making certain categorical exclusion determinations publicly accessible and to reflect DOE organizational changes. The DOE NEPA Order assigns internal responsibilities for compliance with the Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508) and DOE’s NEPA implementing procedures (10 CFR Part 1021).

The Deputy Secretary’s *Memorandum for Heads of Departmental Elements on NEPA Process Transparency and Openness* (October 2, 2009) established a policy requiring categorical exclusion determinations based on Appendix B to Subpart D of the DOE NEPA regulations to be documented and made publicly available online. The changed Order incorporates this policy among the

responsibilities of NEPA Compliance Officers, stating that “Categorical exclusion determinations . . . shall be documented and made available to the public by posting online, generally within two weeks of the determination unless additional time is needed in order to review and protect classified information, ‘confidential business information,’ . . . or other information that DOE would not disclose pursuant to the Freedom of Information Act . . . .”

The other changes reflect the transfer of NEPA responsibilities from the former Assistant Secretary for Environment, Safety and Health to the General Counsel (DOE Notice 451.1 (October 6, 2006)).

DOE O 451.1B, Change 2, is now posted at [directives.doe.gov](http://directives.doe.gov) and on the DOE NEPA Website under Requirements. An administrative change to the Order is in preparation to reflect the Deputy Secretary’s recent policy regarding posting draft EAs online for public comment (related article, page 1). 



# Recovery Act NEPA Reviews Keep Pace

Federal agencies completed more than 11,000 NEPA reviews for the American Recovery and Reinvestment Act (ARRA or Recovery Act) projects during the quarter ending June 30, 2010, according to the latest report prepared by the Council on Environmental Quality (CEQ). More than 1,700 (about 15 percent) of these were completed by DOE. CEQ submitted the sixth quarterly report on the NEPA status of projects receiving Recovery Act funds to Congress on August 2, 2010.

**Overall, the departments and agencies continue to report the timely completion of NEPA reviews that inform decisions on projects and activities receiving ARRA funds and position the agencies to implement those projects and activities in an environmentally sound manner.**

– Council on Environmental Quality  
August 2, 2010, Report to Congress

“Agencies continue to meet the challenges of administering programs and projects that were dramatically expanded by ARRA funding by providing tools (e.g., checklists, templates) and additional guidance to help program and project managers deliver projects and activities while meeting their environmental requirements,” CEQ wrote. “Examples of agencies implementing NEPA efficiencies include the continued development of programmatic analyses to meet NEPA compliance requirements for multiple projects and activities, resulting in the expeditious completion of subsequent specific projects and activities.”

The August report summarizes the NEPA status of more than 215,000 Recovery Act projects. Cumulatively through June 30, 2010, Federal agencies completed more than 174,600 categorical exclusion (CX) determinations and 9,000 EAs, and analyzed more than 790 projects in EISs. Agencies concluded that NEPA is not applicable to about 4,200 other Recovery Act projects. Together, these projects involve obligations of approximately \$243 billion funded under Division A of the Recovery Act. In addition, CEQ reported that more than 1,600 NEPA reviews are underway, including approximately 800 CX determinations, 750 EAs, and 35 EISs.

As of June 30, DOE had completed nearly 7,300 NEPA reviews supporting the obligation of more than \$29.5 billion for projects receiving Recovery Act funding, an increase of almost \$2.9 billion since March 31, 2010 (*LLQR*, June 2010, page 14).

## Future Reports

Section 1609(c) of the Recovery Act requires quarterly reports on NEPA activities related to implementing the Recovery Act through September 30, 2011. The next CEQ report to Congress will cover NEPA activities through September 30, 2010. Federal agency reports are due to CEQ by October 15, 2010, and CEQ will submit the next report to Congress in November.

The CEQ reports to Congress are available at [NEPA.gov](http://NEPA.gov). For more information, contact Brian Costner, Office of NEPA Policy and Compliance, at [brian.costner@hq.doe.gov](mailto:brian.costner@hq.doe.gov) or 202-586-9924. 

## An Insider’s Tip: How To Handle Multiple Dates and Addresses in *Federal Register* Notices



An often overlooked instruction in the *Federal Register Document Drafting Handbook* is that when a *Federal Register* notice announces more than four dates and addresses, such as for scoping meetings or public hearings, such information should be presented under the SUPPLEMENTARY INFORMATION heading, under an appropriate subheading such as “Meetings” or “Public Participation,” instead of under the DATES and ADDRESSES headings at the beginning of the notice. When using this approach, insert a statement in the DATES and ADDRESSES sections to direct the reader to the information – for example, “See ‘Meetings’ in the SUPPLEMENTARY INFORMATION section for meeting dates.”

For questions or guidance, contact DOE’s *Federal Register* Liaisons Clara Barley ([clara.barley@hq.doe.gov](mailto:clara.barley@hq.doe.gov) or 202-586-8705) or Diana Dean ([diana.dean@hq.doe.gov](mailto:diana.dean@hq.doe.gov) or 202-586-7440). 

**The carrot: Improve clarity** – Within the SUPPLEMENTARY INFORMATION section, dates and locations can be combined in a logical presentation along with any additional information specific to each meeting, while in the preliminary headings, the content of the DATES and ADDRESSES sections is prescribed to be distinct and may not be combined.



**The stick: Avoid delay** – If a notice with more than four dates and addresses in the preliminary headings is submitted for *Federal Register* publication, it may be sent back for revision, which would then require a new signature of the issuing official.



# President Establishes Nation's First Ocean Policy

For the first time, the United States has a National Ocean Policy for the stewardship of the ocean, coasts, and the Great Lakes. President Obama signed an Executive Order (E.O.) on July 19, 2010, establishing the policy and creating a [National Ocean Council](#) to oversee its implementation. The 25-member council is co-chaired by the White House Office of Science and Technology Policy and the Council on Environmental Quality (CEQ) and includes representatives from 15 Federal agencies (including DOE) and the White House.

The Policy requires regional goals and plans to be developed that may be relevant to DOE NEPA reviews, such as for those involving off-shore energy research and development (e.g., wind, wave/tide, thermal gradient), power transmission, or other scientific exploration.

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**President Obama recognized that our uses of the ocean are expanding at a rate that challenges our ability to manage significant and often competing demands.**

– Nancy Sutley, Chair  
Council on Environmental Quality  
[July 19, 2010, Press Release](#)

E.O. 13547, [Stewardship of the Ocean, Our Coasts, and the Great Lakes](#), adopts the recommendations of an Interagency Ocean Policy Task Force, which was established in June 2009 by President Obama. These recommendations provide a roadmap for implementing the E.O. and are presented in the [Final Recommendations of the Interagency Ocean Policy Task Force](#), issued concurrently.

The Task Force, composed of 24 senior-level Federal officials, was led by the Chair of CEQ. DOE was represented by David Sandalow, Assistant Secretary for Policy and International Affairs. The Task Force stated in its final report that the Nation must “set a new course for improved stewardship of the ocean, our coasts, and the Great Lakes. This must include a comprehensive, integrated, transparent, science-based, and ecosystem-based planning process to achieve the sustainable use of the ocean, our coasts and the Great Lakes.”

The Task Force called for consistent, sustained senior-level attention to ocean-related issues from all Federal agencies whose activities depend on or may affect coastal or marine areas. The Task Force recommended an implementation strategy based on comprehensive, integrated, ecosystem-based coastal and marine spatial (CMS) planning and management.



*Energy planning needs to balance diverse uses of the ocean and coastal areas. (photo: Final Recommendations of the Interagency Ocean Policy Task Force)*

The country will be divided into nine regional planning areas, based on ecological conditions: Northeast, Mid-Atlantic, South Atlantic, Great Lakes, Caribbean, Gulf of Mexico, West Coast, Pacific Islands, and Alaska/Arctic. Each region will have a planning body consisting of Federal, state, and tribal representatives to develop regional goals, objectives, and ultimately regional CMS Plans. The regional planning bodies will submit their Plans to the National Ocean Council for national consistency certification. CMS Plans are to be completed by 2015.

The CMS planning framework includes developing and analyzing alternatives and impacts, releasing a draft plan with supporting environmental impact analysis for public comment, and preparing a final plan for 30 days public notice before implementation. CMS Plans will cover all manner of coastal and marine issues and activities, including cultural, recreation, science, aquaculture, commercial fishing, transportation, energy development, and national security. Once a CMS Plan is adopted, appropriate adjustments would be made through monitoring and adaptive management.

Each regional plan will have a lead Federal agency; other agencies, including DOE, may be asked for assistance. The Task Force encouraged agencies to provide support when requested. 

## Ocean and Great Lakes Facts<sup>1</sup>

- The United States has over 95,000 miles of coastline and the largest Exclusive Economic Zone in the world.
- The Great Lakes are the largest freshwater system on Earth, with 10,000 miles of shoreline and some 95 percent of the Nation's fresh surface water.
- Nearly half of the Nation's population lives in coastal counties.

<sup>1</sup> Interagency Ocean Policy Task Force.

# Transitions



## NEPA Compliance Officers

### Legacy Management: Tracy Ribeiro

**Tracy Ribeiro** was designated NEPA Compliance Officer (NCO) for the Office of Legacy Management (LM) when she recently assumed the duties as the LM Environmental Program Manager. Ms. Ribeiro has been working with DOE since 2007 as a Legacy Site Manager. Previously, she worked with the Naval Nuclear Propulsion Program, private consultants, and an environmental/research facility for 18 years. She has certifications as an Environmental Auditor and as a Professional Geologist (North Carolina and Virginia). Ms. Ribeiro can be reached at [tracy.ribeiro@lm.doe.gov](mailto:tracy.ribeiro@lm.doe.gov) or 970-248-6621.

*Rich Bush, a former NCO, has been designated as the alternate NCO. Tracy Plessinger (the previous NCO) is still with LM, but concentrating on other topic areas.*

### West Valley Demonstration Project: Martin Krentz

**Martin Krentz** is now the NCO for the West Valley Demonstration Project (WVDP). Mr. Krentz had served WVDP as an environmental consultant for 2 years before joining DOE in April 2010 as a Physical Scientist on WVDP's Regulatory Strategy and Environmental Compliance Team. He has over 20 years of experience in the environmental compliance field and is both a Certified Hazardous Materials Manager Master Level and a Qualified Environmental Professional. Mr. Krentz can be reached at [martin.krentz@wv.doe.gov](mailto:martin.krentz@wv.doe.gov) or 716-942-4007.

*The previous NCO, Cathy Bohan, now serves as a project manager for the WVDP. She can be reached at [catherine.m.bohan@wv.doe.gov](mailto:catherine.m.bohan@wv.doe.gov) or 716-942-4159.*

## Former Office of Civilian Radioactive Waste Management NCOs Take New Headquarters Positions

The Office of Civilian Radioactive Waste Management will be disbanded on September 30, 2010. **Narendra Mathur** now serves as an engineer with the new Office of Standard Contract Management (within the Office of the General Counsel). **Jane Summerson** is now a National Nuclear Security Administration employee and serves as an NCO for the Office of Energy Efficiency and Renewable Energy and can be reached at [jane.summerson@ee.doe.gov](mailto:jane.summerson@ee.doe.gov) or 202-287-6188.

## Council on Environmental Quality

**Ellen Athas** is the Council on Environmental Quality's (CEQ's) new Senior Counsel, replacing Ted Boling, who has taken a position in the Department of the Interior. Ms. Athas served as CEQ's Deputy General Counsel and Associate Director for Oceans, Coasts and Environmental Policy during the Clinton Administration, and has held legal positions in the Department of Justice, the Federal Aviation Administration, and the Ocean Conservancy.

**Katie Scharf**, formerly Special Assistant to DOE's General Counsel Scott Blake Harris, now serves as CEQ's Deputy General Counsel. 



# Litigation Updates

## DOE NEPA Litigation

### Appeals Court Affirms that Plaintiffs Lack Standing To Sue

The U.S. Court of Appeals for the Ninth Circuit affirmed a decision by the U.S. District Court for the District of Hawaii granting the Government's motion for summary judgment, on the ground that the plaintiffs lacked standing to allege that DOE and the National Science Foundation violated NEPA by providing support for construction and operation of the Large Hadron Collider.

In 2008, two private citizens sued DOE, Fermilab, the National Science Foundation, and the European Organization for Nuclear Research (CERN), alleging that they violated NEPA by preparing the Large Hadron Collider for operation without NEPA review (*LLQR*, June 2008, page 20). The Large Hadron Collider, a physics research facility operated by CERN and located on the French-Swiss border, accelerates proton particles to nearly the speed of light and collides them at the center of four large detectors designed to observe those collisions.

The appeals court found that the plaintiffs failed to establish any of the three requirements for "standing." Specifically, the plaintiffs did not demonstrate (1) an "injury in fact," (2) "a causal connection between the injury and the conduct complained of" that is not attributable to "the independent action of some third party not before the court," and (3) a likelihood that a favorable decision will redress injury. Regarding the requirement to demonstrate "injury in fact," the appeals court noted that the plaintiffs have only alleged "potential adverse consequences" and stated that "speculative fear of future harm does not constitute an injury in fact sufficient to confer standing."

The appeals court also determined that the plaintiffs failed to satisfy the causality and redressability prongs of standing (requirements 2 and 3, above). The appeals court found that because the U.S. Government "enjoys only observer status on the CERN council, and has no control over CERN or its operations. . . . the alleged injury, destruction of the earth, is in no way attributable to the U.S. government's failure to draft an environmental impact statement." (*Sancho v. DOE*, Case No.: 08-17389; August 24, 2010, memorandum at [www.ca9.uscourts.gov/memoranda](http://www.ca9.uscourts.gov/memoranda))

## Other Agency NEPA Litigation

### Supreme Court Addresses Injunction Standard for NEPA Case

*The Supreme Court found that the U.S. Court of Appeals for the Ninth Circuit "abused its discretion" in enjoining the planting of Roundup Ready Alfalfa while the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) completes an EIS. The Court relied on its 2008 decision (Winter v. Natural Resources Defense Council) regarding the proper standard when a court determines whether to issue an injunction. We encourage the interested reader to examine the entire opinion.*

After preparing an EA and issuing a finding of no significant impact, APHIS approved the deregulation of a strain of alfalfa ("Roundup Ready Alfalfa") that is genetically engineered to be resistant to glyphosate, a weed killer originally patented and marketed by Monsanto as "Roundup." Monsanto had petitioned APHIS to deregulate the strain of alfalfa because it "does not present a plant pest risk." Geertson Seed Farms, a conventional alfalfa seed farm, and environmental groups concerned with food safety sued, alleging that APHIS should have prepared an EIS before its deregulation decision.

The U.S. District Court for the Northern District of California agreed and vacated (i.e., voided) the agency's decision deregulating Roundup Ready Alfalfa; enjoined (i.e., prohibited) APHIS from deregulating Roundup Ready Alfalfa, in whole or in part, before completing the required EIS; and entered a nationwide injunction prohibiting almost all future planting of Roundup Ready Alfalfa (with limited exceptions for those farmers that had already planted the crop or purchased the seed on the basis of APHIS's deregulation decision).

APHIS and Monsanto appealed. The Ninth Circuit Court upheld the District Court's injunction. Monsanto then appealed the appeals court's ruling to the Supreme Court.

*(continued on next page)*



## Four-Part Injunction Test Applies to NEPA Cases

The Supreme Court summarized Monsanto’s argument “that the lower courts in this case proceeded on the erroneous assumption that an injunction is generally the appropriate remedy for a NEPA violation.” In particular, Monsanto noted that the District Court relied on precedent established prior to the Supreme Court’s 2008 opinion in *Winter v. Natural Resources Defense Council* that “an injunction delaying the contemplated government project is proper ‘until the NEPA violation is cured.’” (For more on *Winter*, see [Supreme Court Case No.: 07-1239; LLQR, December 2008, p. 35.](#))



The Supreme Court found the lower court’s presumption “that an injunction is the proper remedy for a NEPA violation except in unusual circumstances” was the reverse of the proper analysis. Instead, the Court reiterated its finding in *Winter* that the determination whether to grant an injunction for a NEPA violation must rely on the traditional four-part test for an injunction. This requires a finding that a plaintiff has established: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”

The Supreme Court found that “none of the four factors supports the District Court’s order.” Because the Supreme Court left in place the lower court’s rejection of APHIS’s approval of crop deregulation until the EIS is completed, APHIS must either fully or partly approve deregulation of the Roundup Ready Alfalfa seed before planting can resume. APHIS is currently reviewing comments received on its [draft EIS](#). (*Monsanto Co. v. Geertson Seed Farms*, [Case No.: 09-475](#); June 21, 2010)



## CEQ Updates Its FOIA Regulations

The Council on Environmental Quality (CEQ) has updated its regulations for disclosing information under the Freedom of Information Act (FOIA). The changes “reflect the principles” in President Obama’s call for open government, CEQ states in its final rule, and “reaffirm its commitment to providing the fullest possible disclosure of records to the public” (75 FR 48585; August 11, 2010). CEQ established a [Proactive Disclosure Reading Room](#) “to advance NEPA’s goals of transparency and public accountability in decision-making.” The rule states that CEQ will use the reading room and associated websites (particularly [NEPA.gov](#)) “to make environmental documents more accessible to the public.”



CEQ prepared an EA for its rulemaking because CEQ has not established any categorical exclusions. This concise EA was published in its entirety in CEQ’s Notice of Proposed Rulemaking (74 FR 58576; November 13, 2009), where it took a single page of the *Federal Register* notice. No comments were received on the EA. Because these regulations “pertain solely to procedures regarding the dissemination of information and will have not only a minimal impact on CEQ resources,

including paper consumption, but will conserve resources and improve the FOIA process,” CEQ found that the regulations will have no significant impact on the human environment and, therefore, an EIS is not required.

CEQ’s existing FOIA regulations were promulgated in 1977; the new regulations become effective on September 10, 2010. More information is available at [www.whitehouse.gov/administration/eop/ceq/foia](http://www.whitehouse.gov/administration/eop/ceq/foia).



### New “Proactive Disclosure Reading Room”

Responding to the Attorney General’s March 19, 2009, [memorandum on FOIA](#), which instructed agencies to “readily and systematically post information online in advance of any public request,” CEQ established, as part of its “FOIA Requester Service Center,” a Proactive Disclosure Reading Room. The Reading Room webpage provides documents frequently requested under FOIA, the legislative history of NEPA, and CEQ historical documents, among other environmental information.



# 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.

- Nicholas School of the Environment and Earth Sciences, Duke University  
919-613-8082  
[del@nicholas.duke.edu](mailto:del@nicholas.duke.edu)  
[www.nicholas.duke.edu/del](http://www.nicholas.duke.edu/del)
  - Tribal Consultation and Accounting for Cumulative Effects in the NEPA Process**  
Durham, NC: September 13-17  
\$1,665
  - Implementation of NEPA**  
Durham, NC: November 1-5  
\$1,250
  - Scoping, Public Involvement and Environmental Justice and Socioeconomic Impact Analysis under NEPA**  
Durham, NC: December 6-10  
\$1,665
  - Certificate in the National Environmental Policy Act**  
Requires successful completion of one core and three elective NEPA short courses.  
Co-sponsored by the Council on Environmental Quality.  
Fee: Included in course registration.
- Northwest Environmental Training Center  
425-270-3274  
[info@nwetc.org](mailto:info@nwetc.org)  
[www.nwetc.org](http://www.nwetc.org)
  - NEPA: Writing the Perfect EA, FONSI or EIS**  
Omaha, NE: October 18-19  
Billings, MT: October 21-22  
\$495 (\$395 for Federal employees)
  - Preparing, Reviewing, Challenging, and Defending Documents Prepared under NEPA and CEQA**  
Pasadena, CA: October 26-27  
\$495 (\$395 for Federal employees)
- The Shipley Group  
888-270-2157 or 801-447-5977  
[shipley@shipleygroup.com](mailto:shipley@shipleygroup.com)  
[www.shipleygroup.com](http://www.shipleygroup.com)
  - Core Principles: Telling the NEPA Story, Keeping Documents Brief, and Meeting Legal Requirements**  
Las Vegas, NV: September 14-16  
\$985 (GSA contract: \$895)
- NEPA Climate Change Analysis and Documentation**  
Niceville, FL: September 22-23  
\$785 (GSA contract: \$695)
- NEPA Cumulative Effects Analysis and Documentation and NEPA Climate Change Analysis and Documentation**  
Phoenix, AZ: October 5-8  
\$1,185 (GSA contract: \$1,095)
- Applying the NEPA Process and Writing Effective NEPA Documents**  
Salt Lake City, UT: October 19-22  
\$1,145 (GSA contract: \$1,055)  
Virginia Beach, VA: November 30 – December 3  
\$1,145 (GSA contract: \$1,055) until 10/13/10
- Overview of NEPA Process and Managing NEPA Projects and Teams**  
Seattle, WA: October 26-29  
\$1,145 (GSA contract: \$1,055) until 9/21/10
- Managing NEPA Projects and Teams and Reviewing NEPA Documents**  
St. Louis, MO: November 1-5  
\$1,345 (GSA contract: \$1,255) until 9/28/10
- Overview of the NEPA Process**  
Las Vegas, NV: November 3  
\$345 (GSA contract: \$255) until 9/21/10
- Applying the NEPA Process and Advanced Environmental Cross-Cutter**  
Jacksonville, FL: November 16-19  
\$1,145 (GSA contract: \$1,055) until 9/28/10
- Applying the NEPA Process and Writing Effective NEPA Documents and NEPA Cumulative Effects Analysis and Documentation**  
San Francisco, CA: December 6-10  
\$1,345 (GSA contract: \$1,255) until 10/20/10
- NEPA Certificate Program**  
Requires successful completion of eight courses offered by The Shipley Group.  
\$5,450  
Contact: Natural Resources and Environmental Policy Program, Utah State University; 435-797-0922  
[judy.kurtzman@usu.edu](mailto:judy.kurtzman@usu.edu)  
[www.cnr.usu.edu/htm/students/grad-degrees/nepa](http://www.cnr.usu.edu/htm/students/grad-degrees/nepa)

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## Training Opportunities

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- SWCA Environmental Consultants  
800-828-7991  
[training@swca.com](mailto:training@swca.com)  
[www.swca.com/training](http://www.swca.com/training)  
  
**Comprehensive NEPA**  
San Diego, CA: October 20-22  
\$795
- USDA Graduate School  
888-744-4723  
[customersupport@graduateschool.edu](mailto:customersupport@graduateschool.edu)  
[http://graduateschool.edu/course\\_details.php?cid=ENV54435E](http://graduateschool.edu/course_details.php?cid=ENV54435E)  
  
**NEPA: Policy, Procedure, Science, and Art**  
Washington, DC: Tuesdays, September 21 – November 23  
\$375
- US Institute for Environmental Conflict Resolution  
(520) 901-8501  
[usiecr@ecr.gov](mailto:usiecr@ecr.gov)  
[www.ecr.gov/training/training.aspx](http://www.ecr.gov/training/training.aspx)  
  
**Advanced Multi-Party Negotiation of Environmental Disputes**  
Lakewood, CO: September 14-16  
\$750  
  
**Introduction to Managing Environmental Conflict\***  
Washington, DC: September 22-23  
\$500  
  
**Negotiating Environmental Issues\***  
Washington, DC: October 26-27  
\$500

\* Co-sponsored by the DOE Office of Conflict Prevention and Resolution.

## Customized NEPA Training

- Environmental Impact Training  
512-963-1962  
[info@eiatraining.com](mailto:info@eiatraining.com)  
[www.eiatraining.com](http://www.eiatraining.com)
- Environmental Planning Strategies, Inc.  
563-332-6870  
[jleeeeps@mchsi.com](mailto:jleeeeps@mchsi.com)  
[www.jlee-eps.com/workshops.php](http://www.jlee-eps.com/workshops.php)
- Environmental Training & Consulting International, Inc.  
503-274-1790  
[info@envirotrain.com](mailto:info@envirotrain.com)  
[www.envirotrain.com](http://www.envirotrain.com)
- ICF International  
703-934-3603 or 800-532-4783  
[info@icfi.com](mailto:info@icfi.com)  
[www.icfi.com/newsroom/educational-opportunities.asp](http://www.icfi.com/newsroom/educational-opportunities.asp)
- International Institute for Indigenous Resource Management  
303-733-0481  
[iiirm@iiirm.org](mailto:iiirm@iiirm.org)  
[www.iiirm.org](http://www.iiirm.org)

## DOE Environmental Attorneys' Training To Focus on Conflict Resolution and Other Current Issues

The annual environmental attorneys' training will be held this year on October 19–20 at DOE Headquarters in Washington, DC, with audio and video links to be announced. This training, traditionally held for Departmental and contractor environmental attorneys (for whom Continuing Legal Education credits may be available), is also open to NEPA practitioners, program staff, and contractors involved in environmental issues. The agenda will include current NEPA developments,

Native American issues (including environmental conflict resolution), natural resource damages, appropriations related to cleanup activities, energy parks, the Recovery Act, and other environmental issues.

For more information, and to register, contact Steven Miller, Office of the Assistant General Counsel for Environment, at [steven.miller@hq.doe.gov](mailto:steven.miller@hq.doe.gov) or 202-586-2925. 

# EAs and EISs Completed April 1 to June 30, 2010

## EAs<sup>1</sup>

### **Argonne Site Office/ Office of Environmental Management**

[DOE/EA-1670\\*](#) (4/9/10)

*Decontamination and Demolition of Building 310 at Argonne National Laboratory, Argonne, Illinois*

Cost: \$15,000

Time: 13 months

### **Golden Field Office/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1704\\*](#) (6/4/10)

*Construction and Operation of a Proposed Cellulosic Biorefinery, BlueFire Fulton Renewable Energy, LLC, Fulton, Mississippi*

Cost: \$48,000

Time: 12 months

[DOE/EA-1733](#) (6/21/10)

*Calpine Enhanced Geothermal Systems Project, Sonoma County, California*

Cost: \$70,000

Time: 9 months

[DOE/EA-1759\\*](#) (5/17/10)

*Southwest Alaska Regional Geothermal Energy Project, Naknek, Alaska*

Cost: \$128,000

Time: 2 months

### **Office of Loan Programs**

[DOE/EA-1683\\*](#) (5/6/10)

*Loan Guarantee to Abengoa Solar, Inc., for the Solana Thermal Electric Power Project near Gila Bend, Arizona*

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

Time: 10 months

[DOE/EA-1690\\*](#) (4/20/10)

*Loan and Grant to A123 Systems, Inc., for Vertically Integrated Mass Production of Automotive-Class Lithium-Ion Batteries, Detroit, Michigan*

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

Time: 9 months

[DOE/EA-1692](#) (6/11/10)

*Loan Guarantee to Red River Environmental Products, LLC, for Construction and Start-up of an Activated Carbon Manufacturing Facility in Red River Parish, Louisiana*

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

Time: 11 months

[DOE/EA-1726\\*](#) (6/3/10)

*Loan Guarantee to Kahuku Wind Power, LLC, for Construction of the Kahuku Wind Power Facility in Kahuku, O'ahu, Hawaii*

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

Time: 6 months

### **National Energy Technology Laboratory/ Office of Energy Efficiency and Renewable Energy**

[DOE/EA-1699](#) (5/18/10)

*Pope/Douglas Third Combustor Expansion Project, Alexandria, Minnesota*

Cost: \$4,000

Time: 9 months

[DOE/EA-1709\\*](#) (5/14/10)

*Compact Power, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Holland, Michigan*

Cost: \$45,000

Time: 5 months

[DOE/EA-1713\\*](#) (4/30/10)

*Celgard, LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Concord, North Carolina*

Cost: \$48,000

Time: 5 months

[DOE/EA-1718\\*](#) (4/7/10)

*EnerG2, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative Project, Albany, Oregon*

Cost: \$37,000

Time: 5 months

(continued on next page)

<sup>1</sup> EA and finding of no significant impact issuance dates are the same unless otherwise indicated.

\* Recovery Act project

# EAs and EISs Completed April 1 to June 30, 2010

(continued from previous page)

[DOE/EA-1720\\*](#) (4/7/10)

*Pyrotek, Inc., Electric Drive Vehicle Battery and Component Manufacturing Initiative, Sanborn, New York*

Cost: \$36,000

Time: 5 months

[DOE/EA-1722\\*](#) (4/21/10)

*Toxco, Incorporated, Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, Lancaster, Ohio*

Cost: \$20,000

Time: 5 months

[DOE/EA-1723\\*](#) (4/30/10)

*General Motors, LLC, Electric Drive Vehicle Battery and Component Manufacturing Initiative Application, White Marsh, Maryland, and Wixom, Michigan*

Cost: \$37,000

Time: 5 months

## **National Energy Technology Laboratory/ Office of Fossil Energy**

[DOE/EA-1658](#) (5/6/10)

*Development and Demonstration of a Biomass Energy Center for Food Processing Applications, Topeka, Kansas*

Cost: \$60,000

Time: 14 months

## **National Nuclear Security Administration**

[DOE/EA-1677](#) (5/6/10)

*Conveyance and Transfer of the Two Land Tracts Pursuant to Public Law 111-11, Section 13005, Albuquerque, New Mexico*

Cost: \$22,000

Time: 12 months

[DOE/EA-1771](#) (5/26/10)

*U.S. Receipt and Storage of Gap Material – Plutonium, Delaware, Georgia, South Carolina, and Tennessee (For Official Use Only; EA not publicly available)*

[Finding of No Significant Impact](#) (available online)

Cost: \$496,000

Time: 9 months

## **Western Area Power Administration**

[DOE/EA-1635](#) (5/7/10)

*Williston to Tioga Transmission Line Project, North Dakota*

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

Time: 21 months

## EISs

### **Office of Fossil Energy/**

### **National Energy Technology Laboratory**

[DOE/EIS-0409](#) (75 FR 28612, 5/21/10)

(EPA Rating: EC-2)

*Kemper County Integrated Gasification Combined-Cycle (IGCC) Project, Kemper County, Mississippi*

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

Time: 20 months

[Department of Defense was a cooperating agency.]

## **Western Area Power Administration**

[DOE/EIS-0415](#) (75 FR 30022, 5/28/10)

(EPA Rating: EC-2)

*Deer Creek Station Energy Facility Project, Brookings and Deuel Counties, South Dakota*

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

Time: 15 months

[Department of Agriculture, Rural Utilities Service was a cooperating agency.]

### **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](http://www.epa.gov/compliance/nepa/comments/ratings.html).)

\* Recovery Act project

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost for the preparation of 14 EAs for which cost data were applicable was \$41,000; the average cost was \$78,000.
- Cumulatively, for the 12 months that ended June 30, 2010, the median cost for the preparation of 38 EAs for which cost data were applicable was \$45,000; the average was \$67,000.
- For this quarter, the median and average completion time for 19 EAs was 9 months.
- Cumulatively, for the 12 months that ended June 30, 2010, the median completion time for 47 EAs was 6 months; the average was 9 months.

## EIS Cost and Completion Times

- For this quarter, there were no EISs completed for which cost data were applicable.
- Cumulatively, for the 12 months that ended June 30, 2010, the median cost for the preparation of 3 EISs for which cost data were applicable was \$1.4 million; the average cost was \$11 million.
- For this quarter, the completion times for 2 EISs were 15 and 20 months.
- Cumulatively, for the 12 months that ended June 30, 2010, the median completion time for 5 EISs was 49 months; the average was 43 months.

# Recent EIS-Related Milestones June 1 to August 31, 2010

## Notices of Intent

### **Bonneville Power Administration**

DOE/EIS-0451

*Hooper Springs Substation and Hooper Springs-Lower Valley Transmission Line, Caribou County, Idaho*

July 2010 ([75 FR 39241](#), 7/8/10)

### **Office of Electricity Delivery and Energy Reliability**

DOE/EIS-0447

*Champlain Hudson Power Express Transmission Line Project, New York*

June 2010 ([75 FR 34720](#), 6/18/10)

### **Office of Fossil Energy**

DOE/EIS-0444\*

*Texas Clean Energy Project (TCEP), Ector County, Texas*

June 2010 ([75 FR 30800](#), 6/2/10)

DOE/EIS-0445\*

*American Electric Power Service Corporation's Mountaineer Commercial Scale Carbon Capture and Storage Demonstration, Mason County, West Virginia*  
June 2010 ([75 FR 32171](#), 6/7/10)

## Amended Notice of Intent

### **Office of Environmental Management**

[DOE/EIS-0283-S2](#)

*Supplemental Environmental Impact Statement for Surplus Plutonium Disposition, Savannah River Site, Aiken, South Carolina*

July 2010 ([75 FR 41850](#), 7/19/10)

## Draft EISs

### **Bonneville Power Administration**

[DOE/EIS-0422](#)

*Central Ferry-Lower Monumental 500-kilovolt Transmission Line Project, Garfield, Columbia, and Walla Walla Counties, Washington*

July 2010 ([75 FR 38517](#), 7/2/10)

### **Western Area Power Administration**

[DOE/EIS-0427](#)

*Grapevine Canyon Wind Project, Coconino County, Arizona*

July 2010 ([75 FR 43160](#), 7/23/10)

[DOE/EIS-0433\\*\\*](#)

*Keystone XL Oil Pipeline Project*

April 2010 ([75 FR 19969](#), 4/16/10)

[Department of State is the lead agency; WAPA is a cooperating agency.]

\* *Recovery Act project*

\*\* *Not previously reported in LLQR*

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# Recent EIS-Related Milestones

## June 1 to August 31, 2010

(continued from previous page)

### [DOE/EIS-0435](#)

*Modification of the Groton Generation Station Interconnection Agreement*, Brown County, South Dakota  
August 2010 ([75 FR 47591](#), 8/6/10)

## Final EISs

### **Office of Energy Efficiency and Renewable Energy/Golden Field Office**

#### [DOE/EIS-0407\\*](#)

*Abengoa Biorefinery Project near Hugoton*, Stevens County, Kansas  
August 2010 ([75 FR 51458](#), 8/20/10)  
[EPA notice correcting 30-day wait period [75 FR 52736](#), 8/27/10]

### **Western Area Power Administration**

#### [DOE/EIS-0418](#)

*South Dakota Prairie Winds Project*, Aurora, Brule, Jerauld, and Tripp Counties, South Dakota  
July 2010 ([75 FR 44951](#), 7/30/10)  
[Co-lead: Department of Agriculture, Rural Utilities Service]

## Records of Decision

### **Office of Fossil Energy/ National Energy Technology Laboratory**

#### [DOE/EIS-0409](#)

*Kemper County Integrated Gasification Combined-Cycle (IGCC) Project*, Kemper County, Mississippi  
August 2010 ([75 FR 51248](#), 8/19/10)

### **Western Area Power Administration**

#### [DOE/EIS-0415](#)

*Deer Creek Station Energy Facility Project*, Brookings and Deuel Counties, South Dakota  
July 2010 ([75 FR 39926](#), 7/13/10)

## Amended Record of Decision

### **Office of Environmental Management**

#### [DOE/EIS-0119](#)

*Decommissioning of Eight Surplus Production Reactors at the Hanford Site*, Richland, Washington  
July 2010 ([75 FR 43158](#), 7/23/10)

## Supplement Analysis

### **Office of Environmental Management**

#### **Decommissioning of Eight Surplus Production Reactors**

##### [\(DOE/EIS-0119\)](#)

#### [DOE/EIS-0119/SA-01](#)

*Decommissioning of Eight Surplus Production Reactors at the Hanford Site*, Richland, Washington  
(Decision: No further NEPA review required)  
July 2010

\* Recovery Act project

## Questionnaire Results

# What Worked and Didn't Work in the NEPA Process

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B 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

- *Internal scoping meeting.* An internal scoping meeting was held with the EA preparation team to foster efficient interactions among the participants.
- *Advance scoping.* The EA was scoped well in advance. (This is the third EA for the subject project.) Some changes to the project necessitated additional NEPA documentation.
- *Coordination.* Extensive coordination with the applicant during the scoping phase transformed the EA proposed action from a greenfield development to an existing facility retrofit with only minor new construction.
- *Early issue identification.* Early coordination with the cooperating agency, as well as with EPA and the U.S. Fish and Wildlife Service (FWS), identified potential issues early in the NEPA process.

## Data Collection/Analysis

### What Worked

- *Good communication.* The EA contractor maintained regular communication with the project manager and team members to ensure proper collection and interpretation of characterization data.
- *Use of pre-existing data.* Data from previous EAs on the same subject were used and referenced where relevant.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Effective document manager.* The document manager ensured that the EA was on schedule and that all milestone dates were met.

- *EA coordinator assigned.* A coordinator was assigned to communicate the NEPA document manager's expectations and to keep the contractor on track. Biweekly progress meetings, collaboration on succinct data calls, and data call follow-ups were all used.
- *Responsive applicant.* A very responsive applicant and close coordination with FWS during the Endangered Species Act Section 7 consultation facilitated timely completion of the EA. Additionally, the applicant was very cooperative and quick to respond to requests for additional information.
- *Legal coordination.* Close coordination with DOE legal counsel regarding the progress of the draft EA and Biological Opinion helped maintain the project's schedule.
- *Pre-briefings.* Providing a pre-briefing to DOE legal counsel prior to their review of the draft EA helped to apprise them of all issues, which facilitated a timely iterative review process.
- *Organized review process.* Reviews were completed in a timely manner. Early coordination with the cooperating agency established guidelines for receiving timely input. Weekly review meetings with the applicant, cooperating agency, and the NEPA support contractor identified problem areas early.

### Factors that Inhibited Timely Completion of Documents

- *Review process.* The amount of time it would take for DOE reviews and concurrence for both the draft and final EA was not fully understood and planned for in the original schedule.
- *Loss of key personnel.* Two of three key personnel left the contractor's project team about midway through the project.
- *Disregard for schedule.* The internal DOE EA review schedule was disregarded.
- *Unanticipated comments.* Internal DOE reviews required additional time to respond to unanticipated comments.

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# Questionnaire Results

## What Worked and Didn't Work (continued from previous page)

- *Incomplete scoping.* Two mutually exclusive options were included in the proposed action, but the second option had not been scoped.
- *Competing workload.* DOE workloads caused slight delays in timely review of EA drafts.
- *Extensive consultation.* Extensive tribal consultation requests lengthened the EA process.

## Teamwork

### Factors that Facilitated Effective Teamwork

- *Open communication.* Communication was the key to good teamwork among the contractors, the DOE team, and the applicant. Constant communication and face-to-face interactions with the contractor and the applicant helped to avoid problems and misunderstandings.
- *Productive meetings.* Efficient and timely meetings and quick follow-up facilitated teamwork.
- *Regular interaction with cooperating agencies.* Regular meetings during the NEPA process with cooperating agencies helped facilitate teamwork and EA preparation.
- *Diverse experts.* Integration of outside consultants and resource experts assisted the team's effective preparation of the EA.
- *Project management involvement.* The DOE project manager was involved in all major decisions regarding EIS analysis of impacts.
- *Establishing rules.* The NEPA support contractor was new to DOE NEPA work and ground rules for involving DOE in the analysis were established.

### Factors that Inhibited Effective Teamwork

- *Last-minute concerns.* Extensive coordination with DOE staff review team was disrupted by concerns raised late in the review process.

## Process

### Successful Aspects of the Public Participation Process

- *Prompt agency response.* Comments from the state's environmental protection and historic preservation agencies were prompt and responsive, and no objections were received.

- *Multiple media outlets.* Publishing the notice of availability in four local newspapers, and providing drafts directly to several stakeholders, elicited several comments.
- *Early stakeholder support.* Early endorsement of the project site by environmental groups provided the applicant assurance during preparation of the EA.
- *Public approval.* State and local officials were supportive of the project.
- *Meeting location.* A scoping meeting location near the project location facilitated public participation.
- *Postcard use.* Postcards were sent to landowners in the area notifying them of the scoping process and the draft EIS public hearing.

## Usefulness

### Agency Planning and Decisionmaking: What Worked

- *Conservative impact analysis approach.* The EA established conservative environmental assumptions. Utilizing this approach ensured that the execution of the project would be within the established environmental boundaries.
- *Confidence provided by the NEPA process.* The NEPA process provided assurances to the decisionmakers that the project would be able to comply with applicable environmental regulations and thus proceed as planned.
- *Applicant influenced.* The NEPA process was of particular value in influencing the decisionmaking process of the program applicant. The NEPA process was the impetus behind the applicant's full consideration of the environmental consequences of their proposals. The applicant's willingness to provide detailed surveys and analyses for the EA facilitated informed and sound decisionmaking.
- *Agency procedure.* The NEPA process played a role in agency planning because it was viewed as a prerequisite to project approval.
- *Cooperative decisionmaking.* While this action could have been categorically excluded under DOE NEPA regulations, one of the cooperating agencies wanted an EA prepared. DOE management agreed to its request, resulting in cooperative and sound decisionmaking.

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# Questionnaire Results

## What Worked and Didn't Work (continued from previous page)

- *Issue identification.* The NEPA process identified potential issues related to the connected action of development of a lignite mine that otherwise may not have been addressed as early in the process.

### Agency Planning and Decisionmaking: What Didn't Work

- *Multiple EAs.* The NEPA process had little influence on planning or decisionmaking. This third EA for the project was prepared to address a modification.
- *Applicant environmental report.* The environmental report submitted by the applicant and the fact that required permits had been issued, rather than the DOE NEPA process, influenced DOE's decisionmaking.

## Enhancement/Protection of the Environment

- *Potential impacts minimized.* Environmental protection was enhanced because project activities were not only assessed but also revised, resulting in lesser impacts.
- *Prior agency NEPA process.* The project was already undergoing NEPA review by another Federal agency before DOE became the lead agency. Measures to minimize potential impacts were identified prior to DOE's involvement.
- *Control measures employed.* The NEPA process ensured that all practicable environmental control measures were considered and employed.
- *Protection provided by other laws.* The environment was protected by the oversight of other agencies and laws, rather than the NEPA process for this project.
- *Permits issued.* Measures to minimize potential impacts had already been determined through state and local permit conditions.
- *Environmental consequences averted.* As a result of the NEPA process, the impacts that would have been associated with a greenfield development were avoided.

## Other Issues

### Guidance Needs Identified

- *Administrative Record guidance.* Official DOE guidance on compiling and managing an Administrative Record is needed.
- *GC guidance.* Guidance is needed regarding what constitutes a "legally required" comment versus one that is just "suggested," as discussed in a memorandum from the General Counsel regarding NEPA process improvements.
- *Guidance on in-progress projects.* The NEPA process began after construction was underway, prompting the need for guidance regarding NEPA review of privately financed projects that are in progress.
- *Executive Orders.* Procedures for satisfying Executive Orders on protection of children and invasive species control should be developed.

## 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 this issue, in which 7 questionnaire responses were received for EAs and 1 response was received for an EIS, 4 out of 8 respondents rated the NEPA process as "effective."

- A respondent who rated the process as "5" stated that NEPA played a major role in the applicant's (but not DOE's) decisionmaking. The project was modified after the applicant considered the environmental and NEPA process implications derived from the original proposal. As a result, the applicant consulted with DOE staff and decided to reshape its proposal to diminish the amount of construction initially planned.
- A respondent who rated the process as "5" stated that NEPA goes beyond the permit requirements that any project must meet. Public participation and identification of mitigation measures would otherwise not occur.

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## Questionnaire Results

### What Worked and Didn't Work (continued from previous page)

- A respondent who rated the process as “4” stated that the NEPA process is a vital planning tool for identifying environmental aspects and impacts in accordance with requirements of the DOE Environmental Management System.
- A respondent who rated the process as “4” stated that the NEPA process played an influential role in the decisionmaking process as the finding of no significant impact reassured decisionmakers that an environmentally benign site was chosen that would not pose problems for the overall viability of the project.
- A respondent who rated the process as “2” stated that properly completing the Endangered Species Act Section 7 consultation was essential to the success of the project. Most of the NEPA work was already done by FWS before DOE became the lead agency.
- A respondent who rated the process as “2” stated that construction of the project was already underway and permits were issued when DOE became involved and began its NEPA process. As a result, DOE had a good indication from the environmental report submitted with the application that the project would not be delayed or undesirable as a result of environmental concerns.
- A respondent who rated the process as “1” stated that the NEPA process had little influence on the project because this was the third EA created for the purpose of assessing scope changes already determined to be needed.
- A respondent who rated the process as “1” stated that a public law that triggered this action had greater influence over DOE decisions than NEPA. 

## EPA Reference for Energy Efficiency Planning and Analysis

 The Environmental Protection Agency's (EPA's) Office of Federal Activities has compiled a comprehensive resource on how energy efficiency decisions are made in the Federal government and how Federal energy efficiency policies help to increase energy independence and reduce environmental pollution. The *Energy Efficiency Reference for Environmental Reviewers*, recently posted on EPA's website, is intended to serve as a guide to EPA staff in preparing scoping comments and formal EIS review comments.

The *Reference* takes the reader through the field of Federal energy efficiency policy and requirements, beginning with a chapter on relevant laws, regulations, Executive Orders, Directives, and Guidance documents. Next the *Reference* describes Federal programs promoting energy efficiency, listed by topic, including appliances and equipment,

facility siting and construction, buildings and housing, military installations, laboratory and industrial facilities, and vehicles and transportation facilities. The *Reference* then provides background information on a wide variety of renewable energy technologies. It also contains a chapter on training opportunities for those wanting more detailed information on energy efficiency.

Although produced for EPA staff, this reference manual may be of interest to those planning to prepare NEPA documents because EPA will use the *Reference* as it reviews EISs. The *Reference* cites the Council on Environmental Quality NEPA regulations (40 CFR 1502.16(e)) which specify consideration of energy requirements and conservation potential in EISs. The *Reference* also contains citations to dozens of source documents, including URL links, that may be generally useful to NEPA practitioners. 