

# LESSONS LEARNED

December 2, 2002; Issue No. 33

Fourth Quarter FY 2002

## CEQ Asks How to Improve NEPA Implementation; Responses Vary Widely

In response to questions from the Council on Environmental Quality's (CEQ's) NEPA Task Force, Federal, state, local, and tribal agencies, environmental

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While it's true that efficiency improvements can be made in the NEPA process, I simply cannot agree that an "analysis paralysis" or "process gridlock" exists...[I]n order to do a good job of soliciting public input and doing meaningful effects analysis, it will take effort, time, and dollars. – NEPA coordinator, Nez Perce National Forest

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Collectively, the comments cover nearly every aspect of NEPA implementation. They range from strong support for the value of the NEPA process to sharp criticism, especially of project delays associated with NEPA

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Amend CEQ regulations to "eliminate environmental assessments," "eliminate the programmatic EIS," "delete consideration of cumulative effects," and "tighten the definition of 'new information' that requires a supplemental EIS," and also "end judicial review of the regulations." – American Forest Resource Council

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and business groups, and individual citizens have weighed in during the past few months with opinions on how to improve NEPA implementation. CEQ also sought and received examples of best practices and case studies.

compliance. Most comments suggest improvements in NEPA guidance or routine practices. Many comments were agency- and project-specific, providing criticism and recommendations for how a specific proposal should be altered. The NEPA

Task Force is reviewing all the comments along with other information, including interviews with Federal agencies, and expects to issue a best-practices handbook and a report with draft recommendations early in 2003.

"We're reviewing these responses to CEQ, with an eye toward those suggestions that might make DOE's NEPA implementation more efficient," said Carol Borgstrom, Director of DOE's Office of NEPA Policy and Compliance. "The NEPA Office also is cognizant of recent Executive Orders and proposed legislation that encourage faster completion of environmental reviews." (See text box, page 6, for a summary of these related activities.)

### Task Force Gathers NEPA Advice

During the summer of 2002, CEQ's NEPA Task Force solicited comments on effective NEPA implementation practices and case studies. Following coordination with the DOE NEPA Community,

Ray Berube, Deputy Assistant Secretary for Environment and Senior NEPA Liaison for the Department, provided comments, dated September 23, 2002, which contained "several case studies that demonstrate the flexibility in the existing NEPA procedures and illustrate successful NEPA implementation." (See text box, page 4, for a summary of the CEQ questions and DOE responses.) In addition, DOE's NEPA staff addressed the Department's experiences with programmatic EISs and categorical

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DOE agrees that it is useful to examine ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public. – Ray Berube, DOE

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*continued on page 5*

## Inside *LESSONS LEARNED*

Welcome to the 33<sup>rd</sup> quarterly report on lessons learned in the NEPA process. Have you noticed that NEPA has been in the news a lot lately? Although this issue of *LLQR* is longer than usual, I encourage you to read all the news, views, and lessons learned. We thank you for your continuing support of the *Lessons Learned* program.

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*Carol Borgstrom*

Director  
Office of NEPA Policy and Compliance

## Be Part of Lessons Learned

### We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. Draft articles for the next issue are requested by February 3, 2003. Contact Yarden Mansoor at [yarden.mansoor@eh.doe.gov](mailto:yarden.mansoor@eh.doe.gov) or 202-586-9326.

### Quarterly Questionnaires Due February 3, 2003

Lessons Learned Questionnaires for NEPA documents completed during the first quarter of fiscal year 2003 (October 1 through December 31, 2002) should be submitted by February 3, but preferably as soon as possible after document completion. The Questionnaire is available interactively on the DOE NEPA Web at [tis.eh.doe.gov/nepa](http://tis.eh.doe.gov/nepa) under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at [vivian.bowie@eh.doe.gov](mailto:vivian.bowie@eh.doe.gov) or 202-586-1771.

### LLQR Online

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

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## DOE Submits Cooperating Agency Report to CEQ

DOE responded on October 30, 2002, to the Council on Environmental Quality's (CEQ's) request for Federal agencies to report biannually on cooperating agency activities in new EISs and EAs, with the first report to address NEPA reviews started between March 1 and August 31, 2002. This request was initiated in the January 2002 CEQ memorandum entitled "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Protection Act." (See *LLQR*, March 2002, page 1.)

CEQ has developed a Web-based tool, the Cooperating Agency Reporting System (CARS), for transmitting the requested information. DOE's Office of NEPA Policy and Compliance asked NEPA Compliance Officers to enter their respective data. The NEPA Office reviewed the results and transmitted them to CEQ, marking a successful use of electronic media for internal information reporting.

Of the five EISs that DOE initiated during the six-month period (that is, for which DOE issued a notice of intent), two EISs each have two cooperating agencies. Of the 23 EAs that DOE started during the reporting period, one EA has five cooperating agencies. CEQ is evaluating the information submitted by the agencies and will later announce plans for using the cooperating agency information and any refinements to CARS.

DOE staff are encouraged to consult their NEPA Compliance Officers for questions on the information provided in the first biannual cooperating agency report. For information on cooperating agency reporting, contact Yarden Mansoor at [yarden.mansoor@eh.doe.gov](mailto:yarden.mansoor@eh.doe.gov) or 202-586-9326. 

# DOE Proposes Revisions to Floodplain and Wetland Regulations to Streamline Procedures, Add Flexibility

Based on over 20 years of experience with its existing regulations for floodplain and wetland environmental reviews (10 CFR Part 1022, first issued in 1979), DOE is proposing revisions that would reduce documentation, streamline procedures, and add flexibility to its environmental protection program. The revisions would continue to fulfill the substantive provisions of the 1977 Executive Orders for floodplain management (E.O. 11988) and protection of wetlands (E.O. 11990) and would add no new requirements.



*This baldcypress-water tupelo swamp lies in a floodplain at the Savannah River Site.*

The proposed revisions, issued by the Assistant Secretary for Environment, Safety and Health, were published

November 18, 2002 (67 FR 69480), for a 60-day public comment period that ends January 14, 2003.

## More classes of action would be exempt from assessment procedures

DOE proposes that four classes of actions – site characterization, environmental monitoring, ecological research activities, and facility modifications to improve safety or environmental conditions – normally would be exempt from the requirement to prepare a floodplain or wetland assessment. The proposed rule states conditions under which an exemption would be appropriate. Under this revision, about half the assessments prepared by DOE since 1994 would not have been required. DOE has normally exempted routine maintenance from assessment since its regulations were first issued.

## Public notification procedures would be simplified

Under the proposed revisions, DOE would emphasize local notification (e.g., via newspapers, radio, mailings) of its proposed floodplain and wetland actions rather than requiring publication in the *Federal Register*. However,

for proposed actions with effects of national concern, DOE would require *Federal Register* publication as well as local notification.

In providing the National Nuclear Security Administration's concurrence on the proposed revisions, James Mangeno, NEPA Compliance Officer, noted, "We agree with your efforts to streamline the floodplain and wetlands

environmental review process and make it easier for the field operations offices to conduct routine actions."

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The proposed changes would substantially reduce the administrative burdens associated with floodplain and wetland environmental review without sacrificing public involvement or environmental protection. – Stephen Wright, Administrator, Bonneville Power Administration


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## Reviews could be coordinated under CERCLA or NEPA

The proposed revisions would identify the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as an alternative mechanism to the NEPA process for meeting the floodplain and wetland review requirements. This revision would update the regulations to be consistent with DOE's current policy and practice regarding environmental reviews under CERCLA. (See *LLQR*, September 2002, page 13.) "We are pleased with the greater flexibility the proposed revisions offer, and the ability to use the CERCLA documentation to meet the requirements," stated Keith Klein, Manager, Richland Operations Office, in his concurrence response.

## Other proposed changes would facilitate taking emergency actions and using the regulations

Proposed revisions would allow emergency actions to be taken immediately, with follow-up documentation of impacts and further consideration of mitigation measures. Updates are proposed to the list of resources that can be used to identify whether an action would be in a floodplain or wetland. The proposed revisions would make the rule easier to use by reordering sections to parallel the assessment process and by eliminating outdated provisions.

Please send written comments on the proposed revisions to Carolyn Osborne, Office of NEPA Policy and Compliance, by e-mail to [carolyn.osborne@eh.doe.gov](mailto:carolyn.osborne@eh.doe.gov) or fax to 202-586-7031. Questions may be addressed to her also at 202-586-4600 or leave a message at 800-472-2756. 

## NEPA Task Force Questions

The NEPA Task Force queries focus on six key areas, with subtopics. (67 FR 45510, July 9, 2002; also see *LLQR*, March 2002, page 17; June 2002, page 11; and September 2002, page 5.)

- **Technology, information management, and information security:** information sources, barriers to using information technology and to quality information, databases and protocols, information management and retrieval tools, use of technology (for communicating, document distribution, public involvement, and decisionmaking), and balancing openness and information security
- **Federal and inter-governmental collaboration:** effective cooperative relationships and processes, barriers and challenges, and training
- **Programmatic analysis and tiering:** suitability of issues to programmatic analysis, avoiding duplication in tiered analyses, and linkage to environmental management systems
- **Adaptive management/monitoring and evaluation plans:** factors considered in deciding to use the approach, analysis structure, aspects that may require further NEPA analyses, and factors to consider for determining monitoring techniques and intensity
- **Categorical exclusions:** basis for establishing, influence of other agencies' exclusions, and improvements in promulgation process
- **Additional areas for consideration**

## DOE's Responses

DOE's September 23, 2002, submittal to the NEPA Task Force, summarized below, is available at <http://ceq.eh.doe.gov/ntf>.

- DOE uses a wide variety of **information sources** in document preparation. Barriers to public use of information technology include lack of high-speed Internet access, restrictions due to security concerns, and challenges in verifying currency of posted information. Technology for ensuring integrity of electronic information is available. The DOE NEPA Web is a key resource.
- DOE examples of successful **interagency cooperation** emphasize early continuous involvement and finding ways to express differing views in a NEPA document. Challenges include agreeing on respective responsibilities and authorities, determining the length and intensity of cooperation needed, committing to address issues, and agreeing on schedules. Training should emphasize communication. Memoranda of Understanding were provided.
- DOE's successful **programmatic and tiered NEPA reviews** have addressed interrelated activities at multiple sites or site-wide environmental impact analysis for multi-program activities at large DOE sites. NEPA and Environmental Management Systems are complementary approaches.
- DOE has incorporated flexibility for decisionmaking by analyzing a full range of reasonable alternatives. DOE also addresses aspects of **adaptive management** in a supplement analysis, supplemental EIS, or amended record of decision. Management buy-in, cost, and stakeholder acceptance are key factors in considering which adaptive management steps to adopt in a project.
- DOE's preferred basis for establishing a **categorical exclusion** is a history of environmental reviews that show a pattern of no significant impacts. Care is needed in considering other agencies' categorical exclusions because context of an activity is important in determining significance.
- DOE believes that CEQ's NEPA implementing regulations for environmental assessments afford adequate flexibility regarding the appropriate content and format.



# CEQ Asks for Input *(continued from page 1)*

exclusions during interviews with NEPA Task Force representatives.

CEQ has published all comments received, including DOE's, on the NEPA Task Force Web site, <http://ceq.eh.doe.gov/ntf>, identifying 14 sets of comments from Federal agencies, 46 from state, local, and tribal officials, almost 150 from organizations, and over 250 from individuals. The summary that follows is intended to reflect the diversity of viewpoints contained in comments submitted to CEQ.

## **Technology, Information Management, and Information Security**

A substantial portion of the comments to CEQ addressed the use of information technology, the related issue of

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**Since NEPA is an interdisciplinary process, it would be beneficial to have data sources compatible with each other. – Federal Aviation Administration**

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public access to information, and information quality.

Information technology is “adding great value to the NEPA process,” according to the Western Governors Association, which advocates that Federal

agencies adopt “a single technology template that would allow for consistency in how all agencies engage state and local governments and the public.”

Limits on information access drew fire from some quarters. “Increased security concerns are seriously diminishing the quality of information available to the public,” wrote the Oak Ridge (Tennessee) Local Oversight Committee

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**Regional staff have indicated difficulty in reconciling how to achieve targeted, straightforward, and short environmental analyses...in the face of recent court decisions that place emphasis on use of a greater number of action alternatives and on more in-depth analyses of environmental impacts. – National Oceanic and Atmospheric Administration**

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Citizens’ Advisory Panel (CAP). The panel criticized “censorship” of “maps that have already been widely disseminated in the public domain” and claimed that deleted information makes documents “difficult to

interpret.” Concerned Citizens for Nuclear Safety in Santa Fe, New Mexico, similarly felt the public has been encumbered by the removal of documents from the Internet and the increasing difficulty in getting paper copies of many documents.

Use of protected information in NEPA analysis can represent the best compromise, suggested the Coast Guard, referring to the conflict between using protected information in impact analysis and thus not being able to fully disclose the bases of the analysis, or not using the protected information and thereby limiting the scope of analysis.

Where should agencies “draw analytical boundaries?” asked the Federal Aviation Administration (FAA), in light of “increasing demand for more information and analyses because we have the technical ability to produce it.” Environmental documents may be larger, FAA noted, “without necessarily adding commensurate value in terms of identifying significant effects.”

## **Federal and Inter-governmental Collaboration**

Several commenters encouraged Federal agencies to better cooperate with state, local, and tribal governments. Commenters claimed that involving governments in only the external review process is

insufficient. Government entities at all levels often prefer an opportunity to be involved in the environmental analysis so as to,

in the words of the Chairman of the Custer County (Idaho) Commissioners, “have a better understanding of the ‘whys.’” Other commenters pointed to the valuable information available through non-Federal government agencies, including information on socioeconomic, zoning, planning, cultural and historical resources, and natural resources.

Commenters had several suggestions to encourage inter-governmental cooperation. Federal agencies “should share their resources with tribes to encourage tribal participation as cooperating agencies” suggested the Natural Resources Defense Council (NRDC). Others emphasized allowing sufficient time for cooperating agencies to provide quality responses to documents and recognizing the deliberative needs of government entities. A NEPA consultant encouraged states to “adopt ‘little NEPA’-type laws to provide the common framework to make NEPA more successful throughout the nation.” Additional comments requested guidance on incorporating state and local requirements into NEPA documents and coordinating multiple state and Federal environmental review requirements.

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**Reasonable deviations from the established timetable may need to be accommodated at times, in the interest of encouraging substantive, informed input from the cooperators. – Crook County (Wyoming) Board of Commissioners**

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# CEQ Asks for Input (continued from previous page)

One example of why improved Federal-state coordination is needed was presented by the Edison Electric Institute (EEI). “The linear nature of electric transmission facilities poses unique challenges for NEPA analysis and permitting processes,” wrote EEI. Transmission lines cross multiple jurisdictions and bring “a larger number of landowners and agencies to the table as potential stakeholders than generation facilities located on discrete parcels.” Moreover, “alternative routes are often limited” because of the need to connect with existing equipment. “[C]oordinated, cooperative reviews and decisions could shorten by years the licensing and permitting process for generation plants and transmission lines,” EEI stated.

Concerns about obstacles to the effectiveness of inter-governmental cooperation also were raised, one being differences in agency missions. “Resource agencies do not want to be associated with WisDOT on projects that affect resources under their jurisdiction,” wrote the Wisconsin Department of Transportation (WisDOT). The National Oceanic and Atmospheric Administration

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**To have an effective “cooperating agency” relationship, those involved agencies must agree to cooperate in achieving the purpose and need of the project. – U.S. Navy**

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provided what might be a partial rationale for this dynamic, noting that in several instances where other agencies had cooperating status, the public

“misinterpreted” this to indicate that the National Marine Fisheries Service was “abrogating certain responsibilities as the regulating agency.” The Forest Service framed the problem this way: regulatory agencies focus on short-term impacts, for example on air and water quality during forest thinning operations, while the Forest Service focuses on long-term environmental objectives, such as preventing wildfires and associated impacts.

The Forest Service also asserted that NEPA itself discourages collaboration. “While a collaborative process builds on and incrementally shapes a proposal to meet mutual interests as the parties work toward a decision,” the NEPA process encourages various interests to “weigh in and comment on the alternatives they support. There is no incentive built into the NEPA process to work toward a single solution that accommodates multiple interests.”

## Programmatic Analysis and Tiering

Programmatic reviews are appropriate, commented the Environmental Protection Agency (EPA), for “Classes of actions in which impacts stay the same from project to project (e.g., specific impacts from renewal of licenses for nuclear power plants that can be analyzed generically)

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## Executive Orders, Proposed Legislation Promote Faster Environmental Reviews

President Bush and some Members of Congress strongly advocate streamlining government decisionmaking processes, especially for significant infrastructure projects such as those associated with energy supply and transportation. To date, none of their efforts change NEPA requirements, but they do send a strong message about accelerating environmental reviews.

Two Executive Orders (E.O.s) signed by President Bush carry this message to Federal agencies. E.O. 13274, *Environmental Stewardship and Transportation Infrastructure Project Reviews*, signed on September 18, 2002, directs the Secretary of Transportation to designate high-priority projects and chair an interagency task force to facilitate measures that streamline the review process. The E.O. directs that “agencies shall to the maximum extent practicable expedite their reviews for relevant permits or other approvals, and take related actions as necessary, consistent with available resources and applicable laws, including those relating to safety, public health, and environmental protection.”

This language is similar to that in E.O. 13212, *Actions to Expedite Energy-Related Projects*, signed by the President on May 18, 2001. That E.O. established an interagency energy task force headed by James Connaughton, Chair of CEQ. It also instructed agencies, consistent with law and regulation, to “expedite their review of permits or take other actions as necessary to accelerate the completion” of projects that will increase the production, transmission, or conservation of energy. (See article, page 21, on a recent energy task force workshop and *LLQR*, June 2001, page 12, for information on E.O. 13212.)

Members of Congress also have sought faster decision processes for infrastructure improvements. Legislation was introduced earlier this year that would require expedited environmental review of airport expansion plans for the Chicago area. Separate proposed legislation would establish deadlines for agency comments during the NEPA process for highway construction projects. There also were legislative proposals during 2002 that would curtail the applicability of NEPA to certain forest management activities, including proposals to remove material that could fuel wildfires on Federal lands.

# CEQ Asks for Input *(continued from previous page)*

...[and] when doing a broad-based analysis off of which individual projects will be tiered (e.g., a corridor-based analysis from which specific road segments will be tiered).”

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**Tiering works when each new level of review addresses new issues only...rather than revisiting each issue in its entirety at each successive tier. – Washington Department of Natural Resources**

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The Wildlife Management Institute also stated a value to programmatic reviews in that “where

the same project is being replicated on different planning units,” a programmatic analysis “provides the public with a digestible overview of the task at hand while explaining what the cumulative impacts would be on the environment and society.”

On the other hand, programmatic reviews should be limited, according to the American Loggers Council, suggesting that CEQ exclude from NEPA review those “pre-decisional planning or other documents that cover such broad geographical areas and so many unknown projects as to be unsusceptible or poorly susceptible to NEPA-related environmental analysis.”

Other commenters pointed to limitations inherent in programmatic reviews. The Forest Service noted that although programmatic analyses have been useful, they are “costly to efficiency and budgets.” The Forest Service

cautioned that as information in programmatic analyses becomes outdated or circumstances change, site-specific efforts can be stopped “until the programmatic decisions can be refreshed.

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**All too often tiered analyses are seen as an “easy out.” Instead of making a good faith effort to evaluate and ground-truth the underlying assumptions of the programmatic analysis, site-level analyses utilize the original document as a stamp of approval for going forward with a given project. – Individual, Eugene, Oregon**

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Another time-consuming aspect

of programmatic decisionmaking is the uncertainty of future actions and conditions associated with broad programmatic decisions. Much time is spent trying to provide detailed effects analyses for these somewhat speculative efforts.”

Programmatic reviews also were criticized by the Wildlife Management Institute as “rarely” complete due to a lack of site-specific information. The Institute added that in

some cases, tiering “leads to confusion and a lack of trust among the public,” in part because related information is split between documents.

## **Adaptive Management/ Monitoring and Evaluation Plans**

Many commenters praised the adaptive management approach. As a learning process, adaptive management requires feedback to tie expectations, such as those expressed in a NEPA document’s predictive analysis, to actual performance (related articles, pages 8 and 10).

The EPA noted that adaptive management “is appropriate in situations where scientific information is incomplete, there is systemic variability, or political consensus does not exist.” The State of Washington Department of Natural Resources similarly stated that adaptive management “fills the gaps when management action is needed, but scientific information is limited.”

NRDC called for greater emphasis on monitoring and mitigation after a decision has been made through the NEPA process.

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**Whenever possible, adaptive management should be utilized, but the process must be kept open and the public notified of changes that take place. – Dairy Producers of New Mexico**

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Another non-governmental organization, the Oak Ridge CAP, went further, writing, “To ensure follow-through, compliance with decisions made under NEPA should be legally enforceable by regulatory or oversight agencies.”

The U.S. Navy encouraged maintaining boundaries between the NEPA process and the adaptive management systems related to a proposed action. “NEPA should not evolve into an adaptive management process... [NEPA] requires a definite ending of either a Finding of No Significant Impact [FONSI] or a Record of Decision in order to proceed with the proposed action. Other follow-on adaptive management systems can result from mitigation committed to in the NEPA process, but the NEPA process itself should not be continuous.”

Adaptive management measures are not always quantifiable, making it “difficult to determine whether environmental degradation has occurred,” commented the Western Land Exchange Project. Under a “cynical view,” the project suggested, agencies would rely on “adaptive management measures to support FONSI and assuage public concerns, proceeding with a proposed action, and later realizing that significant impacts have occurred but refusing to implement the proposed adaptive management measures.”

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# Adaptive Management and the NEPA Process: Responding to New Information

By: Clifford S. Duke, Ph.D., *The Environmental Company, Inc.*

Adaptive management – modifying actions based on environmental monitoring data or other new information – is not a new concept to NEPA practitioners nor to DOE. How adaptive management works is shown in the flow diagram below, which was taken from a 1997 Council on Environmental Quality (CEQ) report. How best to implement adaptive management during and after the NEPA process presents challenges, however, and the CEQ NEPA Task Force recently solicited input in this regard (related article, page 1).

## DOE Input to CEQ on Adaptive Management/Monitoring and Evaluation Plans

As a result of CEQ’s previous exploration of the role of adaptive management in NEPA practice, the Council concluded that “an adaptive management approach may be the best means of attaining both NEPA’s goals and an agency’s mission.” By incorporating adaptive management into NEPA analyses, “agencies can move beyond simple compliance and better target environmental improvement,” CEQ stated.

CEQ’s NEPA Task Force asked commenters to address four questions regarding adaptive management. DOE’s responses are summarized below. (For the complete text of DOE’s responses, see <http://ceq.eh.doe.gov/ntf>.)

### 1. What factors are considered when deciding to use an adaptive management approach?

DOE listed several factors, including environmental risks, uncertainties, stakeholder opinions, regulators’ support, and flexibility, among the factors to be considered, noting that what factors to consider depends (in part) on regulatory requirements and potentially affected parties. Educating all parties on the need for action and involving them in the process for selecting the adaptive management approach could increase the likelihood of stakeholder acceptance of the action to be taken.

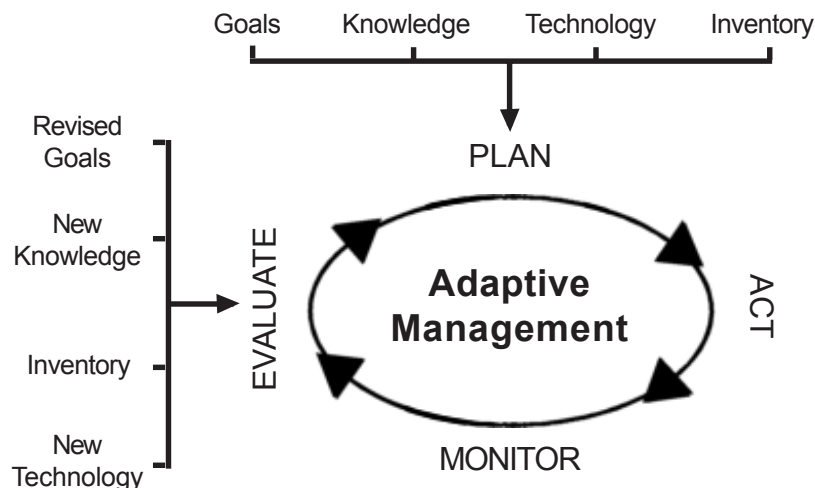
### 2. How can environmental impact analyses be structured to consider adaptive management?

DOE’s response emphasized broadening the range of alternatives to be analyzed in the NEPA review – both

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## What is Adaptive Management?

CEQ’s 1997 report, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-Five Years*, defined adaptive management as “a process of adjusting management actions and directions in light of new information about the ecosystem and its bearing on ecosystem goals. When new information becomes available, project management is reevaluated. Adaptive management recognizes the limits of knowledge and experience and moves iteratively toward goals in the face of uncertainty.” The CEQ report included the diagram below of the adaptive management cycle from Interagency Ecosystem Management Task Force, *The Ecosystem Approach: Healthy Ecosystems and Sustainable Economies, Volume I – Overview*, 1995.





# Adaptive Management and the NEPA Process

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developing alternatives that provide flexibility to deal with change and analyzing alternative technologies that might not be fully developed or authorized. DOE stated that one way to accomplish this is to focus more on the outcome of the alternatives, not the specific solutions. As an example, DOE provided a case study on a record of decision (ROD) (67 FR 45710, July 10, 2002) for the *Interim Management of Nuclear Materials Environmental Impact Statement* (DOE/EIS-0220, October 1995).

### 3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?

DOE noted that subsequent NEPA analyses will be required if there are either substantial changes in the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed actions or its impacts. DOE explained that it uses supplement analyses, supplements, and amended RODs to address these issues. DOE also described a recent EIS process (*Savannah River Site Salt Processing Alternatives Supplemental EIS*, DOE/EIS-0082-S2, June 2001) that incorporated flexibility in both the analysis of reasonable alternatives and the ROD (66 FR 52752, October 17, 2001).

### 4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

DOE replied that the same factors that can be considered when deciding whether to use an adaptive management approach (in question 1) may be considered in determining monitoring technology and intensity. DOE emphasized the importance of stakeholder involvement but acknowledged that cost and “buy-in” from upper management would appear to be the most important factors.

### Use of Adaptive Management in DOE

Applying an adaptive management approach can provide decisionmakers with flexibility in the face of uncertain and changing information. DOE often applies adaptive management principles as part of its existing management systems. For example, DOE’s Integrated Safety Management System has as one of its five core functions, “Provide Feedback and Continuous Improvement,” in which “[F]eedback information on the adequacy of controls is gathered, [and] opportunities for improving the

definition and planning of work are identified and implemented.” (See <http://tis.eh.doe.gov/ism>; also see *LLQR*, September 2002, page 8.)

The adaptive management approach is often applied in environmental management systems (EMS). As noted by CEQ Chair James Connaughton and Office of Management and Budget Director Mitchell Daniels (April 1, 2002, Memorandum to Heads of Federal Agencies), one objective of EMS is continuing improvement in environmental stewardship through integration of environmental performance into daily business decisions. They emphasized the importance of developing EMS at Federal facilities. Recently, Mr. Connaughton linked EMS to the NEPA process, challenging DOE’s NEPA practitioners to “take a NEPA document and turn it into a management program.” (See “CEQ Chair Promotes Management Approach for the Environment,” *LLQR*, September 2002, page 3.)

DOE’s Strategic Petroleum Reserve program has integrated its EMS and NEPA processes (as discussed in DOE’s submittal to the CEQ NEPA Task Force, referenced above) and as a result has streamlined and combined parallel environmental activities in a synergistic manner. (Also see related article, page 10.)

### Looking Ahead

The adaptive management approach presents challenges, however. Flexibility must be built into actions when first proposed and analyzed under NEPA, so that additional NEPA review is not needed each time the action is modified in response to new information. The flexibility that adaptive management provides must be balanced with the NEPA-related requirement to take a “hard look” at the environmental impacts of a proposed action. To the extent that a proposed action is less well-defined, differences in environmental impacts among alternatives may become obscured.

As an approach to coping with the scientific uncertainty and limited knowledge inherent in many NEPA analyses, adaptive management can be a tool to build upon the requirements of 40 CFR §1502.22 to disclose when information relevant to significant adverse impacts is incomplete or lacking. (See “When We Don’t Know, Say So,” *LLQR*, March 1999, page 6.) That is, in addition to disclosing the existence of incomplete or unavailable information, the decisionmaker can develop a plan to modify the proposed action as new information becomes available. **LL**

# Impact Mitigation at Los Alamos: NEPA Functions as an Environmental Management System

By: Carl Sykes, *Office of NEPA Policy and Compliance*

Although it is not labeled as such, DOE has merged its NEPA process and the core elements of an environmental management system (EMS) in the process of fulfilling commitments made in the Mitigation Action Plan (MAP) for the 1999 Los Alamos National Laboratory (LANL) Site-wide EIS (DOE/EIS-0238, January 1999). As explained below, the EMS concepts of planning, implementation, and feedback are reflected in the continuing MAP process related to natural and cultural resources management at LANL. The end result is efficient and effective protection of environmental and historical resources with minimal or no disruption to site operations.

## Integrated Natural and Cultural Resources Management Plan

The LANL Site-wide EIS analyzed the impacts on natural and cultural resources at the 43-square-mile national laboratory in northern New Mexico. The Record of Decision (ROD) for the LANL Site-wide EIS established commitments to mitigate potential impacts to these resources. Following the ROD, DOE created the MAP, a DOE management document that establishes planned actions and schedules to carry out each mitigation commitment made in the ROD (10 CFR §1021.331). The

Integrated Natural and Cultural Resources Management Plan for LANL (IRMP) is a MAP commitment that builds upon existing programs and controls, while developing additional measures to efficiently mitigate impacts of continuing LANL operations.

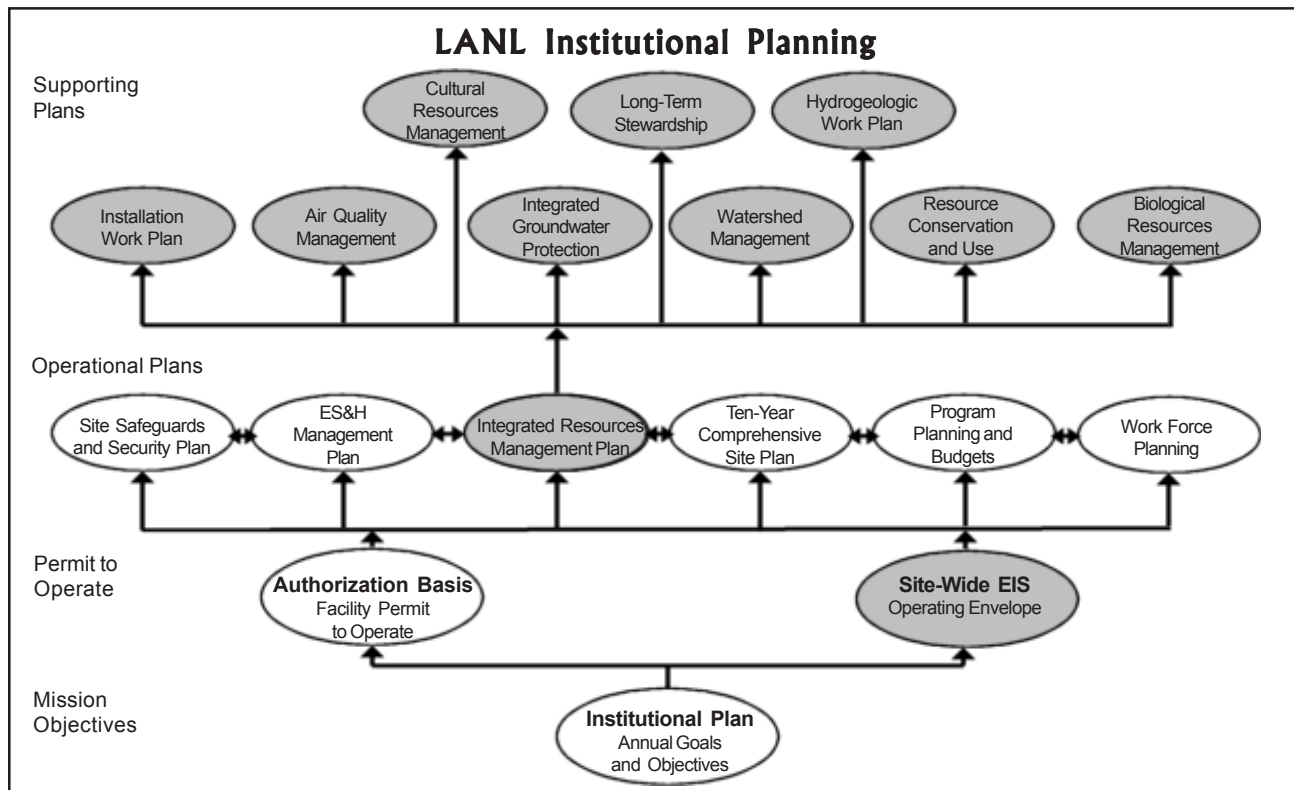
### EMS Core Elements

- **Policy:** Establish environmental policy
- **Planning:** Ensure impacts considered in setting environmental objectives
- **Implementation and Operation:** EMS effectively implemented and maintained
- **Feedback:** Checking, corrective action and continuous improvement
- **Management Review**

Source: ISO 14001

“The IRMP is the culmination of a lot of hard work,” said Elizabeth Withers, NEPA Compliance Officer, Los Alamos Site Operations. “Its implementation will provide a process that enables environmental resources to be

*continued on next page*



This figure, taken from the IRMP, illustrates how the NEPA process has been integrated into the institutional planning at LANL. The IRMP, a commitment in the MAP, is a key operational plan at LANL.

# Impact Mitigation at Los Alamos *(continued from previous page)*

protected with minimum disruption to the laboratory mission.”

The IRMP recognizes that it is desirable to integrate laboratory missions with natural and cultural resource stewardship; its goal is to provide a process that minimizes conflict and develops solutions that advance both mission and stewardship cost-effectively. The IRMP integrates resource-specific protection and compliance programs covering a wide array of resources, including cultural (e.g., prehistoric ruins, historic buildings), groundwater, air quality, biological, watershed, and long-term land stewardship. DOE directed LANL to utilize the existing Integrated Safety Management System<sup>1</sup> to implement the IRMP; environmental values will be similarly incorporated in the planning stages of work activities, with appropriate controls identified and implemented.

## Use of Resource-Specific Plans

The resource-specific plans in the IRMP will be (or already have been) developed to protect, mitigate, or attain compliance, refining the cumulative picture of the resource protection provided in the Site-wide EIS, and prioritizing the protection of the most valuable of sensitive resources. When new and ongoing work is planned, an evaluation will be made of how the activity would affect the resource. Although the LANL Site-wide EIS provides a cumulative picture of impacts, it often has been challenging to gauge the significance of impacts of proposed activities on certain resources. Because the IRMP resource-specific plan will have already assessed the overall site impact to the resource and prioritized controls and protections, the activity-specific evaluation need only be compared to the IRMP resource-specific plan to determine the degree of impacts, the appropriate level of controls, and if the NEPA analysis is adequate. Having resource-specific plans in the IRMP will aid in the streamlining of these processes.

The preservation of historic buildings is one example of how the IRMP will facilitate the streamlining of impact assessment while providing overall protection. In addition to the vast number of prehistoric sites at LANL, there are hundreds of buildings that date from the Manhattan Project and Cold War, as well as a limited number of homesteader cabins that pre-date the laboratory. To comply with the National Historic Preservation Act (NHPA), an assessment must be made prior to any Federal activity to ensure that impacts to historical structures are

<sup>1</sup> Integrated Safety Management Systems are the systematic ways in which safety values are incorporated in the planning stages of work, ensuring that all hazards are analyzed, proper controls are identified and implemented, and feedback is generated for future activities.


assessed and minimized. In the past, these assessments were made on a case-by-case basis, and it was difficult to gauge the relative significance of the various historic buildings on site. This made decisions on the appropriate level of mitigation difficult and occasionally resulted in delays to mission activities (while determining appropriate mitigation measures). The IRMP has the potential to greatly streamline NHPA compliance because its resource-specific plan will provide an overall assessment of historic buildings, identify priority protection of the most significant buildings, and allow the integration of the protection for these buildings in the initial stages of LANL institutional planning. Additionally, when a mission activity threatens to impact a historic building of lesser importance, the assessment and identification of mitigation, if any, will be streamlined, because the cultural resources portion of the IRMP will provide a perspective on why the building may or may not warrant more extensive mitigation measures.



*This pueblo site at LANL is an example of a cultural resource that would be evaluated by the IRMP.*

## IRMP and EMS

The IRMP is an example of how NEPA can be integrated into an EMS. Previous *LLQR* articles have explained that an EMS is a way to fully leverage NEPA in the planning process of Federal agencies (see *LLQR*, September 2002, page 1). The IRMP shares several functions and achieves some of the core elements of an EMS. The IRMP itself is an establishment of environmental policy at LANL. The IRMP facilitates the protection of environmental resources in the planning stages of work, ensuring the impacts to resources are considered and protection objectives are set. The IRMP has EMS-like mechanisms to ensure it is effectively implemented. Finally, the IRMP also provides feedback to the Site-wide EIS and its MAP, ensuring that the Site-wide EIS is kept up-to-date and remains pertinent; such feedback is a key attribute of an effective EMS.

For more information on the MAP or IRMP, or if you are interested in getting a copy of either document, please contact Elizabeth Withers at [ewithers@doeal.gov](mailto:ewithers@doeal.gov) or 505-667-8690. 

## CEQ Asks for Input *(continued from page 7)*

### Categorical Exclusions

Some commenters encouraged casting a “broader net” to approve more categorical exclusions. Most comments in favor of adding categorical exclusions point to the three decades of experience implementing NEPA. “The historical record, including previous EAs showing no impact, and the effects of monitoring of these activities,” commented the Lemhi County (Idaho) Board of Commissioners, “will often speak for themselves.” The Forest Service suggested that agencies “be able to use another agency’s categorical exclusion once approved” by CEQ.

“Because the establishment of any categorical exclusion is likely to be scrutinized by select interest groups,” cautioned the Wildlife Management Institute, “it is imperative that its consideration occurs in an open, collaborative manner from start to finish.”

Other commenters were more skeptical of categorical exclusions. Some cited high costs for preparing categorical exclusions, making them seemingly as

expensive and complex as preparing an EA. An individual from Eugene, Oregon, commented that many activities that are categorically excluded “do in fact create environmental impacts. Perhaps individually the impacts are not significant, but the cumulative effects are unknown because no environmental analysis is required.”

“Rather than support additional categorical exclusions, CEQ should undertake a review of existing agency categorical exclusions and determine whether the individual and cumulative environmental impacts are indeed minimal,” commented the Wise Use Movement from Seattle, Washington.

This sampling of comments demonstrates the diversity of views expressed to CEQ on five topics. CEQ also requested input on any other NEPA topics of interest. This generated similarly diverse comments on public participation, cumulative impacts, and many other issues. CEQ’s and DOE’s consideration of these comments will be discussed in future issues of *LLQR*. ■■

## Institute for Environmental Conflict Resolution Establishes NEPA Advisory Committee

The U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation in October 2002 established a Federal advisory committee to advise on future program directions for the Institute.

The 26 committee members, intended to represent a cross section of viewpoints on environmental issues and environmental conflict resolution, were selected from the Federal government (Federal judiciary; Council on Environmental Quality; Departments of Agriculture, Defense, Interior, and Justice; Environmental Protection Agency; Federal Highway Administration); state, tribal, and local governments; academia; environmental groups; and the private sector.

The Committee’s first meeting took place on November 19 and 20, 2002, in Tucson, Arizona, the seat of the Institute. Members discussed the role of the Institute in achieving section 101 of NEPA and future program

direction. Three subcommittees were established to look further at these questions and also to consider how the Institute can more effectively engage all stakeholders, particularly those who are underrepresented or disenfranchised, in environmental conflict resolution.

The Institute recently named a NEPA Program Coordinator. Jo Barnier, Public Service Team Leader, Superior National Forest, is detailed to the Institute for 18 months.

Additional information, including the list of Advisory Committee members, is available on the Institute’s Web site, [www.ecr.gov](http://www.ecr.gov), or by contacting Melanie Emerson at 520-670-5299 or [usiecr@ecr.gov](mailto:usiecr@ecr.gov). The Foundation and the Institute were both established by Congress to further environmental policy and practice. (See related articles in *LLQR*, September 2001, page 8 and June 2001, page 9.) ■■



# Office of Science Promotes Early Integration of NEPA Process with Project Planning

By: Clarence Hickey, *NEPA Compliance Officer, Office of Science*

“Are environment, safety, and health considerations being properly addressed, given a project’s current state of development?” This is the focus of new NEPA-related guidance issued by the Construction Management Support Division in response to a May 2002 directive from Office of Science Director Dr. Raymond Orbach to incorporate consistent project management practices into Science’s project initiatives. Specifically, the directive called for lessons learned on improving front-end planning and conceptual design reports.



Clarence “Corky” Hickey promotes early NEPA planning.

The September 2002 guidance identified five most frequently recurring difficulties in Science’s environment, safety, and health performance during the early planning stages of several new projects and provided suggestions for improvements. All are directly or indirectly related to Science’s NEPA program: management responsibility and accountability for environment, safety, and health; scope and content of preliminary hazard

analysis reports; integration of the NEPA process and project schedules; NEPA review for project partners and collaborators; and early involvement of regulators and the public.

## Keeping NEPA off the Critical Path

The guidance notes that most Science projects consider NEPA compliance during conceptual design. Sometimes, however, delays in determining the appropriate level of NEPA review may result in a NEPA schedule that is not fully integrated with the project schedule, putting NEPA on the “critical path” that could delay progress. Well-integrated schedules, on the other hand, “contribute to compliance with NEPA requirements, such that the documentation can be prepared in a manner that is timely and cost effective for the Project, while meeting DOE’s expectations for quality, adequacy, and completeness in the NEPA documentation.”


The guidance encourages project managers to consider data on completion times for DOE NEPA documents (such as found in *Lessons Learned Quarterly Reports*). In the face of uncertainty about whether to prepare an EA or EIS, the guidance suggests it may be useful to prepare a draft project schedule that integrates both EA and EIS review schedules. The project schedule could be adjusted

readily after determining which NEPA document will be prepared. In this way, the project manager will be better prepared to start the NEPA process irrespective of which NEPA document is needed.

## Working as Partners

Assuring that NEPA documentation is properly planned and completed for projects that involve collaborations or partnerships among several national laboratories is another focus for NEPA process improvement. These projects often involve one national laboratory that hosts a project, while other laboratories collaborate to conduct aspects of the research and development for the host site or fabricate components or equipment.

The guidance recommends that the hosting laboratory and its local DOE office “work with the partners and collaborators, and their local DOE offices, to ensure that DOE’s NEPA requirements are met for all project related work, including at the partners’ sites.” The Project and local DOE Office do not need to conduct the NEPA process for the partners, but rather ensure that it is conducted and completed according to the procedures in place for the partners’ sites. If appropriate, the work being done at the partners’ sites could be included in the NEPA documentation for the Project at the host site. This should be discussed between the Project, the partners, and DOE early in the Project Planning Phase.

While this guidance was written for the Office of Science, it also may be useful to other organizations. I will be pleased to discuss this guidance with my DOE NEPA colleagues. Entitled *Environment, Safety and Health Considerations for Planning and Reviewing SC Projects (CD-1 and CD-2)*<sup>1</sup>, the guidance (along with Dr. Orbach’s May 2002 directive entitled *Office of Science Direction on Project Management*) is available on the Internet at [www.sc.doe.gov/sc-80/sc-81/docs.html#sc](http://www.sc.doe.gov/sc-80/sc-81/docs.html#sc). I can be reached at [clarence.hickey@science.doe.gov](mailto:clarence.hickey@science.doe.gov) or 301-903-2314. 

<sup>1</sup> CD-1: Critical Decision-1, Approve Preliminary Baseline Range; CD-2: Critical Decision 2, Approve Performance Baseline. A prerequisite for CD-2 is completion of NEPA review. (Source: DOE O 413.3, Program and Project Management for the Acquisition of Capital Assets, Attachment 4; October 13, 2000; [www.directives.doe.gov](http://www.directives.doe.gov)).

# Site-Wide EA Improves Planning at Wind Research Center

By: Roselle Drahushak-Crow, *NEPA Document Manager, Golden Field Office*

Using a site-wide EA to consider the environmental effects of site development is “business as usual” for DOE’s Golden Field Office and National Renewable Energy Laboratory (NREL). In May 2002, the Office issued its *Final Site-Wide Environmental Assessment of National Renewable Energy Laboratory’s National Wind Technology Center* (DOE/EA-1378) for the 305-acre National Wind Technology Center, replacing a November 1996 site-wide EA of similar title (DOE/EA-1127). Located between Golden and Boulder, Colorado, the wind research center is one of the two NREL campuses that support energy efficiency and renewable energy research.

“The NEPA process requires us to plan several years out, to envision the impacts of our actions, and to plan for mitigating those impacts,” said John Kersten, Manager of the Golden Field Office, which administers the management and operating contract for NREL. “The result is that projects are better planned and more likely to be completed on schedule.”

## Management Involvement Improves Effectiveness

The NEPA team ensured that the new EA would be useful by encouraging ownership among managers and other decisionmakers. The Golden Field Office initiated the

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**The NEPA process has proven to be a valuable planning tool for our office and for NREL.**

– John Kersten, Manager, Golden Field Office

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process by working with NREL to organize a multidisciplinary team of both organizations’ managers, site operations personnel, and environment, safety, and health staff.

This team conducted internal scoping to identify the components of the proposed action in the EA, which is to operate the wind research center for alternative energy research with new and improved capability. The proposed action includes permanent physical improvements such as buildings and equipment, utilities, and other infrastructure. It also includes activities that do not require permanent facilities or infrastructure, such as research programs, facility operations, management practices, and maintenance activities. By examining this broad set of proposals and activities, the team improved the quality of the EA and ensured its relevance. Team members also provided feedback into other processes, such as the site development plan and program planning, that sparked additional analysis.

“Through the EA, we proactively identified the need to reroute a natural gas pipeline installation to avoid an environmentally sensitive area, thereby saving time and costs on the project,” said Randy McConnell, Director of Environment, Safety, and Security for NREL. This pipeline would tap into an existing supply line and extend approximately two-thirds of a mile across privately owned property adjoining the site. The environmentally sensitive area is a drainage basin that potentially could serve as habitat for the Prebles Meadow Jumping Mouse, a threatened species.

## Integrating NEPA and Site Planning

Although site-wide EAs typically have a five-year shelf life, the multidisciplinary team elected to address both short-term (five years) and long-term (up to 20 years) site improvements. This approach not only extends the document’s useful life, but also broadens the scope of the analysis to take into account the unpredictable nature of frequently changing priorities in Federal program funding.

For a “reality check,” the team worked with the NREL budget planning office to review the activity and improvement descriptions. Short-term projects that were in a relatively more advanced planning stage, including facility modifications and construction, infrastructure improvements, site activities, and routine maintenance, were analyzed in greater detail. Fewer details were available for the long-term projects (ranging from facility construction to research, development, and testing), but including these projects helped planners and managers to think about options for future improvement scenarios.

These various scenarios were incorporated into a bounding analysis approach for analyzing the potential environmental impact. The site was partitioned or “zoned” according to possible future uses such as new facilities,

*continued on page 17*



*The site-wide EA evaluated the impacts of adding more test turbines like this one at the site.*

# Lesson Learned: Keep Your Options Open

By: Jay Rose, Deputy NEPA Compliance Officer and NEPA Document Manager, National Nuclear Security Administration



Jay Rose shares his experiences.

Sometimes, at the start of the NEPA process, DOE knows what it wants to do and is able to identify a preferred alternative from among the reasonable alternatives in the notice of intent (NOI) or draft EIS. Ultimately, DOE may select that preferred alternative in the record of decision (ROD). Usually, however, the NEPA process isn't so predictable, and the

NEPA Document Manager must effectively manage the inevitable uncertainties and changes that arise. Such was the case with the TA-18 EIS that I managed.

In April 2000, then-Secretary of Energy Bill Richardson announced that DOE would prepare an *Environmental Impact Statement for the Proposed Relocation of Technical Area 18 Capabilities and Materials at the Los Alamos National Laboratory* (LANL), DOE/EIS-0319 (TA-18 EIS). He stated that a new TA-18 facility at LANL was the preferred alternative for the proposed relocation. Based on an earlier site-screening study that had been prepared by the National Nuclear Security Administration's (NNSA's) Office of Defense Programs, the Secretary also stated that the EIS would consider as reasonable alternatives relocating TA-18 missions to the Sandia National Laboratory, the Nevada Test Site, and the Idaho National Engineering and Environmental Laboratory.

The TA-18 houses the Nation's only facilities capable of performing general-purpose nuclear materials handling and criticality experiments. These experiments provide unique training to a variety of Federal agencies in areas such as nuclear materials safety, emergency response in support of counterterrorism activities, and safeguards and arms control for programs aimed at controlling excess nuclear materials. The TA-18 buildings and infrastructure are near the end of their useful life. DOE believes that it is important to maintain these capabilities in a manner that reduces the costs for safeguards and security over the next 25 years.

Following the Secretary's announcement, the NEPA folks sprung into action. We drafted the NOI, held scoping meetings at each of the candidate sites, and started preparing the draft EIS. We ensured that the draft EIS evaluated all site alternatives with the same detail and depth of analysis, even though many people felt that the

preferred alternative was a "done deal" and would be selected in the ROD. In fact, we even worked with the TA-18 experts at LANL to identify another alternative: upgrading the existing TA-18 facilities. We were trying to think ahead, which generated a number of questions: What if budgets got tighter than expected? Would NNSA still be able to afford a new facility? If the mission remained at TA-18, would an upgrade alternative provide some partial benefits?

We completed the draft EIS in August 2001 and scheduled the public hearings in September. On September 11, 2001, having flown to Idaho the day before, I awoke to the horrific news. Needless to say, our public meetings were delayed for several weeks.

Note that the TA-18 EIS considered the impacts of sabotage in a classified appendix. While there is still some uncertainty regarding this analysis issue, we had decided prior to September 11 to analyze sabotage scenarios in the EIS. Since the TA-18 EIS supports a siting decision for a facility that stores approximately two tons of special nuclear material, we felt the decisionmaker should be aware of the potential environmental differences at each site if sabotage occurs.

After the public hearings on the draft EIS, we began preparing the comment-response document and the final EIS. Before approval of the final EIS, Dr. Everet Beckner, who had recently become the Deputy Administrator for NNSA/Defense Programs, asked his staff to take a fresh look at the TA-18 project. Dr. Beckner wasn't convinced a new facility at LANL should be DOE's preferred alternative. The fresh look confirmed his suspicion, and when the final EIS was issued in September 2002, the preferred alternative had changed. Based upon cost, technical, environmental, and mission factors, the Nevada Test Site was designated the preferred alternative. A ROD is expected in December.

From a NEPA standpoint, it is gratifying to know that we had evaluated the full spectrum of reasonable alternatives and analyzed each in the same amount of detail. This enabled the NNSA Administrator to designate a new preferred alternative without unnecessarily delaying the proposed action in order to prepare a supplement to the draft EIS. The lesson to be learned: when it comes to NEPA alternatives, it is much better to err on the side of "inclusive" rather than "exclusive."

For more information, contact me at [james.rose@ns.doe.gov](mailto:james.rose@ns.doe.gov) or 202-586-5484. **LL**



# Early “Agency Scoping” Targets Coordination of Airport Modernization Issues

By: Michael W. MacMullen, *Airports Environmental Program Manager, Federal Aviation Administration, Chicago Airports District Office*



Seeking earlier, more structured, and more informed involvement of governmental agencies in a complex EIS, the Federal Aviation Administration (FAA) has developed new scoping approaches for the modernization program for Chicago O’Hare International Airport. With the expectation that early consultation will save time and resources in later EIS phases, the new scoping elements are:

- Organizing pre-scoping meetings for key resource agencies to orient them to the upcoming project and its EIS.
- Hosting informational meetings for mayors and municipal officials during scoping to orient them to the NEPA process and enable them to participate more effectively.
- Holding “agency scoping meetings” for potentially interested Federal, state, and local government agencies – separately from (and in addition to) the traditional scoping meetings for the public. FAA sought informed agency input on potential alternatives, environmental conditions, relevant studies and analytical methodologies, and ancillary plans and projects to be coordinated with the airport modernization.

- Conducting one-on-one follow-up meetings with each commenting agency to explain FAA’s interpretation and proposed accommodation of the agency’s comments.

These innovations in pre-scoping, scoping, and follow-up were instituted to both increase the information content of agency comments and reduce potential disagreements between FAA and other agencies before the draft EIS is issued.

## MOU to Address Agency Roles in EIS, Integrate Wetlands Review with NEPA

Twelve agencies responded to the announcement of public and agency scoping meetings in the notice of intent (67 FR 47029; July 17, 2002):

**Federal:** U.S. Army Corps of Engineers, Fish and Wildlife Service, Environmental Protection Agency, and Federal Highway Administration

*continued on next page*

## O’Hare Modernization Program: EIS Overview

The O’Hare Airport modernization program would involve an expenditure of about \$6.5 billion in phased construction over eight years, while maintaining operations. Significant impacts are expected – as is typical for airport projects – and have already engendered controversy and litigation.

### Preliminary Purpose and Need:

- To modernize and improve Chicago O’Hare International Airport

### Proposed project may include:

- Build, relocate, and extend runways
- Provide new terminal facilities
- Provide new ground traffic and rail access to airport
- Acquire approximately 540 housing units, 110 businesses, and 430 acres of property

### Range of reasonable alternatives may include, in addition to proposed project:

- “No-Build/Do-Nothing”
- Use other existing or proposed airports
- Alternative number or configurations of O’Hare runways
- Demand-management alternatives

### Key environmental issues identified include:

- Noise
- Air quality
- Surface transportation
- Wetlands impacts and mitigation
- Social and socioeconomic factors



# Early “Agency Scoping” (continued from previous page)

**State:** Illinois Environmental Protection Agency, Department of Transportation (Highways, Rails, and Aeronautics Divisions), Toll Highway Authority, Department of Natural Resources, and State Historical Preservation Office

**Local:** Regional Transportation Authority; municipalities of Bensonville, Park Ridge, and Elk Grove Village

FAA has drafted a Memorandum of Understanding (MOU) to clarify expectations with these agencies, which are likely to be involved with FAA throughout the EIS process. The MOU would require agencies to commit adequate staff resources for timely review of the EIS as it is drafted (but not to provide direct financial support for its preparation) and to comment on and concur in the statement of purpose and need and the list of alternatives to be analyzed in detail in the early stages of EIS preparation. FAA will likely ask the agencies to concur in the identification of the preferred alternative before the final EIS is issued.

The draft MOU also incorporates integration of the NEPA process with the review process needed for permits under Section 404 of the Clean Water Act (e.g., for wetland involvement). Although MOUs for NEPA/Section 404 integration are typically used for interagency review of complex highway projects in the State of Illinois, FAA’s past practice has been to conduct these two review processes separately and sequentially. Both NEPA and Section 404 project reviews involve stating the purpose and need, identifying alternatives to be evaluated in detail, and selecting an agency-preferred alternative. Once the MOU is signed, it would represent the first instance of


an interagency agreement to merge the NEPA/404 processes for an airport project.

## Next Steps

Now, after the close of the scoping period, FAA is conducting a follow-up meeting with each commenting agency to discuss the scoping comments and provide an opportunity to react to the draft MOU. The draft EIS is in initial preparation stages, with work proceeding on the draft noise and air quality impact assessment protocols and also on characterization of the existing environment.

Significant advantages are expected from this new approach of involving agencies from the beginning of the EIS process:


- Identifying key agency resources for timely participation throughout the EIS process
- Identifying relevant information, issues, and problem areas early
- Accommodating agency scoping comments efficiently and responsively
- Facilitating ongoing key agency involvement throughout the EIS process
- Consensus building

Information on the O’Hare Modernization Program, including a NEPA overview, is available online at <http://modernization.ohare.com>. For additional information, contact Michael MacMullen at [michael.w.macmullen@faa.gov](mailto:michael.w.macmullen@faa.gov) or 847-294-7522. 

# Site-Wide EA Improves Planning (continued from page 14)

test pad locations for wind turbines and other technologies, and “no-build” or conservation management areas. The zones provided a framework for quantifying future activities and potential impacts, such as the amount of ground to be disturbed and the square footage of improvements. It also helped the program to plan for long-term priorities such as the capability to test one megawatt and larger wind turbines. Such an analysis will provide a guide for planning future projects and activities.

The benefits of enlisting an integrated site planning approach in the site-wide EA process will become more

apparent during the document’s five-year life expectancy and beyond. When site managers grapple with decisionmaking, the site-wide EA will be a resource to help determine which areas of the site are best suited for a proposed activity, what environmental sensitivities need to be considered, how a proposal compares with original plans, and what has changed on the site. Ultimately, the planners and managers who use this document to assess the environmental implications of site development initiatives will measure the success of this process. For further information, please contact me at [roselle\\_drahushak\\_crow@nrel.gov](mailto:roselle_drahushak_crow@nrel.gov) or 303-275-4775. 

# DOE Issues Information Quality Guidelines

DOE published its final guidelines to ensure and maximize the quality of information it disseminates to the public and to provide mechanisms for the public to request corrections to that information on October 7, 2002 (“Final Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines,” 67 FR 62446; also see *LLQR*, September 2002, page 18). DOE’s guidelines include provisions specific to NEPA as well as broader policies and procedures of interest to DOE’s NEPA Community. The DOE guidelines are required by the Office of Management and Budget (OMB) (67 FR 8452, February 22, 2002). The Council on Environmental Quality (CEQ) (67 FR 65354, October 24, 2002) also has published information quality guidelines that are relevant to DOE’s NEPA activities.

## Congressional Direction

In section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Congress required OMB to build upon existing information quality provisions through guidelines “to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”

Section 515 requires each Federal agency subject to the Paperwork Reduction Act to issue agency-specific guidelines within one year of OMB’s government-wide guidance. Agencies’ guidelines are to “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the [OMB] guidelines.” On a fiscal year basis, beginning with the first report, which is due on January 1, 2004, each agency must report annually to the Director of OMB what complaints are received about information quality and how those complaints are handled.

## OMB Guidelines

The OMB guidelines establish basic information quality requirements applicable to Federal agencies. Briefly summarized, the key OMB requirements are:

- adopt a basic standard of information quality as a performance goal and incorporate information quality criteria into their information dissemination practices,
- review and substantiate the quality of information before it is disseminated (applies to information first disseminated on or after October 1, 2002), and
- establish administrative mechanisms, including appeal procedures, allowing affected persons to obtain timely correction of information that does not

comply with OMB or agency guidelines (applies to information disseminated on or after October 1, 2002, regardless of when it was first disseminated).

Central to these provisions is OMB’s definition of information quality, determined by objectivity, utility, and integrity. An agency’s efforts to assure information quality should be commensurate with the nature and timeliness of the information, with some information being handled in a routine manner and so-called influential information being sufficiently transparent to be reproducible by qualified third parties. The OMB guidelines define “influential information” as information an “agency can reasonably determine” will have “a clear and substantial impact on important public policies and important private sector decisions.” However, the OMB guidelines authorize each agency to “define ‘influential’ in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.”

### OMB Definitions

- **Objective** information is “accurate, reliable, and unbiased” and is presented in an “accurate, clear, complete, and unbiased” manner.
- **Utility** “refers to the usefulness of the information to its intended users, including the public.”
- **Integrity** is an indicator that the information has been protected from “unauthorized access or revision.”

OMB “encourages agencies to incorporate the standards and procedures required” by its guidelines “into their existing resources management and administrative practices rather than create new and potentially duplicative or contradictory processes.” OMB points to its Circular A-130, which outlines many procedural requirements aimed at ensuring effective dissemination of quality information. In compliance with the OMB circular and other Federal requirements, OMB reports that agencies “already have in place well-established information quality standards and administrative mechanisms that allow persons to seek and obtain correction of information” and that serve as the foundation for implementing the new requirements.

CEQ regulations implementing NEPA are one example of these pre-existing mechanisms. CEQ regulations require that information used in the NEPA process “must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA” (40 CFR §1500.1(b)).

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# Information Quality Guidelines *(continued from previous page)*

## CEQ Guidelines

CEQ's information quality guidelines apply to its internal mechanisms for implementing the OMB guidance. The CEQ guidelines point out, though, that much of the information CEQ disseminates originates with other Federal agencies. Consequently, before disseminating information originating from or based on information from another Federal agency, "responsible CEQ staff will obtain a written statement from the agency submitting the information attesting that the information meets the agency of origin's information quality guidelines."

## DOE Guidelines

DOE's information quality guidelines are modeled on the OMB guidelines, with modifications specific to DOE. For example, DOE included its own definition of "influential" that, when used in the "context of scientific, financial or statistical information," means information that is (1) subject to embargo because of potential market effects, (2) the "basis for a DOE action that may result in an annual effect on the economy of \$100 million or more," or (3) "designated by a DOE Element as 'influential.'"

Another definition unique to the DOE guidelines is the determination of when something is subject to public comment. While DOE has many mechanisms for soliciting public comment, for purposes of the information quality guidelines, information is only "subject to public comment" if its availability for comment has been published in the *Federal Register*. When public comment has been solicited through a *Federal Register* notice, any request for correction must be made as part of a comment that is filed during the public comment period. The guidelines also apply this use of the public comment period to all EISs and rulemaking notices. Otherwise, a

request for correction must be filed with the Office of the Chief Information Officer.

DOE's guidelines place several requirements on a request for correction. Among these requirements are that the request must (1) specifically identify the information and document(s) in question, (2) explain with specificity why the information is inconsistent with the DOE or OMB guidelines, (3) present substitute information, and (4) justify the necessity for the requested correction. The burden of justification for correcting the information falls upon the member of the public requesting correction.

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## Information Quality Guidelines on the Web

**CEQ:** [www.whitehouse.gov/ceq](http://www.whitehouse.gov/ceq)

**DOE:** [cio.doe.gov/informationquality](http://cio.doe.gov/informationquality)

**OMB:** [www.whitehouse.gov/omb/info/qigq\\_oct2002.pdf](http://www.whitehouse.gov/omb/info/qigq_oct2002.pdf)

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DOE's guidelines state that, with regard to dissemination of information containing analyses of risks to human health, safety, and the environment, it is DOE policy to apply criteria adapted from the Safe Drinking Water Act Amendments of 1996. These criteria include: (1) using best-available peer-reviewed science and data collected by accepted methods; (2) presenting information that is comprehensive, informative, and understandable; and (3) specifying to the extent practicable: (a) the population addressed by any risk estimate, (b) the expected risk or central estimate of risk for the population addressed, (c) upper-bound or lower-bound estimate of risk, (d) significant uncertainties identified in the assessment of risk, and (e) peer-reviewed studies that support, are relevant to, or fail to support estimates of risks and the methodology used to reconcile inconsistencies in the scientific data.

For further information about DOE's guidelines contact Ms. Deborah Henderson, Office of the Chief Information Officer, at [toby.henderson@hq.doe.gov](mailto:toby.henderson@hq.doe.gov) or 202-586-5606.

## Implications for NEPA Implementation

NEPA documents have always required high quality information, and DOE EISs and EAs are generally subject to public review. OMB notes in its guidelines that public review can help ensure information quality. Consequently, it is likely that compliance with NEPA generally will assure compliance with the new guidelines. **LL**

### NEPA-Related Provisions of DOE Guidelines

- Challenges to information in a final EIS or a record of decision must be included in a petition for a supplemental EIS if the "petitioner asserts that [there] are significant new circumstances or information" to require a supplemental EIS per 40 CFR §1502.9(c)(1)(ii); otherwise, the concerned member of the public must raise questions about information in the final EIS through already established processes.
- For documents other than EISs and rulemaking notices that are not announced in the *Federal Register*, including most EAs, requests for correction must be directed to the Office of the Chief Information Officer.


# DOE Sets Graded Approach for Biota Evaluations

In response to public and regulator interest, and reflecting an international trend away from using human radiation standards to assess ecological impacts for certain exposure scenarios, DOE has issued a final technical standard, "A Graded Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota" (DOE-STD-1153-2002). The standard is to be used for demonstrating compliance with DOE Order 5400.5, "Radiation Protection of the Public and the Environment," and is useful in the conduct of ecological risk assessments, including those prepared for NEPA documents.

"[The standard] provides users with a tiered approach for demonstrating compliance with biota dose rate guidelines that is cost-effective and easy to implement; it allows for the use of measured radionuclide concentrations in environmental media typically collected as part of DOE routine site environmental surveillance programs; it incorporates ecological risk assessment concepts; and it provides guidance for site-specific biota dose assessments where needed," wrote Andrew Lawrence,

Director of the Office of Environmental Policy and Guidance, in distributing the standard throughout the Department.

The technical standard establishes a screening process and provides "Biota Concentration Guides (BCGs)" for controlling impacts to biota. If needed, additional tiers of analysis provide users with methods to conduct a more rigorous dose assessment. Companion software, the RAD-BCG Calculator, facilitates the evaluation of site-specific data. The standard was developed by DOE's Biota Dose Assessment Committee (BDAC) and reflects responses to comments from headquarters and field Federal and contractor staff. Among the changes from the interim standard (*LLQR*, September 2000, page 7) are refinements of several screening values and the addition of specific implementation guidance on the evaluation of radiation as a stressor within ecological risk assessments.

The BDAC Web site provides the standard and related materials (<http://homer.ornl.gov/oeпа/public/bdac>). For further information contact Stephen Domotor at [stephen.domotor@eh.doe.gov](mailto:stephen.domotor@eh.doe.gov) or 202-586-0871. 


## Protected Species Report Issued

DOE's Office of Environmental Policy and Guidance has issued a report entitled, *Federally Protected Animal and Plant Species on DOE-Owned Lands*. The October 2002 report updates a similarly titled April 6, 2000, memorandum, which was the first attempt by DOE to document all Federally protected species observed on its sites.

The report includes information on the 16 DOE sites with verifiable sightings of Federally protected species and provides an inventory of protected species with photographs, brief ecosystem and habitat descriptions,

and a discussion of protective measures undertaken by DOE. It is available at <http://tis.eh.doe.gov/oeпа>.

The report may be useful to NEPA Document Managers as a supplemental resource on potentially affected, threatened, and endangered species. Document Managers also may need to consult with the U.S. Fish and Wildlife Service Endangered Species Program.

For further information, contact Mr. Lee Banicki at [leroy.banicki@eh.doe.gov](mailto:leroy.banicki@eh.doe.gov) or 202-586-5193. 

## Transportation Risk Assessment Handbook


The Transportation Risk Assessment Working Group, formed under DOE's National Transportation Program, recently distributed *A Resource Handbook on DOE Transportation Risk Assessment*.

Representatives from DOE's program offices, Office of General Counsel, several of the national laboratories, and contractors knowledgeable in risk assessment of transporting radiological waste and materials participated on the Working Group.

The handbook includes a review of the most frequently used routing and risk assessment models and methodology, along with a summary of current legal requirements and related DOE guidance. Discussions of technical factors important in developing risk estimates

for both routine and accident conditions are based on the collective experience of analysts having practical expertise in DOE transportation programs.

While providing information specifically useful to NEPA reviews, the handbook contains resource information applicable to transportation risk assessments in general. The National Transportation Program distributed the Handbook to NEPA Compliance Officers and other interested individuals in August 2002 and has made it accessible at [www.ntp.doe.gov](http://www.ntp.doe.gov).

To request information on future updates or to suggest additional topics, contact: Ashok Kapoor, DOE Albuquerque Operations, at [akapoor@doeal.gov](mailto:akapoor@doeal.gov) or (505) 845-4574. 




# Workshop on Energy Right-of-Way Permitting Highlights Interagency Agreement

The White House Task Force on Energy Project Streamlining held a two-day workshop in October 2002 on “Energy Right-of Way Permitting: Federal Land Procedures and Streamlining Initiatives” at the Bureau of Land Management’s Training Center in Tucson, Arizona. The aim was to exchange information among Federal agencies, electric industries, and environmental interest groups on Federal permitting requirements and seek ways to expedite natural gas, oil, and electricity proposals.

Workshop discussion highlighted the interagency agreement, signed by ten Federal agencies including DOE, on early coordination of environmental and historic preservation reviews for interstate natural gas pipelines certificated by the Federal Energy Regulatory Commission (FERC). The May 2002 agreement was followed by development of a draft implementation plan, explained Richard Hoffmann, Director, Division of Environmental and Engineering Review, Office of Energy Projects, FERC. The agreement is consistent with the goals of Executive Order 13212 on expediting energy-related projects (related text box, page 6). The ten agencies have agreed to initiate discussions earlier in the permitting process and to perform simultaneous rather than concurrent reviews. The agreement also serves as a vehicle to explore the agencies’ willingness to implement FERC’s new NEPA Pre-Filing Process (see *LLQR*, September 2001, page 12) and can serve as a model for other types of energy projects. The agreement is available at [www.etf.energy.gov](http://www.etf.energy.gov).


Ellen Russell, DOE NEPA Document Manager and Associate Deputy Director for Electric Power Regulation in the Office of Fossil Energy (FE), led a panel discussion on processing electric transmission line applications, with a focus on international transmission facilities that require a Presidential Permit from DOE. Panel members included Tony Como, FE’s Director for Electric Power Regulation; a representative of the Public Service Company of New Mexico, which is seeking a Presidential Permit from DOE for transmission facilities across the Arizona-Mexico border; and a member of the Arizona Corporation Commission, which has state siting authority. (See *LLQR*, September 1999, page 1, for additional information on the NEPA process for the Arizona project.) These and others at the Workshop spoke of the important coordination and planning role that the NEPA process can play in permitting actions.

In providing an overview of the National Environmental Policy Act (“NEPA 101”), Dinah Bear, General Counsel, Council on Environmental Quality, pointed to the “least used provision” of the CEQ regulations implementing NEPA (40 CFR §1501.8(a)) under which applicants could require Federal agencies to establish a schedule for an EIS.


For further information on the Workshop, contact Carolyn Osborne, Office of NEPA Policy and Compliance, at [carolyn.osborne@eh.doe.gov](mailto:carolyn.osborne@eh.doe.gov) or 202-586-4596. 

## Transitions Energy Efficiency and Renewable Energy

Gary T. Staffo, Energy Efficiency and Renewable Energy (EERE) Safety and Occupational Health Manager, now also serves as acting NEPA Compliance Officer (NCO). As the principal technical expert and policy advisor to senior management on safety and health issues, he has represented EERE on various DOE and external working groups, boards, and committees. Before joining DOE in 1994, he was the first civilian Safety and Environmental Health Officer for the National Science Foundation’s U.S. Antarctic Program (USAP), where he managed many environmental improvement actions, including an update of the USAP EIS. Mr. Staffo can be reached at [gary.staffo@ee.doe.gov](mailto:gary.staffo@ee.doe.gov) or 202-586-9577.

The former NCO, Othalene Lawrence, has taken a new EERE position as Technical Manager in the Office of Industrial Technology Programs. 

## Online Access to DOE NEPA Documents Extended to Governmental Officials

The Office of NEPA Policy and Compliance is providing governmental officials access to documents on the DOE NEPA Web. Governmental officials (including Federal, state, local, and tribal officials) may request a password account to access all of the NEPA documents on this Web site by completing the electronic form at [tis.eh.doe.gov/nepa](http://tis.eh.doe.gov/nepa) (then go to “DOE NEPA Documents”). For information on DOE’s NEPA Document Access System, implemented in November 2001 in response to security concerns, see *LLQR*, June 2002, page 5. If you have any questions, please contact Denise Freeman, Webmaster, at [denise.freeman@eh.doe.gov](mailto:denise.freeman@eh.doe.gov) or 202-586-7879. 



## Litigation Updates

### DOE Sued to Prevent Shutdown of Fast Flux Test Facility

Benton County, Washington, has sued DOE in the U.S. District Court for the Eastern District of Washington, alleging that DOE violated NEPA by not analyzing the impacts of decontaminating and decommissioning (D&D) the Hanford Reservation's Fast Flux Test Facility (FFTF), a 400-megawatt nuclear test reactor that has been in standby status since 1992. Benton County has been a strong supporter of restarting FFTF, in part because of its potential usefulness in making medical isotopes for cancer research and contributing employment and revenue for the local economy.

In May 1995, the Department issued an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) with respect to the shutdown of FFTF. This analysis covered the impacts from deactivation but not final D&D. DOE subsequently included the shutdown of FFTF as one of the alternatives it considered in its *Programmatic EIS for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of FFTF* (DOE/EIS-0310, December 2000). After completion of the Programmatic EIS, Secretary of Energy Bill Richardson issued a record of decision that included deactivation of FFTF (66 FR 7877; January 26, 2001). The decision to deactivate was later reviewed and affirmed by

Secretary Spencer Abraham. As part of that deactivation, DOE's Richland Operations Office was scheduled to begin draining the liquid sodium on November 11, 2002, which would have precluded restarting the reactor.

On November 8, 2002, Benton County filed its suit to stay the sodium extraction. The complaint alleges that DOE violated NEPA by failing to prepare an EIS that addressed all three phases of the shutdown of FFTF, and that DOE's failure to conduct NEPA analysis of D&D constitutes improper segmentation. Benton County also takes issue with the fact that responsibility for the D&D of FFTF had been transferred from DOE's Office of Nuclear Energy to the Office of Environmental Management, and that DOE's contractor, Fluor Hanford, had proposed an accelerated D&D program to be integrated with deactivation. Benton County alleges that DOE has gone beyond deactivation (that is, has begun decommissioning) before conducting appropriate NEPA analysis. After initially agreeing to a two-week delay, DOE has now agreed to halt any deactivation work until March 12, 2003, while the parties file court papers and present oral argument to the Court. *LLQR* will provide additional information as this litigation progresses.

### Yucca Litigation Consolidated; Schedule Announced

The U.S. Circuit Court of Appeals for the District of Columbia Circuit has consolidated lawsuits filed by the State of Nevada regarding Yucca Mountain, including petitions for review of the Department's EIS, site suitability guidelines (10 CFR Part 963), and the Secretary's recommendation of the Yucca Mountain site to the President and the President's subsequent recommendation of the site to Congress (see *LLQR*, March 2002, page 19). Separately, the Court is also considering State of Nevada lawsuits challenging

regulatory standards for Yucca Mountain issued by the Environmental Protection Agency (40 CFR Part 197) and the Nuclear Regulatory Commission (10 CFR Part 63). Under the Court's schedule, the State of Nevada's brief is due on December 2, 2002, DOE's response to Nevada's brief is due February 14, 2003, and the State's reply brief is due on April 29, 2003. Oral argument of the DOE case is scheduled for September 2003.

*continued on next page*

## Litigation Updates *(continued from previous page)*

### South Carolina Governor Appeals Court Decision to the Supreme Court

On October 3, 2002, South Carolina Governor Jim Hodges petitioned the Supreme Court to review the August 6, 2002, decision by the U.S. Court of Appeals for the Fourth Circuit upholding a lower court decision in support of DOE's plans to implement its plutonium disposition program. (See "Appeals Court Upholds DOE in South Carolina Plutonium Disposition Challenge," *LLQR*, September 2002, page 19.) Governor Hodges was attempting to stop the shipment of plutonium from the Rocky Flats Environmental Technology Site (RFETS) to the Savannah River Site (SRS) for long-term storage pending final disposition.

In his petition to the Supreme Court, Governor Hodges restates his claims from the original lawsuit and appeal that the changes to the surplus plutonium disposition record of decision announced by DOE in April had not undergone sufficient NEPA review. (See "South Carolina Sues to Stop Plutonium Shipments to Savannah River Site," *LLQR*, June 2002, page 13.) Following the August 6 ruling by the Court of Appeals, DOE commenced shipping plutonium from RFETS to SRS; the shipping campaign will take several months to complete. The Department's reply to the petition is due by December 9, 2002.

### Other Agency NEPA Cases

#### Navy Sued over Sonar Projects

A coalition of environmental groups led by the Natural Resources Defense Council (NRDC) sued the U.S. Navy in September 2001 to require the Navy to prepare a programmatic EIS on its Littoral Warfare Advanced Development (LWAD) activities. LWAD tests a variety of technologies including sonar systems, some of which have been shown to cause injury and death to whales, dolphins, seals, and other marine mammals. NRDC claimed that LWAD violates NEPA, the Administrative Procedure Act, Marine Mammal Protection Act, Endangered Species Act, and Magnusen-Stevens Fishery Conservation and Management Act.

The Navy sought dismissal of the case, claiming in part that NEPA does not apply to government actions in the "exclusive economic zone" of the ocean, the region from 3 to 200 miles offshore. In an order entered on September 19, 2002, the Federal District Court (Central District of California, Western Division) found that NEPA does apply to LWAD activities in the offshore exclusive economic zone, but that the program, as distinct from its component parts, is not subject to programmatic challenge under NEPA or the Endangered Species Act. The plaintiffs are considering pursuit of NEPA claims related to individual LWAD tests.

NRDC is also lead plaintiff in another NEPA-related lawsuit filed in August 2002 against the Navy and the National Marine Fisheries Service. This suit seeks to block peacetime training, testing, and routine operations

of a new Navy sonar system, known as Surveillance Towed Array Sensor System Low Frequency Active (LFA) sonar, which uses loud, low-frequency sound to detect submarines at great distances. The plaintiffs claimed that the project violates the Marine Mammal Protection Act, Endangered Species Act, and NEPA.

The Federal District Court (Northern District of California) found on October 31 that the plaintiffs are likely to prevail in showing irreparable injury to marine mammals and a future violation of the Endangered Species Act, and on their NEPA claim. Considering the public interest in both national security and in protecting marine mammals and endangered species, the Court instructed plaintiffs and defendants to negotiate precise terms of a preliminary injunction that will permit use of the low-frequency sonar for testing and training in a variety of ocean conditions but provide additional safeguards to reduce the risk to marine mammals and endangered species.

The parties entered into Court-ordered mediation and arrived at a settlement over the scope of the preliminary injunction. Under that settlement, as stipulated by the Court on November 15, testing of the LFA system while the case is pending will be confined to a discreet area of ocean east of Japan and northeast of the Philippines. A hearing on the merits of the arguments is scheduled for June 2003.

*LLQR* will continue to provide updates on these cases. 

# New DOE-wide NEPA Contracts Awarded

By: David A. Gallegos, *DOE-wide NEPA Contract Administrator*

The Albuquerque Operations Office has awarded six indefinite delivery/indefinite quantity (task order), five-year contracts for DOE-wide NEPA support services, including preparation and review of EISs, EAs, environmental reports, and other documentation required by the Nuclear Regulatory Commission and other environmental tasks (such as wetland assessments). The new contracts, which replace four contracts issued starting in June 1997, are designed to provide DOE Program and Field Offices, including the National Nuclear Security Administration (NNSA) and Federal Energy Regulatory Commission (FERC), with high-quality NEPA document support on short notice. The contracts promote a faster and less expensive NEPA process and provide for timely start of work, cost saving incentives, and performance incentives.

Contracts under full and open competition were awarded on September 24, 2002, to:

Battelle Memorial Institute  
Program Manager: Lucinda Low Swartz  
swartzl@battelle.org, 301-933-4668

Jason Associates Corporation  
Program Manager: Ernie Harr  
eharr@jason.com, 301-432-4414

Science Applications International Corporation  
Program Manager: Patricia Wherley  
wherleyp@saic.com, 301-353-8346

Tetra Tech, Inc.  
Program Manager: Thomas Magette  
thomas.magette@tetrattech.com, 703-931-9301

Two small business contracts were awarded on November 5, 2002, to:

AGEISS Environmental, Inc.  
Program Manager: Jeffrey B. Lawrence  
jeffl@ageiss.com, 303-674-7819

Potomac-Hudson Engineering, Inc.  
Program Manager: David C. McGaw  
dave@phe.com, 301-907-9078

The contracts awarded to small businesses are identical in scope to those awarded under full and open competition.

The proposals were evaluated against identical criteria, and the Source Evaluation Team is confident that these small businesses are capable of performing all elements of the statement of work.

The DOE Office of NEPA Policy and Compliance will soon distribute a revised "Brief Guide: DOE-wide Contracts for NEPA Documentation" (guidance last revised in August 1998) and add a contracting module to the DOE NEPA Web. For additional information, contact David Gallegos, NNSA Albuquerque Operations Office, at dgallegos@doeal.gov or 505-845-5849.

*LLQR has reported on the DOE-wide NEPA contracts in almost every issue since the first set of contracts were issued in June 1997. For a listing of articles on the contracts or of tasks issued, see the cumulative index, September 2002, page 29. LL*

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## Thanks for a Job Well Done

On behalf of DOE's NEPA Community, Beverly Cook, Assistant Secretary for Environment, Safety and Health, recently expressed appreciation for the important work done by DOE staff in the timely award of the new NEPA contracts. In memoranda to the heads of their organizations, she recognized: Andrew Grainger, Savannah River Operations Office, chair of the Source Evaluation Team; Hitesh Nigam, NNSA, and William (Skip) Harrell, Albuquerque Operations Office, team members; and Gary Gilliland and Anh Nguyen, Albuquerque Operations Office, advisors to the team on cost/price and legal matters, respectively. She also recognized the significant contributions of David Gallegos in administering the contracts and organizing and overseeing the recent procurements.

Assistant Secretary Cook emphasized that the contracts are a key component of continuing efforts to make the DOE NEPA process more cost-effective and efficient. As a result of the staff's activities, she said, DOE Program and Field Offices nationwide, including NNSA and FERC Offices, "will continue to enjoy access to excellent contractors capable of performing a wide range of NEPA document support tasks on short notice."

### A Seat at the Table: Sharing Information with NEPA Contractors

The Savannah River Operations Office NEPA Compliance Officer (NCO), Drew Grainger, invites representatives of firms holding the DOE-wide contracts to monthly meetings of the Operations Office and management and operating contractor NEPA staffs. These meetings are intended to review ongoing NEPA actions, keep everyone current on plans and upcoming NEPA reviews, and share lessons learned. In the NCO's view, these meetings have helped both the contractors and the Savannah River Operations Office.



# Training Opportunities

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

- **Clear Writing for NEPA Specialists**  
Utah State University: December 9-11  
Philadelphia, PA: January 21-23, 2003  
Las Vegas, NV: February 12-14, 2003  
Fee: \$795
- **How to Manage the NEPA Process and Write Effective NEPA Documents**  
Jacksonville, FL: December 10-13  
Salt Lake City, UT: December 10-13  
Las Vegas, NV: January 14-17, 2003  
Boise, ID: February 25-28, 2003  
Fee: \$995
- **Project Management for NEPA Specialists**  
Utah State University: December 12-13  
Las Vegas, NV: February 10-11, 2003  
Fee: \$495
- **Cumulative Impact Analysis and Documentation**  
Albuquerque, NM: January 15-16, 2003  
Utah State University: February 6-7, 2003  
Fee: \$595
- **Cultural and Natural Resource Management**  
Las Vegas, NV: January 28-29, 2003  
Portland, OR: March 11-12, 2003  
Fee: \$595
- **Overview of the NEPA Process**  
Boise, ID: March 4, 2003  
Fee: \$195
- **Reviewing NEPA Documents**  
Boise, ID: March 5-7, 2003  
Fee: \$795  

*The Shipley Group*  
Phone: 888-270-2157 or 801-298-7800  
ben@shipleygroup.com  
www.shipleygroup.com
- **Accounting for Cumulative Effects in the NEPA Process**  
Durham, NC: February 5-7, 2003  
Fee: \$670 (\$750 after January 6)  

*Nicholas School of the Environment and Earth Sciences*  
*Levine Science Research Center*  
*Duke University*  
919-613-8063  
sea3@duke.edu  
www.env.duke.edu/cee/execed.html
- **NEPA One-Day Workshop**  
Monterey, CA: March 28, 2003  
Fee: \$205  

*University of California Extension*  
740 Front Street, Suite 155  
Santa Cruz, CA 95060  
408-427-6600  
(Offered by TetraTech through UC Extension)  
nepaclass@ttsfo.com  
www.ttsfo.com/services/nepa/class.htm
- **NEPA Toolbox™ Training**  
Several courses are available, including essentials, a management overview, public participation, and a variety of subjects specific to EA and EIS preparation. Dates and locations may be set at an agency's convenience through the Proponent-Sponsored Training Program, whereby the agency sponsors the course and recruits the participants, including from other agencies. Services are available to Federal agencies through GSA Contract No. GS-10F-0163L (899-3).  

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

# EAs and EISs Completed, July 1 to September 30, 2002

## EAs

### **Albuquerque Operations Office**

DOE/EA-1408 (8/7/02)

*Flood Retention Structure Disposition, Los Alamos, New Mexico*

**Cost:** \$195,000

**Time:** 12 months

DOE/EA-1409 (7/30/02)

*Natural Gas Line, Los Alamos, New Mexico*

**Time:** 11 months

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

DOE/EA-1429 (8/23/02)

*Proposed Access Control and Traffic Improvements at Los Alamos National Laboratory, Los Alamos, New Mexico*

**Cost:** \$114,000

**Time:** 5 months

### **Golden Field Office**

DOE/EA-1396 (8/27/02)

*Exergy/Americulture Field Verification of a Small-Scale Geothermal Plant, New Mexico*

**Cost:** \$82,000

**Time:** 19 months

### **Grand Junction Project Office/Environmental Management**

DOE/EA-1399 (8/13/02)

*Groundwater Compliance at Gunnison, Colorado*

**Cost:** \$12,600

**Time:** 14 months

### **Idaho Operations Office/Environmental Management**

DOE/EA-1448 (9/20/02)

*Big Lost River – 8 Trenching Project at Idaho National Engineering and Environmental Laboratory, Idaho Falls, Idaho*

**Cost:** \$11,000

**Time:** 2 months

### **Nuclear Energy, Science and Technology**

DOE/EA-1438 (8/30/02)

*Relocation of the Heat Source/Radioisotope Power System Assembly and Test Operations from the Mound Site, Miamisburg, Ohio*

**Cost:** \$156,000

**Time:** 3 months

### **Oakland Operations Office/National Nuclear Security Administration – Defense Programs**

DOE/EA-1439 (9/25/02)

*East Avenue Security Upgrade at Lawrence Livermore National Laboratory, Livermore, California*

**Cost:** \$40,000

**Time:** 4 months

### **Oak Ridge Operations Office/Environmental Management**

DOE/EA-1317 (8/27/02)

*Transportation of Low-Level Radioactive Mixed Waste from the Oak Ridge Reservation to Offsite Treatment or Disposal Facilities, Oak Ridge, Tennessee*

**Cost:** \$75,000

**Time:** 44 months

DOE/EA-1414 (8/6/02)

*Implementation of the Authorized Limits Process for Waste Acceptance at the C-746-U Landfill, Paducah Gaseous Diffusion Plant, Paducah, Kentucky*

**Cost:** \$76,000

**Time:** 23 months

### **Office of Science**

DOE/EA-1384 (7/13/02)

*Proposed Improvements to the Thomas Jefferson National Accelerator Facility, Newport News, Virginia*

**Cost:** \$78,000

**Time:** 17 months

### **Western Area Power Administration**

DOE/EA-1450 (8/29/02)

*Blythe Energy Project Site Expansion, Blythe, California*

**Time:** 6 months

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

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# EAs and EISs Completed, July 1 to September 30, 2002

(continued from previous page)

## EISs

### Albuquerque Operations Office/National Nuclear Security Administration – Defense Programs

DOE/EIS-0319 (67 FR 59284, 9/20/02)

(EPA Rating: EC-2)

*Proposed Relocation of Technical Area 18  
Capabilities and Materials at Los Alamos National  
Laboratory, Los Alamos, New Mexico*

**Cost:** \$2,200,000

**Time:** 29 months

### Bonneville Power Administration

DOE/EIS-0330 (67 FR 53581, 8/16/02)

(EPA Rating: EC-2)

*Walla Walla Power Project, Walla Walla County,  
Washington*

**Time:** 17 months

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

DOE/EIS-0332 (67 FR 55838, 8/30/02)

(EPA Rating: EC-2)

*McNary-John Day Transmission Line Project, Oregon  
and Washington*

**Time:** 15 months

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

# NEPA Document Cost and Time Facts

## EA Cost and Completion Times

- For this quarter, the median cost of 12 EAs, excluding 2 EAs for which costs were paid for by the applicant, was \$77,000; the average was \$84,000.
- Cumulatively, for the 12 months that ended September 30, 2002, the median cost for the preparation of 27 EAs excluding 7 EAs for which costs were paid for by the applicant, was \$77,000; the average was \$80,000.
- For this quarter, the median completion time of 12 EAs was 12 months; the average was 13 months.
- Cumulatively, for the 12 months that ended September 30, 2002, the median completion time for 27 EAs was 11 months; the average was 13 months.

## EIS Costs and Completion Times

- For this quarter, the median completion time of three EISs was 17 months; the average was 20 months.
- Cumulatively, for the 12 months that ended September 30, 2002, the median cost for the preparation of the 3 EISs for which cost data are appropriate was \$2.2 million. The average cost was \$2.1 million.
- Cumulatively, for the 12 months that ended September 30, 2002, the median completion time for 6 EISs was 23 months; the average was 25 months.

### ENVIRONMENTAL PROTECTION AGENCY (EPA) RATING DEFINITIONS

#### Environmental Impact of the Action

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

#### Adequacy of the EIS

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

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

# Recent EIS-Related Milestones (September 1 to November 30, 2002)

## Notice of Intent

### **National Nuclear Security Administration – Defense Programs**

DOE/EIS-0236-S2

*Supplemental Programmatic Environmental Impact  
Statement on Stockpile Stewardship and  
Management for a Modern Pit Facility*  
September 2002 (67 FR 59577, 9/23/02)

## Draft EIS

### **Western Area Power Administration**

DOE/EIS-0323

*Sacramento Area Voltage Support Project*  
November 2002 (67 FR 69216, 11/15/02)

## Final EISs

### **Idaho Operations Office/Environmental Management**

DOE/EIS-0287

*Idaho High-Level Waste and Facilities Disposition*  
October 2002 (67 FR 63421, 10/11/02)

### **Office of Civilian Radioactive Waste Management**

DOE/EIS-0250

*Geologic Repository for the Disposal of Spent  
Nuclear Fuel and High-Level Radioactive Waste  
at Yucca Mountain, Nye County, Nevada*  
October 2002 (67 FR 65539, 10/25/02)

## Records of Decision

### **Bonneville Power Administration**

DOE/EIS-0183

*Cliffs Energy Project*

September 2002 (67 FR 59498, 9/23/02)

DOE/EIS-0324

*Umatilla Generating Project*

October 2002 (67 FR 62704, 10/8/02)

DOE/EIS-0332

*McNary-John Day Transmission Line Project*

November 2002 (67 FR 68112, 11/8/02)

### **Environmental Management**

DOE/EIS-0200

*Revised Record of Decision, Waste Management  
Program: Treatment and Storage of Transuranic Waste*  
September 2002 (67 FR 56989, 9/6/02)

DOE/EIS-0026-S2

*Amended Record of Decision, Disposal of Certain  
Rocky Flats Plutonium-Bearing Materials at the  
Waste Isolation Pilot Plant*

November 2002 (67 FR 69512, 11/18/02)

### **Western Area Power Administration**

DOE/EIS-0352

*Modification and Construction of Transmission Lines  
for the U.S. 93 Hoover Dam Bypass Project*  
October 2002 (67 FR 61619, 10/1/02)

## Supplement Analyses

### **Bonneville Power Administration**

#### ***Yakima/Klickitat Fisheries Project***

(DOE/EIS-0169)

DOE/EIS-0169/SA-5

*Yakima/Klickitat Fisheries Project Hatchery Control Line*  
(Decision: No further NEPA review required)  
September 2002

#### ***Business Plan*** (DOE/EIS-0183)

DOE/EIS-0183/SA-5

*Boise Diversion Dam - Amendment to Capital  
Investment Sub-Agreement, Contract Number  
DE-MS79-94BP94618*

(Decision: No further NEPA review required)  
October 2002

#### ***Wildlife Mitigation Program*** (DOE/EIS-0246)

DOE/EIS-0246/SA-29

*Blue Creek Winter Range - Spokane Reservation  
(Acquisition of Smith and Parsons Properties)*

(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0246/SA-30

*Horkley Property Fee Simple Acquisition*  
(Decision: No further NEPA review required)  
October 2002

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

DOE/EIS-0246/SA-31  
*Allen Property Fee Simple Acquisition*  
(Decision: No further NEPA review required)  
October 2002

## **Watershed Management Program** (DOE/EIS-0265)

DOE/EIS-0265/SA-90  
*Naches River Water Treatment Plant Intake Screening Project*  
(Decision: No further NEPA review required)  
September 2002

DOE/EIS-0265/SA-91  
*Hood River Fish Habitat (Evans Creek Culvert Replacement)*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-92  
*Asotin Creek Six-Year Direct Seed Program*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-93  
*Couse/Tenmile Creeks Six-Year Direct Seed Program*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-94  
*Yakima Basin Side Channels Project, Browitt Property Acquisition*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-95  
*Libby Creek Channel Stabilization Project*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-96  
*Grave Creek Stabilization Project*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-97  
*Couse and Tenmile Creeks Riparian Restoration Program*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0265/SA-98  
*Hood River Habitat Project*  
(Decision: No further NEPA review required)  
November 2002

## **Transmission System Vegetation Management Program** (DOE/EIS-0285)

DOE/EIS-0285/SA-106  
*Vegetation Management along the SnoKing Tap to the Monroe-Samamish Transmission Line from Structure 8/1 through Structure 20/6*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0285/SA-110  
*Vegetation Management along the Covington-Columbia No.3, 230kV Transmission Lines from Structure 1/1 through 12/1*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0285/SA-111  
*Vegetation Management for the Fairview-Bandon #1, Fairview-Bandon #2, and Fairview-Rogue #1 Transmission Lines*  
(Decision: No further NEPA review required)  
September 2002

DOE/EIS-0285/SA-112  
*Vegetation Management for Portions of the Ross-Alcoa Transmission Lines 230kV and 115kV and Bonneville-Alcoa 115kV*  
(Decision: No further NEPA review required)  
October 2002

DOE/EIS-0285/SA-113  
*Remedial Management for Keeping Vegetation a Safe Distance from Electric Power Facilities and Controlling Noxious Weeds Near the Big Eddy-Ostrander Transmission Corridor*  
(Decision: No further NEPA review required)  
October 2002

## **Mid-Columbia Coho Reintroduction Feasibility Project** (DOE/EA-1282)

DOE/EA-1282/SA-3  
*Artificial Production of Coho Salmon in the Wenatchee and Methow Rivers by BPA and the Yakima Nation*  
(Decision: No further NEPA review required)  
November 2002

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

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. This Quarterly Report covers documents completed between July 1 and September 30, 2002.

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

## Data Collection/Analysis

### What Worked

- *Additional data collection during a public comment period.* Additional archeological data collection during the public comment period on the EA helped DOE reach a memorandum of agreement with the State Historic Preservation Officer.

## Scoping

### What Worked

- *Use of a site screening report.* A site report was prepared prior to the start of the NEPA process to determine reasonable alternative sites for the proposed action.

## Schedule

### Factors that Facilitated Timely Completion of Documents

- *Experienced personnel.* An experienced NEPA document manager and contractor team facilitated timely completion of the EIS.
- *Cooperation and efficiency.* Good cooperation between DOE and contractors at the site, combined with quick turnaround on document reviews and comment resolutions, facilitated timely completion of the EA.
- *Document preparation by DOE employees.* The EA was prepared by DOE employees with broad support from management, with a deadline for EA completion set by the document manager.
- *An interagency memorandum of agreement.* A memorandum of agreement, developed to address impacts to a historic site, facilitated timely completion of the EA.

- *Agency coordination.* Regular coordination with the joint lead agency facilitated timely completion of the EIS.
- *An abbreviated Final EIS.* Use of an abbreviated Final EIS, containing only text changes and comment responses, reduced document handling and review time, facilitating timely completion of the EIS. [Note: See 40 CFR §1503.4(c) for applicable requirements.]

### Factors that Inhibited Timely Completion

- *Missing information.* Lack of design information for the alternatives made timely completion of the EIS difficult.
- *Problems with other agency consultation.* A biological opinion from the U.S. Fish and Wildlife Service needed to be amended, and issues related to a dump site that is eligible for the National Register of Historic Places needed to be resolved before completion of the EA process.
- *Competing staff priorities.* Staff working on the EA had other responsibilities that caused delays at times, but additional funds were not provided for the NEPA analysis.
- *Distance between the project site and the Operations Office.* The distance between the DOE Operations Office and the site of the proposed action delayed incorporation of comments on the EA.
- *Changing circumstances.* Rapidly changing conditions in the energy market caused changes in the project proposal, which slowed completion of the EIS.
- *Coordinating with a State agency.* Meeting the requirements of a State agency as joint lead on the EIS made timely completion difficult.
- *Late comments.* Late comments on the Draft EIS from other agencies slowed completion.

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

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#### Teamwork

##### Factors that Facilitated Effective Teamwork

- *A motivated staff.* The NEPA Compliance Officer served as the document manager and used an interdisciplinary staff who were very interested in the subject of the EA and the environmental issues addressed.
- *Ease of contractor procurement.* The ease of procuring a contractor for the EIS facilitated teamwork.

##### Factors that Inhibited Effective Teamwork

- *Premature applicant actions.* The applicant did not consult with DOE before conducting tests within a historic dump site, and the tests were later determined to have an adverse effect on the site.
- *Moving offices during the project.* Moving all the project engineers, GIS personnel, and maps to a different building half way through the project detracted from teamwork.

#### Process

##### Successful Aspects of the Public Participation Process

- *E-mailed comments.* Using electronic mail for comment submittal was a successful strategy.
- *Use of business reply postcards.* Business reply postcards were mailed to a stakeholder mailing list; subsequently, there no public comments concerning lack of notification or opportunity for involvement.
- *One-on-one meetings.* Open house public meetings followed by one-on-one meetings with people on their affected properties helped DOE understand public concerns.

##### Unsuccessful Aspects of the Public Participation Process

- *Misunderstanding of the consultation process.* The local tribal group did not fully understand what Federal agencies are required to do and have latitude to do on Federal lands, and were strongly displeased with a strict interpretation of “consultation” under the National Historic Preservation Act.
- *Relying on another agency's procedures.* DOE relied on an involved state agency to carry out the public participation process, and they may not have solicited input from all affected parties, including interested tribes.

#### Usefulness

##### Agency Planning and Decisionmaking – What Worked

- *Affecting the choice of alternatives.* We actually changed the preferred alternative through the EIS process.
- *Solving related problems.* The proposed action had been delayed by difficulties in resolving consultation under the National Historic Preservation Act. The EA became the basis for consultation and negotiation among DOE, affected tribes, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation.
- *Identifying significant impacts.* The EA was used to inform the decisionmaker whether there would be a significant impact to cultural resources that could not be mitigated.
- *Addressing changes in an approved action.* A change was made in an action previously found to have no significant impacts; a new EA was prepared to address the change and ensure that the previous conclusions about impacts were still valid.
- *Helping control project costs.* The NEPA process helped identify the most cost effective alternative for the proposed action.

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

(continued from previous page)

- *Identifying the alternative with the lowest impacts.* The EIS process helped identify the alternative with the lowest impacts, avoid conflicts with landowners, and identify mitigation measures to further reduce impacts.

#### Enhancement/Protection of the Environment

- *Incorporation of mitigation measures in the EA.* The EA incorporated archeological surveys and avoidance of sensitive areas as mitigation; monitoring found that no cultural materials were observed in the area where the proposed action was carried out.
- *Protection of natural and historic resources.* As a result of the NEPA process, DOE will contribute to a habitat mitigation bank for the endangered desert tortoise, and a historic site will be protected.
- *Avoiding potential impacts.* The route of an electrical transmission line was altered to avoid potentially significant impacts identified through the EIS process.
- *Highlighting potential cumulative impacts.* A cumulative analysis of air quality impacts has highlighted a regional haze issue in a sensitive area, and spurred the need for a meeting of various agencies to discuss potential solutions to the problem.

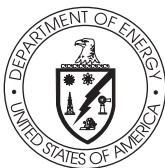
#### Other Issues

- *Guidance need identified.* There is a need for guidance on addressing sabotage and terrorism issues in DOE NEPA documents. [Note: Attachment 1 to *Recommendations for Analyzing Accidents under the National Environmental Policy Act*, July 2002, provides such guidance. The NEPA Office is considering the need for further guidance.]

#### 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 quarter, in which there were 12 EAs and 3 EISs, 6 out of 7 respondents rated the NEPA process as “effective.”
- A respondent who rated the process as “3” stated that the project applicant viewed the process as just another permit needed before they could begin the proposed action.
- One respondent who rated the process as “4” stated that NEPA helped the decisionmaker focus on the relevant factors needed to make a quality decision.
- A respondent who rated the process as “1” concluded that decisions usually have already been made before the NEPA process is completed. LL



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