

00536



Department of Energy

Washington, DC 20585

September 23, 2002

The Honorable James L. Connaughton, Chairman
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20501

Dear Mr. Connaughton:

As the Senior NEPA Liaison for the Department of Energy (DOE), I am pleased to respond to your request for comments on the NEPA Task Force activities and to provide examples of effective NEPA implementation practices. The Department has consistently supported the efforts of the Council on Environmental Quality (CEQ) to improve agency NEPA implementation, including our sponsorship of the CEQ NEPA net and the participation of a DOE representative on the NEPA Task Force.

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. In this regard, DOE has had a formal NEPA Lessons Learned program for eight years and maintains metrics of the cost, time, and effectiveness of its NEPA process.

We appreciate this opportunity to provide answers to the questions in your July 9, 2002, *Federal Register* Notice. We have included supporting documents, including articles from our *Lessons Learned Quarterly Report*, as enclosures. Our submittal includes several case studies that demonstrate the flexibility in the existing NEPA procedures and illustrate successful NEPA implementation.

DOE looks forward to working with the NEPA Task Force as it continues this important effort. If there are any questions concerning our comments or case studies, please direct them to Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at 202-586-4600 or carol.borgstrom@eh.doe.gov.

Sincerely,

Raymond P. Berube
Deputy Assistant Secretary for Environment
Office of Environment, Safety and Health

- Enclosures (1) Responses
(2) Supporting Documents
(3) Case Studies

cc: NEPA Task Force



ENCLOSURE 1**A. Technology, Information Management, and Information Security**

1. *Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form. Examples include but are not limited to species or wetlands inventories, air quality data, field surveys, predictive models, and trend analyses.*

The Department uses a wide variety of information sources in preparing and reviewing NEPA documents, including DOE and non-DOE sources. Examples of DOE sources of information include:

- Existing NEPA documents -- Programmatic and site-wide environmental impact statements (EISs) are especially useful for tiering.
- Annual Site Environmental Reports -- These detailed reports on emissions, regulatory compliance and other environmental factors are required for most DOE sites and provide valuable environmental baseline information.
- Site Environmental Baseline Reports -- Some large DOE sites regularly update environmental baseline information useful in streamlining NEPA reviews. For example, the Hanford Site National Environmental Policy Act (NEPA) Characterization, PNNL-6415 is updated annually.
- Safety Assessment Documents -- This category includes a range of documentation on the safety status of DOE facilities that may be relevant for proposed new activities.
- Technical Standards, Manuals, and Handbooks -- These technical resources ensure consistency in assumptions and methodologies for risk analyses, such as accident analyses. Examples include a handbook for preparing transportation risk analyses under NEPA, and a technical standard for evaluating radiation doses to biota.
- Other NEPA Guidance -- NEPA document preparers and reviewers frequently refer to DOE written NEPA guidance, including checklists and general recommendations for preparing EAs and EISs, and for direction on specific topics, such as Clean Air Act Conformity and NEPA, and accident analyses. Also, preparers and reviewers refer to "mini-guidance" on many topics contained in Lessons Learned Quarterly Reports.

Examples of non-DOE sources of information include census data, planning and other information from state and local governments, and regulatory agency information.

2. *What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?*

Information technologies are extremely powerful resources for the NEPA process, and are useful both internally (e.g., among document preparers and reviewers) and externally (e.g., to foster public participation in the process). The primary barrier to more effective use of information technologies is the general lack of high-speed data transfer capability (e.g., “broad-band” internet access). The U.S. Department of Commerce reports that only about 55% to 60% of U.S. households have access to the internet, and only about 10% to 20 % of those people have high-speed access (see *A Nation Online: How Americans Are Expanding Their Use of the Internet*, Feb. 2002, National Telecommunications and Information Administration, at www.ntia.doc.gov/ntiahome/dn/ and NTIA's *Falling Through the Net II: New Data on the Digital Divide*, July 1998, at www.ntia.doc.gov/ntiahome/ftn99/contents.html). This so-called “digital divide” is a major barrier to electronic distribution of EISs and related material, and to more effectively leveraging the power of information technology (e.g., the download time for EISs is excessive for those with dial-up connections).

Another barrier to using information technologies in the NEPA process regards homeland security concerns. DOE has restricted access to DOE NEPA documents on the DOE NEPA website (see response A.7).

Care must be taken when using information available on the internet because such information may be subject to rapid revision. Citing an internet page as a reference may pose a problem because the information could change or the reference become unavailable. Authors must create a paper record for reference or risk the information becoming unavailable in the future

Regarding assessing and validating the quality of information, the existing CEQ NEPA regulations require agencies to ensure high quality information in NEPA documents. For example, agencies must independently verify information and “...insure that environmental information is available to the public ... information must be of high quality ...” (40 CFR 1500.1(b)), and “... insure the professional integrity, including the scientific integrity of [EISs]” (40 CFR 1502.24). In addition to these and other CEQ and DOE NEPA regulations, Office of Management and Budget information quality guidelines (67 FR 8452; February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, and DOE’s associated draft guidelines (67 FR 7777; July 22, 2002), also address information quality issues (see response under study area F). Although use of new information technologies may pose a need to verify the integrity of information (e.g., to ensure that information from electronic databases has not been tampered with, that electronic versions of documents are complete and accurate, or that internet pages and information cited as references have not changed), we believe that technology for ensuring the integrity of electronic information is available and do not regard this as a new or fundamentally different factor in ensuring the quality of information in NEPA documents.

3. *Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems.*

The Office of NEPA Policy and Compliance maintains several databases containing information about DOE NEPA documents (e.g., preparation cost and time information). The Office of Environment, Safety and Health maintains other databases potentially relevant to NEPA analyses, such as accident occurrence reports and injury rate statistics for DOE sites. DOE programs and field offices maintain other databases containing program and project specific information potentially useful in NEPA documents (e.g., waste inventories, environmental compliance reports, groundwater quality, compliance agreements, habitat management plans, archeological baseline data). For example, the Office of Environmental Policy and Guidance lists many environmental reports and databases on their website at: www.eh.doe.gov/oepa/.

4. *What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?*

The DOE NEPA Website provides the capability to conduct online searches of existing DOE NEPA documents using key words. This enables a document preparer to research how certain topics (e.g., environmental justice) have been addressed in other NEPA documents. The ability to link to other relevant environmental websites is also a useful feature.

5. *What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD-ROM, website, public meeting, radio, television)?*

Our preferred methods vary depending upon how the information or document will be used and whether the use is internal or external to the Department.

Within the Department, most people seem to prefer paper copies for reference documents, especially for large documents; some people, however, want only electronic versions, such as CD-ROM format, which are easily transportable without need for high-speed internet access. In June 2002, we conducted an e-government survey of our NEPA community. Slightly more than half of the respondents stated a preference for electronic copies of NEPA publications; respondents generally preferred receiving e-mail notifications that documents are available for downloading. When asked about preferred methods for receiving draft rules and guidance for review and comment, respondents preferred to receive and comment on documents electronically.

Regarding methods for public notification about proposed actions, public meetings, and the availability of documents, we believe it is important to preserve the flexibility to determine the appropriate method case-by-case. For example, while television, radio or newspaper announcements may be appropriate in some cases, in other cases less-costly methods may be adequate. Asking stakeholders about their preferences, such as via post-card, can be effective.

As discussed in response to question A.2. above, there is a technical barrier to effective electronic distribution of large documents. Another barrier, discussed in A.7 below, is the DOE restriction on access to DOE NEPA documents via the internet. Accordingly, we do not believe that a prescriptive approach to methods for conveying NEPA process information is warranted.

6. *What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making (e.g., websites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)?*

Many stakeholders have told us that they value the DOE NEPA Website as an important source of information about the Department's NEPA process. The major objection or concern about the website that stakeholders have raised is that DOE has restricted public access to nearly all its EAs and EISs on the website because of security concerns.

Most DOE Program and Field Offices also have established websites that have been effective in communicating with stakeholders about environmental issues (not necessarily related to NEPA reviews). Program and Field offices often establish websites for specific NEPA documents to facilitate public commenting online.

Most DOE Programs and Field Offices use electronic databases for management of public comments. Such systems are especially effective for managing large numbers of public comments, offering cut-and-paste, search, and reporting capabilities that greatly enhance the ability to respond to comments individually and collectively.

7. *What factors should be considered in balancing public involvement and information security?*

After September 11, 2001, DOE took several steps to restrict access to information that could be useful to terrorists. For example, DOE restricted access to existing NEPA documents that were archived on the DOE website; access to these documents currently is limited to DOE employees, its contractors, and governmental officials. The Department is now working to define and implement a consistent policy for managing non-classified, security sensitive information and continues to explore ways to find the appropriate balance between informing and protecting the public.

DOE conducts security reviews of new NEPA documents to determine whether to authorize paper and web publication of all or parts of documents. DOE security reviews now include consideration of non-classified but potentially security sensitive information. Factors that DOE considers in conducting such reviews include whether (non-classified) information could damage homeland security (e.g., specific information about the location of a potential security vulnerability), and whether or not information is appropriate for release under the Freedom of Information Act. DOE also considers whether potentially sensitive information is needed for an adequate NEPA analysis; in some cases DOE found that sensitive information originally intended to be included in a NEPA document was not needed for an adequate analysis. In other cases, sensitive information (e.g., information about facility locations relative to receptors) was needed for an adequate EIS, and the information was segregated into a separate volume for "official use only," which will be made available upon written request to people with a need for the information. (See Dec. 2001, March 2002, and June 2002 Lessons Learned articles, Enclosure 2.)

B. Federal and Inter-governmental Collaboration

- 1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions*

Following are two examples of effective cooperating agency processes:

DOE's Idaho High Level Waste and Facilities Disposition Environmental Impact Statement (ID HLW EIS), planned for issuance in Fall 2002, is an example of a successful inter-governmental collaboration. To facilitate cooperation/ coordination between DOE and the State of Idaho, both agencies agreed to a formal Memorandum of Understanding (MOU)(see Enclosure 2) that clearly identified roles and responsibilities, communications pathways, and methods for elevating issues to higher levels of authority within each agency for resolution. In addition, the MOU allowed differing opinions to be presented in the NEPA document. The ID HLW EIS MOU and cooperating agency status for the State of Idaho resulted in both parties understanding the issues and agreeing on how these issues were to be presented in the EIS. Both parties agreed on the majority of issues and presentation of impacts analysis. The State of Idaho developed a foreword in the document that presented those areas where the state had issues or disagreed with DOE. The State of Idaho identified a preferred waste management alternative to be identified in the Final EIS that differs from DOE's preferred waste management alternative.

Another successful example of inter-governmental collaboration by DOE is the development of the Hanford Comprehensive Land-Use Plan EIS in Washington State. This land-use plan EIS, issued September 1999, involved cooperating agency status for three Federal agencies, three county governments, and a city government; a tribal agency and a confederation of Tribes participated as consulting tribal governments. Together these diverse entities, each with very different missions and goals, reached substantial agreement on DOE's land-use plan including: descriptions of land category definitions, the framework for environmental analysis, and the planning policies and implementing procedures of the land-use plan. However, some of the cooperating agencies and consulting tribal governments strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development verses environmental preservation. To resolve these conflicts, cooperating agencies and consulting Tribes developed their own alternatives for consideration in the Draft EIS, using guidelines and a common outline to yield technically parallel information. Although this collaborative process required additional time, it enabled preparation of an EIS that adequately considered the full range of reasonable alternatives. DOE and the U.S. Fish and Wildlife Service each issued Records of Decision based on this EIS (See March 2000 Lessons Learned article, Enclosure 2, and the Case Study on this EIS, Enclosure 3).

2. *What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?*

During the ID HLW EIS effort, DOE addressed several challenges to effective collaboration. The first challenge is the need for cooperating agencies to agree on their respective responsibilities and authorities prior to document preparation. A second challenge is that continual interaction is necessary as the NEPA document is being prepared so that issues and concerns can be addressed in a timely manner and that issues that cannot be resolved by staff are elevated to the appropriate level of management for resolution. A third challenge is that management of both agencies must be committed to address the issues and concerns in need of resolution. And, finally, a fourth challenge is ensuring that the parties agree on the schedule to complete the NEPA document.

Certain obstacles or challenges may apply when involving Native American tribes or county and local governments as cooperating agencies, including: potential schedule conflicts (e.g., the agency may want faster review times than the tribe or local government unit), some tribes or local government units lack technical expertise, and difficulty in obtaining high level approval for key determinations, such as establishing cooperating agency status.

One potential barrier to joint state and federal processes involves jurisdictional issues where more than one party may have overlapping responsibilities for the same project. In an example where this barrier has been overcome, Western Area Power Administration (WAPA) has participated with the California Energy Commission (CEC) in joint environmental review processes for new power plants in California, where an applicant has applied for interconnection with WAPA's transmission system. WAPA has jurisdiction over the interconnection of the power plant to its transmission system. The CEC has jurisdiction over the construction and operation of the power plant. Western and the CEC have been able to deal with this jurisdictional issue by defining each agency's roles in an MOU prepared at the onset of environmental activities (see Enclosure 2 for an example MOU).

3. *What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?*

Inter-governmental communication, inter-agency communication, intra-agency communication, inter-personal communication, ... all forms of communication should be emphasized.

C. Programmatic Analysis and Tiering Questions

1. *What types of issues best lend themselves to programmatic review, and how can they best be addressed in programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analyses, and the efficiencies realized by the analysis or in subsequent tiers.*

There are two main categories of issues/activities where DOE has successfully relied upon programmatic NEPA review. Programmatic reviews have proven effective for DOE programs with inter-related activities at multiple sites. Programmatic reviews have also proven effective in site-wide environmental impact statements (SWEIS), which analyze the impacts from the multi-program activities at large DOE sites.

Within its overall mission, DOE has several major programs encompassing major activities at several different sites. Preparing programmatic NEPA analysis is an effective way to determine the environmental impacts of the overall program and provides a consistent basis from which to tier project specific NEPA analysis within the programs. For example, DOE's Stockpile Stewardship and Management Program is responsible for the production and testing of nuclear weapons for the nation's nuclear stockpile. Some of the numerous activities under this program include nuclear weapons sub-critical testing at the Nevada Test Site near Las Vegas, Nevada; weapons production activities at the Los Alamos National Laboratory in New Mexico; laser testing at the Lawrence Livermore National Laboratory near Oakland, California; as well as several other activities at DOE facilities in Tennessee, Texas, Missouri, and other states. Activities at a given site may be related to activities at other sites, or may be mostly independent. All activities, however, are part of the Stockpile Stewardship and Management Program.

In developing the Stockpile Stewardship Program, DOE prepared this programmatic EIS, which provided valuable information on the environmental impacts of the overall program. The programmatic EIS analysis has also provided a strong basis for the tiering of project specific NEPA analyses. Since the programmatic EIS included resource specific analysis, project specific NEPA analyses that tiered from the programmatic EIS were able to simply incorporate the programmatic analysis and discuss any identified divergences from assumptions/analyses in the programmatic EIS. Thus, the programmatic EIS resulted in efficiencies and prevented duplicative analyses.

Other examples of DOE programmatic EISs include the *Waste Management*, the *Storage and Disposition of Weapons-Usable Fissile Materials*, and the *Waste Isolation Pilot Plant Disposal Phase Supplemental EIS II*. See Enclosure 2 for Lessons Learned articles on programmatic EISs (March 2000, "DOE Decides Disposition of Surplus Plutonium After Complex NEPA Process," and June 1999, "Consolidated Decision Ends 'Tritium Trilogy' Tale").

The SWEIS is a particularly valuable tool for integrating the analysis of environmental impacts at DOE sites and laboratories, which may be very large (several hundred square

miles) and contain numerous facilities with diverse missions and hazards. Since activities at a DOE site may create numerous impacts, the best way to integrate the analyses of the impacts is with a SWEIS. Consistent with DOE implementing regulations, large DOE sites prepare a SWEIS, and then periodically (approximately every 5 years) review the currency of the SWEIS.

Benefits realized from the SWEIS include ability to assess cumulative impacts from multiple activities. From this comprehensive analysis of cumulative impacts, DOE has been able to develop Mitigation Action Plans (MAP) to minimize adverse impacts. Without this type of analysis, development of an effective MAP based on analysis of impacts from individual projects at a site would have difficult. DOE has also realized an efficiency benefit from SWEIS and avoided duplicative NEPA analysis. A number of environmental assessments for new projects at the various sites have tiered from SWEISs, using the baseline environmental data, cumulative impacts, and other analyses.

- 2. Please provide examples of how programmatic analyses have been used to develop, maintain, or strengthen environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses.*

NEPA and Environmental Management Systems (EMS) are complementary processes that can enhance each other.

DOE sites implementing EMS generally focus their EMS on ongoing activities associated with conducting their missions and on small-scale daily activities that are not usually addressed by a NEPA analysis. However, an EMS can provide a framework for continuing follow-through, implementation, and improvement of NEPA decisions made at the beginning of the program analysis process. An EMS can add value to a NEPA analysis by focusing on implementation aspects of ongoing operations, monitoring environmental performance, requiring audits and corrective actions, and assessing the effectiveness of the management system elements needed to implement the program decisions made in the NEPA analysis. In short, an EMS can help improve the implementation of NEPA decisions.

An example of integrating the EMS and NEPA processes can be found at DOE's Strategic Petroleum Reserve (SPR), which stores oil in underground salt domes in Louisiana and Texas. When it developed its EMS, it had a pre-existing framework for evaluation of new projects and activities: the DOE NEPA process.

As part of its EMS, the SPR identifies environmental aspects through two specific processes: the Engineering Design Review process and the Environmental Program. The Engineering Design Review process addresses activities that result in a change to the SPR configuration baseline. This may entail a change or upgrade to an existing system, addition of an entirely new system, or deletion of an obsolete system. Each of these configuration changes presents an opportunity for a new environmental aspect and corresponding impact, with the related need for analysis in order to adequately plan for

them. The NEPA process also requires evaluation of such projects for impacts, best alternative, and appropriate level of action. The SPR's Design Review and NEPA processes are then congruent, and as such offer an opportunity for efficiency through shared processes in identification and maintenance of environmental aspects. A similar process is employed for the Environmental Program for day-to-day activities.

The SPR has employed the Record of NEPA Review document to formalize the environmental aspect and identification process. Actions are evaluated for environmental aspects along with the actual NEPA determination, and documented on the Record of NEPA Review form. This document receives concurrence of the assigned Task Engineers who originate and verify the task requirements, while the NEPA Compliance Officer approves the Record of NEPA Review. Thus, flow-down responsibility of involved parties is demonstrated through this ongoing environmental aspect and impact management process. By development of an integrated NEPA-EMS process, the SPR has streamlined and combined parallel environmental activities in a synergistic manner that produces positive program value, while minimizing redundant processes.

D. Adaptive Management/Monitoring and Evaluation Plans

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

Several factors can be considered when deciding to use an adaptive management approach: time, cost, staffing needs, environmental risks, objectives, uncertainties, stakeholder opinions, administrative support, necessary modeling/monitoring/research, regulators' support, flexibility, guidelines for decision-making, strategies, and determination of how to share information and what reports may need to be generated. Determination of which of these factors to consider depends on several variables, including but not limited to, the scope of the project, regulatory requirements, the potentially impacted parties, and supporters/opponents of the action(s) to be taken. Educating all parties of the need for action and involving them in the process for selecting the adaptive management approach could identify the major factors to be considered and attain stakeholder acceptance of the action to be taken.

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

One way to ensure that the environmental impact analyses are structured to consider adaptive management is to broaden the range of alternatives to be analyzed in the NEPA review. This approach includes developing alternatives that provide flexibility to deal with change and analyzing alternative technologies that might not be fully developed or authorized. One way to accomplish this is to focus more on the outcome of the alternatives, not the specific solutions. (See Enclosure 2, Lessons Learned Quarterly Report articles, "Analyze Alternatives Not Currently Authorized, if Reasonable, to Provide Greater Flexibility," March 2002, and "Analyzing All Reasonable Alternatives in an EIS," March 2001.) An example of how analyzing all alternatives can provide flexibility for DOE decisionmakers was demonstrated in a recent Record of Decision (ROD) for the *Interim Management of Nuclear Materials Environmental Impact Statement* (IMNM EIS) (DOE/EIS-0220, October 1995). For details, see Enclosure 3, Case Study on the IMNM EIS.

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

Many aspects of adaptive management may change the project itself during implementation of the action to be taken. If there are substantial changes in the proposed action that are relevant to environmental concerns, or if significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts exists, subsequent NEPA analyses will be required. DOE addresses these issues in Supplement Analyses (SA), Supplements, and amended RODs.

The EIS on the Savannah River Site Salt Processing Alternatives involved a large-scale and expensive project with technological and regulatory uncertainties that supported a conclusion that the environmental impacts of all of the reasonable alternatives were small

and acceptable. In the EIS and resulting record of decision, DOE incorporated flexibility to allow the agency to modify its course of action during implementation without further NEPA analysis. This flexibility was possible because the EIS provided analysis of the impacts of a full range of reasonable alternatives. To illustrate this flexibility, an excerpt for the record of decision is provided:

Initial implementation . . . will consist of designing, constructing, and operating a facility... DOE will evaluate the processing capacity needed based on high-level waste system requirements..., projected throughput, and conceptual design data. Based on these evaluations, DOE may elect to build a facility or facilities to carry out the [selected alternative] that could accommodate pilot program and production objectives, but would not exceed the size or processing capacity evaluated in the... SEIS. In parallel, DOE will evaluate implementation of any of the other salt processing alternatives for specific waste portions for which processing could be accelerated or that could not be processed in the [selected alternative] facility. These evaluations and potential operations would be undertaken to maintain operational capacity and flexibility in the HLW system, and to meet commitments for closure of high-level waste tanks. Record of Decision: Savannah River Site Salt Processing Alternatives (66 FR 52752, 10/17/01)

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?*

As stated in the response to question D.1, many factors may be considered depending on the action(s) to be taken, project objectives, current best available technological information, stakeholder opinion, regulatory requirements, etc. It is important to involve affected parties in the decisionmaking process and promote the development of shared understandings among diverse stakeholders. Cost and "buy-in" from upper management would appear to be the most important factors when deciding the techniques and level of intensity for the monitoring.

E. Categorical Exclusions

1. *What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?*

For categories of actions with an environmental nexus, DOE's preferred basis is a history of environmental reviews (i.e., environmental assessments, environmental impact statements, and other types of reviews) that show a pattern of no significant impacts. In some cases, past experience and common sense are enough to establish classes of actions that do not individually or cumulatively have a significant effect on the human environment.

DOE periodically queries its NEPA Compliance Officers for suggested additional categorical exclusions, and asks for supporting documentation.

2. *What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?*

Periodically, DOE examines other agencies' categorical exclusions to see whether they include actions similar in scope and impacts to DOE actions; so far, however, we have not identified any categories that DOE might use. In general, we believe that an agency would need to carefully review another agency's categorical exclusion before proposing to revise its NEPA implementing regulations to establish the categorical exclusion. Careful review is needed because the *context* of a similar scope of activity could differ importantly at a different agency; context is an important factor in determining "significance."

3. *Are improvements needed in the process that agencies use to establish a new categorical exclusion? If so, please describe them.*

No changes are needed. Because our categorical exclusions are part of our DOE NEPA implementing regulations, the Administrative Procedure Act governs their amendment process. Though time-consuming, the rulemaking process affords public participation and confers legitimacy. After rulemaking there is no requirement for public participation.

F. Additional Areas for Consideration

Regarding your question about the appropriate utility of and structure of format for environmental assessment documents, we believe that CEQ's NEPA implementing regulations afford agencies adequate flexibility regarding the appropriate content and format of environmental assessments.

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ENCLOSURE 2

Supporting Documentation

Lessons Learned Quarterly Reports – Listing of LLQR articles to be copied and provided with formal response to CEQ

- Mar 2002 Analyze Alternatives Not Currently Authorized, If Reasonable, to Provide Greater Flexibility**
Update on Security Issue in the DOE NEPA Process
- Jun 2002 Expanding Online Access to DOE NEPA Documents**
- Mar 2001 Analyzing All Reasonable Alternatives in an EIS**
- Dec 2001 DOE NEPA Post-911: Reconciling the Need to Protect and the Need to Inform the Public**
- Mar 2000 Hanford Comprehensive Land-Use Plan EIS Helps DOE Preserve Unique Resources**
DOE Decides Disposition of Surplus Plutonium After Complex NEPA Process
- Jun 2000 Los Alamos Site-wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions**
- Sep 2000 Emergency NEPA Procedures Invoked for Actions Taken after Los Alamos Fire**
- Jun 1999 Consolidated Decision Ends “Tritium Trilogy” Tale**
- Mar 1998 DOE Charts Course for Managing TRU Waste**
- Jun 1997 Effective NEPA Hearings: Learning from WIPP Experience**
- Dec 1997 NEPA Review Adds Value to Proposed Sale of Naval Petroleum Reserve**

Memoranda of Understanding

Memorandum of Understanding Between the Western Area Power Administration and the California Energy Commission for the Purposes of a Joint Environmental Review Process for the Proposed Blythe Energy Power Plant Project, dated February 29, 2000.

Memorandum of Understanding Between U.S. Department of Energy and the State of Idaho Regarding the High-Level Waste and Facilities Disposition Environmental Impact Statement, dated September 24, 1998.

Analyze Alternatives Not Currently Authorized, If Reasonable, to Provide Greater Flexibility

According to the Environmental Management (EM) program's Top-to-Bottom Review, the NEPA process for EM projects and programs "is often time-consuming and costly without providing the sound analysis and rational alternatives to support good decisionmaking." The Review also found that many of EM's EISs are "too narrowly scoped and do not adequately evaluate the breadth of options to be considered in the decisionmaking process.... Initial alternatives may not be adequate to support Departmental goals and decisionmaking; thus reanalysis may be necessary."

Value of Broad Range of Reasonable Alternatives

It is important to evaluate a broad range of alternatives in an EIS or EA to give a decisionmaker flexibility in responding to changing circumstances. By coordinating continually with project planners and engineers, document preparers can ensure that an EIS or EA covers "new ideas" that may be emerging on better, cheaper, and faster ways to accomplish the agency's purpose and need for action.

An earlier article in *Lessons Learned Quarterly Report* dealt with the general topic of analyzing reasonable alternatives and included examples of changed circumstances wherein what was impractical became practical over time. (See "Analyzing All Reasonable Alternatives in an EIS," *LLQR*, March 2001, page 6.) That article did not emphasize, however, the value of analyzing alternatives not currently authorized.

Unauthorized Alternatives Can Be Reasonable Alternatives

The concept of reasonableness is not self-defining – that is, reasonable alternatives for an EIS or EA must be determined on a case-by-case basis. To ensure flexibility in decisionmaking, consider the possibility of change not only in the context of an agency's ongoing activities and compliance framework, but also with an eye toward flexibility should technology advance or new compliance agreements be reached.

In guidance, CEQ has stated that "reasonable alternatives include those that are practicable or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant" (CEQ's Forty Most Asked Questions,

CEQ Regulations and Guidance on Alternatives Outside an Agency's Jurisdiction

- CEQ's regulations implementing NEPA require that an agency "rigorously explore and objectively evaluate all reasonable alternatives" to a proposed action (40 CFR 1502.14(a)).
- The regulations specifically require that the analysis include "reasonable alternatives not within the jurisdiction of the... agency" (40 CFR 1502.14(c)).
- The "Forty Most Asked Questions Concerning CEQ's NEPA Regulations" (46 FR 18026, March 23, 1981) further address the issue of alternatives beyond the agency's jurisdiction (Question 2b):

An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or Federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered (40 CFR 1506.2(d)). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies (40 CFR 1500.1(a)).

Question 2(a), reference provided in Text Box). A common thread that runs throughout the CEQ NEPA implementing regulations and related CEQ guidance is that alternatives must be analyzed if they are "reasonable."

An alternative that is practical, feasible, and consistent with an agency's established mission may be "reasonable" for purposes of NEPA, even if it would require some augmentation of the agency's existing authority or a change in existing legal requirements. Inclusion of these alternatives in NEPA documents may provide useful information to inform decisionmaking.

continued on page 8

Analyze Alternatives (continued from page 7)

Analysis of Unauthorized Alternatives Proves Useful

The EIS preparation team for the *Idaho High-Level Waste and Facilities Disposition EIS* (DOE/EIS-0287) did not apply “regulatory filters” in developing the range of reasonable alternatives. The EIS includes alternatives for managing high-level radioactive waste at the Idaho National Engineering and Environmental Laboratory that would not meet existing regulatory requirements and court ordered agreements. Considering such alternatives provides decisionmakers with a broad range of options to properly manage waste, and the flexibility to consider technology developments and new information on potential new waste management approaches. Further, DOE and the State of Idaho have agreed that the EIS could facilitate negotiations on proposed changes to a court-ordered agreement. (See “CEQ Guidance Encourages Agency Cooperation,” page 1.)

Likewise, in the *Supplemental EIS for the Waste Isolation Pilot Plant (WIPP) Disposal Phase* (DOE/EIS-0026-S-2), three of the four action alternatives would violate the restriction in the WIPP Land Withdrawal Act on the total volume of transuranic waste to be disposed of at WIPP and the Act’s implied ban on disposal of non-defense transuranic waste at WIPP. Further, some of the action alternatives would also violate the limit on the volume of remote-handled transuranic waste imposed by the Cooperation and Consultation Agreement with the State of New Mexico. The analysis of these unauthorized alternatives was useful, however, to examine the environmental impacts of disposing of all of DOE’s transuranic waste at WIPP, because non-defense waste and pre-1970 buried waste could constitute as much as 46 percent of DOE’s transuranic waste volume. The unauthorized alternatives were consistent with the purpose and need for agency action and the CEQ regulations and related guidance. ■

Annual NEPA Planning Summaries: Are They Important?

As a NEPA Compliance Officer, you may have wondered why your office must submit an annual NEPA planning summary each year to the Office of Environment, Safety and Health (EH). What is EH doing with these reports?

The purpose of annual planning summaries is *more than* just informing EH’s Office of NEPA Policy and Compliance about EAs and EISs that are being or will be prepared over the next 12 to 24 months, along with estimated costs and schedules. Knowing when EISs are scheduled helps EH plan to have the necessary staff resources available to review and assist in their preparation and approval. Additionally, being aware of all EAs and EISs being prepared throughout the Department helps EH identify cross-cutting issues and trends.

In addition to notifying EH, the annual planning summaries alert the public to upcoming NEPA documents, and ensure that the Secretarial Officers and Heads of Field Organizations are involved early in the NEPA process. Preparation of an annual planning summary provides a vehicle for senior officials to review their NEPA compliance strategies and make any necessary adjustments (e.g., to schedules, resources, alternatives) to reflect program priorities.

Based on a preliminary review of the 23 annual planning summaries received to date, approximately 98 EAs and 41 EISs are scheduled in the next 12 to 24 months. ■

Update on Security Issues in the DOE NEPA Process

The DOE Office of NEPA Policy and Compliance remains concerned about how best to inform the public about the Department's NEPA process and yet limit access to sensitive information. Although there is some uncertainty within DOE and throughout the Federal government about appropriate security policies for Internet content, and, as a result, inconsistent approaches to the problem, we expect the Administration to provide guidance soon. In the meantime, we are beginning to restore electronic access to DOE's NEPA documents. It should be noted that DOE continues to distribute paper copies of its NEPA documents to the public in accordance with NEPA regulations. What follows is an update to the December 2001 *Lessons Learned Quarterly Report* article, "DOE NEPA Post-9/11."

Broad Federal Government Actions Expected

The Council on Environmental Quality (CEQ) convened a meeting of Federal agency NEPA contacts on December 20, 2001, to discuss security concerns over sensitive information and NEPA. Staff from DOE's Offices of NEPA Policy and Compliance, General Counsel (GC), and Civilian Radioactive Waste Management (RW) participated in the exchange of information.

A CEQ NEPA Task Force plans to work with the Office of Homeland Security to provide policy and guidance on security and the NEPA process for Federal agencies. (See "DOE NEPA Staff to Participate in CEQ Task Force to Modernize NEPA," page 17.)

The Office of Homeland Security is considering proposing new guidance that would allow for the protection and control of specific unclassified information. The guidance would provide a level of protection for sensitive unclassified information that will be disseminated to Federal, state, and local governments, and the private sector. The majority of the information would involve infrastructure vulnerability information and response plans.

Other Federal agencies have taken similar actions and face similar questions as DOE in aiming to limit but not eliminate public access to NEPA analyses. Most agencies have restricted Web access to previously issued EISs and EAs while working to establish criteria for "sensitive information" and reinstating Web access.

Two Agencies, Two Approaches

The Federal Energy Regulatory Commission (FERC) believes that NEPA documents for natural gas facilities

could contain sensitive information and has removed from its Web site all such documents for projects that have received a certificate. To provide opportunities for public involvement for proposed new gas facilities, however, FERC still posts current NEPA documents on its Web site. After issuing a certificate, FERC considers the gas facility to be an existing one and removes the related documents from the publicly accessible Web site. FERC does not believe that NEPA documents for hydroelectric facilities contain sensitive information, and such documents remain available on the FERC Web site.

The Nuclear Regulatory Commission (NRC) disabled its entire Web site soon after the September 11th terrorist attack. Since that time, NRC continues to perform a security sensitivity screening of Web site content, including new information and information that was previously available. After information has undergone the security sensitivity screening and been judged appropriate for public access, NRC is reloading NEPA documents and other information onto the Web site. For example, NRC initially removed from its Web site the final EIS for a proposed independent spent nuclear fuel storage facility on an Indian reservation in Utah (NUREG-1714). NRC subsequently reviewed that document for potential security concerns and made it publicly available via its Web site.

Online Access Follows Operational Security Review of the Yucca Mountain Final EIS

In preparing the *Final EIS for a Geologic Repository for Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0309), RW, in consultation with the NEPA Office, GC, Office of Security, and other entities, reviewed the approximately 5,000-page document for information that might be useful to terrorists. RW determined that, because of the security sensitivity of some information in the Final EIS, portions of it should be segregated in a separate volume (Volume IV, "Additional Information") for limited distribution.

RW will not make Volume IV of the Final EIS available via the Internet or in public reading rooms. That volume contains the entire technical appendix on accident analyses (about 49 pages) and about 10 pages from the technical appendix on transportation risk (which is about 207 pages). Volumes I, II, and III, however, are available on

continued on page 10

Security Issues (continued from page 9)

the Web and in reading rooms, and a person reading these would learn of the existence of Volume IV and receive instructions on how to request it. RW would provide Volume IV to people who give their name and address. RW is reviewing the references for the EIS for potential security concerns and may limit electronic access.

Restoring Access to DOE's NEPA Web Site

Since blocking access to EISs and EAs on the DOE NEPA Web in early November 2001, the Office of NEPA Policy and Compliance has been considering appropriate ways to make information available while protecting homeland security. As a first step, in January 2002, the NEPA Office restored online access to DOE NEPA documents for DOE personnel (i.e., to people with "doe.gov" and similar DOE e-mail addresses).

The NEPA Office is now taking additional steps to increase availability of EISs and EAs online. A password access system for contractors who prepare DOE NEPA documents will be available in mid-March. The system will require these contractors to complete an electronic account application in which they must provide identifying information, including a DOE contact. The Office is also planning to make future NEPA documents for which appropriate operational security reviews have been conducted generally available without restrictions.

In seeking to restore public availability to DOE's EISs and EAs online, the NEPA Office seeks input from the DOE NEPA Community on a range of options:

- Continue to restrict access to the approximately 100 draft and final EISs and 320 EAs on the DOE NEPA Web. (The Office is aware that some DOE EISs and EAs may still be publicly available elsewhere online.)
- Establish a password access system for members of the public who identify themselves (e.g., provide their name and address and need for access).
- Open the Web site without restriction. This could be done without a review of the past documents for sensitive information, as the NEPA Office does not have the resources or expertise to conduct such a review. Alternatively, this could be done after Program or Field Offices conduct such reviews or confirm that such a review is not needed for certain documents.

The NEPA Office continues to solicit information and suggestions from the DOE NEPA Community. For further information or to provide comments, contact Denise Freeman, Webmaster, Office of NEPA Policy and Compliance, at denise.freeman@eh.doe.gov or 202-586-7879. 

A NEPA Streamlining Strategy

By: Roger P. Hansen, J.D., *Environmental Consultant*,
and Theodore A. Wolff, Ph.D., *Sandia National Laboratories/New Mexico*

The authors, whose combined NEPA experience serving Sandia National Laboratories totals over 30 years, propose a ten-element strategy, summarized below, to make NEPA "work better and cost less." A fuller discussion of these concepts is contained in their article "Making NEPA More Effective and Economical for the New Millennium," Federal Facilities Environmental Journal, Autumn 2000.

Efficient and effective implementation is needed for NEPA to fulfill its promise as a great tool for environmental management. Obstacles to achieving this promise remain, in part from the persistence of major compliance problems:

- Avoidance of NEPA compliance at all costs, even if it means stopping the project.
- Documentation procrastination that results in setting impossible schedules for EA or EIS preparation.
- Failure to use NEPA to make better decisions.
- "Encyclopedia mania," which results in producing massive multi-volume, often unreadable NEPA documents.
- Inadequate public and agency involvement, causing delay.
- Atrocious writing, editing, and formatting of documents.
- Preparing an EA where an EIS is required and vice versa.

Our strategy is mostly common sense and it cannot overcome long-held anti-NEPA attitudes. But our approach can make NEPA compliance easier and more helpful to decisionmakers and the public.

continued on next page

Expanding Online Access to DOE NEPA Documents

By: Denise Freeman, *Webmaster*

Since blocking access to EISs and EAs (but not to any other content) on the DOE NEPA Web Site in early November 2001, the Office of NEPA Policy and Compliance has taken steps to make NEPA documents available on a limited basis while protecting homeland security. (See related articles in March 2002 and December 2001 issues of *LLQR*.)

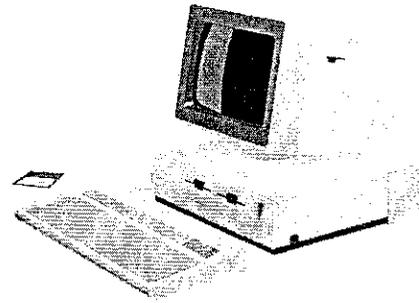
First, in January 2002, the NEPA Office restored online access to all DOE NEPA documents for DOE personnel (i.e., to people with "doe.gov" and similar DOE e-mail addresses). Then, in April 2002, the NEPA Office implemented the NEPA Document Access System to make all NEPA documents available online to contractors who help DOE prepare NEPA documents. The system requires that contractors complete an electronic account application in which they identify themselves, state their need for access to DOE NEPA documents, and provide a DOE contact. Upon confirmation of applicant information (usually within two or three days), User IDs and passwords are issued to applicants via U.S. mail, or upon request, telephone or an attended fax machine.

All DOE personnel should be able to access NEPA documents directly, without need for a password account. Some DOE personnel, however, have had difficulties accessing documents. We try to diagnose and fix such problems when they are reported. This takes time and in some cases DOE personnel have asked for password accounts, which we process as soon as possible.

At this time, archived documents are not available online to anyone other than DOE employees and DOE NEPA contractors because these documents have not been reviewed to determine if they contain security-sensitive information. We welcome comments on whether and how to expand the universe of people that may access documents archived on the DOE NEPA Web site.

We will make newly-completed NEPA documents (in their entirety or with sensitive material removed) available online to anyone, if that is appropriate after security reviews of the documents have been completed by the cognizant Program or Field Office. We would also make documents archived on the DOE NEPA Web Site available to anyone, if appropriate after security reviews are completed.

We will keep the NEPA community apprised of any new developments in e-NEPA. **LL**



Change in e-file Submittal Address

For Draft and Final EISs, after consulting with the Office of NEPA Policy and Compliance staff, send the following as soon as available (preferably when the document is sent to the printer) by overnight courier to the following (changed) address:

ES&H Info Center
Attn: Rhonda Toms, EH-72
Building 270CC
19901 Germantown Road
Germantown, MD 20874-1290

- ✓ One paper copy of the EIS*
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/nepa/docs/docs.htm).

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

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

- ✓ Three printed copies of the NEPA document
- ✓ Web-formatted electronic files
- ✓ A completed DOE NEPA Document Certification and Transmittal Form (available at tis.eh.doe.gov/nepa/docs/docs.htm). **LL**

Mini-guidance from the Office of NEPA Policy and Compliance

Analyzing All Reasonable Alternatives in an EIS

By: Carl Sykes, Office of NEPA Policy and Compliance

An EIS must analyze all reasonable alternatives (40 CFR 1502.14(a)). In determining what are the reasonable alternatives, an agency could include those alternatives that currently seem impractical from a programmatic perspective. This approach can ultimately be the most efficient path to implement a project, because the decision maker is restricted to alternatives analyzed in an EIS (40 CFR 1502.2(e)).

DOE may revise a record of decision (ROD) at any time if the revised decision is adequately supported by an existing EIS (10 CFR 1021.315(d)). The Office of Environmental Management recently considered changing its earlier decision for disposition of plutonium fluoride residues stored at the Rocky Flats Environmental Technology Site.

Alternatives Analyzed in the EIS

DOE decided (63 FR 66136; December 1, 1998) to ship plutonium fluoride residues from Rocky Flats to the Savannah River Site for processing to separate plutonium, rather than blending them down below the 0.2% plutonium "safeguard" limit for disposal at the Waste Isolation Pilot Plant (WIPP). These were the two action alternatives for these residues analyzed in the EIS for *Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site* (DOE/EIS-0277, August 1998). In that EIS, DOE analyzed a third action alternative for several other categories of residues: blending down only to 10% plutonium and applying a variance to safeguard limits on the concentration of plutonium, so that the partially blended-down residues could be brought to WIPP for disposal. DOE stated that this alternative would be impractical for plutonium fluoride residues and did not analyze it in the EIS. At the time, plutonium was technically relatively easy to recover from fluoride residues at the 10% level. Thus, the residues would not have qualified for a safeguards variance and DOE would be precluded from bringing such residues to WIPP.

Changed Circumstances Made Impractical Alternative Practical

After issuing the 1998 ROD, DOE encountered difficulties in certifying the container for shipping the residues from Rocky Flats to the Savannah River Site. Additional testing was projected to delay shipping for several months, which would have threatened DOE's ability to close the Rocky Flats Site by 2006.

In the interim, the Rocky Flats Site had developed methods to make plutonium recovery from fluoride residues more difficult, allowing for plutonium fluoride

residues blended down to 10% to be disposed of at WIPP under a variance to safeguard limits.

Before revising the ROD, DOE needed to determine whether the EIS analysis of the alternative to blend down to 0.2% encompassed the activities and impacts of the alternative to blend down to 10% and apply a safeguard variance. Accordingly, Environmental Management prepared a Supplement Analysis, which showed that the activities were very similar and the impacts were similar or lower under the variance. DOE was able to conclude that no further NEPA review was needed to revise the ROD (66 FR 4803; January 18, 2001). Although it seemed when preparing the Residues EIS that material blended down to 10% could never be disposed of at WIPP, analyzing this alternative in the EIS ultimately would have facilitated timely decision making.

Another EIS Analyzed All Alternatives, Allowed Ready Decision Making

In the *Interim Management of Nuclear Materials* EIS (DOE/EIS-0220, October 1995) DOE analyzed modifying Building 235-F at the Savannah River Site for storing nuclear materials, even though it seemed certain at the time that the materials would be stored in a planned Actinide Packaging and Storage Facility (APSF). When unanticipated developments led DOE to want to cancel the APSF project and implement the Building 235-F alternative, a new ROD (66 FR 7888; January 26, 2001) was readily issued accordingly.

Recommendations for EIS Alternatives

- ✓ In determining the range of reasonable alternatives, include alternatives that would achieve DOE's underlying goal under a variety of foreseeable circumstances. Analyze alternatives that seem impractical only because of current programmatic assumptions, but otherwise would be reasonable.
- ✓ If technical or economic factors suggest that an alternative is infeasible, consider whether there is a reasonable chance that those factors might change, rendering the alternative feasible. **LE**



National Environmental Policy Act **LESSONS LEARNED**

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

December 5, 2001; Issue No. 29

Fourth Quarter FY 2001

CEQ Chair Describes Goals, Supports NEPA Principles



The Council on Environmental Quality (CEQ) wants Federal agencies to weave environmental considerations into everyday business, as opposed to conducting NEPA compliance as a distinct project to fend off lawsuits. Recently appointed CEQ Chair James L. Connaughton

(*Lessons Learned Quarterly Report*, June 2001, page 12) described this and other key CEQ goals at a September 21, 2001, meeting with Federal agency NEPA Contacts.

Mr. Connaughton made it clear that this administration supports NEPA's principles "as much as all previous administrations." In this connection, he referred to Section 101 of NEPA – which declares a Federal policy "to use all practicable means and measures... to create

and maintain conditions under which man and nature can exist in productive harmony" – as the first articulation of "sustainable development."

Approach to Environmental Issues

Based on his favorable experiences in advising major corporations how to deal with environmental aspects, Mr. Connaughton described his approach for Federal agencies in terms of the following "themes:"

- ✓ **Promote stewardship.** Empower and challenge local managers to carry out day-to-day environmental responsibilities as an integral component of their long-range management. Develop an "e-consciousness," seeking to avoid environmental problems today, and in the future.

continued on page 3

DOE NEPA Post-9/11: Reconciling the Need to Protect and the Need to Inform the Public

This article describes the current situation regarding DOE's actions to protect information that terrorists might use and the implications for DOE's NEPA Program. Policies regarding protection of such sensitive information are evolving within DOE and the Federal government. We will update DOE's NEPA Community as any significant changes occur. It should be noted that DOE continues to distribute paper copies of its NEPA documents to the public in accordance with NEPA regulations.

Public access to DOE NEPA documents on the Internet has been restricted as a result of the events of September 11, 2001. In early November, the Office of Environment, Safety and Health blocked all access to environmental assessments (EAs) and environmental impact statements

(EISs) and related documents published on the DOE NEPA Web. (Access to NEPA Announcements and guidance modules has not been restricted.) Various DOE Program and Field Offices also removed NEPA documents from their Web sites or blocked access to the documents. Other Federal agencies, including the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission, have taken similar actions.

DOE actions to restrict Web information were taken in response to a memorandum dated October 26, 2001, from DOE Deputy Secretary Francis S. Blake. Referring to the recent terrorist attacks and the resulting heightened concern about publicly available information on the Department's operations, Deputy Secretary Blake directed

continued on page 4

NEPA Post-9/11 (continued from page 1)

all Departmental elements to review information that is available on the Internet and in other venues that could be used by those who would target DOE sites, facilities, and activities for terrorist attacks. Citing EISs as an example of the type of information that could be used by terrorists, the Deputy Secretary directed the Department to remove or restrict public access to such information, as appropriate.

Aiming to Limit But Not Eliminate Access

"The need to protect the public post-9/11 and the need to inform the public through the NEPA process presents an extremely challenging security review, but these two objectives must be reconciled," said Nancy Slater, who is leading an ongoing operational security review for the Office of Civilian Radioactive Waste Management (RW). "Our intention is to limit, as necessary, but not eliminate, access to sensitive material," she said.

Public access to information under the NEPA process generally parallels public access under the Freedom of Information Act (FOIA). The Council on Environmental Quality's regulations implementing NEPA direct Federal agencies to make EISs and related documents available to the public under the provisions of FOIA with one exception -- "without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action" (40 CFR 1506.6(f)). In its NEPA regulations, DOE affirms that it shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to FOIA. However, DOE shall, "to the fullest extent possible," segregate any information that is exempt from disclosure requirements into an appendix to allow public review of the remainder of a NEPA document. (See 10 CFR 1021.340.)

Attorney General John Ashcroft issued a Memorandum on FOIA procedures for Heads of all Federal Departments and Agencies on October 12, 2001, emphasizing the need for Federal agencies to carefully consider institutional, commercial, and personal privacy interests that could be implicated by disclosure of information. "When you carefully consider FOIA requests and decide to withhold records in whole or in part," the memorandum states, "you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis...."

The Attorney General's memorandum and Department of Justice guidance on its application are available on the Department of Justice Web site (www.usdoj.gov, under "FOIA," then "Reference Materials," then "FOIA Post," then "New Attorney General FOIA Memorandum Issued" (posted 10/15/01)). The guidance accompanying the memorandum focuses on an exemption referred to as "High 2 Exemption: Risk of Circumvention," and the important role it can play in allowing agencies to protect critical infrastructure information.

The Department's regulations implementing FOIA require DOE to make records (even records authorized by FOIA to be withheld) available to the requester whenever such disclosure is in the public interest (10 CFR 1004.1), and obligates DOE when denying a request for information to state why a discretionary release is not appropriate (10 CFR 1004.7(b)(1)).

Focus Shifts to Documents in Preparation

In response to the Blake directive, the NEPA Office first focused on securing information on the DOE NEPA Web site so as to limit easy access to existing information. (In this regard, access to EAs and EISs on the DOE NEPA Web for persons with doe.gov addresses has been restored. A process for password access for others with a "need to know" is being developed.) Attention has now shifted to the content of NEPA documents that are being prepared.

In reconciling the sometimes competing needs of protecting and informing the public in the RW program, Ms. Slater is consulting with the NEPA Office, Office of General Counsel, Office of Security, and other entities, and applying a general security concept that is analogous to a "three-legged stool."

The "three legs" represent types of information that may be useful to a terrorist who wants to cause an adverse "consequence" (e.g., fatalities, radiation exposures to the public, theft of Special Nuclear Material, etc.). Removing any one "leg" would render the stool useless -- that is, make the information represented by the other two legs unusable. The three legs are: (1) "Target" (e.g., identifying an inventory of nuclear or hazardous material that a terrorist might find to be an attractive target).

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NEPA Post-9/11 (continued)

(2) "Location" (e.g., identifying specific buildings or operations where such materials or hazards are located), and (3) "Accessibility" (e.g., identifying vulnerabilities of materials to unauthorized access or destruction).

Security Concerns Do Not Change Required NEPA Analysis

The analytical work that is done for an EIS or EA has not changed as a result of our heightened concerns for security. The same type of analysis with the same level of detail needs to be provided to the decision maker and others with a "need to know." How the analytical information is packaged and issued may change, however.

Most DOE NEPA documents routinely undergo a Scientific and Technical Information review before issuance that may consist of a patent review, classification review and review for "unclassified controlled nuclear information" (UCNI), and an operational security review. As the Department is now focusing more attention on operational security, these reviews may take longer, affect EIS and EA schedules, and result in segregation of certain sensitive information.

DOE has precedents and the NEPA process provides flexibility for necessary segregation of all or parts of an environmental analysis from public review. For example, in proposing the "Sapphire Project," DOE prepared a classified EA that was later declassified and issued to the public after the action was taken (DOE/EA-1006, October 1994, Proposed Interim Storage at the Y-12 Plant, Oak Ridge, TN, of Highly Enriched Uranium Acquired from Kazakhstan by the United States). In several other cases, DOE has segregated material into classified appendices that were nonetheless provided to Environmental Protection Agency personnel with security clearances for review (DOE/EIS-0236, Stockpile Stewardship and Management Programmatic EIS, is a major example).

What's Next

The Office of NEPA Policy and Compliance is working to address the need for public disclosure of appropriate information while protecting homeland security. The Office plans to prepare guidance on evaluating and segregating NEPA information for security purposes as NEPA documents are prepared. In addition, the Office is considering the feasibility of reviewing NEPA documents that were previously accessible to the public on the DOE NEPA Web, segregating information as necessary, and again making the documents accessible to the public on its Web site. 

Some Types of Information

Classified – Information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, or information determined to require protection against unauthorized disclosure under Executive Order 12958 or prior Executive Orders, which is identified as National Security Information: DOE Manual 475.1-1A, May 8, 1998, issued under DOE Order 200.1.

Official Use Only (OUO) – A designation identifying certain unclassified but sensitive information that may be exempt from public release under the Freedom of Information Act. DOE Manual 475.1-1A, May 8, 1998. (Per the Office of DOE General Counsel for General Law, OUO is not a recognized exemption under FOIA. Only that material that qualifies under one or more of FOIA's nine exemptions may be withheld from a FOIA requester.) (A DOE Order concerning OUO is being developed.)

Unclassified Controlled Nuclear Information (UCNI) – Certain unclassified but sensitive Government information concerning nuclear material, weapons, and components whose dissemination is controlled under Section 148 of the Atomic Energy Act. DOE Order 471.1A, June 30, 2000.

An e-NEPA Reminder

For all completed DOE NEPA documents, please continue to provide the Office of NEPA Policy and Compliance with the required electronic file(s) and a completed DOE NEPA Document Certification and Transmittal Form. We will continue to maintain the Department's comprehensive electronic NEPA library for access by the DOE NEPA community and others with a "need to know." For further information on electronic files and submittal procedures, see *Lessons Learned Quarterly Report*, December 2000, page 7, and June 2000, page 11, or contact Denise Freeman at denise.freeman@eh.doe.gov or 202-586-7879.

N E P A	National Environmental Policy Act
	<h1>LESSONS LEARNED</h1>
U.S. DEPARTMENT OF ENERGY	QUARTERLY REPORT

March 1, 2000; Issue No. 22	For First Quarter FY 2000
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Hanford Comprehensive Land-Use Plan EIS Helps DOE Preserve Unique Resources

By: Thomas W. Ferns, NEPA Document Manager, Richland Operations Office, and Yardena Mansoor, Office of NEPA Policy and Assistance

A 50-year land-use plan for the Hanford Site? Some said it couldn't be done. Too many factions, they said, with irreconcilably different visions for the future. Would NEPA be a help or a hindrance in developing such a land-use plan?

It turns out that the Hanford Comprehensive Land-Use Plan EIS Record of Decision (ROD) (64 FR 61615; November 12, 1999) marks the end of a successful, albeit long and arduous planning process. It was a process that many stakeholders – whose diverse views could not all be accommodated – acknowledged was open and fair. Importantly, the EIS allowed DOE to make decisions immediately to preserve uniquely valuable natural

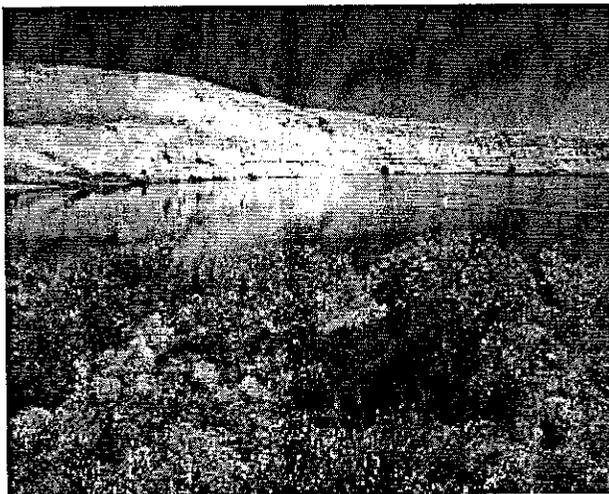
resources at the Site – notably expanding a National Wildlife Refuge on the Wahluke Slope, on the northern shore of the Columbia River within the Hanford Site. Over a longer term, the Record of Decision seeks to balance the Department's continuing land-use needs at the Hanford Site with its desire to preserve important ecological and cultural values of the Site and allow for economic development in the area.

Mapping out a long-term comprehensive blueprint for the 586-square-mile Hanford Site in southeastern Washington was no easy task. The experience demonstrates the versatility and usefulness of the NEPA review process in land-use decision making, and the importance of a robust stakeholder involvement process.

This article examines the relationship between Hanford's remedial action and land-use decision making, describes the stakeholder involvement approaches (first with a stakeholder working group and then with cooperating agencies), and describes the environmental benefits from this NEPA process.

Initial EIS Scope: Remediation and Land Uses for Contaminated Areas

Early in 1989, DOE negotiated a Federal Facility Agreement with the U.S. Environmental Protection Agency (EPA) and the Washington State Department of Ecology (Ecology) that established decision-making responsibilities and an enforceable schedule for remediation of the Hanford Site.



The White Bluffs of the Wahluke Slope rise above the Hanford Reach of the Columbia River.

continued on page 4

Hanford Comprehensive Land-Use Plan EIS (continued from page 1)

The cleanup negotiators soon realized that a plan for land uses could facilitate remediation planning. Otherwise, specific land-use decisions would have to be made on a project-by-project basis, using EPA's default cleanup goal -- residential use -- in areas where many were advocating a less costly environmental preservation goal. For some parts of the Hanford Site, such as the 200-Area waste management facilities, a residential use goal would be technically infeasible or economically prohibitive, and could cause more environmental injury and human health risks than it would avoid.

In August 1992, DOE published a Notice of Intent to prepare an EIS on cleanup strategies to meet alternative objectives for contaminated areas of the Hanford Site. These alternatives included unrestricted uses (including residential and agricultural); uses with limitations, such as on groundwater use; and exclusive future use by DOE (for waste management and buffer zones).

Building on the Working Group's report, DOE issued a Draft Hanford Remedial Action EIS (August 1996) that assessed the potential environmental impacts of attaining the cleanup conditions needed for alternative land uses and the impacts of the uses themselves.

Changed EIS Focus: Land Uses for Entire Site

Based on comments on the 1996 Draft EIS, DOE decided to refocus the EIS on a proposed Comprehensive Land-Use Plan because remediation decisions would be made by EPA and Ecology, as lead regulatory agencies, and DOE as an implementing agency.

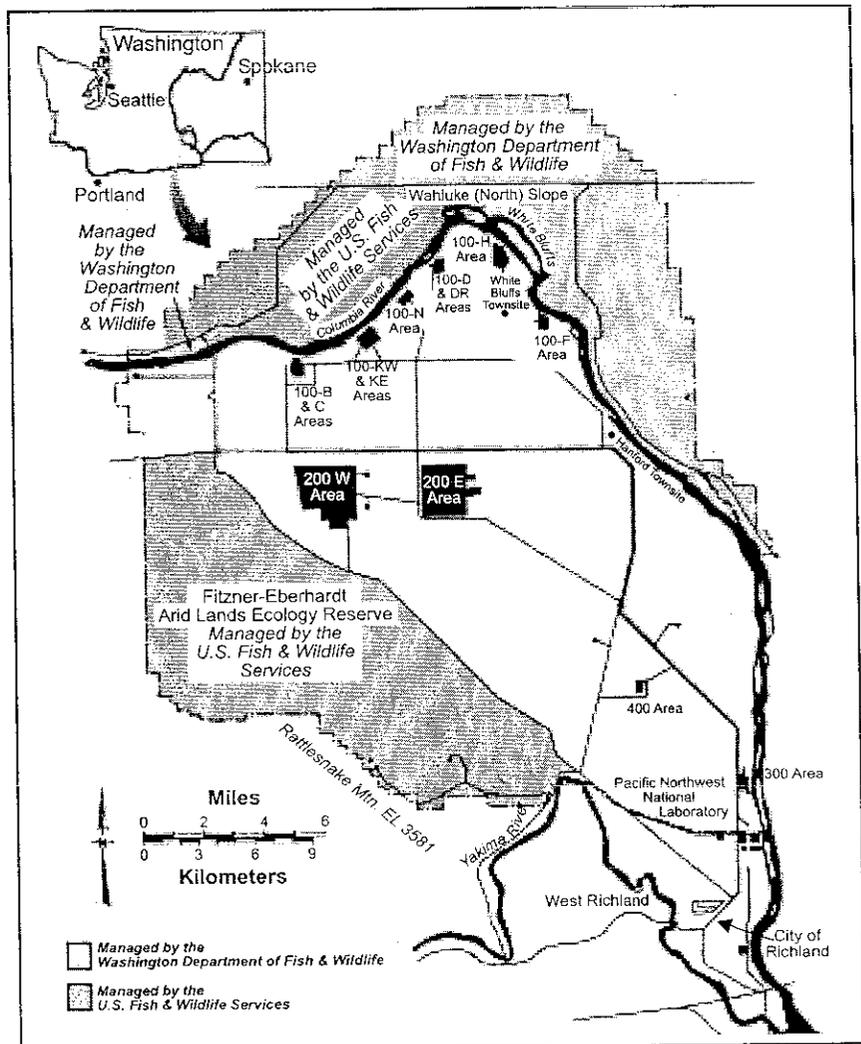
With the scope of the EIS limited to land-use issues, DOE also decided to consider the entire Site (not just contaminated areas). Because of this change, DOE decided to prepare a Revised Draft EIS,

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Working Group Established Common Ground

EPA, Ecology, and DOE organized a process to involve stakeholders in developing a vision for the future uses of the Hanford Site. The agencies established the Hanford Future Site Uses Working Group, with representatives of labor, environmental, governmental, agricultural, economic development, and citizen interest groups, and of Tribal governments. The Working Group was charged with establishing the common ground from which priorities and preferences could be debated. In December 1992, the Working Group submitted its final report, *The Future for Hanford: Uses and Cleanup*, to DOE as EIS scoping input, thus framing the key elements of the EIS:

- dividing the Site into sub-areas,
- identifying reasonable alternative uses for each sub-area, and
- stating a set of group values to be respected in the land-use planning process.



Hanford Comprehensive Land-Use Plan EIS (continued from previous page)

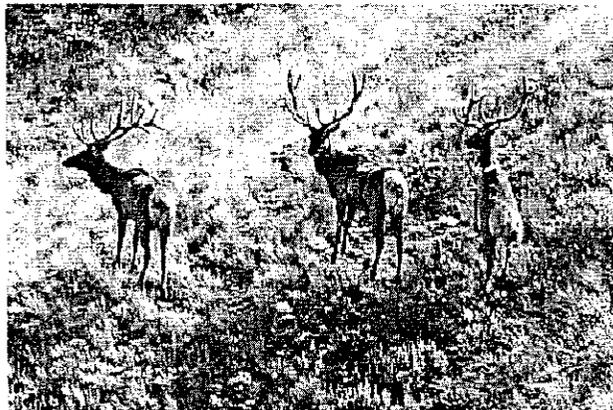
and also to expand stakeholder participation by involving agencies and Tribes with land-use interests.

Agencies and Tribes: Full NEPA Partners with Irreconcilable Interests

Nine parties responded to DOE's invitation to participate as either a cooperating agency or, in the case of the Tribal Nations, a consulting government: the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service within the U.S. Department of the Interior; the City of Richland and Benton, Franklin, and Grant Counties; the Department of Environmental Restoration and Waste Management of the Nez Perce Tribe; and the Confederated Tribes of the Umatilla Indian Reservation. Together they reached substantial agreement on the land-use category definitions, a framework for the environmental analyses, and the Comprehensive Land-Use Plan's policies and implementing procedures.

However, some of the cooperating agencies and consulting Tribal governments strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To provide fair voices for competing interests, cooperating agencies and consulting Tribes developed their own alternatives for consideration in the revised Draft EIS, using guidelines and a common outline to yield technically parallel information. The EIS presented these alternatives as written by these parties. Although this collaborative process required time, it ultimately saved time by enabling preparation of an EIS that adequately considered the full range of reasonable alternatives.

DOE and the cooperating agencies created six land-use alternatives, each consisting of a map that designated allowable uses for sub-areas within the Site. Except for



These elk are part of a herd that migrates through the Hanford Site. The EIS considered how to manage large portions of the Site to preserve biological resources.

Hanford's Unique Resources

- The Hanford Site contains a large tract of rare and unfragmented shrub-steppe habitat and rare animal and plant species.
- Along the north and east of the Hanford Site runs the last free flowing stretch of the Columbia River, known as the Hanford Reach, valued for its recreational uses and as prime salmon spawning habitat. The Reach's northern shore, known as the Wahluke Slope, rises in a chalk bluff formation whose stability has been threatened by agricultural irrigation.

No Action (continuing current land uses, land management processes, and intergovernmental relationships), each alternative represents one or more Tribe, Federal, or local agency preferred alternative.

DOE's preferred alternative in the Revised Draft EIS would consolidate waste management operations in the Central Plateau of the Site, allow industrial development in the eastern and southern portions of Hanford, increase recreational access to the Columbia River, expand an existing Saddle Mountain National Wildlife Refuge on the north side of the Site to include all of the Wahluke Slope, and allow limited commercial grazing on the Site.

The Department of the Interior agencies' alternative would increase Federal stewardship of Hanford's natural resources. The local governments' alternative would allow agricultural and grazing activities on the Hanford Site and increase industrial development. Two Tribal alternatives called for increasing traditional Tribal uses while preserving natural and cultural resources. The Tribes and DOE "agreed to disagree" on the interpretation of treaty rights in the interest of moving the EIS forward.

NEPA Process Enhanced Environmental Values

Public comments on the Revised Draft EIS primarily addressed environmental issues such as Hanford's unique shrub-steppe habitat, the importance of protecting the Hanford Reach to preserve salmon spawning sites, the proposed Congressional designation of the Hanford Reach as a Wild and Scenic River, and the historic significance of the Hanford Site's first nuclear reactor. Comments overwhelmingly favored a more environmentally protective alternative – with no cattle grazing, less gravel mining for remediation activities, and more preservation of wildlife and habitat than DOE's Revised Draft preferred alternative.

continued on page 10

DOE Issues Decisions for Low-level and Mixed Low-level Waste

Last Planned Decisions for the Waste Management Programmatic EIS

On February 25, 2000, DOE published a Record of Decision for the Department's Waste Management Program: Treatment and Disposal of Low-level Waste (LLW) and Mixed Low-level Waste (MLLW) (65 FR 10061). The decisions enable DOE to integrate waste management activities among sites to promote expeditious, compliant, and cost-effective cleanup.

In brief, for the management of LLW analyzed in the Final Waste Management Programmatic EIS (DOE/EIS-0200), DOE decided to perform minimum treatment at LLW generator sites. In addition, the Hanford Site in Washington and the Nevada Test Site will be made available to all DOE sites for LLW disposal and, to the extent practicable, some other LLW disposal operations at DOE sites will continue as specified in the Record of Decision.

For the management of MLLW analyzed in the Waste Management Programmatic EIS, the Department decided

to treat MLLW at the Hanford Site, Idaho National Engineering and Environmental Laboratory, Oak Ridge Reservation, and Savannah River Site, and to dispose of MLLW at the Hanford Site and the Nevada Test Site. In the same *Federal Register* notice, DOE amended the December 1996 Record of Decision for the Nevada Site-wide EIS (DOE/EIS-0243) to accord with these decisions regarding Nevada.

This is the last planned Record of Decision under the Waste Management Programmatic EIS issued May 1997. The previous Records of Decision for DOE's Waste Management Program were:

- Treatment and Storage of Transuranic Waste (63 FR 3629; January 23, 1998);
- Treatment of Non-wastewater Hazardous Waste (63 FR 41810; August 5, 1998); and
- Storage of High-level Radioactive Waste (64 FR 46661; August 26, 1999). 

Hanford Comprehensive Land-Use Plan EIS (continued from page 5)

Influenced by this public preference, DOE ultimately decided to increase environmental protection of parts of the Site. Accordingly, the Washington Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and DOE modified their management agreements to allow expansion of the Saddle Mountain National Wildlife Refuge to the entire Wahluke Slope. The Record of Decision, which adopts the Comprehensive Land-Use Plan, "creates a roadmap for planning appropriate industrial development in the eastern and southern parts of Hanford while defining areas of the site where waste management will be handled," said Assistant Secretary for Environmental Management Dr. Carolyn L. Huntton.

Plan Includes Implementation Procedures

To help ensure that future decisions are consistent with the Comprehensive Land-Use Plan and that appropriate NEPA review takes place for future land-use proposals, the EIS includes an unusual chapter on implementation procedures. Under these procedures, adopted in the Record of Decision, proposals for new facilities and activities on the Site, whether from private or government proponents, will be evaluated by DOE's Realty Officer and NEPA Compliance Officer, jointly with a Site Planning Advisory Board that includes representatives from the cooperating agencies and affected Tribal governments.

For more information on the Hanford Comprehensive Land-Use Plan EIS, contact Tom Ferns at thomas_w_ferns@rl.gov or call 509-372-0649. 

DOE Decides Disposition of Surplus Plutonium After Complex NEPA Process

On January 4, 2000, the Department announced its decision to dispose of up to 50 metric tons of surplus weapons-usable plutonium by immobilizing approximately one-third of it and using the remainder to fabricate mixed oxide (MOX) fuel, which will be irradiated in existing commercial nuclear reactors to make the plutonium inaccessible and unattractive for weapons use. Three new facilities will be constructed and operated at the Savannah River Site for pit disassembly, plutonium immobilization, and MOX fuel fabrication, the latter facility to be licensed by the U.S. Nuclear Regulatory Commission.

This major decision, the culmination of a complex NEPA process that began with a programmatic EIS initiated six years ago, was based on a tiered project-specific EIS that included a supplement to the draft EIS. (In a parallel procurement process, DOE also prepared an environmental critique and synopsis under Section 216 of the DOE NEPA regulations.)

In the project-specific Surplus Plutonium Disposition EIS (DOE/EIS-0283), DOE evaluated 15 action alternatives involving seven DOE sites and three commercial reactor sites. Planning and executing an appropriate NEPA compliance strategy required extensive discussions among numerous affected Program and Field Offices, and the Offices of General Counsel and NEPA Policy and Assistance.

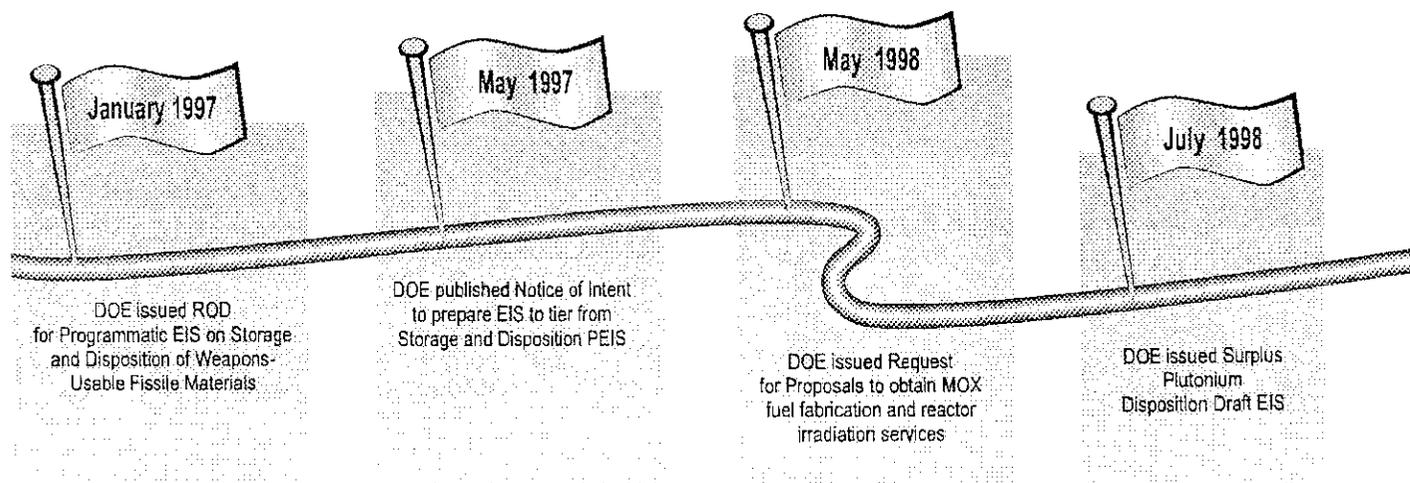
In preparing this EIS and the resulting Record of Decision (ROD) (65 FR 1608; January 11, 2000), the Office of Fissile Materials Disposition discovered that its EIS affected, or was affected by, many other DOE EISs and EAs. These interrelationships required close

coordination between that Office and other involved Program and Field Offices to ensure that the EIS used current information. According to Bert Stevenson, the Materials Disposition NEPA Compliance Officer and NEPA Document Manager, "Close coordination was especially important in preparing the cumulative impact analysis. A total of 35 NEPA documents contributed to it. We had to cope with several moving targets and tie them all together into a credible analysis. I was in almost daily contact with my counterparts in Defense Programs, Environmental Management, and the Field Offices."

Tiering and an Amended Programmatic ROD

The Surplus Plutonium Disposition EIS was tiered from the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic EIS (DOE/EIS-0229). In the Programmatic ROD (62 FR 3014; January 21, 1997), DOE selected strategies for storage of weapons-usable fissile materials and disposition of surplus plutonium; the strategy included consolidating part of DOE's weapons-usable plutonium storage at the Savannah River Site. The Programmatic ROD made moving plutonium to the Savannah River Site for storage contingent on completing a new storage facility and selecting Savannah River as the site for immobilizing plutonium in the subsequent Surplus Plutonium Disposition ROD. However, when Environmental Management identified possible difficulties in meeting the closure schedule for the Rocky Flats Environmental Technology Site, DOE amended the programmatic ROD (63 FR 43386; August 13, 1998) to allow for earlier shipment of plutonium from Rocky Flats by upgrading existing storage facilities at the Savannah River Site.

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“216 Process” and a Supplemental Draft EIS

While preparing the Surplus Plutonium Disposition Draft EIS, DOE initiated a procurement consistent with DOE’s NEPA regulations at 10 CFR 1021.216 (the “216 process”) to obtain MOX fuel fabrication and reactor irradiation services under a privatization approach. (Section 216 establishes an environmental review process within the procurement process for evaluating proposals. DOE uses the 216 process when it needs to meet significant acquisition objectives before the NEPA process can be completed, as often is inherent to a privatization approach. See *Lessons Learned Quarterly Report*, September 1997, page 8.)

The May 1998 Request for Proposals for this work defined limited activities that could be performed before a Surplus Plutonium Disposition EIS ROD. Per the 216 process, DOE requested that each offeror provide, as part of its proposal, information on facility design for MOX fuel fabrication and on commercial reactors proposed for irradiation services. This information was used in the procurement process to identify potential environmental impacts of the proposals and was documented in an environmental critique. In addition, an environmental synopsis, based on the environmental critique, was provided to the U.S. Environmental Protection Agency and made available to the public. In March 1999, DOE awarded a contract (contingent on DOE selecting the contractor’s approach after completing NEPA review) for fuel fabrication and reactor irradiation services. The award decision was based, in part, on the analysis documented in the environmental critique.

Meanwhile, DOE issued the Surplus Plutonium Disposition Draft EIS in July 1998, which generically assessed the potential environmental impacts of using MOX fuel in commercial nuclear reactors. In April 1999, DOE issued a Supplement to the Surplus Plutonium Disposition Draft EIS that incorporated the synopsis and analyzed the potential environmental impacts of using

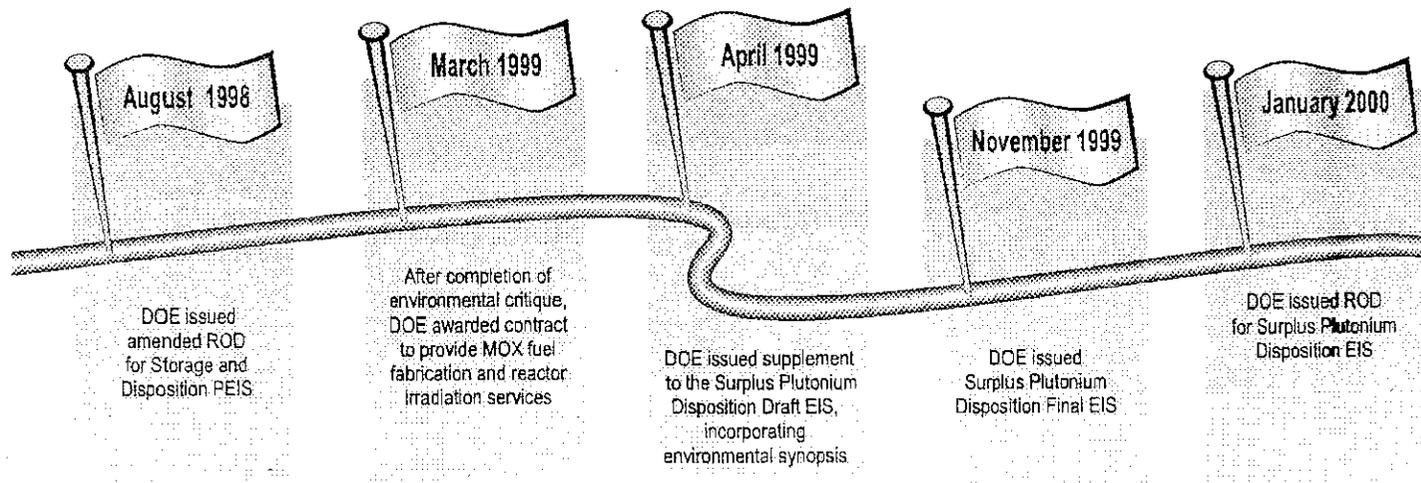
MOX fuel in the specific commercial reactors. “This approach helped save us some time in that we issued the Draft EIS, followed by a Supplement to the Draft EIS, a Final EIS, and a ROD,” said Mr. Stevenson.

Meeting Milestones Through Teamwork

As the Office of Fissile Materials Disposition was preparing the Final EIS and identifying Los Alamos National Laboratory as the preferred alternative for fabrication of test MOX fuel rods, Defense Programs raised questions about the Laboratory’s capability to support this activity in addition to its existing mission requirements. Materials Disposition, however, was concerned that delays in the Surplus Plutonium Disposition EIS would affect its overall program schedule, which included Environmental Management’s commitments to the State of Colorado regarding the shipment of Rocky Flats surplus plutonium to the Savannah River Site.

After much internal discussion, the matter was resolved by compromise: DOE selected Los Alamos National Laboratory for the manufacture of the test fuel rods, but deferred deciding which facility at the Laboratory will be used for the final stages of the test assembly work. Materials Disposition and Defense Programs established a process, which may involve further NEPA review, to resolve the longer-term issues.

Timely publication of the Surplus Plutonium Disposition Final EIS and ROD could not have been accomplished without extraordinary teamwork among many offices. Mr. Stevenson advises NEPA Document Managers to identify possible linkages to other proposals and NEPA reviews early in the internal scoping process: “When numerous sites and programs are involved in a NEPA review, coordinating data calls and project milestones is the only way to avoid potential conflicts and inefficiencies.”



National Environmental Policy Act

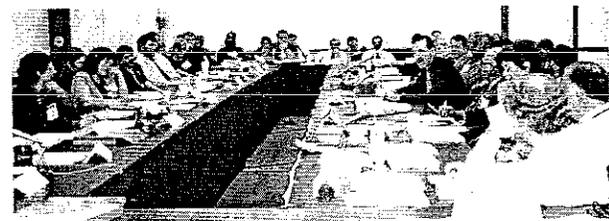
LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY QUARTERLY REPORT

June 1, 2000; Issue No. 23 For Second Quarter FY 2000

NEPA Compliance Officers Celebrate 10 Years of Progress, Look to Future

Celebrating the 10th anniversary of the establishment of DOE NEPA Compliance Officers (NCOs), the Office of NEPA Policy and Assistance convened a meeting of NCOs in Washington, DC, May 2 and 3, to consider "What Have We Learned?" and "Where Are We Going?" Focused on the theme "Looking Back, Moving Forward," the NCOs reviewed progress made in the past decade and set goals for further improvements. A large timeline chart was displayed to show DOE NEPA accomplishments, including turning points, key events, guidance, NEPA community meetings, and major programmatic EISs in the past 10 years. (See text box, page 5.)



Headquarters and Field Office NEPA Compliance Officers at the 10th Anniversary Meeting in Washington, DC.

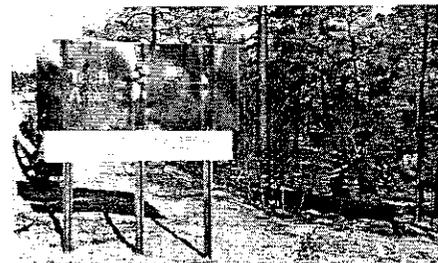
In welcoming the NCOs, Dr. David Michaels, Assistant Secretary for Environment, Safety and Health, said: "I'm impressed with the NEPA process and its results. Everything DOE does is under scrutiny. Doing NEPA well helps answer questions, keeps DOE out of trouble, and helps DOE do the right thing." The NCOs deserve thanks, he noted, for their role in strengthening the foundations of DOE decision making.

Environmental Excellence Award Announced

Dr. Michaels announced that the DOE NEPA Lessons Learned Program has been selected to receive an Environmental Excellence Award from the National Association of Environmental Professionals and thanked the NCOs for their contribution to this effort. (See related article on page 2.) He also presented Certificates of Recognition to four NCOs who have served for 10 years.

continued on page 4

Los Alamos Site-wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions



A "sign" of the Los Alamos wildfire at Technical Area (TA)-53.

As DOE and the Los Alamos region cope with the effects of last month's devastating fire, the 1999 Los Alamos National Laboratory (LANL) Site-wide EIS has proved to be a valuable reference document. In fact, the NEPA process had earlier focused DOE attention on the risks of wildfire at LANL and prompted mitigation actions within the past year that reduced the severity of impacts of the fire. Moreover, the analyses in the Site-wide EIS will be useful in planning recovery programs.

The LANL Site-wide EIS (DOE/EIS-0238) included an accident scenario - an extensive wildfire initiated to the southwest of LANL near the border with the Bandelier National Monument - that closely mirrored the actual

continued on page 3

Los Alamos EIS Analyzed Wildfire Impacts (continued from page 1)

Cerro Grande Fire. That fire, ignited as a "prescribed burn" by the National Park Service on May 4, 2000, went out of control and burned about 50,000 acres of forest and residential land, including about 9,000 acres (approximately 30 percent) of the LANL site.

During the fire, DOE relied upon the EIS analyses to answer public inquiries and concerns, particularly regarding the potential adverse effects from the fire burning over contaminated areas. According to Elizabeth Withers, Los Alamos Area Office NEPA Compliance Officer, the EIS was "an extremely valuable tool for public relations credibility in a very emotional and difficult time." The completeness of the assessment in the EIS, coupled with the onsite air monitoring, "helped to establish early on that there was no imminent danger to people resulting from the fire," she said.

The detailed accident analysis (Appendix G of the EIS, which is posted on the DOE NEPA Web at tis.eh.doe/nepa/docs/docs.htm) covered the immediate impacts of such a wildfire on workers, the public and the environment. The analysis assumed that about 8,000 acres on LANL would be burned as well as portions of the Los Alamos townsite. "These scenarios are quite credible, in view of the present density and structure of fuel surrounding and within LANL and the townsite, as well as the occurrence of three major fires in the past 21 years," the EIS stated. In considering the combined probability of fire-favorable conditions, the EIS concluded "that a major fire moving up to the edge of LANL is not only credible, but likely . . ."

Comments Focused Attention on Wildfire

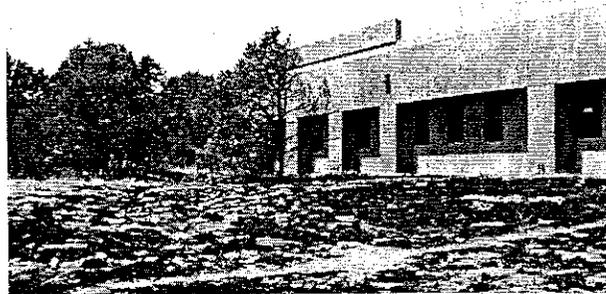
The Draft LANL Site-wide EIS did not analyze a wildfire accident because under the initial screening methodology that scenario had not been considered plausible.

However, comments at the public hearing on the Draft EIS from a forester at the nearby Santa Fe National Forest and written comments from the Department of the Interior focused attention on the issue. The commenters referenced a recent Forest Service report about the threat of wildfire. The Final EIS estimated that the frequency of this type of fire is 1 in 10 years.

Based on this high chance of fire identified in the EIS analysis, actions were begun immediately to reduce the wildfire risks at certain key facilities, including TA-54 (waste facility) and TA-16 (Weapons Engineering Tritium Facility). Trees were cut and wooden pallets on which waste drums were stacked were replaced with aluminum pallets.

With the completion of these actions, the Final EIS stated (conservatively) that the population dose from a site-wide fire would be reduced from an estimated 675 person-rem to 50 person-rem, thereby avoiding a potential for approximately 0.3 latent cancer fatalities.

The EIS also addressed the longer-term environmental impacts resulting from a fire, e.g., loss of protective



Wildfire scorched the grounds near Building 326 at Technical Area-46.

cover, runoff, soil erosion and sedimentation, effects on legacy contaminants, effects on biological systems, and effects on cultural resources. As stated in the EIS, "The consequences of a wildfire are diverse, continuing through time and space, and frequently having significant changes in geomorphology and biological communities and processes . . . Loss of vegetative cover will create a setting that can have pronounced effects on flow dynamics, soil erosion and sediment deposition."

Mitigation Reduces Hazard

In the LANL Site-wide EIS Record of Decision (September 1999), DOE committed to develop by December 1999 a preliminary program plan for comprehensive wildfire mitigation, including construction and maintenance of strategic fire roads and fire breaks, creation of defensible space surrounding key facilities, and active forest management to reduce fuel loadings. The Mitigation Action Plan, October 1999, states that the wildfire hazard at LANL was currently being reduced by thinning trees, maintaining fire roads and fire breaks, and other measures.

The Los Alamos Area Office was about to issue a Wildfire Management Plan Programmatic EA for pre-approval review when the fire forced a change in plans. That EA is now being revised in light of the fire and will be issued shortly.

An interagency Burned Area Emergency Rehabilitation Team is working onsite to address immediate recovery actions. The Team has a NEPA unit, which has initiated an informal consultation with the Council on Environmental Quality regarding emergency NEPA procedures.

According to John Ordaz, Defense Programs project manager for the LANL Site-wide EIS, the NEPA process worked well in this case because the EIS team "was determined from the outset to prepare a useful document." When the EIS team heard the concerns about wildfire at the public hearing, "we investigated the claims and the science behind the analysis." Then the team found ways to reduce the fire load for the high risk areas. "It was the dedication of the EIS team that got the mitigations implemented," Mr. Ordaz said.



National Environmental Policy Act

LESSONS LEARNED

U.S. DEPARTMENT OF ENERGY

QUARTERLY REPORT

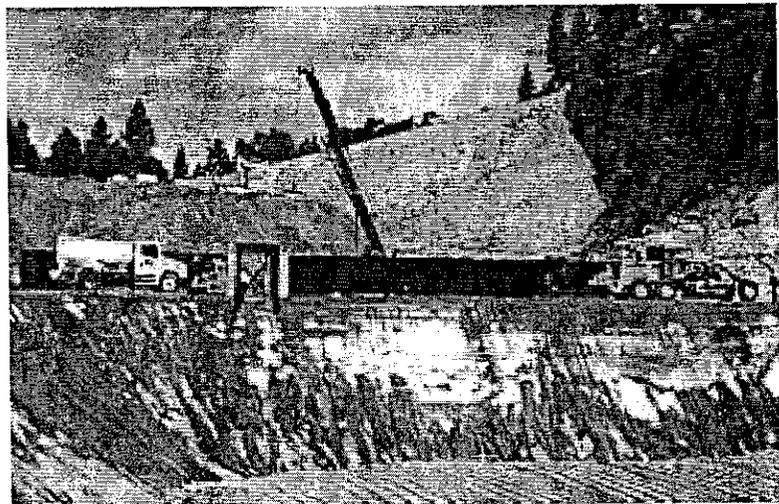
September 1, 2000; Issue No. 24 For Third Quarter FY 2000

Emergency NEPA Procedures Invoked for Actions Taken after Los Alamos Fire

To avert further harm in the wake of the May 2000 Los Alamos wildfire, DOE is taking emergency actions with potentially significant impacts, without preparing an EIS. Instead, DOE is proceeding under "alternative arrangements" to comply with NEPA, as provided under 40 CFR 1506.11, a section of the Council on Environmental Quality (CEQ) NEPA regulations that deals with emergency circumstances. The specific alternative arrangements were established in consultation with CEQ, as discussed further below. DOE's post-fire emergency activities include constructing a 70-foot-high water retention structure in Pajarito Canyon to protect

Los Alamos National Laboratory (LANL) nuclear facilities and the downstream communities from flooding due to summer rainstorms and possible contaminant transport.

Agencies seldom have invoked the emergency provision of the CEQ regulations, only about 30 times in 22 years, in cases that demanded immediate action to respond to threats to life, national security, or an important resource. Based on DOE records, this is only the third time DOE has used these procedures. The other cases involved the Bonneville Power Administration's actions to save the endangered sockeye salmon on the Snake River and the threatened failure of the Par Pond Dam at the Savannah River Site, both in 1991.



A 70-foot-high retention structure, shown here under construction by the U.S. Army Corps of Engineers, is among the DOE actions taken in response to the Cerro Grande Fire at Los Alamos.

After consulting with CEQ on the Los Alamos wildfire, DOE published a Notice of Emergency Action and is now preparing a Special Environmental Analysis to evaluate the environmental impacts of the completed and ongoing emergency actions. This analysis is a major component of DOE's NEPA compliance for the emergency actions extending through November 2000.

Emergency Actions Have Net Beneficial Impacts

The fire began on May 4 when high winds caused a prescribed burn within the Bandelier National Monument in New Mexico to spread out of control.

continued on page 4

NEPA staff positions open. Apply by September 8. See page 2.

Emergency NEPA Procedures for LANL (continued from page 1)

DOE and other agencies immediately took action to contain and extinguish the fire and limit its damage – establishing clearings for fire lines, clearing access roads and improving existing roads for heavy transport equipment and fire trucks, cutting down trees to protect utilities and structures, setting small backfires to protect buildings and utilities, and dropping water and fire-retardant slurry from low-flying helicopters and airplanes. These actions taken during the fire had relatively minor environmental impacts that were primarily beneficial.



Post-fire runoff, shown here emerging from a culvert, is now black with soot.

Recovery Team Undertakes Broad Range of Post-Fire Actions

By the time the fire was brought under control two weeks later, it had burned almost 43,000 acres, including 7,650 acres on LANL. The fire's destruction of vegetation cover left the area vulnerable to soil erosion and flooding from

summer rainstorms. LANL hydrologists estimated that runoff could be significantly greater than before the fire, potentially threatening the property and well-being of the 10,000 residents located downstream of the DOE lands in White Rock, the Pueblo of San Ildefonso, and the Pueblo of Cochiti. Soil erosion and flooding also could threaten to release hazardous and radioactive contaminants from 168 potential release sites and two nuclear facilities at LANL. It may take years to decades in some locations for enough vegetation to become established on hillsides and canyons to deter soil erosion and flooding.

Because July and August are peak months for rainstorms, the post-fire conditions justified taking further emergency actions without sufficient time to prepare an EIS. These emergency response actions have a net beneficial impact, although potential environmental impacts to specific receptors range from beneficial to adverse. The actions most likely to result in adverse impacts include removing potential contaminants, especially in canyon bottoms and floodplains. Although these actions would reduce the potential spread of contaminants, by removing additional vegetation they would also increase the potential for soil erosion. Flood control mechanisms, such as berms, dams, sediment traps, and catchment basins, alter local drainage patterns and also could cause adverse environmental impacts.

Post-Fire Emergency Actions at LANL

- **Environmental Damage Assessment:** On-foot and aerial surveys; repairing and replacing air and surface water monitoring stations; contaminant monitoring
- **Potential Release Sites:** Stabilizing and protecting damaged or vulnerable sites; treating, removing, and disposing of contaminants; excavating canyon bottoms
- **Cultural Resources:** Assessing, protecting, and stabilizing damaged or vulnerable sites
- **Threatened and Endangered Species:** Assessing fire and post-flood impacts on threatened and endangered species and their habitats
- **Utilities and Infrastructure:** Protecting and repairing buildings, structures, roads, and utilities; decontaminating or demolishing contaminated buildings
- **Hazard Reduction Actions:** Stabilizing soils and reseeded; improving, replacing, and installing culverts; retaining or diverting stormwater runoff; relocating hazardous material and special nuclear material; removing dead and damaged trees
- **Other Recovery Actions:** Staging and storing equipment and building materials, installing temporary housing

DOE Consults with CEQ, Commits to Public Involvement

In May and early June 2000, officials of DOE and the other Federal agencies represented on the Cerro Grande Fire Burned Area Emergency Rehabilitation Team consulted with CEQ regarding environmental review for the emergency actions. In a June 15 letter documenting

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Emergency NEPA Procedures for LANL (continued from previous page)

these consultations, Henry Garson, NEPA Compliance Officer for the National Nuclear Security Administration's Office of Defense Programs, described DOE's plans and commitments for alternative NEPA compliance. DOE would issue a Notice of Emergency Action, provide a range of public involvement opportunities, monitor the effectiveness and environmental effects of emergency actions, make monitoring results public and consider any resulting comments, and modify actions during implementation to mitigate adverse effects. DOE also committed to prepare a Special Environmental Analysis, to be issued in September 2000, to evaluate the environmental impacts of the completed and ongoing emergency actions.



Newly installed concrete barriers protect the historic Pond Cabin from potential stormwater damage. The cabin, built in 1914, is listed on the New Mexico State Register of Historic Places.

These alternative arrangements for complying with NEPA proved satisfactory to CEQ, as stated in the June 15, 2000, response from Dinah Bear, General Counsel: "We commend DOE for its commitment to provide for continuing public involvement, including soliciting comment on the Notice of Emergency Action, the Special Environmental Analysis, and on monitoring results and prospective mitigation." CEQ requested a brief report summarizing the conduct of the alternative arrangements and identifying any lessons learned or recommendations that DOE thinks would be useful to consider in future emergency situations, which DOE agreed to provide when the alternative arrangements are concluded.

DOE Publishes Notice of Emergency Action Required under 10 CFR 1021.343

DOE then issued a Federal Register Notice (65 FR 38522; June 21, 2000) that listed past, current, and planned DOE emergency actions from the beginning of the fire through November 2000. The Notice also addressed the potential environmental impacts of these emergency actions and

possible mitigation measures, and DOE's plans for continuing public involvement and preparation of a Special Environmental Analysis. DOE has held weekly public meetings (until recently broadcast on local radio) and uses a Web site, press releases, telephone information line, and informal consultations to provide continuing information to stakeholders. DOE and the other agencies taking emergency actions have consulted with the affected Pueblos, and have accommodated their requests to preserve locations of cultural value. The U.S. Fish and Wildlife Service, State Historic Preservation Officer, and Advisory Council on Historic Preservation also were consulted. In addition, DOE established a Public Advisory Group to focus on communications issues as they relate to potential runoff and flood mitigation activities.

Information Sources

Additional information, including photos and the Rehabilitation Plan, is available on the Web site of the Cerro Grande Fire Burned Area Emergency Rehabilitation Team at www.baerteam.org/cerrogrande/. The Notice of Emergency Action is available on the DOE NEPA Web at tis.eh.doe.gov/nepa/ under DOE NEPA Announcements (and also at the LANL Web site, www.lanl.gov/worldview/ under Cerro Grande Fire). When issued, the Special Environmental Analysis will be available on the DOE NEPA Web under DOE NEPA Analyses.

For information on the role of the wildfire scenario accident analysis of the LANL Site-wide EIS in prompting mitigation actions, see *Lessons Learned Quarterly Report*, June 2000, page 1. LANL's *Wildfire 2000*, August 2000, provides a more detailed comparison of the EIS postulated accident with the actual fire and is available on the LANL Web site at

continued on page 6

Cerro Grande Fire Burned Area Emergency Rehabilitation Team Members	
<i>Federal</i>	<i>State and Local</i>
Department of Energy	State of New Mexico
Forest Service	County of Los Alamos
Natural Resources Conservation Service	University of California
National Park Service	<i>Pueblos</i>
Bureau of Indian Affairs	Santa Clara Pueblo
	San Ildefonso Pueblo

Emergency NEPA Procedures for LANL (continued from page 5)

<http://lib-www.lanl.gov/la-pubs/00393627.pdf>. DOE issued an EA on the *Wildfire Hazard Reduction and Forest Health Improvement Program at LANL* (DOE/EA-1329) in August. For further information, contact Elizabeth Withers, NEPA Compliance Officer, Los Alamos Area Office, at ewithers@doeal.gov, or phone 505-667-8690. 

Thank You, Elizabeth Withers

The Office of NEPA Policy and Compliance extends its appreciation to Elizabeth Withers, the Los Alamos Area Office NEPA Compliance Officer, for her hard work in coordinating NEPA compliance for emergency actions taken by DOE in response to the Cerro Grande Fire. Under difficult circumstances, Elizabeth kept affected parties informed of fast-breaking events, while managing the preparation of NEPA documents and coordinating the Department's efforts with other agencies, particularly on matters pertaining to endangered species and protection of cultural resources.

Water Retention Structure Challenged

The Army Corps of Engineers is constructing for DOE a 70-foot-high water retention structure in Pajarito Canyon to protect the residents of White Rock and LANL facilities, including Technical Area 18, which contains nuclear facilities. Runoff control will be needed for several years until the groundcover regenerates. The structure, to be completed in September, will not hold back water permanently like a conventional dam, but instead is designed with a free-flow outlet structure to completely release impounded floodwater at a controlled rate within 96 hours. Forest Guardians, an environmental organization based in Santa Fe, questions the need for the "dam" and has filed a Notice of Intent to sue the Corps of Engineers for alleged violations of Section 404 of the Clean Water Act.

So, You Think DOE Gets a Lot of Public Comments... Massive Response to Forest Service Roadless Area Conservation Program

Encouraging public participation in Federal decision making that may affect the environment, as NEPA requires, can sometimes lead to a seemingly overwhelming number of letters, postcards, faxes, e-mail and telephone messages, public meeting transcripts, petitions, and resolutions. Each submittal may contain several distinct comments.

A typical high-profile DOE EIS may elicit hundreds or even a few thousand comments. In one of its largest public responses ever, DOE so far has tallied about 11,000 comments (from about 2,300 letters and other submittals) on the Draft EIS for the Yucca Mountain Geologic Repository (DOE/EIS-0250). DOE conducted 21 public hearings and established a public comment period of almost 200 days for this Draft EIS.

But this does not even come close to the U.S. Forest Service's ongoing experience in preparing an EIS for its Roadless Area Conservation Program and related proposed rule, which would apply to about 160 National Forests and Grasslands. (For information on the program, visit the Forest Service Web site at www.roadless.fs.fed.us/). Public participation activities for the Roadless Area Conservation Program included about 450 public scoping meetings and hearings on the Draft EIS.

In its scoping process, the Forest Service received more than 517,000 letters, cards, and other submittals, containing well over one million comments. Form letters and post card campaigns accounted for about 481,000 of the submitted items.

During a 60-day Draft EIS public comment period ending in July 2000, the Forest Service estimates that it received more than one million letters, cards, and other items, which include about 60,000 individually written letters – 6,000 of them from local, state, and Federal agencies. The Forest Service has assigned 95 full-time staff members to analyze these comments.

Based on the Roadless Area Conservation Program and similar experiences, the Forest Service, in consultation with the Council on Environmental Quality, is developing new training on methods for agencies to manage and meaningfully incorporate large volumes of public comments received in the NEPA process. The Office of NEPA Policy and Compliance intends to consult with the Forest Service to identify lessons learned for such cases. (For related articles on responding to public comments, see *Lessons Learned Quarterly Reports* for September 1996, page 4, and September 1997, page 12.) 

N E P A	National Environmental Policy Act
	<h1>LESSONS LEARNED</h1>
U.S. DEPARTMENT OF ENERGY	QUARTERLY REPORT

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For Second Quarter FY 1999

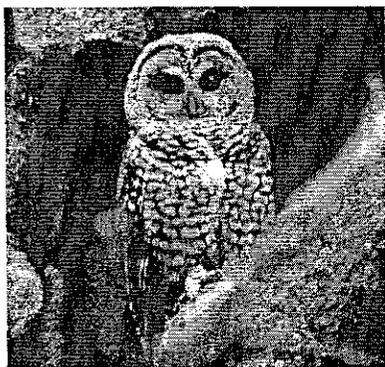
Consolidated Decision Ends "Tritium Trilogy" Tale

By: Jay Rose, *Office of Defense Programs*

When Secretary of Energy Bill Richardson signed the Consolidated Record of Decision for Tritium Supply and Recycling on May 6, 1999, he ended a three-year decision making process. This effort had been a high priority for the Office of Defense Programs (DP) since December 1995, when former Secretary O'Leary announced the Department's decisions stemming from the Tritium Programmatic EIS (DOE/EIS-0161) – an announcement that set off a "chain reaction" that would rock DP's world. The programmatic decision triggered the need for DP to prepare simultaneously three related, high-profile project EISs, which became known as the "Tritium Trilogy."

The story begins with the Tritium Programmatic Record of Decision (60 FR 63878; December 12, 1995), in which DOE selected a "dual track" strategy to further evaluate the two most promising tritium supply alternatives: (1) irradiating tritium-producing rods in a commercial light water reactor, and (2) developing a new tritium production linear accelerator, identifying the Savannah River Site in South Carolina as the location for the accelerator, should DOE decide to build one. In addition, DOE decided to construct a new tritium extraction capability at Savannah River.

continued on page 4



Mexican spotted owls are among the protected species at Los Alamos National Laboratory.

NEPA and Habitat Management Plan: Environmental Synergy

By: Elizabeth Withers, *NEPA Compliance Officer, Los Alamos Area Office*, with John Stetson, *Pacific Western Technologies, Ltd.*

On the day DOE issued the Draft EIS for the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility at Los Alamos National Laboratory (LANL), LANL biologists discovered a nesting pair of Mexican spotted owls (*Strix occidentalis lucida*) – which had only recently been listed as threatened – in the canyons directly below the proposed site. Today, this nest site, at the edge of a major explosives testing facility, is one of the most successful breeding nests of spotted owls in the entire Jemez Mountain range.

continued on page 6

The “Tritium Trilogy” (continued from page 1)

Three Coordinated EISs Tiered from the Programmatic EIS

Based on commitments in the Programmatic EIS Record of Decision, DP proceeded to tier three project-specific EISs: the “Tritium Trilogy” (text box, below).

While it is not unusual to tier a project-specific EIS from a Programmatic EIS, the tritium NEPA strategy was unusual because the three project-specific EISs shared more than just a similar schedule. What really “rocked” DP’s NEPA world was the degree of inter-relatedness among the three tiered EISs – they even shared alternatives:

- No Action for the Commercial Reactor EIS was the Proposed Action for the Accelerator EIS, and No Action for the Accelerator EIS was the Proposed Action for the Commercial Reactor EIS.
- The alternatives for a new tritium extraction capability at the Savannah River Site included not only those in the Tritium Extraction EIS, but also an alternative in the Accelerator EIS that incorporated tritium extraction capability within the accelerator facility.
- The tritium extraction facility was to be capable of extracting tritium not only from commercial reactor targets but also from the alternative accelerator production targets.

The relationships among these technically complicated proposed actions and alternatives would normally indicate that the proposals should be analyzed in a single EIS. After considerable thought, however, DOE decided that three narrowly focused – but carefully coordinated – EISs would be easier to write and to understand, and more useful to the public and DOE. The bottom line was to prepare three tiered, project-specific EISs with common goals: consistency, clarity, accuracy, legal adequacy, and complete analysis of potential impacts to affected resource areas.

Communicate Clearly

The most important factor in successful cooperation is full and open communication. Projects often suffer difficulties or delay because someone, somewhere, did not communicate fully and openly. In the case of the Tritium Trilogy, without such communication, the no action alternatives in the Commercial Reactor EIS and the Accelerator EIS could have been inconsistent, or the alternative of combining the tritium extraction capability with the accelerator facility might not have been analyzed.

Meet Early on “Framework” Issues

One of the best methods for resolving technical and management issues is to meet with the Environment, Safety and Health (EH) Office of NEPA Policy and Assistance, General Counsel (GC), and any other involved Program Offices well before preparing the Notice of Intent. This enables the EIS Document Manager to brief the “team” on the purpose and need and proposed actions, and for the team to design an appropriate NEPA strategy. This “internal scoping” process promotes common understandings among the participants and provides time to resolve issues before public scoping begins. The result is a smarter NEPA Document Manager, better informed EH and GC participants, more effective coordination with other involved offices, a carefully crafted NEPA strategy, a productive public scoping process, and ultimately, a better-informed public and decision maker.

Build Consistency into Your NEPA Documents

Once the interrelationships among the three EISs were recognized (working them out, of course, was an ongoing process), the documents could be prepared better. Communication was the key element in good management. Because both the Accelerator EIS and the Tritium Extraction EIS concerned the Savannah River Site, the two EIS preparation teams shared “affected

continued on next page

The “Tritium Trilogy”

Final EIS for the Accelerator Production of Tritium at the Savannah River Site
(DOE/EIS-0270)

NEPA Document Manager: Richard Rustad, SR

Final EIS for the Construction and Operation of the Tritium Extraction Facility at the Savannah River Site
(DOE/EIS-0271)

NEPA Document Manager: John Knox, SR

Final EIS for the Production of Tritium in a Commercial Light Water Reactor
(DOE/EIS-0288)

NEPA Document Manager: Jay Rose, DP

The "Tritium Trilogy" (continued from previous page)

environment" data. This enabled each document team to use resources efficiently while providing accurate and consistent data. With respect to the Commercial Reactor EIS, coordination with the Tritium Extraction EIS preparation team was essential because the tritium extraction facility would extract tritium from the rods that were irradiated inside a commercial reactor. It would have been problematic if the Commercial Reactor EIS discussed irradiating 4,000 rods per year while the Tritium Extraction EIS discussed a capability to extract 2,000 rods per year. Likewise, it would be inconsistent for the Tritium Extraction EIS to evaluate operations beginning in 2002 if the commercial reactors were not expected to provide irradiated rods to the tritium extraction facility until 2005.

Make Complex Matters Clear

DOE's complex and dynamic proposed actions can be quite challenging to understand and explain. But if our plans do not make sense to us, how can we expect the public to do any better?

To aid understanding, each of the project-specific tiered EISs contained a common preface to explain the relationships among the projects. Staff from the Savannah River Site, DP, the DOE NEPA Office, and GC participated in preparing this common preface.

After publishing the three draft EISs, DOE received many comments that applied to more than one of the EISs. Many public comments on the Commercial Reactor EIS and the Accelerator EIS overlapped on issues such as nonproliferation, cost, or technical capability. This crosscutting required close teamwork among the NEPA Document Managers to ensure that responses in both EISs were accurate and consistent. We did not want two EISs to give different answers to the same comment!

Finally, after issuing the three Final EISs, DOE published a consolidated Record of Decision (text box) to avoid

confusion that might have resulted from three separate RODs. While this, too, challenged our communication skills, the goal – to inform stakeholders and to direct those who must carry out the decisions – was worth it.

In conclusion – while the Tritium Trilogy may have rocked DP's NEPA world – in the end the Department kept the beat. 

Consolidated Record of Decision for the Tritium Supply Program

DOE's Consolidated Record of Decision for Tritium Supply and Recycling (64 FR 26369; May 14, 1999) describes DOE's plans for a new domestic source for tritium to support the nuclear weapons stockpile. First, this Record of Decision documented Secretary Richardson's December 22, 1998, announcement selecting the commercial light water reactor alternative as the primary tritium supply, and designating an accelerator system at the Savannah River Site as the backup tritium supply source (although the decision did not authorize accelerator construction). Further:

- The Tennessee Valley Authority's Watts Bar Unit 1, Sequoyah Unit 1, and Sequoyah Unit 2 reactors are the specific commercial light water reactors that will provide irradiation services needed to produce tritium.
- The H-Area within the Savannah River Site will be the location for a new tritium extraction facility.
- DOE selected specific technologies and a specific location at the Savannah River Site for the accelerator production of tritium, should an accelerator be needed.

DOE Charts Course for Managing TRU Waste Records of Decision Issued for WIPP SEIS and Waste Management PEIS

The Department has issued two landmark Records of Decision (RODs) that set the course for treatment, storage, and disposal of transuranic (TRU) waste:

- The ROD for the Waste Isolation Pilot Plant (WIPP) Disposal Phase, based on the WIPP Disposal Phase Supplemental EIS (DOE/EIS-0026-FS2; September 1997) (SEIS-II); and
- The ROD for Treatment and Storage of Transuranic Waste, based on analyses in the Waste Management Programmatic EIS (DOE/EIS-0200; May 1997) (WM PEIS TRU).

TRU waste contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram of waste.

Together, these two RODs, which were both published in the *Federal Register* on January 23, 1998 (at 63 FR 3623 and 63 FR 3629), give notice of DOE's decisions regarding disposal of TRU waste at WIPP, the minimum requirements for treatment of TRU waste to meet WIPP acceptance criteria, and the locations for preparation and storage of TRU waste before disposal.

WIPP is a mined repository for radioactive waste, the first of its kind in the United States. It is located 2,100 feet below the surface in an ancient salt deposit near Carlsbad,

New Mexico. Under the SEIS-II ROD, DOE will use WIPP for disposal of up to 175,600 cubic meters of TRU waste, after preparation to meet WIPP's waste acceptance criteria. Before the site can be opened for disposal, WIPP must still meet compliance requirements of the Environmental Protection Agency (and, for TRU mixed waste, the State of New Mexico).

The WM PEIS TRU ROD is the first ROD based on the WM PEIS, which supports integrated nationwide decision making for DOE's waste management program. The ROD will be followed in due course by RODs for low-level mixed waste, low-level waste, high-level waste, and hazardous waste. Under the WM PEIS TRU ROD, each DOE site that currently has or will generate TRU waste will prepare and store its TRU waste onsite until disposal, except that the Sandia National Laboratory in New Mexico will transfer its TRU waste to the Los Alamos National Laboratory in New Mexico.

For further information regarding the WIPP decision, contact Harold Johnson, NEPA Document Manager and Compliance Officer, Carlsbad Area Office, at johnsoh@wipp.carlsbad.nm.us, phone (505) 234-7349, or fax (505) 234-7061. For further information on the WM PEIS TRU decision, contact Patrice Bubar, Director, Office of Planning and Analysis (EM-35), Office of Environmental Management, at patrice.bubar@em.doe.gov, phone (301) 903-7204, or fax (301) 903-9770. 

DOE-wide NEPA Contracts Update

In June 1997, the Department awarded three DOE-wide NEPA contracts to teams headed by Halliburton NUS Corporation, Science Applications International Corporation, and Tetra Tech, Incorporated, to support your NEPA documents quickly, effectively, and cost efficiently. Since then, Tetra Tech has acquired Halliburton NUS and now Tetra Tech will propose the combined resources of Tetra Tech, Inc. and Tetra Tech NUS (formerly Halliburton NUS) to support your NEPA documents. To foster competition, an additional award will be made soon. The new awardee will be announced before the meeting of NEPA Compliance Officers later this month. For more information on use of the DOE-wide NEPA contractors, contact Dawn Knepper at dknepper@doeal.gov or (505) 845-6215, forward questions to your NEPA Compliance Officers, or see the next issue of the *Lessons Learned Quarterly Report*.

Since December 1997, the following task has been awarded:

Task Description	NEPA Document Manager	Award Date	Contractor Team
Brookhaven High Flux Beam Reactor EIS	Nand Narain (BNL) narain@bnl.gov, phone (516) 344-5435	12/17/97	Tetra Tech, Inc.

For information on tasks awarded before December 1997, see the *Lessons Learned Quarterly Report*, December 1997, page 13. 

Effective NEPA Hearings: Learning from WIPP Experience

By: Harold Johnson, DOE Carlsbad Area Office
Mike Antiporda, CTAC-Jacobs Engineering

Public hearings can be extremely challenging when a project has stakeholders nationwide. The U.S. Department of Energy's Carlsbad Area Office met this challenge in conducting public hearings on the *Waste Isolation Pilot Plant (WIPP) Disposal Phase Draft Supplemental Environmental Impact Statement (SEIS-II)*. Our experience with eight hearings held in cities across the country may provide some useful lessons learned.

Plan for a Hearing

- Provide a draft public involvement plan for stakeholder input. We announced the availability of a draft plan in our stakeholder newsletter and made appropriate changes based on comments from stakeholders.
- Determine locations for public hearings based on familiarity and accessibility to the public.
- Identify opportunities for public comment, to the extent possible, in the draft NEPA document.
- Brief the communications media in advance so that they can provide clear and consistent information to the public.
- Provide comment procedures in advance and make them available in writing at the meeting.
- Print informational materials "just in time." Circumstances can change right before the final deadline. Ensure that technical staff review for accuracy to prevent costly reprinting. Allow the printer enough time to print everything on schedule and error-free.

Design a User-Friendly Approach

- Provide furnishings that organizations or individuals with alternative points of view may use to display and make their informational materials available to the public.
- Route visitors through the display area on their way to the hearing room. People will likely pick up information, read it, and engage staff under these circumstances. Our informational materials addressed specific aspects of the SEIS-II, but also offered information about the WIPP project and the National Environmental Policy Act.

Provide a Positive Environment

- Hold hearings in-the-round. The hearing officer, technical support staff, commentors, and court reporter should all be seated at a table located in the center of the room. Arrange attendee seats on all sides of the center table and use a public address system to enable everyone to hear.
- Hold an on-the-record question-and-answer session 30 minutes before each comment session to generally assess stakeholder concerns and clarification needed in the NEPA document.
- Use flexible procedures to avoid unnecessary debate about rules and fairness.
- Announce the names of the upcoming commentors frequently, so that people can anticipate their opportunity to speak and remain to listen to other commentors.
- Open the floor to those who want to comment, if no one is signed up to follow a speaker.
- Schedule breaks for the court reporter, especially if the number of commentors is high. Discomfort can reduce the reporter's concentration; comfort can improve overall quality of his/her work.

Maintain Team Communication

- Hold an end-of-the-day debriefing for DOE and contractor staff as a useful coordination tool when conducting multiple hearings or single hearings that last multiple days. Close communication among hearing staff can promote successful practices and can prevent mistakes from being repeated.

Copies of the *Waste Isolation Pilot Plant (WIPP) Disposal Phase Draft Supplemental Environmental Impact Statement (SEIS-II)* can be obtained directly through the Internet (www.wipp.carlsbad.nm.us). If you have any questions or need further information, please contact Harold Johnson, Carlsbad Area Office, at (505) 234-7349 or Dennis Hurtt, Carlsbad Area Office, at (505) 234-7327. 

N E P A	National Environmental Policy Act
	<h1>LESSONS LEARNED</h1>
U.S. DEPARTMENT OF ENERGY	QUARTERLY REPORT

December 1, 1997, Issue No. 13

For Fourth Quarter FY 1997

NEPA Review Adds Value to Proposed Sale of Naval Petroleum Reserve

DOE recently completed a Supplemental EIS/Program Environmental Impact Report (SEIS/PEIR) on the sale of Naval Petroleum Reserve (NPR) No. 1 (Elk Hills), a Federally owned oil field near Bakersfield, California (*map, next page*). Closing the sale, scheduled for February 2, 1998, is conditioned on completing several statutory requirements, including the NEPA process, antitrust review, and a 31-day Congressional review.

The NEPA review was an important step leading to the prospective agreement to sell NPR-1 to Occidental Petroleum Corporation for \$3.65 billion—the largest Federal divestiture in U.S. history. Based on the Supplemental EIS, the Office of Fossil Energy will be able to incorporate protection for biological and cultural resources into its decision making.

After the October 6, 1997, announcement of DOE's agreement to sell NPR-1 to Occidental, DOE Assistant Secretary for Fossil Energy Patricia Fry Godley observed: "The NEPA process significantly contributed to the success of the NPR sale process. The prospective new owner will implement mitigation measures, in particular those concerning biological and cultural resources, similar to DOE's past practices. In addition, we involved Federal, State and local government entities as well as the public and private sector efficiently and meaningfully."

Tony Como, the NEPA Document Manager, noted that "the highly interactive EIS team met the challenge of producing a high quality document under a very ambitious schedule."



The endangered San Joaquin Kit Fox would continue to be protected after sale of NPR-1. (Photo courtesy of California Department of Fish and Game.)

Combined Federal and State Environmental Review

DOE and the Kern County Department of Planning jointly prepared the SEIS/PEIR to meet both NEPA and California Environmental Quality Act (CEQA) requirements. The two agencies held joint public hearings on the Draft SEIS/PEIR. The combined process provided an effective framework for close and timely coordination among DOE and State and local agencies.

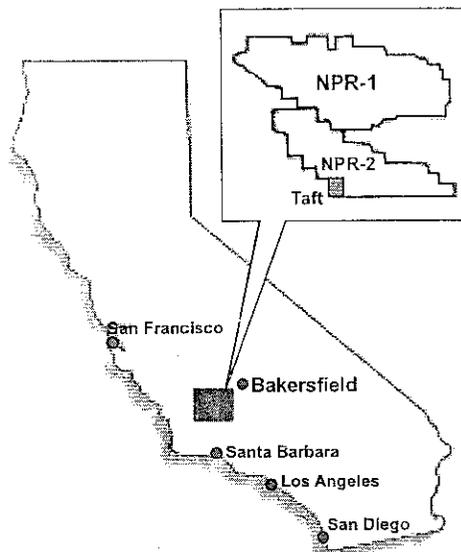
Potential Effects Warranted Mitigation

NPR-1 serves as important habitat for a variety of threatened and endangered species, including the endangered San Joaquin Kit Fox. The NEPA/CEQA process alerted Federal, State, and county agencies and the public to how increased commercial development of the

continued on page 2

NPR-1 (continued)

oil and gas field could have significant impacts on threatened and endangered species and other biological resources. In addition, the optional provisions of the sales contract sensitized the oil and gas companies to the need for mitigation of significant environmental impacts to biological resources by providing for the transfer of an existing permit issued under Section 7 of the Endangered Species Act (ESA). Section 7 provisions ordinarily do not apply to nongovernmental entities, but the transfer was specifically allowed by the Act that authorized the sale. The advantage of a permit transfer is that a successful bidder would have a defined set of agreed-upon mitigation measures for immediate compliance with ESA, with time after the sale to obtain a commercial permit under ESA Section 10. Under the proposed sale agreement,

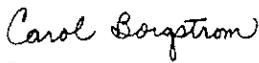


Naval Petroleum Reserve Fields in California. NPR-1 is located 35 miles southwest of Bakersfield.

Inside LESSONS LEARNED

Welcome to the fourth quarter FY 1997 Quarterly Report on lessons learned in the NEPA process. Articles in this issue include:

- INEEL EIS: New Approaches to Scoping 3
- CEQ Environmental Justice Guidance 4
- Strategies for EIS Savings 4
- ISO 14000 and NEPA 7
- Recent EIS Milestones 8
- National Association of Environmental Professionals (NAEP) 8
- NAEP's NEPA Recommendations 9
- New National Environmental Training Office 10
- Training Events 10
- Beneficial Landscaping Practices 11
- Draft CEQ Guidance on Global Climate Change ... 12
- Transitions 13
- DOE-wide NEPA Contracts Update 13
- Transboundary Environmental Impacts 14
- Annual NEPA Planning Summaries 14
- Recent NEPA Guidance 14
- Public Involvement: If You Don't Know Where You're Going 15
- Litigation Updates 16
- Questionnaire Results 19
- EIS-related Documents 21
- Time and Cost Facts 22


 Director
 Office of NEPA Policy and Assistance

Occidental Petroleum will assume DOE's existing Section 7 permit and agree to the same mitigation measures that DOE has been required to implement at the site.

The SEIS/PEIR also focused public attention on potential impacts to cultural resources—specifically two historic oil wells and several prehistoric sites of particular concern to Native Americans. DOE and Kern County are completing consultations and preparing a programmatic agreement with the California State Historic Preservation Officer and the Advisory Council on Historic Preservation concerning possible mitigation activities. Other issues addressed in the SEIS/PEIR include the potential impacts of increased oil and gas operations upon air and water quality.

Congressional Mandate Presents NEPA Challenges

The NPR-1 proposed sale demonstrates that Congressionally mandated divestiture does not diminish DOE's responsibility under NEPA. The schedule for the proposed sale, however, posed challenges to DOE to ensure a full and timely NEPA review while managing the sales process to maximize the financial return to the government. DOE needed to be responsive to a schedule affected by market timing considerations, while striving to meet the Congressional deadline to sell NPR-1 by February 10, 1998. The NEPA review process proved to be a partner in a successful sale process.

For more information, contact Tony Como, Office of Fossil Energy, at anthony.como@hq.doe.gov, phone (202) 586-5935, or fax (202) 287-5736. 

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE WESTERN AREA POWER ADMINISTRATION
AND
THE CALIFORNIA ENERGY COMMISSION
FOR THE PURPOSES OF A JOINT ENVIRONMENTAL REVIEW PROCESS
FOR THE PROPOSED
BLYTHE ENERGY POWER PLANT PROJECT

Table of Contents

Section	Title	Page
1.	PREAMBLE	1
2.	EXPLANATORY RECITALS	1
3.	AGREEMENT	2
4.	TERM OF THIS AGREEMENT	3
5.	DEFINITIONS	3
6.	RESPONSIBILITIES OF THE COMMISSION	4
7.	RESPONSIBILITIES OF WESTERN	5
8.	SIGNATURE CLAUSE	8
9.	ATTACHMENT A: LIST OF CONTACTS	9
10.	ATTACHMENT B: PROJECT SCHEDULE	10

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
DESERT SOUTHWEST REGION

MEMORANDUM OF UNDERSTANDING
FOR
JOINT ENVIRONMENTAL REVIEW PROCESS
WITH
THE CALIFORNIA ENERGY COMMISSION

1. PREAMBLE

This agreement, made this 29th day of February, 2000, between the UNITED STATES OF AMERICA, acting by and through the Administrator, Department of Energy (DOE), Western Area Power Administration, herein called Western, represented by the office executing the Agreement; and the staff of the California Energy Commission (Commission), an authorized division of the State of California, herein referred to as the Commission staff, for the review of and preparation of environmental documents on the Blythe Energy Project.

2. EXPLANATORY RECITALS

- 2.1 Blythe Energy Project, LLC., has approached Western and the Commission concerning proposed construction of a gas-powered electrical generation plant, the Blythe Energy Power Plant Project (Project), at a location near Blythe, California. The Project encompasses an interconnection with Western's main transmission system south of Parker Dam.
- 2.2 Western has responsibilities as a Federal agency pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 CFR 1500-1508), and the regulations of DOE (10 CFR 1021 and 1022), regarding the need to consider the potential environmental impacts associated with the construction, operation and maintenance of the Project, including the modification of existing transmission facilities needed for the interconnection.

- 2.3 The requirements of NEPA are largely procedural, requiring the lead Federal agency to take into account the potential for direct, indirect, and cumulative impacts on the human environment by the Project. NEPA does not mandate an outcome, but requires full disclosure of potential impacts to be considered in decisionmaking.
- 2.4 The Commission is the agency of the State of California authorized with the responsibility for siting all thermal power facilities 50 megawatts (MW) or greater, and the preparation of documentation to satisfy the requirements of the California Environmental Quality Act (CEQA; Public Resources Code 2100 et seq.). The Commission's responsibility includes all aspects of the Project and all related facilities such as water, gas, and electric transmission lines.
- 2.5 The requirements of CEQA are more than procedural, requiring the lead state agency to identify potentially significant environmental impacts associated with the Project, and mandating mitigative feasible measures that reduce identified impacts to less than significant.
- 2.6 Due to the overlapping jurisdiction of NEPA and CEQA, this Agreement establishes the respective responsibilities of Western and the Commission. Western and the Commission will make every effort to reach agreement in order to fulfill the goals of this proposed joint environmental review process.
- 2.7 Western and the Commission staff believe that a joint environmental review process benefits the applicant, each agency, and most importantly the public, by reducing costs, setting a firm schedule, reducing paperwork, eliminating redundancy, and minimizing confusion.

3. AGREEMENT

Western and the Commission agree to the terms and conditions set forth herein.

4. TERM OF THIS AGREEMENT

- 4.1 This agreement shall become effective on the date of its execution and remain in effect until completion of all activities associated with any mitigation or other similar constraints placed on the Project by Western or the Commission.
- 4.2 Either party may terminate this agreement by 30 days notification in writing to the other party. Both parties shall use the 30 days to consult and determine whether the Agreement should remain in force.
- 4.3 Should the Agreement terminate before the completion of the environmental review process, each party shall be responsible for carrying out their own independent environmental reviews pursuant to the legal requirements of each agency.

5. DEFINITIONS

- 5.1 Applicant shall mean Blythe Energy Project, LLC., and its representatives.
- 5.2 Blythe Energy Power Plant Project shall mean the proposed power plant, a 520-MW natural gas-fired combined-cycle plant with two combustion turbines, one steam turbine, and supporting equipment. It also includes the site and all related facilities including water, wastewater, natural gas, and transmission lines, structures and facilities, any modifications to existing facilities, as well as access roads, laydown areas and parking areas.
- 5.3 Lead Federal Agency shall mean the Federal agency responsible for compliance with the requirements of NEPA, the regulations of the Council on Environmental Quality and DOE, as well as with the requirements of other Federal laws and regulations.

5.4 Lead State Agency shall mean the State agency that has the principle responsibility of approving a project that may have a significant effect on the environment.

5.5 Plant site shall mean the location of the power plant only.

5.6 Schedule shall mean the schedule of events in Attachment B to this Agreement.

6. RESPONSIBILITIES OF THE COMMISSION

6.1 The Commission is the lead State agency for the purposes of CEQA and the Warren-Alquist Act (Public Resources Code Section 25000 et seq.). That means that the Commission shall have the primary responsibility for the review and certification of environmental, engineering, and design data as established in 6.2 below.

6.2 The Commission shall have the responsibility to conduct its review and certification process in accordance with its mandated requirements, with the qualifications noted below. Those responsibilities will include the plant site and all related facilities such as water, wastewater, and gas lines, access roads built for the Project, and all new substations and electric transmission lines from the plant site to the first point of interconnection with Western's transmission system.

6.2.1 The Commission shall consult, and try to reach agreement with Western, on any environmental impacts from any proposed changes to Western's existing transmission system.

6.2.2 The Commission shall consider extending the timing of certain studies necessary for the consideration of some environmental impacts (for example, biological and cultural). The Commission staff and Western shall confer regarding any changes to the timing of studies or surveys.

- 6.3 The Commission shall provide Western an opportunity to review and comment on the submission of application materials from the applicant before determining the adequacy of the data.
- 6.4 The Commission shall have the primary responsibility to prepare and distribute all joint Commission/Western documents, and chair all meetings and workshops in association with the Project.
- 6.5 The Commission shall endeavor to incorporate the comments of Western regarding significant adverse environmental impacts from the project into the preparation of staff's draft documents. Whenever possible, primary authors and commenters shall communicate directly to resolve conflicts, concerns, or questions.
- 6.6 The Commission shall provide a list of staff contacts for each subject/issue area, to be provided in Attachment A to this Agreement.
- 6.7 The Commission shall consult with Western so that Western's responsibilities under NEPA and other federal mandates are satisfied.

7. RESPONSIBILITIES OF WESTERN

- 7.1 Western is the lead Federal agency for the purposes of compliance with NEPA. This means that Western has the primary responsibility for independent review and analysis of environmental impacts associated with the Project as specified below.
- 7.1.1 Western shall review the application for certification provided to the Commission by the applicant to determine whether Western's requirements are adequately covered by the application. Western shall provide comments on the application to the Commission in a timely manner.

- 7.1.2 Western shall be responsible for the review and comment on the analysis of environmental impacts by the Commission and shall provide timely comments on all draft sections of the preliminary and final Commission staff assessments and any other documents for which staff requests comments.
- 7.1.3 Western will be responsible for providing a Purpose and Need Statement for the preliminary and final Commission staff assessments.
- 7.1.4 Western shall have primary responsibility for the determination of conditions or mitigation needs associated with any and all reconstructions or reconfigurations of existing transmission lines and facilities beyond the first point of interconnection. Western shall consult and try to reach an agreement with the Commission staff on any environmental impacts from, or conditions that may be necessary to mitigate environmental impacts to, any proposed changes to Western's existing transmission system.
- 7.2 Western is the lead Federal agency for the purposes of Section 106 of the National Historic Preservation Act, as amended (NHPA: 16 U.S.C. 470f), and the regulations at 36 CFR 800. This means that Western shall have the responsibility to consult directly with the California State Historic Preservation Officer and, if necessary, with the Advisory Council on Historic Preservation, pursuant to the regulations at 36 CFR 800. Western shall make all determinations on the significance of any and all cultural resources and the effects on any significant properties by the Project.
- 7.2.1 Western may be a joint author for the analysis section on cultural resources in the documentation, and share responsibility for its content.

- 7.2.2 Western shall consult with the Commission so that the Commission's responsibilities under CEQA are satisfied through compliance with the Section 106 process.
- 7.3 Western is the lead Federal agency for the purposes of the Endangered Species Act (ESA; 16 U.S.C. 1531-1544). This means that Western has the primary responsibility, in accordance with Section 7 of ESA, to consult with the U.S. Fish and Wildlife Service (FWS), prepare the necessary Biological Assessment, make a timely application to the FWS for a Biological Opinion, and negotiate any mitigative measures between the FWS, the applicant, and the Commission staff. Western may be a joint author for the analysis sections on biological resources and water-related habitat resources and share responsibility for its content.
- 7.4 Western has primary responsibility to satisfy the requirements of DOE's regulations on floodplains and wetlands at 10 CFR 1022, pursuant to Executive Orders 11988 and 11990. Western shall consult and try to reach agreement with the Commission staff on any conditions or mitigation required for impacts to floodplains and/or wetlands.
- 7.5 Western shall provide a list of staff contacts for each subject/issue area, to be provided in Attachment A to this Agreement. This list of contacts should be utilized to the fullest extent in resolving questions, conflicts, or concerns.

CQ536

8

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: Michael S. Hartney

CALIFORNIA ENERGY COMMISSION STAFF

By: _____

ATTACHMENT A

ENERGY COMMISSION STAFF ASSIGNMENTS FOR THE BLYTHE POWER PLANT AFC

Project Manager Lance Shaw
 Staff Counsel Lisa DeCarlo for data adequacy then Dick Ratliff
 Project Secretary Pat Owen

SUBJECT AREAS

1. Project Overview Lance Shaw
 2. Alternatives Lance Shaw
 3. Compliance Steve Munro
 4. Land Use Eric Knight
 5. Traffic & Transportation Jim Adams for data adequacy then an expert witness
 6. Visual Gary Walker
 7. Socioeconomics Amanda Stennick for data adequacy then a new staff
 person
 8. Public Health Mike Ringer
 9. Safety Chris Tooker for data adequacy then a new staff person
 10. Waste Management Mike Ringer
 11. Cultural Resources Kathy Matthews for data adequacy then an expert witness
 12. Air Quality Guido Franco
 13. Trans Line, Safety & Nuisance ... Obed Odoemelam
 14. Hazardous Materials Rick Tyler
 15. Biological Resources Dick Anderson
 16. Water & Soils Resources Richard Sapudar
 17. Noise Steve Baker
 18. Reliability Steve Baker
 19. Efficiency Steve Baker
 20. Geology/Paleontology Bob Anderson
 21. Transmission System Eval. Laiping Ng
 22. Facility Design Kisabuli

WESTERN AREA POWER ADMINISTRATION STAFF ASSIGNMENTS FOR THE
 BLYTHE ENERGY PROJECT ENVIRONMENTAL ASSESSMENT PROCESS

Document/Environmental Assessment Manager Nicholas Chevance
 Project Manager/Engineering Teresita Amaro
 General Counsel Doug Harness
 Environmental Manager, Desert Southwest Region John Holt
 Environmental Specialist, Desert Southwest Region George Perkins
 Team Lead/Environmental Planning Group David Swanson
 Biologist/Endangered Species Consultation Specialist John Bridges
 Archeologist/Cultural Resources Specialist Mary Barger
 Environmental Specialist, Environmental Planning Group Cathy Cunningham

CQ536

II. SCHEDULING ORDER

COMMITTEE SCHEDULE for BLYTHE ENERGY PROJECT	
EVENT	DATE
Blythe Energy AFC filed	December 9, 1999
Commission deems AFC data adequate	March 22, 2000
Staff Files Issue Identification Report and Data Requests	May 2
Informational Hearing & Site Visit	May 4
Staff workshop on data requests	May 4
Applicant files data responses	June 3
Status Report #1 due to Committee	June 5
Status Report #2 due to Committee	July 5
Applicant files data response on Western's interconnection study including Imperial Irrigation District and Southern California Edison impacts.	July 10
Applicant files Preliminary Determination of Compliance (PDOC) from the Mojave Air Quality Management District (MAQMD)	July 21
Status Report #3 due to Committee	August 7
Staff files Preliminary Staff Assessment (PSA)	September 1
Status Report #4 due to Committee	September 5
Applicant files MAQMD Final Determination of Compliance (FDOC)	September 22
Committee conducts Status Conference, if necessary	September 22
Status Report #5 due to Committee	October 5
Staff files Final Staff Assessment (FSA) as testimony	October 25
All other parties file testimony	November 6
Status Report #6 and Prehearing Conference Statements due	November 8
Committee conducts Prehearing Conference	mid November

III. INFORMATION

Members of the public may participate in all phases of the licensing process in a variety of ways. For information on public participation, contact Roberta Mendonca, the Public Adviser, at (916) 654-4489 or, toll free at (800) 822-6228 or, email: <pao@energy.state.ca.us>

CQ 536

**Memorandum of Understanding
Between U.S. Department of Energy and the State of Idaho
Regarding the High-level Waste and Facilities Disposition Environmental Impact Statement**

**Section 1
Background**

- 1.1 Through the preparation of an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, *et seq.*, the U.S. Department of Energy (DOE) is in the process of determining how best to continue managing high-level waste, and associated facilities and equipment, located at the Idaho Nuclear Technology and Engineering Center (INTEC) on the Idaho National Engineering and Environmental Laboratory (INEEL) site near Idaho Falls, Idaho. In preparing the EIS, DOE is working to meet its legal obligations and protect human health and the environment.
- 1.2 In October 1995, the State of Idaho (State), U.S. Department of the Navy, and DOE entered into a Settlement Agreement. This Idaho Settlement Agreement was incorporated into a Consent Order terminating two consolidated actions: *Public Service Co. of Colorado v. Batt*, No. CV 91-0035-S-EJL (D. Id.) and *United States v. Batt*, No. CV-91-0054-S-EJL (D. Id.). Among other things in the Idaho Settlement Agreement, DOE agreed to evaluate alternatives for the treatment of calcined waste and treat all high-level waste at the INEEL so that it is ready to be moved out of Idaho for disposal by a target date of 2035. The EIS will help DOE make an informed decision about how best to carry out these activities.

**Section 2
Purpose**

- 2.1 During DOE's initial activities preparing the EIS, it has become apparent that the State of Idaho has special expertise and perspectives that can assist DOE in its data gathering and analysis activities. From the perspective of DOE, it would be advantageous to obtain input from the State on the regulatory implications of implementing the various alternatives considered in the EIS as early as possible in the process. From the State's perspective, early consideration of these regulatory implications, and consideration of the technical aspects of the alternatives by State experts, will improve the EIS document and can facilitate DOE's progress toward meeting the legal requirements of the Idaho Settlement Agreement, a goal the State has a very strong interest in seeing met.
- 2.2 Pursuant to the Council on Environmental Quality (CEQ) regulations implementing NEPA, agencies that agree to work together on an EIS can do so formally in several different ways. 40 C.F.R. §§ 1501, *et seq.* For purposes of this MOU, the parties are in agreement that the most effective relationship shall be one in which DOE serves as the "Lead Agency" and the State serves as the "Cooperating Agency."
- 2.3 The purpose of this Memorandum of Understanding (MOU) is to describe the working relationship between DOE and the State ("the parties"). Section 4 defines the roles and responsibilities of both the Lead Agency (DOE) and the Cooperating Agency (the State) during the preparation of the EIS. The Communication and Document Distribution Plan that describes in more detail this relationship and the process that will be followed to carry out these respective duties has been attached to this MOU as "Attachment A."

**Section 3
Authority**

- 3.1 This MOU is consistent with the intent of NEPA, 42 U.S.C. § 4332; the CEQ regulations implementing NEPA, 40 C.F.R. §§ 1501.1(b), 1501.2(2), 1501.6, 1506.2, 1508.5, 1508.15, 1508.16 and 1508.26; and DOE's NEPA implementing regulation regarding interagency cooperation, 10 C.F.R. § 1021.342.
- 3.2 There is nothing in either federal or state law that prohibits the parties from entering into this MOU.

**Section 4
Roles and Responsibilities**

- 4.1 Time frames. Subject to section 5.4 of this MOU, the parties agree to act with all reasonable diligence to develop and implement a schedule such that a final EIS is issued by September 30, 1999.
- 4.2 Signatures. The parties agree that both the draft and final EIS will be released to the public with the signatures of officials from both DOE and the State. The cover of both the draft and final EIS will name DOE as the Lead Agency and the State of Idaho as the Cooperating Agency.
- 4.3 Security Clearances.
 - 4.3.1 DOE agrees to pursue any necessary security clearances for designated state personnel who are working on the EIS.
 - 4.3.2 Subject to any legal restrictions or limitations upon DOE regarding the dissemination of information to the public, including, for example, the Freedom of Information Act, the Privacy Act, or any provision of the Atomic Energy Act regarding the protection of certain information, DOE will make available to the State any relevant information the State needs or requests in order to carry out the intent of this MOU. At the discretion of DOE, with regard to certain documents, "made available" may mean temporary access at a DOE office in lieu of actual delivery to the State. The sharing of information with certain state personnel who have the need to access this information for purposes of analysis on this EIS does not constitute a waiver of any defenses, arguments or claims DOE can lawfully make to protect such information from disclosure to members of the public. Furthermore, the State hereby agrees that it will exercise all means legally available to protect the information from further disclosure for as long as the State is in possession of the information.
- 4.4 Administrative Record Materials. The parties agree that the development and maintenance of a complete and current Administrative Record are crucial for the NEPA decision-making process. To further this goal, the parties agree that DOE will assemble and maintain the Administrative Record, and that, to the extent allowed by law, the State will provide all relevant documents, computer records, and any other materials to DOE for this purpose on a timely (and preferably a weekly) basis during the preparation of the draft and final EIS.

- 4.5 Compliance. In preparing and issuing the EIS, as Lead Agency DOE shall be responsible for ensuring compliance with all requirements of NEPA, all applicable federal regulations and orders, and the thorough and correct analysis of all pertinent laws and regulations. Where appropriate, the State shall assist DOE in identifying the existence and consequences of permitting and other regulatory requirements of the State related to proposed projects or alternatives. Both parties agree to ensure that all relevant environmental issues, reasonable alternatives, and environmental impacts are addressed in the EIS to the extent possible.
- 4.6 Meeting Attendance. The parties agree to have their respective authorized representatives or suitable alternates attend regular meetings to discuss the progress of the EIS. The parties further agree to attend any other meetings as necessary to clarify issues, provide expertise, respond to public comment, or as necessary to assure the timely and orderly preparation and dissemination of documents and information relating to the EIS. The parties will jointly coordinate, prepare, and participate in any public meetings or other opportunities to inform, involve, or take comments from interested persons.
- 4.7 Document Preparation. DOE has primary responsibility for writing, rewriting, editing and publishing all sections of the draft and final EIS, subject to timely review and revision by the State. DOE agrees to provide the State preliminary versions of various portions of the draft EIS for review and comment. If the comments are provided within the time frames established in the Communications Plan or otherwise agreed to, DOE agrees to incorporate or address the State's comments and perspectives into the documents.
- 4.8 Data and Information Management. The parties acknowledge that portions of data or information gathered during the preparation of the EIS and other NEPA documents might be claimed to be protected from disclosure by DOE to the State or by the State to DOE or a third party. To the extent allowed by the laws of their jurisdictions, the parties agree to honor such claims and provide appropriate protection to materials so identified.
- 4.9 Document Dissemination. DOE will be responsible for printing both the draft and final EIS; publishing the Notice of Availability in the Federal Register; filing any documents with the EPA; and otherwise distributing documents to agencies, the public and other interested parties. The State is responsible for reviewing and editing or supplementing the document distribution list prior to distribution by DOE.
- 4.10 Dispute Resolution.
- 4.10.1 The parties agree that they will strive to expeditiously and fairly resolve any disputes between them whenever possible. Each party agrees to work professionally with the other to achieve closure on any issues arising during the process of preparing and processing the NEPA documents.
- 4.10.2 DOE and the State shall make reasonable efforts to resolve disputes at the NEPA Document Manager or comparable supervisor level. If resolution of a significant issue is unable to be achieved at that level, the parties may agree to elevate the dispute for consideration by the Manager of the Office of Program Execution of DOE Idaho Operations Office and the State Coordinator-Manager for the INEEL Oversight Program.

- 4.10.3 The parties recognize that the essence of the NEPA process is to inform the public of different points of view on technical matters whenever it is necessary for complete disclosure. Thus, one method of resolution under NEPA is for the parties to "agree to disagree" and to so state in the NEPA documents.
- 4.11 Decision-Making. DOE is responsible for making decisions to take actions within the scope of the EIS and related NEPA documents. DOE will make these decisions consistent with NEPA statutory and regulatory requirements. DOE shall discuss its decisions with the State prior to the issuance of the Record of Decision on the EIS. If the State has any objection to the DOE decision, to the extent practicable, the State will notify DOE of its objection prior to issuance of the Record of Decision.

Section 5
Effect of this MOU

- 5.1 The parties agree that the sole purpose of this MOU is to set out the roles, responsibilities and expectations of the parties during the cooperative preparation of the EIS.
- 5.2 Both parties agree that no portion of this MOU creates any binding contract, nor is it intended to create any legal rights, either procedural or substantive, for either of the parties, or any third party.
- 5.3 Nothing in this MOU shall be construed to restrict in any way the authority of any agency of the State of Idaho to ensure that DOE complies with the Idaho Environmental Protection and Health Act, Idaho Code §§39-101, et seq., the Hazardous Waste Management Act of 1983, Idaho Code §§39-4401, et seq., or any other law, order or agreement.
- 5.4 Nothing in this MOU shall relieve DOE from its obligation to comply with any federal, state, or local law, order or agreement between the State and DOE.
- 5.5 Nothing in this MOU shall alter the rights and responsibilities of the parties with regard to section J.4 of the Idaho Settlement Agreement described in section 1.2 of this MOU.

Section 6
Modification and Termination

- 6.1 This MOU may be modified only by written agreement of the parties.
- 6.2 With the exception of the information-protection restrictions set out previously in §4.3.2, this MOU will automatically terminate upon publication of the Record of Decision for the EIS.
- 6.3 This MOU may be terminated by the mutual written agreement of the parties or by either party upon 7-day written notice to the other party.

CQ536

Section 7
Effective Date

7.1 This MOU shall become effective upon the date of signature by the State of Idaho.

SO AGREED:

Date 9/24/98

John Wilcynski
John Wilcynski, Manager
Idaho Operations Office,
U.S. Department of Energy

Date 9/24/98

Kathleen E. Trever
Kathleen Trever, Coordinator-Manager
INEEL Oversight Program
State of Idaho

ATTACHMENT A
MEMORANDUM OF UNDERSTANDING

COMMUNICATION and DOCUMENT DISTRIBUTION PLAN

1.0 PURPOSE. The purpose of this High-Level Waste (HLW) Environmental Impact Statement (EIS) Communication and Document Distribution Plan is to describe the roles and responsibilities of the U.S. Department of Energy (DOE), Idaho Operations Office (DOE-ID), DOE Headquarters (DOE-HQ), and the State of Idaho (State) involving:

- The review and approval of the draft HLW EIS for distribution;
- Tasks associated with notifications and other activities to be performed, and work products to be produced, in conjunction with the issuance and distribution of the draft and final HLW EIS;
- Events, such as public meetings and hearings, workshops, and media briefings, that will be conducted during the public comment period for the draft HLW EIS; and
- The process for reviewing and responding to comments received on the draft HLW EIS, so as to produce a final HLW EIS acceptable to both DOE and the State.

2.0 STRATEGY

2.1 Representatives. The parties shall designate representatives:

- DOE-ID NEPA Document Manager: **Thomas Wichmann**
- DOE-HQ Project Lead: To Be Designated
- State Project Lead: **Ann Dold**
- EIS Contractor: To Be Designated

2.2 Press Releases, Public Notice Advertisements, and Media Contacts. Before they are issued, DOE-ID and the State will review and approve all public notice materials, including press releases, notification message points, and background questions and answers. DOE-ID will be responsible for distribution of this material in coordination with DOE-HQ and State public involvement staff. Public Notice Advertisements will be run in newspapers, as appropriate, to inform the public of any comment periods and public meetings. Copies of all approved public notice materials will be maintained in the HLW EIS Administrative Record.

2.3 Draft HLW EIS.

2.3.1 Pre-Distribution Notification. Prior to formal distribution of the draft HLW EIS to the public, certain individuals should be specially notified of the availability and planned date for issuance of the draft HLW EIS. The names of those individuals will be included in the Document Distribution List agreed to by the parties. The purpose of the pre-distribution notification is to alert the individuals that a draft HLW EIS will be distributed, a corresponding press release will be issued, and the public comment period will begin. Upon confirmation to the DOE-ID NEPA Document Manager that those notifications have been made, the document will be distributed pursuant to section 2.3.4 below.

2.3.2 Pre-Distribution Briefings and Informational Material. Prior to the formal release of the draft HLW EIS to the public, DOE-ID, DOE-HQ and the State will be provided with materials that will enable each organization to pre-notify other key stakeholders of the contents of the EIS. DOE-HQ will be the primary point of contact for the DOE Complex and national stakeholders, as set out in the Document Distribution List; DOE-ID and the State will be the primary points of contact for regional and local stakeholders, as well as their respective organizations. DOE-ID will prepare draft materials for review and concurrence by DOE-HQ and the State. Copies of all approved informational materials developed for public release will be maintained in the HLW EIS Administrative Record.

2.3.3 Publication of Notice of Availability (NOA). Following approval of the draft HLW EIS for publication by the State and DOE-HQ Project Leads and the DOE-ID NEPA Document Manager, the DOE-HQ Project Lead will submit the NOA to the Federal Register for publication.

2.3.4 Draft EIS Distribution.

2.3.4.1 Following approval of the draft HLW EIS for publication pursuant to section 4.3 below, the draft HLW EIS will be distributed to the individuals and organizations on the HLW EIS Document Distribution List by the DOE-ID NEPA Document Manager with the support of the EIS Contractor. As early in the process as possible, the State public involvement staff will provide the DOE-ID NEPA Document Manager with a list of individuals and organizations that need to be included on the HLW EIS Document Distribution List. The DOE-HQ Project Lead also will submit the draft HLW EIS (5 copies) to the U.S. Environmental Protection Agency (EPA) to support publication of the EPA NOA, and 18 copies to the Department of Interior.

2.3.4.2 The DOE-ID NEPA Document Manager will provide copies of the draft HLW EIS, as well as other informational materials, to the local news media and make copies available through DOE Reading Rooms in Boise and Idaho Falls, in libraries, and at scheduled public comment hearings.

2.3.4.3 After the initial distribution, all new requests for copies of the draft HLW EIS, will be handled in the order in which the requests are received.

2.3.5 Post-Distribution Public Information, Briefings, Workshops, and Public Comment Period Activities.

2.3.5.1 The preparation of post-distribution public information regarding the draft HLW EIS will be the responsibility of the DOE-ID NEPA Document Manager with the support of the EIS Contractor. Such information may include audio-visual materials, briefing packets, handouts, and other presentation support materials that will facilitate effective communication, maximize awareness of the draft HLW EIS, and encourage participation in the public comment process. Materials to be used in this process shall be approved by the DOE-ID NEPA Document Manager and the State Project Lead.

2.3.5.2 Post-distribution public information regarding the draft HLW EIS will be used at a variety of meetings sponsored by DOE-ID and the State and held throughout the comment period. The meetings will provide the public with diverse opportunities and forums for interaction with the HLW EIS preparers and decision-makers. At these meetings the public will be encouraged to identify issues and concerns and to submit comments on the draft HLW EIS. Tasks associated with the arrangement of public comment period meetings and activities, unless otherwise noted, will be the responsibility of the DOE-ID NEPA Document Manager. The DOE-ID, the State Project Lead, and their respective public involvement staff will coordinate and assist in this process. The parties recognize that third parties, such as Tribal Nation governments, city councils, interest groups or civic organizations may also sponsor or participate in such meetings.

2.3.6 Public Comment Hearings. Any public comment hearings shall comply with all requirements of NEPA and the implementing regulations and any other applicable law.

2.3.6.1 Public comment hearings will be held in conjunction with the public comment period for the draft HLW EIS. Public comment hearings will be arranged by DOE-ID and held at a minimum of two sites in Idaho. However, additional meetings may be scheduled if warranted by the public interest. All hearings will be 1) handicapped accessible; 2) held at locations that do not inhibit participation by minority or low-income populations; 3) when appropriate equipped with sign and language interpreters; and 4) conducted in a manner that maximizes dialogue with the public.

2.3.6.2 Public hearings will be announced at least 15 days in advance. Diverse channels of communication will be transcribed and written comments accepted. At all hearings, the public will be encouraged to identify issues of concern, and those concerns will be documented and responded to formally by DOE-ID and the State. A log of all hearings will be maintained. The log will record each hearing, the nature of the questions, concerns, or issues identified by hearing participants, any follow-up required, and if follow-up is required, when it was completed.

2.3.7 Consultations with Tribal Nations. Tribal Nation Consultation meetings will be scheduled with the Shoshone-Bannock Tribes and other Tribal Nations if so requested. At these meetings, representatives of DOE-ID and the State will be present to provide information regarding the draft HLW EIS and to receive input from Tribal Nation members regarding issues of concern and comments on the draft HLW EIS.

2.4 Distribution of the Final EIS. The final EIS distribution, and pre- and post-distribution activities, will follow the same process as outlined in section 2.3 except for the workshops and public comment activities.

3.0 SCHEDULE. Consistent with §4.1 of the MOU, the DOE-ID NEPA Document Manager is responsible for development and implementation of a schedule mutually agreeable to DOE-ID and the State of Idaho.

4.0 EIS DOCUMENT CONTROL, REVIEW, CHANGE and APPROVAL PROCESS.

4.1 Document Review and Change Process. The DOE-ID NEPA Document Manager and the State of Idaho Project Lead will develop a document review and change process for the draft and final EIS that will provide for adequate document control to ensure that all changes are acceptable to both parties. This process will also describe the responsibilities for each review coordinator.

4.2 Document Control. Once the draft EIS is released and the final EIS is in preparation, a controlled version of the HLW Final EIS will be maintained by the EIS contractor at the direction of the DOE-ID NEPA Document Manager.

4.3 Document Approval Process. Upon resolution of all outstanding comments and issues and a determination by the DOE-ID NEPA Document Manager and the DOE-HQ Project Lead that the draft and final HLW EIS is ready for publication, the document will be submitted for final review by the respective organizations. The DOE-ID NEPA Document Manager will provide sufficient copies of the draft and final HLW EIS to support the review process of each organization. Approval of the draft and final EIS will consist of:

- The DOE-ID NEPA Document Manager securing a letter of transmittal from the DOE-ID Manager to the DOE Assistant Secretary of Environmental Management;
- The State of Idaho securing concurrence from the Coordinator-Manager of the INEEL Oversight Program for the State of Idaho;
- The DOE-HQ Project Lead securing concurrence from EH, GC, RW and PO and approval from the Assistant Secretary of EM to publish the final HLW EIS.

Upon receipt of the above, the DOE-ID NEPA Document Manager will authorize the publication and distribution of the EIS pursuant to section 2 of this Plan.

5.0 COORDINATION AND COMMUNICATION. Beginning on a date agreed upon by the parties, the DOE-ID NEPA Document Manger, DOE-HQ Project Lead and the State Project Lead, as well as other designated EIS points of contact will establish regular meetings to ensure coordination and communication. The meetings will focus on what needs to be done to address outstanding issues, including the identification and assignment of new action items and responsibilities, and ensuring the timely implementation of this Plan. These meetings will be coordinated by the DOE-ID NEPA Document Manager.

6.0 ADMINISTRATIVE RECORD. The DOE-ID NEPA Document Manager shall, with the cooperation of the State and DOE-HQ, maintain the administrative record for the HLW EIS.

CQ530

EXTERNAL bcc DISTRIBUTION:

- ID DISTRIBUTION:
J. Wilcynski, MS 1203
J. Lyle, MS 1101
T. Wichmann, MS 1108
R. Kimmel, MS 1154
D. Gore, MS 1209
L. Green, MS 1146

CONCURRENCE:

*D. Gore 9/23/98 EIS
for Richard Project Office
Kimmel*

RECORD NOTES:

1. Letter written to forward MOU between U.S. DOE and State of Idaho to Kathleen Trever for her signature.
2. Letter was written by Denise Gore. *DG 9/23/98*
3. This letter/memo closes CATS number N/A
4. The attached correspondence has no relation to the Naval Nuclear Propulsion Program. Naval Reactors concurrence is not required.

CQ536

ENCLOSURE 3

CASE STUDIES

CASE STUDY: Interim Management Of Nuclear Materials EIS

CATEGORY: Adaptive Management

PROJECT: Interim Management of Nuclear Materials Environmental Impact Statement at the Savannah River Site (DOE-EIS-0220, October 1995)

PRACTICE: Analyzing reasonable alternatives in an EIS

AGENCY: Department of Energy

INVOLVED PARTIES: NA

AGENCY CONTACT: Carl Sykes, 202-586-9924, carl.sykes@eh.doe.gov
Drew Grainger, 803-952-8001, drew.grainger@srs.gov

DATES: Final EIS October 1995

Context/Background: During preparation of the *Interim Management of Nuclear Materials Environmental Impact Statement* (IMNM EIS) at the Savannah River Site (SRS), the inclusion of an alternative considered marginally reasonable (at the time the EIS was prepared) provided management flexibility years later when circumstances changed and the alternative was found to be reasonable.

Project Description: One way to ensure that the environmental impact analyses are structured to consider adaptive management is to include all reasonable alternatives in the NEPA review, including alternatives that might not be fully developed or authorized. A recent supplemental Record of Decision (ROD) from the IMNM EIS provides an example of how analyzing all alternatives can provide flexibility for DOE decisionmakers. In the ROD (67 FR 45710, July 10, 2002), DOE announced its decision to process a portion of plutonium liquid solutions in Savannah River's H-Canyon through the Defense Waste Processing Facility (DWPF). Previous RODs (60 FR 65300, 12/19/95; 61 FR 48474, 9/6/96; 62 FR 61099, 11/14/97) had announced DOE's decision to implement other processing alternatives in the IMNM EIS.

When the IMNM EIS was prepared, the DWPF alternative for H-Canyon plutonium solutions was almost eliminated as being unreasonable. Several technical obstacles had been identified that, if not overcome, would render the alternative impractical. Rather than dismissing this alternative, DOE analyzed it in the EIS, while also providing a description of the obstacles. Subsequent to the decisions made in the earlier RODs, DOE developed ways to overcome the obstacles. Further assessment by DOE indicated that implementing the DWPF alternative in conjunction with another alternative would enable DOE to realize cost and schedule improvements and other program benefits. Because the DWPF alternative was analyzed in the IMNM EIS, DOE could issue an amended ROD. Thus, this example shows the importance of analyzing all reasonable alternatives, including those alternatives that may have technical or other obstacles in the near term.

Internet Site:

Value as a Practice:

- **Results:** This practice is important as an example of a NEPA success story because it demonstrates the importance of analyzing all reasonable alternatives, even if they appear difficult to implement due to technological, political or other constraints.

- **Source of information/references:**

Interim Management of Nuclear Materials Environmental Impact Statement
(DOE/EIS-0220, October, 1995)

Supplemental Record of Decision, IMNM EIS, 67 FR 45710, July 10, 2002

“Analyzing All Reasonable Alternatives in an EIS,” *Lessons Learned Quarterly Report*, March 2001 (See Enclosure 2)

CQ53p

CASE STUDY: Los Alamos National Laboratory Site-Wide EIS

CATEGORY: Adaptive Management/Programmatic Analysis

PROJECT: Los Alamos National Laboratory Site-Wide Environmental Impact Statement (SWEIS) (DOE/EIS-0238, January 1999) and its Analysis of Wildfire

PRACTICE: Public Participation/Mitigating Impacts Identified in an EIS

AGENCY: Department of Energy

INVOLVED PARTIES: NA

AGENCY CONTACT: Carl Sykes, 202-586-9924, carl.sykes@eh.doe.gov
Elizabeth Withers, 505-667-8690, ewithers@doeal.gov

DATES: Draft SWEIS, April 1998; Final SWEIS, January 1999

Context/Background: Developed in response to public comments on the draft EIS, the wildfire accident scenario in the Los Alamos SWEIS helped mitigate impacts from the disastrous Cerro Grande fire in May of 2000 and provided valuable information that was utilized while fighting the fire.

Project Description: The Los Alamos SWEIS was prepared by DOE to analyze the impacts of the continued operation of the Los Alamos National Laboratory, one of several national laboratories that support DOE's responsibilities for national security and other missions. LANL occupies approximately 43 square miles in north-central New Mexico, approximately 25 miles northwest of Santa Fe. The draft SWEIS did not analyze a wildfire accident because under the initial screening methodology, that scenario had not been considered plausible. However, comments at the public hearing on the Draft EIS from a forester at the nearby Santa Fe National Forrest and other written comments focused attention on the issue. The commenters referenced a recent Forest Service report about the threat of wildfire. The final SWEIS estimated that the frequency of this type of fire is 1 in 10 years.

Based on this high chance of fire identified in the SWEIS analysis, actions were begun immediately to reduce the wildfire risks at certain key facilities, including TA-54 (waste facility) and TA-16 (Weapons Engineering Tritium Facility). Trees were cut and wooden pallets on which waste drums were stacked were replaced with aluminum pallets.

The SWEIS also addressed the longer-term environmental impacts resulting from a fire, e.g., loss of protective cover, runoff, soil erosion and sedimentation, effects on legacy contaminants, etc. In the SWEIS Record of Decision (September 1999), DOE committed to develop a preliminary program plan for comprehensive wildfire mitigation, including construction and maintenance of strategic fire roads and fire breaks, creation of defensible space surrounding key facilities, and active forest management to reduce fuel

loadings. DOE was initiating some of these measures when the fire spread to LANL. The mitigation measures taken prior to the fire helped minimize or preclude damage to key facilities and releases of contaminants and nuclear materials to the environment.

During the fire, DOE relied upon the SWEIS analyses to answer public inquiries and concerns, particularly regarding the potential adverse effects from the fire burning over contaminated areas. The completeness of the assessment in the SWEIS, coupled with air monitoring, helped to establish early on there was no imminent danger to people resulting from the fire. The actual Cerro Grande fire closely followed the SWEIS wildfire scenario, and personnel in the command center also utilized SWEIS analyses in strategizing firefighting responses.

Internet Site:

Value as a Practice:

- **Results:** This practice is important as an example of a NEPA success story because it demonstrates the importance of responding to public input during the NEPA process and demonstrates that NEPA analyses can provide tangible benefits in mitigating impacts to the environment.
- **Source of information/references:**

Los Alamos National Laboratory Site-Wide Environmental Impact Statement (SWEIS) (DOE/EIS-0238, January 1999)

“Los Alamos Site-wide EIS Analyzed Wildfire Impacts, Prompted Mitigation Actions,” *Lessons Learned Quarterly Report*, June 2000 (See Enclosure 2.)

“Emergency NEPA Procedures Invoked for Actions Taken after Los Alamos Fire,” *Lessons Learned Quarterly Report*, September 2000 (See Enclosure 2.)

CASE STUDY: Hanford Comprehensive Land-Use Plan EIS**CATEGORY:** Cooperating Agencies**PROJECT:** Hanford Comprehensive Land-Use Plan EIS**PRACTICE:** Effective Use of Cooperating Agencies**AGENCY:** Department of Energy**INVOLVED PARTIES:** Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, City of Richland, Washington, Counties of Benton, Franklin, and Grant, Department of Environmental Restoration and Waste Management of the Nez Perce Tribe, Consolidated Tribes of the Umatilla Indian Reservation**AGENCY CONTACT:** Yarden Mansoor, 202-586-9326, Yarden.Mansoor@eh.doe.gov
Thomas Ferns, 509-376-7474, Thomas_W_Ferns@rl.gov**DATES:** Final Hanford Comprehensive Land Use Plan EIS, September, 1999**Context/Background:** During preparation of an environmental impact statement for the comprehensive land-use planning of the Hanford Site, DOE collaborated with several Indian tribes and federal and local government agencies. Because of this collaboration, the NEPA process was completed more effectively.**Project Description:** The development of the Hanford Comprehensive Land-Use Plan EIS in Washington State is an example of successful inter-governmental collaboration by DOE. This land-use plan EIS, issued September 1999, involved cooperating agency status for three Federal agencies, three county governments, and a city government; a tribal agency and a confederation of Tribes participated as consulting tribal governments. Together these diverse entities, each with very different missions and goals, reached substantial agreement on DOE's land-use plan including: descriptions of land category definitions, the framework for environmental analysis, and the planning policies and implementing procedures of the land-use plan. However, some of the cooperating agencies and consulting tribal governments strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To resolve these conflicts, cooperating agencies and consulting Tribes developed their own alternatives for consideration in the Draft EIS, using guidelines and a common outline to yield technically parallel information. Although this collaborative process required additional time, it enabled preparation of an EIS that adequately considered the full range of reasonable alternatives. Both DOE and the U.S. Fish and Wildlife Service have issued Records of Decisions based on this EIS. (See *Lessons Learned* article: "Hanford Comprehensive Land-Use Plan EIS Helps DOE Preserve Unique Resources" in Enclosure 2.)

Value as a Practice:

- **Results:** This NEPA success story demonstrates that the benefits of cooperation may be greatest when consensus among potential cooperators is precluded by their differing, complex, and often passionate interests. The EIS enabled both DOE and the U.S. Fish and Wildlife Service to issue Records of Decision under which DOE can meet its mission needs while protecting important ecological and cultural values of the site (e.g., the Hanford North Slope, Arid Lands Ecology Reserve, McGhee Ranch, and other resources). Stakeholders thought that the process was inclusive and fair, even if their preferences were not selected. As evidenced by comments from the public, the tribes, and federal, state, and county government officials, this EIS process resulted in a thoughtful and comprehensive study of potential land uses that balanced many competing values on resource use alternatives. For example, the following are extracted from some of the letters that DOE received on the Final EIS:

COOPERATION IN EIS PREPARATION

USFWS commends DOE for working so diligently with the many interested parties.

Thomas Dwyer, Acting Regional Director
Fish and Wildlife Service, U.S. Department of the Interior

... DOE-RL management and staff, as well as contract employees and representatives of the cooperating agencies and Tribes ... have worked hard to bring about this draft, which is about as close to a product of consensus as can be achieved, given the varied, complex, and passionate interests it incorporates.

Claude L. Oliver, Chairman
Board of County Commissioners, Benton County

This document is an important reflection of the kind of cooperation that can occur among the Department of Energy, State, local and tribal governments, and interested stakeholders in identifying and trying to balance various interests. The document reflects careful thought and consideration in outlining the range of possible Hanford land use options. . . .

Leo M. Bowman, Administrative Board Chairman
Benton Redevelopment Initiative, Port of Benton

RESPONSIVENESS AND BALANCING

I appreciate the balanced approach the alternative takes with regard to preservation, recreation, and industrialization, as well as the alternative's commitment to the Tri-Party Agreement. . . . This ... EIS moves us closer to a solution that I believe best serves the interests of the citizens of Washington and best protects our important cultural, fish and wildlife resources.

Patty Murray
United States Senator

The Hanford Advisory Board is pleased that the U.S. Department of Energy and the cooperating agencies and tribes have produced a thoughtful and comprehensive study of potential land uses for the Hanford Site which fairly considers its many important values and resources. We appreciate DOE's responsiveness to comments on the initial draft.

Merilyn B. Reeves, Chair
Hanford Advisory Board

We applaud DOE-RL's inclusion of Alternatives prepared by the Nez Perce Tribe ERWM [Department of Environmental Restoration and Waste Management] and the Confederated Tribes of the Umatilla Indian Reservation as well as recognition of the Treaties of the United States with American Indian Tribes of the Hanford Region in the document and DOE-RL's recognition of its federal trust responsibility.

Patrick Sobotta, Interim ERWM Director
Nez Perce Tribe

- **Source of information/references:**

Hanford Comprehensive Land-Use Plan Environmental Impact Statement
(DOE/EIS-0222, September 1999)

DOE Record of Decision (64 FR 61615; November 12, 1999)

U.S. Fish and Wildlife Service Record of Decision (64 FR 66928; November 30, 1999)

CASE STUDY: Bonneville Power Administration Policy-Level Analysis and Tiered Decisionmaking

CATEGORY: Policy, Program, Adaptive Management, and Collaboration

PROJECTS: Bonneville Power Administration (BPA) Business Plan EIS, and Fish and Wildlife Implementation Plan EIS

PRACTICE: Public process, policy-level analysis, and tiered Records of Decision (RODs)

AGENCY: Bonneville Power Administration, U.S. Department of Energy

INVOLVED PARTIES: Northwest Power Planning Council; federal and state governments, environmental interest groups, electric utility customers; and Columbia River Basin businesses

AGENCY CONTACT: Charles C. Alton, 503-230-5878, ccalton@bpa.gov
Kathy Pierce, 503-230-3962, kspierce@bpa.gov

DATES: *Began:* 1995 *Ended:* Ongoing

Context/Background: BPA is a federal agency, under the U.S. Department of Energy, that markets wholesale electrical power and markets transmission services in the Pacific Northwest. BPA's 300,000 square mile service territory covers the states of Idaho, Oregon, and Washington, and parts of Montana, Wyoming, California, Nevada, Utah, and British Columbia, Canada. BPA owns and operates more than 15,000 miles of the high-voltage electric transmission line and over 300 substations. BPA's transmission system accounts for about 75% of the region's high voltage grid, and includes major transmission links with other regions. About 45% of the electric power used in the Pacific Northwest comes from BPA-- power generated at 31 federal hydro projects, one nonfederal nuclear plant at Hanford, Wash., and some nonfederal power plants, such as wind projects. BPA also implements one of the world's largest fish and wildlife programs--over \$500 million annually.

BPA is a self-funding agency: it pays for its expenses through power and transmission sales. Both power and transmission are sold at cost, and BPA repays any borrowing from the U.S. Treasury with interest. Revenues BPA earns help the agency fulfill its public responsibilities—including investments in energy conservation and renewable resources. Because of the rapidly changing nature of electric markets and the timely needs of fish and wildlife mitigation and recovery efforts under the Endangered Species Act (ESA) and other legal protections, BPA must be able to make decisions and adapt quickly to changing circumstances. BPA needed a sound business plan to allow it to compete successfully in the market and continue to fulfill its public responsibilities. Such a business plan would clearly be a major Federal action requiring the preparation of an EIS. The challenge was how to ensure NEPA compliance while meeting the timing demands of competing in the market. The agency also needed to enhance understanding with other Federal and State agencies, more than 50 Tribes, special interest groups, electric utility customers, and the general public. This situation led BPA to rethink and reform its NEPA compliance strategy. BPA developed a methodology that allows the public and

other interested parties to be involved more directly in decisionmaking process in a more timely and appropriate way.

Project Description: Under both projects, BPA prepared a *policy-level* EIS. The intent was to take advantage of the years of environmental knowledge that had been developed and then return to the basics of environmental impact assessment. The impact assessment focused not only on the physical environment, but on the social and economic environments as well. It stressed the appropriate level of analysis for the level of decision being made. Or as the Section 1502.28 of the CEQ Regulations states: “. . . Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.” BPA also uses this process to ensure a closer relationship with the public during the decisionmaking process.

There are three basic components to this methodology:

- Relationship analysis
- Tiered RODs
- Public process

Relationship Analysis: This type of analysis uses the basic relationships between the agency's actions and the environment as they relate to air, land, and water impacts. Over the last several decades the US has developed a wealth of environmental impact knowledge from thousands of NEPA and other related documents. It is expedient to extract basic information and apply it to agency actions regardless of location differences. For example, the construction and operation of a combustion turbine (CT) generating facility has a standard set of air land, and water impacts (e.g., incomplete combustion of natural gas will lead to releases of NO_x, CO₂, and CO). No matter where the facility is constructed, these impacts will occur. The degree and the level of impact can vary depending on the mitigation applied and the surrounding environment. But if the analysis is done at the policy-level, decisions of specific facility locations are not yet relevant to the decisionmaking process (not ripe for decisionmaking). At the policy-level of analysis what is essential is to know what general direction policy decisions by the agency will take with regard to CT development within the sphere of influence (e.g., service territory). General decisions regarding the amount of megawatts needed within the service territory can be made and approximate amounts of air pollutants can be calculated. BPA has found, after years of modeling for all types of energy and environmental impacts, that the actual outcomes measured years later are many times inaccurate by more than ten fold. BPA has adopted a saying that, “it is better to be generally correct than precisely wrong.” In other words, it is better for the public to have a general understanding of what is to come from an agency's policy actions than giving a false sense of precision that is almost assuredly incorrect. To reach a level of competency for impact analysis that can account for where within the service territory a specific energy resource will be built is the next level of decisionmaking.

Tiered RODs: Agencies make decisions at several different levels. Typically those levels can include policy, program, and site-specific levels. By starting at policy-level decisionmaking and analysis, an agency can begin to focus its attention, as well as the

attention of the general public or interest groups, where the broad decisionmaking will take place (e.g., mission, legal mandates, or congressional/executive direction). If an analysis is done as described above, the agency can make a relatively global decision about its choices, informed of the cumulative effects. Following such a decision, the agency can then move towards preparing an impact assessment for a program or site-specific decision. Since the agency has already analyzed the impacts of the agency policy and made a decision which direction to take, it is poised to provide greater definition of impact assessment for implementing actions. Whether it is a program (e.g., group of projects or a particular way of doing a part of its mission) or site-specific actions, the agency can now clarify more clearly where and how the impacts described at the policy-level will occur. By conducting a public process to share and discuss such information with the public and other interested parties, the agency can create a “stair-stepping” of decisions to demonstrate how its decisions from the policy level relate and connect to decisions at the program or site-specific level. Thus, the agency’s obligation under NEPA to have a fully informed decisionmaker and public is met, as well as the requirement for preparing analyses and making decisions when an action is ripe for decisionmaking.

Public Process: None of the above steps can be completed without a thorough public process. Public process under NEPA is too often limited to only the meetings and documents prepared as part of the CEQ Regulations requirements. BPA has broadened its definition of public process to include those activities that are directly related to the policy, program, or site-specific action. It has been far more fruitful for BPA to integrate its NEPA process completely into the policy, program, or site management process. This allows the public and other interested parties to engage BPA at one time rather than having to attend multiple meetings on the same subject but through several different processes. This avoids confusion, duplication, and also facilitates joint internal agency decisionmaking by the executives or project managers with the environmental staff. The environmental aspects just become one of the many factors determining the agency decision.

Internet Sites: www.efw.bpa.gov/cgibin/PSA/NEPA/SUMMARIES/BP_EIS0183
and www.efw.bpa.gov/cgibin/PSA/NEPA/SUMMARIES/FishWildlifeImplementation

Value as a Practice:

- **Results:**
 - Able to make decisions at all levels (policy, program, or site-specific) more timely (e.g., can match rapidly changing market forces and the important needs of fish and wildlife that are in danger or threat of going extinct)
 - Achieve a high level “cumulative” analysis for agency business
 - Establish a level of analysis appropriate to the decision to be made (actions ripe for analysis and decisionmaking)

- Achieve a better understanding for the public and others, including internal to the agency, for the relationship among the different levels of agency decisionmaking
- Maintain a closer relationship with the public and interest groups regarding agency actions
- **Challenges overcome:**
 - Internal agency fear of NEPA process as a “speed bump” to decisionmaking
 - Executives, managers, and staff using the NEPA process to actually help clarify and make decisions rather than an “add-on” process
 - The agency’s tendency to desire large amounts of data and paperwork to support the agency’s position in court
- **Challenges remaining:**
 - To educate more of the BPA staff on the process and methodology
 - Continuing to demonstrate the value and the power of the policy-level analysis and tiered RODs concept
 - Educating more of the NEPA staff on applying the methodology
 - Continuing to innovate and make the process more powerful for decisionmaking and public process
- **Source of information/references:**
 - *Business Plan EIS* (DOE/EIS-0183), ROD, and numerous tiered RODs.
 - *Fish and Wildlife Implementation Plan EIS* (DOE/EIS-0312).
 - *Could the SEA-Directive Succeed within the United States?* Paper by P. Benjamin Underwood, Global Environmental Solutions and Charles C. Alton, Bonneville Power Administration for the International Association of Impact Assessment Conference, June, 2002.
 - *Social Impact Assessment —Rational Decisionmaking with Emotion..* Paper by Charles C. Alton, Bonneville Power Administration and P. Benjamin Underwood, Global Environmental Solutions and for the International Association of Impact Assessment Conference, June 2002.
 - *The Policy-Level “Programmatic” Impact Assessment – A Practical Methodology For Answering Tomorrow’s Questions Today.* Paper by Charles C. Alton, Bonneville Power Administration and P. Benjamin Underwood, Global Environmental Solutions and for the International Association of Impact Assessment Conference, June 2000.
 - *NEPA in a Changing World: Incomplete or Unavailable Information, Changing or New Information.* Paper by Katherine S. Pierce for U.S. Department of Justice National Environmental Policy Act Seminar, May 2001.

CASE STUDY: Bonneville Power Administration Programmatic Reviews with Tiered Site-Specific Analyses

CATEGORY: Programmatic Analysis and Tiering

PROJECTS: Bonneville Power Administration (BPA) Wildlife Mitigation Program, Watershed Management Program, and Transmission System Vegetation Management Program

PRACTICE: Programmatic EISs (one for each program listed above) identified and Records of Decision (RODs) established standards and guidelines for managing program implementation techniques; site-specific proposals for action are reviewed for conformance, new information, and unusual circumstances.

AGENCY: Bonneville Power Administration, U.S. Department of Energy

INVOLVED PARTIES: Northwest Power Planning Council; Columbia Basin Fish and Wildlife Authority

AGENCY CONTACT: Thomas C. McKinney, 503-230-4749, tcmckinney@bpa.gov

DATES: *Began:* 1997 *Ended:* Ongoing

Context/Background: The BPA Wildlife Mitigation and Watershed Management Programs involve BPA funding of projects proposed and managed by Columbia Basin state and tribal wildlife management organizations, landowners, conservation groups, local watershed councils, and other Federal agencies. The BPA Transmission System Vegetation Management Program uses several vegetation control methods to prevent vegetation from interfering with transmission facility operation and maintenance access. All three programs repetitively use multiple implementation techniques.

Project Description: For each program, BPA adopted standards and guidelines to ensure that individual projects are planned and managed with appropriate consistency across projects, jurisdictions, and ecosystems, as well as over time. The primary objective was to resolve issues in advance of project development while retaining appropriate project-specific flexibility. In support of these decisions, each programs' EIS: (1) identified all potential program implementation techniques; (2) generically evaluated the potential environmental impacts of each technique; (3) developed possible responses (strategies, goals, and procedural requirements) to mitigate potential environmental impacts and resolve issues; and (4) sorted and modified possible strategies, goals, and procedural requirements into alternative sets of standards and guidelines consistent with contrasting implementation priorities, and one alternative set consistent with blended priorities. (For the Wildlife and Watershed programs, these alternative sets of standards and guidelines all began with a common eight-step, ecosystem-based project planning process adapted from *The Ecosystem Approach: Healthy Ecosystems and Sustainable Economies*; see references below). Prior to project commitment, BPA reviews each specific project for conformance with the applicable

program standards and guidelines, and any significant new circumstances or information relevant to environmental concerns. If found to conform, and to lack significant new circumstances and information, BPA records the finding in a Supplement Analysis (SA) in accordance with 40 CFR 1502.9(c) and 10 CFR 1021.314 (Department of Energy NEPA Implementing Procedures).

Internet Site: www.efw.bpa.gov/cgi-bin/PSA/NEPA/Projects

Value as a Practice:

- **Results:** (1) incorporation of appropriate environmental protection measures into early project planning, (2) satisfied constituents, (3) more timely project-specific review, and (4) less expensive project-specific review.
- **Challenges overcome:** (1) Fear of change, and (2) confusion about and casual regard for project-specific review procedures.
- **Challenges remaining:** (1) To continue institutionalizing application of each program's standards and guidelines and (2) to adapt the standards and guidelines for continuous improvement.
- **Source of information/references:**
 - *Wildlife Mitigation Program EIS* (DOE/EIS-0246), ROD, and SAs 1 to 22.
 - *Watershed Management Program EIS* (DOE/EIS-0265), ROD, and SAs 1 to 89.
 - *The Ecosystem Approach: Healthy Ecosystems and Sustainable Economies*, a report of the Interagency Ecosystem Management Task Force, June 1995 (PB95-265583 at National Technical Information).
 - *A Handy Guide to Meeting Bonneville's Environmental Requirements Before the Funding of Your (Fish or Wildlife) Project*, Bonneville Power Administration, July 2001 (DOE/BP-3395).
 - *Transmission System Vegetation Management Program EIS* (DOE/EIS-0285), ROD, and SAs 1 to 109.