



CQ88

**Oak Ridge Reservation  
Local Oversight Committee**

August 23, 2002

NEPA Task Force  
Council on Environmental Quality  
P.O. Box 221150  
Salt Lake City, UT 84122

*Subject: Comments on Improvement and Modernization of National Environmental Policy Act (NEPA) Analyses and Documentation*

*Reference: Federal Register, Vol. 67, No. 131, Tuesday, July 9, 2002, pages 45510-45512*

Dear Madam or Sir:

The Citizens' Advisory Panel (CAP) of the Oak Ridge Reservation Local Oversight Committee, Inc. (LOC) is responding for your request for comments on how to improve NEPA documents. These comments should be attributed to the CAP only, as the LOC Board has not had the opportunity to address the issue.

The LOC is a non-profit regional organization funded by the State of Tennessee and established to provide local government and citizen input into the environmental management, decision-making and operation of the DOE's Oak Ridge Reservation. The Board of Directors of the LOC is composed of elected and appointed officials from the City of Oak Ridge and the seven counties surrounding and downstream of the Oak Ridge Reservation, and the chair of the CAP. The CAP is a stakeholder organization with up to 20 members with diverse backgrounds who represent the greater Oak Ridge Reservation region; the CAP supports Board interests by reviewing and providing recommendations on U.S. Department of Energy (DOE) decisions and policies.

General Comments

The CAP reviews NEPA documents produced by the DOE, primarily from the various offices at Oak Ridge Operations, but also occasionally others of national concern. In our experience, there are many more examples of poor documents than good ones. NEPA documents have become noticeably poorer in quality since DOE took responsibility for their production from the national laboratories and contracted this task to outside contractors, generally chosen for being the lowest bidders instead of the most technically competent.

As a general comment, the CAP has seen DOE use the NEPA process in a formulaic manner to justify decisions already made. In our experience, this type of abuse is more common at the site level. A typical strategy is to prominently highlight the preferred alternative and present inadequate alternatives as the only other options, instead of alternatives that are logical and reasonable.

For many DOE projects at the site level, the preparation or anticipated release of draft NEPA documents is announced and then frequently delayed indefinitely or withdrawn without explanation.

A major concern that the CAP has with NEPA is not addressed by the CEQ comment solicitation. Specifically, our organization foresees no realistic improvement in quality of analyses and consistent implementation of mitigating actions unless the NEPA process is overseen by a regulatory agency. To

---

**Anderson • Meigs • Rhea • Roane • City of Oak Ridge • Knox • Loudon • Morgan**

NEPA Task Force

08/23/02

Page 2 of 3

CQ 88

ensure follow-through, compliance with decisions made under NEPA should be legally enforceable by regulatory or oversight agencies.

### Specific Comments

Responses to specific questions asked in the July 9, 2002, Federal Register Notice are referenced to the original numbering below.

**A.1.** – An excellent source of data is the US Census Bureau. Too often NEPA documents copy from pre-existing EAs or EISs without updating demographic information. The recently released “*Draft EA for the Transfer of Facilities and Equipment to the United States Enrichment Corporation Centrifuge Research and Development Project at the East Tennessee Technology Park*” cited 1990 data for housing in Oak Ridge. A related problem that is repeatedly seen is the citing of data that stakeholders have corrected on previous EAs, leading to the conclusion that preparers are relying on uncorrected drafts as sources. A recurring example is the inclusion of maps with an incorrect Oak Ridge Reservation boundary.

**A.5. and A.6.** – E-mail is the primary and preferred method for conveying or receiving information about proposed actions and communicating with members of the CAP and other interested stakeholders. The CAP often passes comments around via e-mail for review and approval. The Internet is useful for retrieving NEPA documents and finding related reference materials.

**A.7.** – Increased security concerns are seriously diminishing the quality of information available to the public. Much of the censorship is aimed at maps that already have been widely disseminated in the public domain. Documents subjected to such censorship are difficult to interpret due to the deleted or low-resolution maps and related information. Additionally, we are troubled by the inconsistency we have seen among DOE sites on the availability of both historic and time-sensitive review drafts of public documents in electronic format.

**B.2.** – The desire of the lead agency to pursue its preferred alternative can hinder entering into an effective collaborative agreement with another involved agency. An example of this was the “*Draft Environmental Assessment for the Floodplain Strip Adjoining the Boeing Property*” (DOE/EADRE-006). This DOE Oak Ridge Operations Office EA assessed a proposal for the sale (to a real estate developer) of about 200 acres of DOE-owned floodplain/wetland land in a narrow strip along the shoreline of a Tennessee Valley Authority (TVA) reservoir. TVA has active management responsibility for the reservoir, has jurisdiction by law over this floodplain property, had previously made a formal request to have the land conveyed to TVA, has relevant expertise not directly available to DOE, and asked informally to be a cooperating agency in the EA. The CAP believed that the document would have benefited greatly by having the TVA as a cooperating partner with the DOE and said as much in comments submitted November 29, 2000 concerning the draft EA. DOE refused to involve TVA as a cooperating agency, probably because DOE was in a hurry to implement its preferred alternative of transferring the land to the developer and feared that TVA's involvement would hinder its implementation of a decision that essentially had been made before the EA was started.

**C.1.** – Programmatic reviews seem most appropriate for issues with multiple overarching effects. A major DOE example is the Yucca Mountain Project. When the decision is then made to go forward with an action, tiered analyses can be accomplished based on more specific plans or local actions that will depend on the ability to dispose of high level waste at Yucca Mountain. The best way to avoid duplication is to reference the Final EIS when evaluating alternatives for transportation plans, sequenced

NEPA Task Force  
08/23/02  
Page 3 of 3

CQ88

waste disposal, or whatever the next level decision may be. When possible, programmatic reviews need to identify and include a thorough analysis of site-specific impacts; such analyses then can form the basis for additional tiered documentation.

Programmatic reviews are also appropriate for long-term planning purposes. For example, the Oak Ridge Reservation should have had a site-wide (equivalent to programmatic) EIS in order to better guide decision-making on the use of Reservation lands, impacts of reindustrialization, siting of the Spallation Neutron Source, and other decisions that instead have been addressed in a piecemeal fashion. This allows DOE to ignore the broader impacts of the many actions and instead approve individual actions leading to incremental environmental degradation.

E. – DOE has used categorical exclusions to avoid addressing some of their biggest problems. A basis and process for establishing categorical exclusions is needed to avoid such abuse of the option. An example is mercury in wastes, a categorical exclusion for DOE's "broad spectrum" waste treatment action in the early 1990s. The purpose of the action was to put several different waste streams out for bid by outside contractors for treatment and disposal, and DOE did not want to address the complicating issue of mercury as a particularly problematic contaminant. Certainly Oak Ridge stakeholders would be opposed to mercury content becoming a categorical exclusion when applied to other actions on the Oak Ridge Reservation, because it is one of the major contaminants of concern in a variety of waste streams and polluted lands and water bodies.

The CAP appreciates the opportunity to comment on problems we see with DOE's implementation of NEPA and provide suggestions on how to improve the analyses and documentation.

Sincerely,



Norman A. Mulvencov  
Chair, LOC Citizens' Advisory Panel

cc: LOC Document Register  
LOC CAP  
LOC Board  
John Owsley, Director, TDEC DOE-O  
Pat Halsey, FFA Administrative Coordinator, DOE ORO  
David Mosby, Chair, ORSSAB  
Michael Holland, Acting Manager, DOE ORO