

CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES

TRIP REPORT

SUBJECT: National Association of Environmental Professionals 26th Annual Meeting
Professional Development, Fiscal Year 2001
(20.01402.158)

DATE/PLACE: June 24–27, 2001
Arlington, VA

AUTHOR: D.R. Turner

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PERSON PRESENT: D.R. Turner

BACKGROUND AND PURPOSE OF THE TRIP:

The National Association of Environmental Professionals (NAEP) is a multidisciplinary association involved in advancing the practice of environmental science both internationally and in the United States. Each annual conference is divided into a number of technical and programmatic “tracks” that focus on a particular aspect of environmental practice. Reflecting the diversity of environmental issues, the membership of NAEP includes technical, regulatory, and legal professionals. The conference is relatively small (about 250 registered attendees) and has a broader aspect than strictly technical issues. This year, the annual conference was held in the Washington, DC area. Perhaps for this reason, the attendance seemed to be skewed towards regulatory, legal, and management aspects of current environmental practice. The tracks considered for the 2001 conference included:

- Environmental Policy in the Department of Defense
- Ethics
- National Environmental Policy Act Symposium
- Public Participation
- Regulatory Practice
- Science and Technology/Environmental Management Systems
- Sustainable Development
- Training and Higher Education
- Transportation
- Utilities
- Watershed and Land Management

Discussions in these areas include oral and poster presentations, panel discussions, luncheon speakers, and working group meetings. An electronic version of the proceedings volume for the conference is available from the author.

MEETING SUMMARY:

Before the official beginning of the conference, I attended two short courses offered by NAEP. The first outlined the process involved in becoming a certified environmental professional (CEP). This is a board type of certification rather than certification by examination. The CEP is a fairly recent certification, but judging from the attendees at the conference, is becoming more common. Although it does not carry the same weight as a P.E. or a membership in a state bar association, it provides a means for providing a "seal-of-approval" and lending credence to environmental work.

The second short course covered current practice in mitigation under NEPA. The focus of this short course (taught by two lawyers), was on the prevailing practice of using mitigation during preparation of environmental assessments to reach a finding of no significant impact (FONSI) and avoid preparing an environmental impact statement (EIS). The course instructors used examples of inadequate mitigation analyses that were challenged in court as case studies. These mitigation analyses were typically too general in nature, and did not provide enough detail to understand what was being mitigated, who was performing the mitigation, or what criteria were to be used to judge the success of the proposed mitigation.

A number of the tracks covered at the NAEP annual conference are not closely associated with current activities at the Center for Nuclear Waste Regulatory Analyses (CNWRA). There were, however, a number of sessions related to the NEPA process that is part of the high-level waste program as well as our non-Nuclear Waste Policy Act work for NRC. I have provided a brief summary of the topics covered in the NEPA sessions.

The current status of NEPA was addressed in a series of panel discussions with agency officials, contractors, and environmental law specialists. Based on comments from the panelists and questions from the audience, there were several underlying concerns, many of which should be familiar to us as participants in radioactive waste management programs. These include:

- Documentation of the NEPA process. One of the key goals of NEPA is public disclosure of environmental impacts considered in the decision making process. Documentation of how decisions were reached is an important part of the disclosure process, and is particularly critical given the litigiousness associated with many projects subject to NEPA.
- An early start to the NEPA process is critical for success, but "how early is early" often varies depending on point of view. For example, a NEPA manager wants to start as early as possible, but agency general counsel may want to wait until other programmatic concerns are resolved and the time is "ripe" for starting public disclosure through the NEPA process. This can reduce the time available for implementing NEPA, however, and may lead to problems with regard to public participation.
- NEPA is a procedural law to bring environmental impact considerations into a federal agency's decision making process. Because it is procedural, NEPA provides for no specific enforcement to put teeth into decisions based on environmental considerations, and many agencies are not yet comfortable pushing environmental issues as part of their statutory

responsibilities. NEPA implementation is complicated further by real (or perceived) competition for scarce resources between agency mission (those things an agency is legally responsible for) and the NEPA process.

- New technology is having growing pains as it gets incorporated into the NEPA process. This includes the use of the Internet in the scoping process, public document availability, and GIS analysis for a given process.
- There is an increased focus on programmatic EISs for issues of national concern. This leads to increasingly complicated documents that may require coordination among dozens of federal, state and local agencies. More complicated NEPA documents also result in a need for more detailed analyses of indirect and cumulative impacts.
- Improved monitoring is needed to determine the effectiveness of assumptions and predictions made in the original NEPA analysis. The potential need for long-term monitoring places a premium on establishing baseline conditions. Long-term monitoring also means that the NEPA process may not be complete with the issuance of a FONSI (environmental assessment) or a Record of Decision (EIS), and additional public disclosure may be necessary as monitoring results become available. Monitoring has also opened up interest in adaptive management techniques to modify original commitments (mitigation, license conditions, etc.) if results indicate that the environmental impact analyses were off the mark.
- Public outreach is becoming more important, placing a premium on expressing complicated scientific concepts in terms that are easy to understand. In addition, methods of interacting with the public are also undergoing a change, with more emphasis on the Internet as opposed to public reading rooms and public meetings. This expands the likely audience for a NEPA document, and may lead to more contention and more litigation.
- Although NEPA practitioners would like to have general guidelines and methodologies, they are pushed to tailor the NEPA process for a specific proposed action at a specific site. Defining action/site-specific information is becoming more difficult as NEPA documents focus on programmatic requirements and become more complex.
- To treat mitigation, monitoring, and cumulative impact assessment, NEPA practice is extending out to further times. Several panelists commented on the difficulties in making predictions out to 30 yrs. Neither I nor the NRC staff in attendance at the conference raised the regulatory time frames for radioactive waste management.
- Recent guidance from both EPA and the Council on Environmental Quality is now available to help conduct environmental justice analyses as part of the NEPA process. Up until now, the EPA has been slow to act on a number of petitions received claiming discrimination under Title VI of the Civil Rights Act as part of environmental justice. Litigation based on environmental justice in NEPA is now starting to work its way through state and federal court systems, but court decisions handed down in April of this year are not consistent.

SUMMARY AND CONCLUSIONS:

The NAEP annual conference is a good place to meet NEPA practitioners and learn the latest developments in NEPA implementation. It is useful to get outside of the technical community and hear different perspectives in what is inherently a legal and procedural process. It was surprising to learn that even after more than 30 yrs, there are still questions regarding NEPA implementation, and the treatment of NEPA among different federal, state, and local agencies is still inconsistent. As part of our work for the NRC, it is important for CNWRA staff to attend these types of conferences to learn the state-of-the-art in NEPA practice.

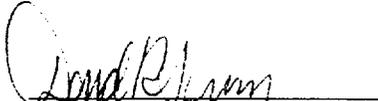
PROBLEMS ENCOUNTERED:

None.

PENDING ACTIONS:

None.

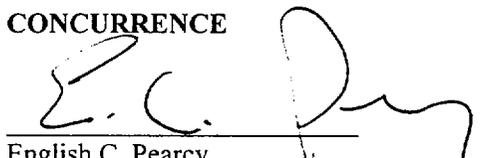
SIGNATURE



David R. Turner

07/12/2001
Date

CONCURRENCE



English C. Percy
Manager, Geohydrology and Geochemistry

7/12/2001
Date



Budhi Sagar
Technical Director

7/12/2001
Date