

# **CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES**

## **TRIP REPORT**

**SUBJECT:** 32<sup>nd</sup> Annual Meeting of the National Association of Environmental Professionals (AI No. 06002.01.011.052)

**DATE/PLACE:** April 22–25, 2007, Orlando, Florida

**AUTHOR(S):** D. Turner

**PERSONS PRESENT:** Approximately 250 members of the National Association of Environmental Professionals

### **BACKGROUND AND PURPOSE OF MEETING/TRIP:**

The purpose of this trip was to participate in a training course in National Environmental Policy Act (NEPA) reviews and to attend the annual meeting of the National Association of Environmental Professionals as part of the Center for Nuclear Waste Regulatory Analyses (CNWRA) program for professional development. The meeting consisted of 28 technical sessions focused on environmental topics such as science education, NEPA, transportation, sustainability, public outreach, and urban planning. The NEPA sessions were particularly useful, as the topics covered for improving NEPA analysis and documentation are directly relevant to the environmental reviews conducted by the U.S. Nuclear Regulatory Commission (NRC) as part of its licensing process.

### **SUMMARY OF PERTINENT POINTS AND ACTIVITIES:**

The technical program for this and other National Association of Environmental Professionals events is located at <[www.naep.org](http://www.naep.org)>. Most of the courses that the author attended were focused on NEPA practice. Although not explicitly related to the NRC NEPA process, many of the discussions and presentations offer insights into NEPA implementation at other agencies that can potentially benefit and improve NRC environmental reviews. The most pertinent points and presentations are summarized next.

The author attended a one-day short course Writing the Perfect Environmental Assessment/Finding of No Significant Impact, or Environmental Impact Statement (EIS). The course was led by O. Schmidt, an attorney with the Department of Agriculture, and J. Melton, the current president of the National Association of Environmental Professionals. The materials provided with the course included a compilation of court decisions that have helped to shape the NEPA process. The instructors used NEPA case law to structure an approach for developing concise documents that meet NEPA requirements. The authors recommend focusing early effort on developing alternatives and describing the proposed action, as this can more firmly establish the scope of the review and streamline documentation of the impact analysis. Case studies were used to explore strengths and weaknesses of various analyses.

L. Swartz (Battelle Memorial Institute) described quantitative scoring criteria used to evaluate alternatives for a programmatic EIS that the U.S. Department of Energy (DOE) prepared for a power plant as part of a public/private consortium. This systematic approach allowed the project proponent to work with DOE and establish a technical basis to eliminate a number of alternatives early in the process. Reducing the number of alternatives helps to streamline the NEPA process, and early involvement of the public and other stakeholders in developing screening criteria should help to reach a decision.

L. Swartz presented a summary of NEPA case law from 2006. This was an annual update to a summary that she began preparing in 2000. During 2006, there were 28 substantive NEPA court decisions, and the agency decision was upheld only about half of the time. There were 10 Federal agencies named, but more than half of the cases involved the U.S. Forest Service and the Bureau of Land Management. Generally, courts continue to uphold decisions where the agency demonstrated that it took a "hard look" at potential environmental impacts. The courts also strengthened recent interpretations that cumulative impacts must be considered in NEPA analysis, except where future actions are speculative. Ms. Schwarz discussed the recent 9<sup>th</sup> Circuit Court decision on the Diablo Canyon independent spent fuel storage facility, noting the potentially far-reaching effects on environmental analysis. In addition, she discussed a 9<sup>th</sup> Circuit Court decision supporting the preparation of a programmatic environmental impact statement for general impact assessment of resource exploitation, with subsequent tiered analysis to support site-specific decisions.

M. Smith (Humboldt State University) presented a summary of litigation related to cumulative impact assessment. In 2006, there were 8 (out of 28) court decisions related to cumulative impact assessment, and 5 were decided in favor of the agency decision. The most common challenge to agency cumulative impact assessments is that analysis of other actions was inadequate, and the courts give additional weight to examples where there is clear evidence of consultation with agencies that have special expertise relevant to the analysis. Challenges were upheld in two cases related to mining where the court determined that the agencies did not include an adequate analysis of existing and planned mines in the vicinity of the proposed action.

D. Batts (Environmental Management and Planning Solutions, Inc.) presented the results of a study of Environmental Protection Agency (EPA) ratings of EISs from 1995–2006. The analysis noted that only about half of the EISs produced since the mid-1990s are available on the Internet. The study authors noted differences in ratings by EPA region, time, and presidential administration. For example, there has been a slight increase in the top two EPA ratings (Lack of Objections and Environmental Concern), while there has been a decrease in the number of Environmental Objection ratings issued, and the Environmentally Unacceptable rating has virtually disappeared. In addition, the study noted that EPA Region VIII (Intermountain West) tends to issue a larger number of Environmental Concerns ratings, while Regions 6 (South Central) and 7 (Great Plains) tend to have a higher number of Lack of Objections ratings. The authors caution that the data need additional study to determine underlying causes of these trends.

B. Smythe and H. Greczmiel made separate presentations on NEPA-related developments at the Council on Environmental Quality. Several handbooks and guidance documents have been issued recently to implement recommendations made by the 2003 Task Force on Modernizing NEPA. The presenters both noted a general change in proposed environmental legislation with

the change in control of Congress. Prior to the 2006 elections, most bills proposed specific language to constrain NEPA and expedite projects. In contrast, legislation proposed during 2007 has mandated compliance with NEPA, and there have been no new calls for NEPA reform. As an example, a separate 2005 initiative in the U.S. House of Representatives to reform NEPA has apparently ended without any proposed legislation.

There were two sessions on improving the quality of NEPA documents. During these sessions, there was a great deal of interest in a recent EIS produced by the Washington State Department of Transportation. The EIS was prepared with the help of a professional graphic document specialist and used figures, graphics, tables, and appendixes to reduce the length of the document. Other steps to improve readability included larger line spacing and a larger 11- x 17-in format. One additional result of this effort was a reader-friendly toolkit (located on the Internet at <<http://www.wsdot.wa.gov/TA/T2Center/ToolKitDocument.pdf>>) to help NEPA professionals produce more concise reports. Transparency and traceability were discussed in the context of plain language to ensure that the important details of the analysis are adequately addressed in the attempt to produce shorter documents.

**IMPRESSIONS/CONCLUSIONS:**

This annual meeting is divided into roughly equal technical and programmatic parts. Although a number of the sessions (e.g., Brownfields Remediation) are not directly related to NRC environmental reviews, the NEPA track contains presentations that are relevant to CNWRA activities for NRC. Keeping current in recent developments in NEPA case law, Council on Environmental Quality guidance, NEPA best practices, and Congressional initiatives is important to ensure that environmental reviews conducted for NRC continue to meet NEPA requirements.

**PROBLEMS ENCOUNTERED:**

None.

**PENDING ACTIONS:**

None.

**RECOMMENDATIONS:**

The National Association of Environmental Professionals annual conference is perhaps the best venue for keeping abreast of changes in NEPA and environmental review practice. It is a relatively small meeting, with an agenda that provides many networking opportunities to identify potential new hires, consultants, and subcontractors. The theme of the 2008 annual meeting will be changing climates, with possible special sessions on energy, environmental/homeland security, and public participation. NRC and CNWRA staffs should submit any abstracts by the September 10, 2007, deadline.