

BACKGROUND

The National Environmental Policy Act, 42 U.S.C. §4332(2)(C) ("NEPA") requires the promulgation of an Environmental Impact Statement ("EIS") prior to the undertaking of any major federal action which may have a significant impact on the environment.

NEPA became the law of the land in 1970. Throughout most of the thirty-year history of the law, the United States Department of Energy ("DOE") excused itself from the obligations of the law at its defense nuclear weapons production facilities, citing the Atomic Energy Act of 1954. (42 USC §2011 *et seq.*) In the mid-1980's, due to a succession of events which began in Oak Ridge, Tennessee, DOE became responsive to its obligations under NEPA in areas related to environmental restoration, preparing internal rules for the promulgation of Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements.

Regarding nuclear weapons production activities, however, the story remained as it had been—the Atomic Energy Act trumped NEPA. Even in the very few instances when DOE prepared an Environmental Assessment, it did so in secret; public participation, a fundamental and essential element of NEPA (40 CFR § 1500.1(b)), was considered optional. In 1992, a DOE spokesperson stated publicly that DOE policy in Oak Ridge, Tennessee, did not include the participation of the public in the preparation of Environmental Assessments.

In 1994, the Secretary of Energy, Hazel O'Leary, made explicit in her Guidance for the implementation of the National Environmental Policy Act (*Effective Public Participation under the National Environmental Policy Act*, US DOE, Office of NEPA Policy and Assistance, December, 1994) that public participation was not only required by law, it was, as the law had recognized, essential to the purposes of NEPA. The result sought by NEPA, a fully informed decision by an agency, could be reached only with the full participation of the public.

As a result, in 1994, the public was invited to participate in the first-ever environmental review of nuclear weapons production-related activities on the Oak Ridge Nuclear Reservation. An Environmental Assessment was prepared to review the impacts associated with the continued Proposed Interim Storage of Enriched Uranium Above the Maximum Historical Storage Level at the Y-12 Plant, Oak Ridge, Tennessee, September 1994 (DOE/EA 0929). In the process of issuing a Finding of No Significant Impact (September 14, 1995) that resulted from the Environmental Assessment on Enriched Uranium storage, DOE acknowledged, in a letter dated August 28, 1995 from Victor H. Reis, Assistant Secretary for Defense Programs, that "the Department has determined that it will be desirable to prepare" a site-wide Environmental Impact Statement for the Y-12 nuclear weapons plant in Oak Ridge. (Correspondence from Victor H. Reis to Ralph Hutchison and the Oak Ridge Environmental Peace Alliance, August 28, 1995)

On March 17, 1999, DOE published a Notice of Intent to prepare a Site-Wide Environmental Impact Statement for the Y-12 Nuclear Weapons Plant in Oak Ridge, TN. Scoping meetings were held in April, 1999, and a public information session was held in September, 1999, by DOE. A Draft of the Environmental Impact Statement was promulgated in February, 2000. The Draft EIS was actually published on December 26, 2000.

The starting point for the Y-12 Site-Wide EIS, according to DOE, is a series of decisions recorded in the mid-1990's as a result of three studies: the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management ("SSM PEIS"), the Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement ("S&D PEIS"), and the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement ("S-HEU EIS"). The Y-12 Site Wide EIS is being prepared to "review actions that could implement decisions made" in the Records of Decision for the SSM PEIS, the S&D PEIS, and the S-HEU EIS.

THE OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE

These comments are provided for the record by the Oak Ridge Environmental

Comment No. 2 (cont.)

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Chapter 1. The cumulative impacts to ORR and the area around Y-12 are included in Chapter 6, Cumulative Impacts. Volume I, Chapter 5, Section 5.12 addresses occupational and public health and safety impacts, and Volume II, Appendices D and E provide further detailed analyses on human health effects from normal operations/facility accidents and air quality, respectively.

The purpose of the NEPA process is to ensure that accurate environmental studies are performed; that they are done with public involvement; and that public officials make decisions based on an understanding of the environmental consequences. It is a well established principle under NEPA that the purpose and need of a proposed action should delineate the limits of the reasonable alternatives to the action. That is, an alternative that does not accomplish the agency's goals is not a reasonable alternative. As explained in Volume I, Chapter 2, the purpose of the proposed action is to implement the programmatic decisions on Y-12 previously announced in the RODs for the SSM PEIS and the S&D PEIS. DOE believes that the Y-12 SWEIS discusses all of the reasonable alternatives for maintaining the assigned nuclear weapons support mission at Y-12 and evaluates the reasonable alternatives for modernizing the HEU Storage and Special Materials missions at Y-12 to maximize efficiency, cost-effectiveness, and ES&H goals.

While the proposed HEU Materials Facility and the Special Materials Complex have progressed to the conceptual design level, other facilities at Y-12 considered for modernization are still in the very early planning phase and are not proposed (i.e., conceptual design has not begun) at this time. Table 3.3-1 provides a summary of the potential new facilities. None of potential future modification projects are included in the No Action - Planning Basis Operations Alternative. Two modernization projects are included in the action alternatives for the Y-12 HEU Storage Mission and Special Materials Mission. If and when new modernization projects are proposed for Y-12, separate