

Regulatory Review and Characterization

SPR sites are analogous in their mission and the applicability of Federal environmental regulations. However, that SPR sites are located in both LA and TX presents a unique situation relative to the surrounding environment, any particular environmental challenges, and state regulatory requirements. Thus, for each site and the SPR program as a whole, relevant state and Federal statutes, regulations, and agency guidance and Federal EOs were summarized and analyzed for applicability. Applicable Federal and state statutes and regulations and Federal EOs are presented as Attachment F. In further consideration of each site's unique setting, a site-specific determination of the need to prepare a new EIS or SEIS based on the particular state regulations applicable to that site is necessary. Likewise, an evaluation of the SPR as a program must be conducted to determine whether the original programmatic EISs still adequately address the potential cumulative impacts of both state and Federal regulations that have been amended and/or newly enacted.

Evaluation of compliance with current environmental laws is appropriate as new statutes, regulations, and executive orders have been promulgated since the inception of the program. It is important to note, however, that new statutes or regulations do not necessarily constitute a change in the proposed action or new information such that they could compel preparation of a new EIS or SEIS. Further, according to CEQ regulations, an activity may be considered significant when it threatens a violation of Federal, state, or local law or requirements imposed for the protection of the environment and as such may provide a basis for preparation of a new EIS or SEIS. Thus, compliance with applicable regulations does not ensure that the threat of a violation is not present, or that the effects to the environment are insignificant, or that a new EIS or SEIS is not necessary. Analysis is required for completeness and documentation of analysis is provided in the checklists in Attachment J. Only statutes, regulations, guidance, and/or executive orders that were further assessed for significance are discussed in the following subsections.

State and Federal Statutes and Regulations

Potentially significant state regulations were analyzed and an evaluation of potential significance was provided by ICF in Attachment E. Additional analysis was performed by the M&O Contractor relative to the site-specific and programmatic effects of the overall regulatory environment. Thorough analysis indicates that it is more likely that SPR compliance with said regulations conferred a benefit to the environment. Since 1993, DM, the current DOE M&O

Contractor for the SPR, has focused on attainment of environmental excellence. The SPR's charter membership in the EPA's National Environmental Performance Track program (P-Track) constitutes validation that, under DM's contract, the SPR Environmental Program has achieved a level of performance beyond minimum compliance criteria. The applicability and potential significance of state and Federal statutes and regulations are addressed at the site level in the subsection, "Site-Specific Applicability" and at the programmatic level in the subsection "Programmatic Applicability" below.

Site-Specific Applicability

A review of all applicable state and Federal statutes and regulations indicated compliance and conformity at all sites. Regular regulatory reviews are conducted to maintain awareness of any regulatory changes potentially affecting the SPR and to allow reaction time should action be required to maintain compliance. Most recently, activities to maintain compliance include modification of the NEPA process to accommodate DOE guidance regarding 2003 amendment of 10 CFR 1022 (floodplain/wetlands assessment and review). To ensure that the requirements of this regulation are met, assessment of floodplains/wetlands has been added as a specific aspect for assessment during the NEPA process. As well, in 2001, the SPR received concurrence from both Texas and Louisiana regarding Clean Air Act conformity in accordance with amendment to applicable state and Federal regulations and DOE guidance.

Additionally, the effects of site operations and discharges were evaluated. In light of site participation in several *voluntary* environmental excellence programs and DOE's objective of continuous improvement, it was determined that the standard established on the SPR as a program and at each SPR site far exceeds the mere minimum requirements of state and Federal statutes and regulations pertaining to environmental impacts and safety. Operations at SPR sites are governed not only by state and Federal regulations, but also by strict internal requirements, and occur "only in an environmentally responsible manner" according to policy.

Currently, each site operates under a centralized environmental management system (EMS) conformant with International Organization for Standardization (ISO) 14001, and DM has voluntarily attained and maintains certification to the ISO 14001 standard. Further, DM has also attained accreditation in the ISO 9001 Quality Management Program. DM's memberships include membership in EPA's P-Track, which consists of one registration that includes all five sites as members based on their operation under the EMS, and membership in state initiatives such as the Clean Texas/Cleaner World program and the Louisiana

Environmental Leadership Program (LAELP). In conjunction with these, each site has individually attained Occupational Safety and Health Administration (OSHA) Voluntary Participation Program (VPP) Star status as well as DOE VPP Star status, to emphasize a safe working environment for employees. Attainment of these indicates that the SPR has achieved excellence in providing a safe work environment as well as environmental excellence

In order for each site to attain these accreditations, they must demonstrate conformance with the environmental excellence initiatives of each program. For continued participation in many programs, continuous improvement objectives are required. Thus, each site is continually striving to further decrease any environmental burdens associated with its operations. Based on the sites continued compliance and dedication to operation only in an environmentally responsible manner, no further assessment is recommended.

Programmatic Applicability

A review of all SPR sites including non-facilities indicates that the SPR as a program is managed to far exceed compliance and conformity with all applicable statutes and regulations. The participation in several *voluntary* environmental excellence programs and objective of continuous improvement is applied throughout the SPR program as evidenced by the membership in P-Track under DM's contract and the various SPR initiatives and programs that have achieved award-winning status for environmental excellence. Participation in these has been largely the result of implementation of the centralized EMS that conforms with ISO 14001, DM's voluntarily attainment and maintenance of certification to the ISO 14001 standard, and internal requirements such as Pollution Prevention (P2).

Membership in P-Track is accompanied by a requirement that the SPR set and meet objectives for continuous improvement to reduce environmental burdens at a program level. As well, internal requirements such as P2 are continuous improvement requirements to reduce overall waste through preventative measures such as education and source reduction as well as responsive measures such as recycling and reuse. Thus, the SPR program is continually striving to improve its operations and reduce operational impacts on the environment. Based on the SPR's record of compliance and its recognition for environmental excellence, no further assessment is recommended.

Executive Orders

All EOs that have been amended or enacted since the original EISs were published were evaluated for potential effects on the SPR. Only EOs with potentially significant effects were analyzed and an evaluation of potential significance was provided by ICF in a submittal received September 26, 2003 (See Attachment G). Additional analysis of site-specific and programmatic effects of these was performed by the M&O Contractor as necessary and where indicated by screening. Analyses conducted relative to both the applicability and potential significance of Federal EOs 12898 and 13045 are addressed at the site level in the subsection, “Site-Specific Applicability” and at the programmatic level in the subsection “Programmatic Applicability” below.

Site-Specific Applicability

A review of all applicable Federal EOs indicated that sites were compliant with the nearly all applicable EOs. Sites had not, however, been assessed concerning the newer EOs regarding environmental justice (EJ) and protection of children, 12898 and 13045, respectively. Prior to a determination of compliance, assessment of each site was conducted utilizing accepted EPA National guidance and Region 6 methodology.

Executive Order 12898 – Environmental Justice

Assessment to determine if sites were compliant was performed by ICF using an EPA Headquarters screening tool applied to current socioeconomic data. Guidance associated with the screening tool utilizes a 50% minority population threshold and a 50% impoverished population threshold to determine whether the area adjacent to a site has the potential to be classified as an EJ community. Results indicated that one TX site, Bryan Mound, had an adjacent population that was greater than 50% minority and 36% impoverished and one LA site, Bayou Choctaw, had an adjacent population that was greater than 41% minority and 33% impoverished. As these sites exhibited characteristics that indicated that there was a potential for classification of adjacent communities as EJ communities, these were selected for further analysis. Refer to Attachment G for the ICF report regarding analysis of this data, and Attachment H for calculations and supporting documentation. Assessment was then performed for both sites by the M&O Contractor using a regional screening tool, the *Environmental Justice Index Methodology* (EPA, 1996). The methodology prepared by Region 6 utilizes a ranking system and equation to determine whether an area is vulnerable as an EJ

area. Essentially, the methodology utilizes a generalized population density factor ranking system coupled with a ranking system based on state poverty and minority averages to populate a 'degree of vulnerability' equation regarding the area. Degrees of vulnerability range from 1 to 100 and degree of vulnerability of an area increases with increasing values. Neither of the SPR sites evaluated using this methodology had a degree of vulnerability over 3, which is the threshold for further consideration. See Attachment M for calculations supporting this analysis.

Executive Order 13045 – Protection of Children

Assessment was performed to determine if sites were compliant. The percentage of the population comprised of children in the affected county adjacent to the site was compared to the percentage of the population comprised of children in the state where the site was located. Only one site, Bryan Mound, had a greater percentage of population which was comprised of children than the state in which it was located. All other sites were located in areas where the percentage of the population comprised of children was less than the state average. The percentage of the population comprised of children near the BM site was 12.6% while the average for the State of TX is 9.3%. Although there are 36% more children in the population of the affected county, relative to the protection of children, consideration of the isolated and secured location of the site approximately 2.2 miles away from residential areas, schools, playgrounds or other sensitive populations significantly decreases the likelihood of exposure of children that is substantially greater than exposure in other locales. That the site is isolated in a secluded location on the [REDACTED] that it has controlled entry due to fencing and other security measures, and that it has limited accessibility via a small levee road, all combine to negate any need for further assessment.

Programmatic Applicability

A review of all applicable Federal EOs indicated that the program was compliant with the nearly all applicable EOs. The program had not, however, been assessed concerning the newer EOs regarding EJ and protection of children, 12898 and 13045, respectively. Prior to a determination of compliance, assessment of SPR programmatic entities such as pipelines was conducted utilizing accepted EPA National guidance and Region 6 methodology.

Executive Order 12898 – Environmental Justice

As EJ is primarily concerned with the siting of facilities in impoverished and/or minority communities, an assessment was performed for each site to determine if

sites were compliant. As discussed in the previous sections, populations directly adjacent to SPR sites either did not possess characteristics that would serve to classify them as EJ communities or were not vulnerable to classification as an EJ community based on comparison to state and/or regional factors.

However, as the SPR consists of programmatic entities such as pipelines, additional analyses of these were also undertaken. As stated above, guidance associated with the screening tool utilizes a 50% minority population threshold and a 50% impoverished population threshold to determine whether the area adjacent to a pipeline has the potential to be classified as an EJ community. Results indicated that two [REDACTED] pipelines, [REDACTED] which had an adjacent population that was greater than 42% minority and 25% impoverished and [REDACTED] which had an adjacent population that was greater than 25.2% minority and 7.3% impoverished exhibited characteristics that indicated that there was a potential for classification of the adjacent communities as an EJ community. Thus, these pipelines were selected for further analysis. Refer to Attachment G for the ICF report regarding analysis of this data, and Attachment I for calculations and supporting documentation. Additional assessment was then performed for both pipelines as it was for the sites, i.e. via the *Environmental Justice Index Methodology* prepared by Region 6. Neither of the SPR pipelines evaluated using this methodology had a degree of vulnerability over 3, which is the threshold for further consideration. Consequently, further analysis was not required. See Attachment N for calculations supporting this analysis.

Executive Order 13045 – Protection of Children

Assessment was performed to determine if the SPR as a program was compliant. An average of the percentage of the population comprised of children in the population adjacent to SPR pipelines was compared to an average of the percentage of the population comprised of children in TX and LA, the two states where all SPR pipelines are located. As a whole, the SPR pipelines program-wide are located such that, in areas adjacent to these, the percentage of the population comprised of children is comparable to an average of the states over which the sites range. Further assessment was not required.

Conclusion

The results of the regulatory review relative to each site and the SPR as a program were consistent with the outcome in *National Indian Youth Council v. Watt*, 664 F.2d 220 (10th Cir. 1981) in that there were no state and/or Federal regulations that constituted new information such that it would/could provide a basis for preparation of a new EIS or SEIS. Initial review of the Federal EOs,

however, indicated that further assessment of EOs 12898 and 13045 were necessary to determine compliance. Analysis of each site and SPR programmatic entities indicated that sites were compliant with the spirit and the letter of these and would provide no foundation for preparation of a new EIS or SEIS.