

# Management of Cultural Resources at Department of Energy Facilities

- BACKGROUND:** The Department of Energy (DOE) recognizes the cultural and scientific value of the cultural resources that may exist on the properties under its management or over which it has direct or indirect control. Therefore, DOE has implemented a program to protect these resources and ensure that all DOE facilities and programs comply with all existing cultural resource executive orders, laws, and regulations.
- STATUTES:** Antiquities Act of 1906; Historic Sites Act of 1935; National Historic Preservation Act of 1966, as amended (NHPA); Archaeological and Historic Preservation Act of 1974; American Folklife Preservation Act of 1976; American Indian Religious Freedom Act of 1978 (AIRFA); Archaeological Resources Protection Act of 1979, as amended (ARPA); Abandoned Shipwreck Act of 1987; and Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).
- ORDERS:** Executive Order 11593, Protection and Enhancement of the Cultural Environment.
- REGULATIONS:** 36 CFR 60: National Register of Historic Places; 36 CFR 61: Procedures for Approved State and Local Government Historic Preservation Programs; 36 CFR 63: Determination of Eligibility for Inclusion in the National Register of Historic Places; 36 CFR 65: National Historic Landmarks Program; 36 CFR 78: Waiver of Federal Responsibilities under Section 110 of the National Historic Preservation Act; 36 CFR 79: Curation of Federally-Owned and Administered Archeological Collections; 36 CFR 800: Protection of Historic and Cultural Properties; and 43 CFR 7: Protection of Archaeological Resources.
- REFERENCES:**
1. U.S. Department of Energy, Office of Congressional and Intergovernmental Affairs. *American Indian Tribal Government Policy*. DOE 1230.2. April 1992.
  2. U.S. Department of Energy, Office of Environmental Guidance. *The Environmental Guidance Program Reference Book: The National Historic Preservation Act and Related Legislation*. ORNL/M-1178. Oak Ridge National Laboratory, Oak Ridge, Tennessee.
  3. U.S. Department of Energy, Office of Environmental Guidance. *The Environmental Guidance Program Reference Book: The American Indian Religious Freedom Act*. ORNL/M-483. Oak Ridge National Laboratory, Oak Ridge, Tennessee.
  4. U.S. Department of Energy, Office of Environmental Guidance Memorandum. "Management of Cultural Resources at Department of Energy Facilities," February 23, 1990.
  5. U.S. Department of Energy, Office of Environmental Guidance Memorandum. "The Native American Graves Protection and Repatriation Act," July 30, 1992.
  6. U.S. Department of Energy, Office of Environmental Guidance Memorandum. "National Historic Preservation Act Amendments of 1992," August 26, 1993.
  7. U.S. Department of Interior, National Park Service, and Advisory Council on Historic Preservation. *The Section 110 Guidelines: Annotated Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act*. November 1989.
  8. U.S. Department of Interior, National Park Service. National Register Bulletin Number 38: *Guidelines for Evaluating and Documenting Traditional Cultural Properties*.
  9. U.S. Department of Interior, National Park Service. "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines," September 29, 1983.

## **Cultural Resources Defined**

Cultural resources include, but are not limited to, the following broad range of items and locations: (1) archaeological materials and sites dating to the Prehistoric, Historic, and Ethnohistoric Periods that are currently located on, or are buried beneath, the ground surface; (2) standing structures that are over 50 years of age or are important because they represent a major historical theme or era; (3) cultural and natural places, certain natural resources, and sacred objects that have importance for Native Americans; and (4) American folklife traditions and arts.

## **Obtaining Information about the Management of Cultural Resources**

Information concerning the cultural resources that may exist on DOE facilities or on properties that may be affected by DOE programs can be obtained by contacting the DOE Point of Contact (POC) in the appropriate DOE Operations Office. Additional information can be obtained by contacting the DOE Federal Preservation Officer (FPO), the State Historic Preservation Officer (SHPO) in each state or territory, local historical organizations, American Indian tribes and other Native American organizations, and the Advisory Council on Historic Preservation (ACHP). Names, addresses, and phone numbers for the ACHP and for all the SHPOs can be obtained from the DOE FPO.

## **Protection of Cultural Resources on DOE Property**

DOE facility and program managers must consult with their SHPO concerning specific compliance requirements and cultural resource preservation planning. In some cases consultation may also be

required with the ACHP and appropriate local historical organizations, interested individuals and groups, and American Indian tribes. Further, the National Historic Preservation Act, as amended in 1992, allows a tribe to designate a tribal preservation official to administer the tribal historic preservation program and contains a number of new provisions that expand the role of Native Americans and Native Hawaiians in preservation activities. To ensure appropriate interactions with American Indian tribes that may be impacted by the Department's activities, DOE 1230.2 delineates the specific responsibilities of various Headquarters and field elements.

Existing cultural resource management laws and their implementing regulations require operators of DOE-owned or -leased facilities to develop programs for the identification, evaluation, nomination, and protection of cultural resources located on the properties under their management and for the mitigation of negative impacts to them. DOE programs providing permits and/or allocating funding for activities that may affect cultural resources on non-DOE owned land are also required to comply with all cultural resource management laws and regulations.

## **Cultural Resource Management Program**

A consolidated DOE cultural resource management program that is proactive and responsive to existing cultural resource laws and implementing regulations should be developed and implemented at each DOE facility and for each DOE program. A cultural resource management program will include the following elements:

- ❑ Ensure professionally trained cultural resource management personnel are

employed to prepare cultural resource management plans; determine the need for and scope of field studies; carry out field, laboratory, and archival studies; and evaluate the potential National Register significance of identified cultural resources. (For guidance in selecting qualified personnel see 36 CFR Part 61 and the 1983 Department of Interior Guidelines concerning Professional Qualifications Standards.)

- ❑ Include Federal/State agency officials, the SHPO, American Indian tribes, the ACHP, and interested organizations or persons (e.g., local governments; applicants for Federal assistance, permits, or licenses; and the public) into the **Section 106** consultation process as specified in the NHPA, as amended, and its implementing regulations (36 CFR Part 800) and ARPA.
- ❑ Facilitate public involvement and participation by consulting with Federal, State, and local preservation groups and Native American groups regarding preservation planning decisions.
- ❑ In accordance with the American Indian Policy attached to DOE 1230.2, each DOE Operations Office or DOE installation with areas of cultural or religious concern to American Indians will consult with them about the potential impacts of proposed DOE actions on those resources and will avoid unnecessary interference with traditional religious practices. Cultural resource measures will include the identification of places, natural resources, and objects of sacred and religious importance as defined by designated tribal representatives.
- ❑ Protect cultural resource sites and, as appropriate, monitor unreported sites. These proactive actions should include compliance with NHPA, as amended, and ARPA.
- ❑ Develop a systematic program to inventory surface and sub-surface cultural resource sites at each DOE facility according to **Section 110** of the NHPA and ARPA. Inventories should include buildings or sites that may be less than 50 years of age that have significant historical importance.
- ❑ Use the National Register of Historic Places criteria in 36 CFR Part 60 to evaluate the significance of the cultural resources that are identified.
- ❑ Establish a permitting system for the controlled excavation, removal, and protection of cultural resources during scientific and compliance-oriented field projects as required by ARPA.
- ❑ Include sufficient lead time in the project planning process for meeting cultural resource compliance requirements for field surveys and excavations as required by **Section 106** of the NHPA, as amended. The time necessary to complete field activities and prepare compliance documents that meet Federal standards should be factored into the scheduling of projects that involve ground disturbing activities or modifications to standing structures that are more than 50 years old or are of significant historical importance.
- ❑ Budget sufficient funds to support cultural resource compliance actions and programs. (See the Archaeological and Historic Preservation Act and the NHPA, as amended.)

- ❑ Curate cultural resource collections and records in accordance with the guidance provided in 36 CFR Part 79. The public distribution of compliance-related studies and reports must comply with the NHPA, as amended.
- ❑ Identify and repatriate human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony in collections created as a result of past DOE activities as well as from current and proposed activities.
- ❑ To prevent looting and vandalism, protect information concerning the exact location of sensitive cultural resource sites and prohibit the dissemination of such information to the general public.
- ❑ Promptly notify the DOE FPO of the inadvertent discovery of human remains and objects and other unanticipated findings.
- ❑ Prepare a Cultural Resource Management Plan (CRMP) that identifies the individual facility/program strategies for meeting the program elements described above. Follow DOE guidance in preparing this plan and in making periodic revisions.

### **DOE Managers Must Consider Cultural Resources in Planning**

DOE managers must follow the planning considerations discussed above whenever direct or indirect DOE activities result in ground disturbance and/or alterations to standing structures that are more than 50 years old or are important because they represent a major historical theme or era. Managers must ensure that compliance is maintained for activities

that are on DOE-owned as well as non-DOE-owned properties. DOE activities include day-to-day operations; new construction; Resource Conservation and Recovery Act (RCRA)- and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-related cleanup actions; as well as DOE-licensed and DOE-funded actions. Managers should also ensure that personnel are kept apprised of new amendments to cultural resource statutes (e.g., NHPA Amendments of 1992) and the development of cultural resources regulations (e.g., those planned to implement NAGPRA).

### **Penalties for Failing to Protect Cultural Resources**

Failure to protect both known and unrecorded cultural resource sites and materials can lead to criminal and civil penalties, including up to five years imprisonment and a fine of up to \$250,000 per violation, as well as the forfeiture of all equipment and vehicles used to facilitate a violation. [See the ARPA and the Omnibus Crime Control Act of 1984 (PL 98-596).]

*Questions of policy or questions requiring policy decisions will not be dealt with in EH-232 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Lois Thompson, Federal Preservation Officer, Office of Environmental Policy and Assistance, Department of Energy, EH-412, 1000 Independence Ave., S.W., Washington, D.C. 20585, telephone (202) 586-9581.*