

6.0 Statutory and Regulatory Requirements

P.L. Hendrickson

The Hanford Site is owned by the U.S. Government and is managed by the U.S. Department of Energy (DOE). It is the policy of the DOE to carry out its operations in compliance with all applicable federal, state, and local laws and regulations, presidential executive orders, DOE directives, and treaty rights. Environmental regulatory authority over the Hanford Site is vested both in federal agencies, primarily the U.S. Environmental Protection Agency (EPA), and in Washington State agencies, primarily the Washington State Department of Ecology (Ecology) and the Washington State Department of Health (DOH). In addition, the Benton Clean Air Authority (BCAA) has certain regulatory authority over Hanford activities, including open burning, asbestos removal, and fugitive dust control. Significant environmental laws, regulations, and other requirements are discussed in this chapter in the following order:

- Major federal environmental laws
- Significant applicable federal and state regulations
- Presidential executive orders
- DOE directives
- Treaties, statutes, and policies relating to Indian Tribes of the Hanford region
- Existing environmental permits covering activities at the Hanford Site.

There are a number of sources of information available concerning statutory and regulatory requirements as they relate to the National Environmental Policy Act (NEPA) process. Sources available over the Internet include the following:

- Links to Hanford NEPA documents at: <http://www.hanford.gov/rl/resource.asp>
- DOE's NEPA web site at: <http://www.eh.doe.gov/nepa/>
- Council on Environmental Quality's (CEQ's) web site at: <http://www.whitehouse.gov/ceq/>
- EPA's NEPA web site at: <http://epa.gov/compliance/nepa/index.html>.

The National Environmental Policy Act Compliance Guide (DOE 1998) issued by the DOE Office of Environment, Safety, and Health, contains useful information including regulations, DOE and CEQ guidance, and copies of relevant executive orders, as well as other preparation assistance documents such as checklists.

(The following introduction [boxed text] is intended to be explanatory for persons writing the chapter of a Hanford Site environmental impact statement [EIS] or environmental assessment [EA] covering regulatory requirements, but is not intended to be included in the EIS or EA.) The material following the boxed text can be adapted, as appropriate, for use in an EIS or EA at the discretion of the authors. Additional specificity should be added to the material to reflect the particular circumstances and facts that are the subject of the EIS or EA. An EIS will normally contain more detail than an EA.

Introduction

The CEQ regulations in the Code of Federal Regulations (CFR) at 40 CFR 1500-1508 implement NEPA and set forth requirements for the preparation of environmental documentation by federal agencies that satisfies NEPA. DOE has adopted the CEQ regulations as part of its NEPA implementing procedures (10 CFR 1021.103). The CEQ regulations identify the types of actions proposed by a federal agency that require preparation of an EIS, prescribe the content of an EIS, and identify actions and other environmental reviews that must or should be undertaken by the federal agency in preparing and circulating an EIS. In general, an EIS must be prepared by a federal agency for any major federal action significantly affecting the quality of the human environment (40 CFR 1502.3). The regulations also state reasons why an agency may want to prepare an EA instead of an EIS (40 CFR 1508.9).

A specific requirement in the CEQ regulations (40 CFR 1502.25) is that the draft EIS must list “all federal permits, licenses, and other entitlements which must be obtained in implementing the proposal.” If it is uncertain whether a federal permit or license is needed, the draft EIS is to so indicate. There is, however, no requirement in the CEQ regulations or in the DOE NEPA implementing procedures at 10 CFR Part 1021 that the EIS must list or discuss applicable environmental laws and regulations. Nevertheless, applicable environmental laws and regulations (federal, state, and local) have been discussed in recent Hanford Site EISs and EAs in a chapter usually captioned “Statutory and Regulatory Requirements.” The discussion below assumes this chapter is chapter 6 of the EIS or EA, but another chapter number is possible.

Chapter 6 of Hanford Site EISs and EAs should include the list called for by 40 CFR 1502.25(b). The list should also include significant permits that will be needed from federal, state, and local government agencies. Chapter 6 should not normally include information on environmental impacts associated with any of the requirements. For example, Executive Order (E.O.) 12962 requires federal agencies to evaluate the effects of their actions on aquatic systems and recreational fisheries. Although E.O. 12962 should be mentioned in Chapter 6 in appropriate cases, the actual impacts of the alternatives on aquatic systems and recreational fisheries should be discussed in the Environmental Consequences chapter (normally Chapter 5) of the EIS or EA and any recreational fisheries aspects of the affected environment should be discussed in the Affected Environment chapter (normally Chapter 4) of the EIS or EA. Chapter 6 can refer the reader to the portion of the EIS or EA where the environmental impacts associated with a particular environmental requirement are discussed.

A summary of prior EAs and EISs prepared for activities at the Hanford Site is in National Environmental Policy Act Source Guide for the Hanford Site (Fluor Hanford 2002).

The purpose, then, of Chapter 6 in this document is to present a “reference” that can be used as the basis for the preparation of future Hanford Site EISs and EAs. The intent is to present a reasonably complete discussion of federal, state, and local environmental laws, regulations, and permit requirements that are applicable to activities at the Hanford Site. The information in this chapter can then be adapted to any future Hanford Site EIS/EA by deleting irrelevant parts and by adding some specificity with respect to the proposed action and the alternatives being considered.

It should be noted that environmental standards and permit requirements usually appear in regulations and not in the laws themselves. Thus, more emphasis is placed on regulations and less on laws in this chapter.

Federal and State Environmental Laws

Federal law governs environmental regulation of federal facilities. Most major federal environmental laws now include provisions for regulation of federal activities that impact the environment. The activity to be regulated is usually an activity being carried out by an agency of the executive branch. The federal environmental law will also typically designate a specific agency, such as EPA or the U.S. Nuclear Regulatory Commission (NRC), as the regulator. In addition, federal laws may provide for the delegation of the environmental regulation of federal facilities to the states or may directly authorize the environmental regulation of federal facilities by the states through waivers of sovereign immunity. At Hanford, all these situations apply in varying degrees. EPA has regulatory authority over Hanford facilities and has delegated regulatory authority to, shares regulatory authority with, or is in the process of delegating regulatory authority to the State of Washington. The State of Washington also asserts its own independent regulatory authority over Hanford facilities under federal waivers of sovereign immunity and state legislation. The Washington State Department of Ecology has also delegated various air compliance responsibilities to the BCAA.

As a legal matter at Hanford, applicable federal and state environmental standards must be met. As a practical matter, differences in language between federal and state laws and regulations may result in some differences in applicability and interpretation. Guidance on specific applicability should be obtained from the Office of Chief Counsel of the DOE Richland Operations Office (DOE/RL) or the Office of River Protection (DOE-ORP).

Citation of Laws and Regulations

Laws and regulations may be cited both by their common name and by their location in the appropriate document. Federal laws are most often cited by their common name (e.g., Clean Water Act [CWA]), by their public law (Pub. L. or PL) number, or by their location in the United States Code (USC). Section numbers differ between laws as enacted and as codified in the USC, so it must be understood which is being cited. Federal regulations appear in the CFR. Washington State laws are most often cited by their location in the Revised Code of Washington (RCW). Washington State regulations are cited by their location in the Washington Administrative Code (WAC). Links to the RCW and WAC are available at <http://slc.leg.wa.gov/>. Announcements of proposed and final federal regulations appear in the Federal Register (FR). Announcements of proposed and final Washington State regulations appear in the Washington State Register.

Specific Federal Laws Cited in the CEQ Regulations

Four federal laws are specifically cited in the CEQ regulations [40 CFR 1502.25(a) and 1504.1(b)]:

- Section 309 of the Clean Air Act (CAA) (42 USC 7609)
- Fish and Wildlife Coordination Act (16 USC 661 *et seq.*)
- National Historic Preservation Act (NHPA) (16 USC 470 *et seq.*)
- Endangered Species Act (ESA) (16 USC 1531 *et seq.*)

Section 309 of the CAA directs EPA to review and comment in writing on the environmental impacts of any matter relating to EPA's authority contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. In addition to commenting on EISs, EPA rates every draft EIS prepared by a federal agency under its Section 309 authority. Ratings are made for the environmental impact of the proposed action and the adequacy of the impact statement. Rating categories for environmental impact are: LO - lack of objections, EC - environmental concerns, EO - environmental objections, and EU - environmentally unsatisfactory. Rating categories for adequacy are: Category 1 - adequate, Category 2 - insufficient information, and Category 3 - inadequate. A summary of EPA rating definitions is available at: <http://www.epa.gov/compliance/nepa/comments/ratings.html>. Responses to EPA's comments on a draft EIS are included in the final EIS.

The CEQ regulations (40 CFR 1502.25[a]) direct federal agencies to prepare draft EISs concurrently with and integrated with environmental impact analyses and related surveys required by the Fish and Wildlife Coordination Act, the NHPA, the ESA, and other environmental review laws and executive orders. The three preceding statutes should be cited in Chapter 6 of a draft EIS. Environmental impacts associated with the laws should be discussed in Chapter 5.