

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with § 6.400(d) of this regulation.

(e) *Lead agency.* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project. The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set forth in 40 CFR 1501.5.

(2) If, after the meeting of involved agencies, EPA has been determined to be the lead agency, the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency, the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Notice of intent.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the notice of intent in the FEDERAL REGISTER, distribute the notice of intent and arrange and conduct a scoping meeting as outlined in 40 CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, pursuant to § 6.604(g)(3) of this part, the responsible official shall insure that a notice of intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(g) *EIS method.* EPA shall prepare EISs by one of the following means:

- (1) Directly by its own staff;
- (2) By contracting directly with a qualified consulting firm; or
- (3) By utilizing a third party method, whereby the responsible official enters into a *third party agreement* for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such an agreement shall not be initiated unless both the applicant and the responsible official agree

to its creation. A third party agreement will be established prior to the applicant's environmental information document and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract.

(ii) Select the consultant based on his ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project.

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

(h) *Documents for the administrative record.* Pursuant to 40 CFR 124.9(b)(6) and 124.18(b)(5) any environmental assessment, FNSI EIS, or supplement to an EIS shall be made a part of the administrative record related to permit issuance.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

#### § 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each

## Environmental Protection Agency

## § 6.700

separate decision to issue an NPDES permit shall then be based on the information in this areawide EIS. Site specific EISs may be required in certain circumstances in addition to the areawide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: The nature and extent of the vacant land subject to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on development and the environment; and the changes in the availability or demand for energy and the resulting environmental consequences.

(2) The new source will directly, or through induced development, have significant adverse effect upon local ambient air quality, local ambient noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(3) Any major part of the new source will have significant adverse effect on the habitat of threatened or endangered species on the Department of the Interior's or a State's lists of threatened and endangered species.

(4) The environmental impact of the issuance of a new source NPDES permit will have significant direct and adverse effect on a property listed in or eligible for listing in the National Register of Historic Places.

(5) Any major part of the source will have significant adverse effects on parklands, wetlands, wild and scenic rivers, reservoirs or other important bodies of water, navigation projects, or agricultural lands.

### § 6.606 Record of decision.

(a) *General.* At the time of permit award, the responsible official shall

prepare a record of decision in those cases where a final EIS was issued in accordance with 40 CFR 1505.2 and pursuant to the provisions of the permit regulations under 40 CFR 124.15 and 124.18(b)(5). The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Mitigation measures.* The mitigation measures derived from the EIS process shall be incorporated as conditions of the permit; ancillary agreements shall not be used to require mitigation.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

### § 6.607 Monitoring.

In accordance with 40 CFR 1505.3 and pursuant to 40 CFR 122.66(c) and 122.10 the responsible official shall ensure that there is adequate monitoring of compliance with all NEPA related requirements contained in the permit.

[47 FR 9831, Mar. 8, 1982]

## Subpart G—Environmental Review Procedures for Office of Research and Development Projects

SOURCE: 56 FR 20543, May 6, 1991, unless otherwise noted.

### § 6.700 Purpose.

(a) This subpart amplifies the requirements described in subparts A through D by providing specific environmental review procedures for activities undertaken or funded by the Office of Research and Development (ORD).

(b) The ORD Program provides scientific support for setting environmental standards as well as the technology needed to prevent, monitor and control pollution. Intramural research is conducted at EPA laboratories and field stations throughout the United States. Extramural research is implemented through grants, cooperative agreements, and contracts. The majority of ORD's research is conducted within the confines of laboratories. Outdoor research includes monitoring, sampling, and environmental stress and ecological effects studies.