

United States General Accounting Office

GAO

Report to the Honorable
J. Dennis Hastert, House of
Representatives

July 1989

INFORMATION DISSEMINATION

Cost of Mailing Environmental Impact Statement for Super Collider





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-236102

July 28, 1989

The Honorable J. Dennis Hastert
House of Representatives

Dear Mr. Hastert:

This report responds to your January 23, 1989, request that we examine the Department of Energy's (DOE) decisions and actions in distributing the final environmental impact statement (FEIS) for the superconducting super collider (SSC). In your letter and in subsequent discussions, you expressed concern over DOE's printing and distribution of an 8,000-page FEIS to almost 17,000 recipients. You suggested that an effort of this magnitude might have been wasteful because many of the recipients neither expected nor wanted copies of the FEIS. You asked us to determine if a mailing of this size and expense was necessary to comply with federal regulations.

Results in Brief

Although DOE's actions and decisions were within the discretion allowed by law and regulations, we believe that DOE could have met federal regulations with a shorter FEIS and with a more limited distribution, thus reducing printing and mailing costs.

DOE officials said that they also recognized the cost savings that could be realized by shortening the FEIS and limiting its distribution. However, they did not consider cost a major constraint in this case. According to the responsible officials, the major factors that drove their decisions were (1) the high visibility of the project and potential controversy of their decisions, (2) the desire to avoid any allegations of suppressing information, (3) the perceived need to avoid any lawsuits or other objections that could result in delaying the project, and (4) the desire to select the site for the SSC by mid-January 1989.

Background

In January 1987, the Reagan Administration proposed to construct the world's largest high-energy physics accelerator, the SSC, to advance scientific knowledge about the fundamental components of matter and the laws that underlie all physical processes. The SSC would be the largest scientific instrument ever constructed. Its main feature is an oval tunnel that, when completed, will be 53 miles in circumference and at least 35 feet underground.

Because of its scientific prestige, the economic impact of constructing and maintaining the facility, and its potential for stimulating the surrounding region's economic development, 43 proposed sites competed for selection as the location for the SSC. According to DOE, the federal government's total lifetime investment in the project is estimated to be over \$11 billion.

A DOE SSC site task force analyzed the seven best-qualified sites and, as required by federal regulations,¹ issued a draft environmental impact statement (DEIS) for the SSC in August 1988. The public was invited to comment on the DEIS and public hearings were held in the vicinity of the seven sites. DOE received written and oral statements from 5,630 commenters, including letters, petitions, and testimony at the public hearings. The comments varied widely. While many simply stated either support for or opposition to the SSC, others offered more technical and/or environmental concerns.

DOE then prepared a FEIS that (1) assessed and compared the environmental impacts of the proposed construction and operation of the SSC at each of the seven site alternatives, (2) considered written and oral comments on the DEIS, and (3) identified a site in Ellis County, Texas, as the preferred site for the SSC.

DOE issued the four-volume FEIS in December 1988. It weighed 26 pounds and consisted of 23 separately bound documents, as shown in table 1.1.

Table 1.1: SSC FEIS

Volume	Contents	Number of separately bound documents
I	Environmental Impact Statement	
II	Comment/Response Document Summary and Index	
	Comments (Letters & Transcripts)	1
	Responses	
III	Methodology For Site Selection	
IV	Appendixes	

¹The National Environmental Policy Act of 1969 establishes the policy for protection of the environment; sets goals; and provides means for carrying out the policy, including the requirements for environmental impact statements. The federal regulations that implement the act prescribe what federal agencies must do to comply with the act.

The FEIS totaled about 8,000 pages. DOE had 19,000 copies printed. Approximately 17,000 copies, weighing a total of 221 tons, were distributed to about 16,800 agencies, organizations, and individuals. The recipients included each of the 5,630 commenters and such others as affected landowners and members of the news media. The cost for printing and distributing the SSC FEIS was about \$1.4 million.

Objectives, Scope, and Methodology

Our objectives were to examine DOE's decisions associated with printing and distributing the SSC FEIS and to determine whether the actions taken were necessary to satisfy regulatory requirements. As agreed with you, we concentrated on DOE's decisions to (1) include individual comments as part of the FEIS, (2) send the entire FEIS to all recipients, and (3) use overnight delivery and first-class/priority mail to distribute the statement.

To meet our objectives, we reviewed DOE records and interviewed DOE officials involved in the decisions to determine the factors that governed the decisions. We reviewed the regulations that prescribe what federal agencies must do to comply with the procedural provisions of the National Environmental Policy Act of 1969 (NEPA) to determine DOE's compliance and to identify options available for reducing the size and distribution of a FEIS. We also interviewed Council on Environmental Quality (CEQ) officials responsible for the NEPA regulations on environmental impact statements (EIS), and the Environmental Protection Agency's (EPA) Office of Federal Activities officials to obtain their views on the SSC FEIS and available options.

We did our work from March 1989 to June 1989 and in accordance with generally accepted government auditing standards.

DOE's Low-Risk Approach

DOE's decisions to (1) include individual comments in the FEIS, (2) send the entire FEIS to all who participated in the process, and (3) send copies by overnight express and first-class/priority mail were consistent with federal regulations governing environmental impact statements. However, we identified several options, also in accord with regulations, that could have been exercised to reduce the statement's size, distribution, and associated costs.

Agency officials said that they also recognized some of these options but decided to take a conservative approach to ensure undisputed compliance. They said the following factors guided their decisions.

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- Because of the economic benefits and prestige associated with the SSC, DOE recognized that the competition among states was high and that any decision on the final site selected could be controversial. DOE wanted to be sure that all who participated in the process received the FEIS and wanted to avoid any potential lawsuits for noncompliance.
 - The site task force was operating on a time schedule, established in February 1987, that required an announcement of the site selection decision by January 18, 1989. In order to meet this schedule as well as the regulatory provision that the public have a 30-day period to comment on the FEIS, the task force needed to mail the FEIS in early December.
 - DOE had been criticized for its handling of environmental contamination clean-up efforts at defense production facilities. Officials did not want to add to criticism through controversy over its environmental impact statement.

The decisions DOE made, the reasons why the decisions were made, and other options available are discussed in the following sections.

Decision to Include All Information in FEIS

NEPA regulations require an agency preparing a FEIS to assess, consider, and respond to comments received. However, the regulations allow that, if the comments are especially voluminous, an agency can summarize the comments and its responses, rather than itemizing each comment and response.

The task force considered including just the summary of the comments and responses, but they believed that this would have risked the possibility that some individual commenters may have perceived that their comments were ignored, with the potential of adverse public reaction and/or lawsuit. The task force decided that with one exception, the “most prudent thing to do” was to reproduce each of the comment letters and hearing transcripts. The one exception was in instances of duplicate letters, form letters, or post cards—only one copy was published although each individual received the FEIS. For example, more than 3,000 copies of an identical form letter were received from commenters endorsing their state as the SSC site, but only one copy of the letter was included in the FEIS. Each of these commenters received the entire FEIS.

DOE’s decision to reproduce the comments added to the volume of the FEIS and to associated printing and mailing costs. The reproduction of the comments, letters, and transcripts accounted for 12 of the 23 documents, totaled about 5,000 pages, and accounted for approximately 60

percent of the weight. While we did not determine what incremental cost this represented in printing, we estimate that DOE could have saved about \$170,000 in the first-class/priority mail costs if it had reduced the size by not reproducing comments.

An EPA Office of Federal Activities² official said that as a general rule, agencies publish comments in a FEIS. He said it is preferred that agencies publish the comment letters because if agencies summarize the letters, they risk allegations that they have suppressed or ignored opposing views.

Saving money was not a consideration in this decision—rather, ensuring full and unquestionable compliance with the regulations was the overriding factor.

Decision to Send the Entire FEIS to All Who Participated in the Process

Having made its decision to include all information, including individual comments and responses as part of the FEIS, it was unnecessary for DOE to send the entire 8,000-page document to all participants. However, DOE decided to send all four volumes to each of the 16,800 agencies, organizations, and individuals who participated in the process.

Again, the overriding factor in DOE's decision was to ensure unquestioned compliance with the requirement that it provide adequate information to all interested parties. In terms of cost, the task force considered the potential public response to receiving a "mountain of material" and anticipated that they would get some individual complaints from taxpayers. The task force made a conscious decision that it was better to provide too much information to the public rather than to appear to be withholding information from interested parties. They also believed that any public perception that DOE was withholding information could result in lawsuits that would have delayed processes or overturned decisions.

According to the regulations, a complete FEIS must be sent to

(a) "Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

²The Office of Federal Activities is the official recipient in EPA of all EISs. The Office does (1) the operational duties associated with the administrative aspects of the EIS filing process and (2) the substantive EPA reviews.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.” (40 CFR 1502.19)

For agencies, organizations, and individuals other than those defined above, an agency can distribute something less than the complete EIS, such as a summary.

Within the scope of these regulations, DOE could have sent less than the entire FEIS to a significant number of recipients. DOE did not classify its recipients by each of the four categories in the regulations, so we do not know the actual number of individuals or organizations that needed to be sent the entire FEIS or the number that could be sent something less than the complete FEIS.

We estimate, however, that DOE could have sent several thousand recipients a summary and still have been in compliance. For example, the regulation does not require that a complete FEIS be sent to persons, organizations, or agencies whose comments on the DEIS were nonsubstantive. The task force, however, decided not to differentiate between substantive and nonsubstantive comments. It considered all individuals who submitted a written comment or spoke at the hearings as providing a substantive comment because (1) the regulations provide no clear guidance as to what a substantive comment is and (2) the majority of comments offered some substance and therefore required a response. The regulations do not define “substantive.” However, the regulations regarding the specificity of comments set forth a broad standard that could be used as a starting point. They say, among other things, that “[c]omments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.”

Although DOE says that it did not differentiate between substantive and nonsubstantive comments, in effect it did so. In responding to comments in the FEIS, DOE assigned a “comment noted” response without further discussion to comments that “expressed only support or opposition without providing technical data, correcting factual errors, or refuting

analyses; stated opinions without relevant questions or contradictions to the content; did not introduce any changes to improve or modify the analyses or alternatives; or were not relevant to the environmental analysis of the prospective SSC alternatives.” We reviewed DOE’s responses to the comment documents reproduced in the FEIS and found that for 36 percent of the documents, all comments received the response “comment noted.” Thus, at a minimum, if DOE’s characterization was correct, 36 percent of the 5,630 commenters on the DEIS, or 2,026, did not need to be sent the entire FEIS. If, for example, DOE had sent just volume I and the summary document of volume II to the 2,026 recipients, we estimate that DOE could have saved about \$30,876 in the first-class/priority mailing costs.

We note that a DOE decision to disseminate less than the entire FEIS could have resulted in a 15-day delay in completing the process. The regulations provide for a 30-day period after notice is published that the FEIS has been filed with EPA before the agency may take final action (40 CFR 1506.10 (b)). During that 30-day period, in addition to the agency’s internal final review, the public and other agencies can comment on the FEIS prior to the agency’s final action on the proposal. The regulations further provide that if an agency circulates a summary instead of the complete FEIS “and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.” Thus, a decision to send a summary could have added an additional 15-day comment period, on top of the normal 30-day period. We found no evidence that an additional 15 days would have been detrimental to the project. However, DOE officials expressed the belief that the additional 15 days would have extended the final site selection past the President’s last day in office and likely resulted in substantial additional delays routinely caused by the transition to a new administration.

A CEQ official and an EPA Office of Federal Activities official said that, in general, agencies do not differentiate between substantive and nonsubstantive comments. Again, the overriding factor in the decision was to err on the side of least risk.

Printing and Delivery Costs for the Final Environmental Impact Statement

NEPA regulations on EISS do not cover the number of copies that agencies are to print or the mode of delivery. DOE’s printing and delivery costs for the FEIS totaled about \$1.4 million, as shown in table 1.2.

Table 1.2: SSC FEIS Printing and Delivery Costs

	Costs
Printing and binding	\$1,016,107
Overnight delivery	9,298
First class mail	334,700
	\$1,360,105

The decision to print 19,000 copies of the FEIS was based on the estimated size of the final mailing list, the anticipated additional requests for copies, as well as the need for a reserve stock to use as a source document in the development of the supplemental EIS for the selected site. DOE decided to print a number that would be clearly adequate because it is less expensive to have one printing than to have a reprinting for any additional needs.

The decision to use overnight delivery services to distribute 292 copies of the FEIS was to ensure that (1) the governors and other officials who had developed proposals for the SSC in the seven interested states received their copies essentially at the same time and (2) the FEIS was available to the public through designated libraries as soon as possible. Among other things, DOE wanted to avoid a situation in which a proposer might make a public statement before other proposers received their copies. Seventy-five copies were delivered to governors/proposers and 200 copies were delivered to libraries. The remaining 17 copies were delivered to DOE components and contractors.

DOE sent 16,714 copies of the FEIS by first class/priority mail at a cost of approximately \$335,000. Other alternatives existed, but DOE did not consider them. Table 1.3 shows the estimated cost of mailing the entire FEIS by some alternative methods.

Table 1.3: Mail Categories and Costs

Mail category	Cost per item	Total cost	Delivery standard
US Postal Service			
Priority mail	\$20.03	\$334,700 ^a	3 days
Parcel post	7.85	131,205	6 to 8 days
United Parcel Service			
Ground service	7.01	117,165	3 or 4 days

^aDue to a Postal Service internal record keeping problem, as of June 1989, DOE does not have a final bill for the first class/priority mailing. DOE estimated the cost to be \$334,700.

DOE officials said that they chose first-class/priority mail because they believed that it gave the most assurance that the FEIS would be delivered in a timely manner. They said that they did not consider other options. Our analysis shows that United Parcel Service's ground service would have offered a savings of \$217,535 (\$334,700 minus \$117,165) and delivered the document in about the same time period.

Conclusions

While options existed to reduce the size and distribution of the FEIS, DOE's decisions appear to be a good-faith, albeit conservative, effort to ensure compliance with federal regulations. Its decisions also illustrate the influence that varying priorities and constraints can have on executive decisionmaking. Cost was not the primary constraint considered. Other priorities, such as the desire to (1) demonstrate full compliance with the regulations, (2) avoid public criticism or lawsuits, and (3) meet its preestablished timetable, represented overriding considerations. According to DOE officials, these considerations dissuaded them from choosing to limit the distribution or size of the FEIS. They acknowledged, however, that they did not consider using a less expensive means of mailing the FEIS than first-class/priority mail.

DOE's decisions also appear to reflect current federal practices in preparing and distributing EISS. EPA officials responsible for, among other things, ensuring that agencies follow procedural requirements for EISS, said that agencies normally publish all comments in the FEIS to avoid the risk of being accused of suppressing opposing views. They also said that agencies rarely differentiate between substantive and nonsubstantive comments as a low-risk approach. Similar views were also expressed by officials of the Council on Environmental Quality, which is responsible for the federal regulations for preparing and distributing EISS.

While decisions regarding the size and distribution of EISS are judgmental and legitimately influenced by factors other than costs, the choice of the mode of delivery is less so. As illustrated, DOE did not consider alternative means of mailing its statement, although it could have saved over \$200,000. This oversight may indicate a broader, governmentwide mail management problem. We are currently undertaking a governmentwide mail management study and will consider the findings of this report in that effort.

In accordance with your request, we did not obtain written comments on a draft of this report. However, we did discuss the report with DOE officials, who agreed with the facts presented, and have incorporated DOE's views into the report where appropriate.

As agreed with your office, we plan no further distribution of this report until 30 days from its issue date, unless you publicly announce its contents earlier. At that time, we will send copies to the Secretary of Energy, the Director of the Office of Management and Budget, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, and congressional committees having an interest in related issues. Additionally, we will make copies available to others upon request.

The principal contributors to this report were Loretta Walch, Evaluator-in-Charge, and Richard Caradine, Assistant Director.

If you have any questions concerning this report, please call me on 275-8676.

Sincerely yours,

A handwritten signature in black ink that reads "L. Nye Stevens". The signature is written in a cursive style with a long horizontal stroke at the end.

L. Nye Stevens
Director, Government Business
Operations Issues

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