

NGA Federal Facilities Task Force, in Conjunction with the State and
Tribal Government Working Group
Spring Meeting with the U.S. Department of Energy
May 28, 2009
Executive Meeting Summary

Overview

On May 28, 2009, the National Governors Association's Center for Best Practices hosted a meeting of the NGA Federal Facilities Task Force (FFTF) in conjunction with the State and Tribal Government Working Group (STGWG) and U.S. Department of Energy Office of Environmental Management (DOE-EM) officials in Alexandria, Virginia. The overarching aims of the meeting were to improve intergovernmental communications and promote an open dialogue between states and DOE-EM on issues of mutual concern and to help achieve their common goals.

The plenary sessions on May 28 provided a forum for dialogue between FFTF members, STGWG members, and U.S. DOE representatives on their respective concerns and priorities, as well as recent developments at DOE headquarters. Key topics for this meeting included DOE-EM implementation of the American Recovery and Reinvestment Act (ARRA), DOE FY'09 and FY'10 budget, environmental cleanup from the perspective of the Congressional Research Service (CRS), waste disposition, Natural Resource Damage Assessment (NRDA), transportation, energy parks, and management of radioactive sealed sources.

Meeting presentations and materials are available at: <http://www.fftfcleanup.org/archives.htm>

Presentations

State of the DOE Office of Environmental Management - Dr. Inés Triay, Assistant Secretary, DOE Office of Environmental Management

Dr. Triay's presentation is available [here](#).

Dr. Triay provided an overview of significant ongoing activities within DOE-EM, including program priorities, key program issues, ARRA, budget, compliance, and Tribal issues. Dr. Triay stressed that EM's highest priority is to reduce risk while maximizing compliance with regulatory commitments. Dr. Triay also discussed EM's additional priorities, emphasizing waste disposal and soil/groundwater remediation, and job creation through the ARRA. Footprint reduction across the cleanup complex received particular attention during Dr. Triay's presentation. The reduction of larger sites such as Hanford and Savannah River, combined with small site near-term completion, is expected to significantly reduce life cycle costs while creating jobs.

The components of EM's strategy for goal attainment include sound business practices, the use of science and technology to optimize the efficiency of tank waste disposition and excess nuclear materials and spent nuclear fuel disposition, and alternative management approaches. Dr. Triay compared EM's FY'09 base program funding, FY'09 ARRA funding, and the FY'10 Congressional request, adding that EM dedicated its ARRA funding to projects that could be completed quickly and were at risk for non-compliance due to budget difficulties (rather than technology, for example).

Dr. Triay concluded by addressing the major challenges facing EM as it continues to progress with cleanup efforts, with particular mention of the difficulties inherent in managing performance-based projects with life cycles over several decades, applying first-of-a-kind technologies, and managing and maintaining the EM workforce. EM's workforce is expected to stabilize at approximately 1,800 for the foreseeable future.

Dr. Triay made the following additional points in response to questions from Task Force and STGWG members:

- EM only accepts proposed excess facilities for decontamination & decommissioning if appropriate funding is available to do so.
- Calling it an excellent suggestion, Dr. Triay said EM will include compliance as a performance measure, with the goal of 100% compliance.
- Savannah River Site did not receive as much tank cleanup funding from ARRA as the Office of River Protection due to pension issues. Pensions are paid by EM as indirect costs, and the pension plan at SRS is the largest within EM. In order to continue funding pensions at the 80% level, EM transferred transuranic (TRU) waste, low level waste (LLW), soils and groundwater, and excess facilities D&D into ARRA funding and kept tank waste, nuclear materials, spent nuclear fuel (SNF) and a portion of pension costs in the base program.
- EM is committed to completing cleanup at Los Alamos National Laboratory (LANL) by 2015 despite performance and technical issues, and EM headquarters has requested LANL senior staff to confirm their ability to bring the cleanup back into compliance.
- EM will comply with federal policy relating to tribes.

DOE-EM's Implementation of the American Recovery and Reinvestment Act (ARRA) - Cynthia Anderson, EM Recovery Act Program Manager

Ms. Anderson's presentation is available [here](#).

Ms. Anderson reported on the transparency requirements of ARRA, program priorities, status of obligated funds, and the relationship of ARRA funding to compliance. ARRA funding focuses on shovel-ready projects and rapid development of resources at 17 EM sites in 12 states. During April and May of 2009, EM obligated to the field offices approximately \$5.4 billion of the \$6 billion in ARRA funding. Ms. Anderson reviewed the five principles used by EM to guide implementation of Recovery Act funding. She also described the three types of projects being funded: soil and groundwater remediation; low level and TRU waste disposition, and D&D. Ms. Anderson noted that the only exception to these project types was at the Office of River Protection, where ARRA funding is being used for infrastructure related to the Waste Treatment Plant).

EM is conducting monthly performance reviews with contractors to examine the number of jobs saved, jobs created, and waste shipped, among other indicators. Implementation also includes a small business strategy to maximize inclusion of a range of small business types (woman-owned, disadvantaged, etc.). Ms. Anderson summarized contracting status, including independent government cost estimates performed by the Cincinnati DOE office, with the target date for definitization for the majority of contracts by September 30, 2009.

Ms. Anderson concluded by summarizing ARRA allotment status among the sites, primary communications vehicles for ARRA information updates, and the general path forward as ARRA implementation continues.

Ms. Anderson made the following additional points in response to questions from Task Force and STGWG members:

- EM is separating base program activities from ARRA activities in its analysis of unit cost of waste disposition.
- D&D of the Y-12 facility at Oak Ridge and subsequent footprint reduction would benefit both NNSA and EM.
- EM believes that new employees trained for ARRA projects will be well-positioned after funding ends for work in other industries.
- In order to ensure ARRA funds are being well spent, EM will emphasize contractor training in earned value management as well as adhering to a cost performance and schedule performance index.
- Responding to a question about how states could stay aware of the periodic checks on contractor performance, Dr. Triay said regulators could request briefings.

DOE-EM Budgets for FY'09 and FY'10 - Merle Sykes, Deputy Assistant Secretary for Planning and Budget, DOE Office of Environmental Management

Ms. Sykes's presentation is available [here](#).

Ms. Sykes outlined EM's budget priorities given the requirements for DOE to submit a compliant budget to OMB, noting that EM expects to receive guidance soon from DOE's Chief Financial Officer to prepare a five year budget plan. FY'10 budget highlights include fully funding tank waste activities, increased funding at Portsmouth, and a proposed change to the uranium enrichment decontamination and decommissioning account.

Ms. Sykes also discussed a chart comparing FY'09 and FY'10 budget requests by site, with ARRA funding added. Items of particular emphasis included: A request for zero funding in FY'10 for Argonne National Laboratories, which received substantial "plus up" and ARRA funds in FY'09; an overall increase of \$24 million to the Hanford Site to fully fund the river corridor projects, with additional ARRA funding for previously deferred central plateau work; and fewer funds for the Oak Ridge Reservation but full funding of K-25 within the base program and ARRA funds for allowable work on K-27. Ms. Sykes pointed out that EM expects to be fully compliant through 2011 (i.e., no budget shortfalls affecting compliance), although technical issues affecting compliance are always possible.

Key program issues covered during Ms. Sykes's presentation included risk-based priorities and regulatory compliance, the need for improved construction project management, human capital, and pension liabilities.

Ms. Sykes concluded by reviewing EM's commitment to strengthen technology development and pursue sound business practices, especially in light of the large amount of stimulus funding received.

Ms. Sykes made the following additional points in response to questions from Task Force and STGWG members:

- The EM baselines will be the source for DOE's five year budget plans, but at this point the precise form of the plans is not known. Dr. Triay added that sites should be working now with regulators to understand the baselines and to enable regulators to provide feedback.
- EM will update all baselines throughout the summer to account for the impact of ARRA.
- The Tri-Party Agreement (TPA) for Hanford requires the removal of 99% of all waste. The TPA also stipulates that if DOE is unable to remove all waste from Hanford, it can consult with NRC.
- With respect to recent events surrounding the proposed national repository at Yucca Mountain, EM will examine whatever recommendation emerges from the President's Blue-Ribbon panel.

View from the Hill - David M. Bearden, Environmental Policy Specialist, Congressional Research Service

Mr. Bearden spoke about the mission and role of the Congressional Research Service (CRS), a division of the Library of Congress that provides research upon the request of Congressional offices. Mr. Bearden reviewed the Congressional structure for oversight of DOE, such as the committees that address the federal statutes governing DOE, funding structure and processes, and various bills authorizing DOE activities. Mr. Bearden reported that Congress constantly strives to accomplish cleanup objectives more quickly and at lower cost without compromising environmental protection.

Mr. Bearden pointed out that because EM has such a huge task, and Congressional budget allocations and technical barriers can vary from year to year, project planning and implementation is not always consistent. This is frustrating for states that have entered into compliance agreements with DOE. However, Congress appreciates hearing states' perspectives on whether or not cleanup is going well. Members of Congress are often interested in cleanup efforts that affect their particular state or legislative district, rather than the cleanup program in its entirety.

Mr. Bearden made the following additional points in response to questions from Task Force and STGWG members:

- Statements from members of Congress display a wide variety of opinions on DOE's environmental cleanup work. Regardless of these varied opinions, however, members of Congress realize the program has to be funded, and at the end of the day, the funding has been reasonably constant.
- The apparent lack of concern to date from members of Congress about the suspension of Yucca Mountain as an option for the storage of spent nuclear fuel (SNF) is likely due to either of two factors. The first is that members are aware of the situation but other policy issues are taking up their time. The second is that members do not fully understand the importance of a disposal pathway for SNF and defense waste. In addition, the issue is not viewed with a great sense of urgency because high level waste from Hanford, INL, and SRS has not been vitrified yet and is therefore not ready for shipment. Finally, there is no scientific consensus on whether or not Yucca Mountain is the best option for waste storage, due to the time frames under analysis.
- Mr. Bearden was asked what sources of information CRS relies on. He replied that the first step in CRS's research process is to examine current law. If a law is general enough for agency discretion, CRS then looks at official agency reporting. The next step is to examine other sources, including publically released correspondence, or other primary sources. In general, all information used must be publically available. CRS does not rely on advocacy work, except to report on the range of opinion.
- The role of tribes has been an issue for DOE and DOD. When Congress drafted CERCLA it was well aware of its effects on tribes, and there has been a long debate on whether or not the executive branch has met its obligation to consult with tribes. Historically, consultation with tribes has taken longer and not gone as smoothly as with states.
- Reports prepared by CRS are by statute not available to the public. However, anyone may request a copy of a CRS report from a member of Congress.

Update on DOE's Waste Disposition & NRDA Activities - Frank Marcinowski, Office of Regulatory Compliance, DOE Office of Environmental Management, and staff including William Levitan and Matthew Duchesne.

Mr. Marcinowski's presentation is available [here](#).

Mr. Marcinowski provided a summary of DOE-EM's recent activities around waste disposition. Mr. Marcinowski's presentation covered the wide scope of EM's waste and materials disposition and included updates on high level (HLW) and liquid tank waste management, transuranic (TRU) waste, the Waste Isolation Pilot Plant (WIPP), calcine waste, low-level waste (LLW), and mixed low-level waste (MLLW). Mr. Marcinowski highlighted several important items related to waste disposition:

- EM is still in the process of assessing increases in waste volume processing (particularly TRU waste) due to ARRA funding; EM estimates ARRA funding will increase the certification and shipment of TRU waste to WIPP by 25% over the base program.
- EM is in the process of reviewing [DOE Order 435.1](#) and expects to complete the revision in 1½ – 2 years.
- Performance assessment (PA) is required for LLW disposal under 435.1 and is part of the "Community of Practice" program being implemented by the HLW Corporate Board
- Although DOE is technically self-regulating, it is subject to 37 compliance agreements as well as the Defense Nuclear Facility Safety Board. The NRC also provides consultation on DOE's implementation of Section 3116 authority.
- EM has established corporate boards for HLW, TRU, and LLW to guide strategy decisions and inform policy considerations.
- WIPP is now filled to one-third of its legislated capacity and its recertification application (required every five years to EPA to demonstrate compliance with disposal standards) was submitted to EPA in March 2009.

Mr. Marcinowski's presentation also touched on the subject of DOE's proposal for nickel recycling, EM's new mercury management project, nuclear materials consolidation and disposition plan, and excess uranium inventory management.

Mr. Marcinowski made the following additional points in response to questions from Task Force and STGWG members:

- EM is discussing the inclusion of state regulators in the review of DOE Order 435.1
- More detailed information for on-site disposal compared to off-site disposal is available via the Waste Information Management Systems [website](#).
- Forecasts for on-site disposal of MLLW and LLW do not include assumptions of available capacity or impacts of ARRA funding.
- DOE is scheduled to enter into a public review period for non-defense related TRU waste in the near future.
- The DEIS for Greater Than Class C (GTCC) waste is in draft form within DOE and will be released this year. DOE has not consulted with stakeholders and tribes on the DEIS since it is not a "decision-making" document.
- NNSA is responsible for all materials (excess or otherwise) within the Y-12 facility at Oak Ridge.
- Energy Solutions' commercial disposal facility in Utah is the cheapest off-site disposal option for LLW; the cheapest overall solution, however, is still on-site disposal.

Natural Resource Damage Assessment Updates - Matthew Duchesne, Environmental Protection Specialist, DOE-EM

(Mr. Duchesne's presentation slides are incorporated into Mr. Marcinowski's presentation)

Mr. Duchesne outlined several key components of DOE's NRDA program. This includes the overarching policy of integrating natural resource concerns into cleanup actions, as demonstrated by DOE at the Fernald, Brookhaven, and Weldon Springs sites. The NRDA program also follows a policy of cooperation with co-trustees, with cooperative assessment work underway at LANL, Hanford,

Brookhaven, and Oak Ridge, and regular communications with co-trustees at Idaho and Savannah River Site. The cooperative model keeps trustees informed and allows for comments on NRDA policy. NRDA staffing is diffuse, with most personnel at the site level, which leads to some concern about information sharing and institutional knowledge. Mr. Duchesne also discussed NRDA interaction with DOE's Office of General Counsel and the U.S. Department of Justice, and NRDA funding within DOE.

Mr. Duchesne made the following additional points in response to questions from Task Force and STGWG members:

- Funding for NRDA activities is derived from site cleanup (operating) budgets, except at Hanford and LANL. Funding for settlements comes from the judgment fund managed by the Treasury Department.
- In Idaho, the co-trustees include the state, US Department of the Interior, and US Fish and Wildlife Service. Mr. Duchesne said he was not aware of any tribal co-trustees and asked for a correction if this is not correct.
- Prior to Mr. Duchesne assignment to his present role as full time NRDA coordinator at DOE-EM headquarters, NRD decision-making was completely site-specific with no cross-site coordination.

DOE Transportation Program - Stephen C. O'Connor, Director, Office of Packaging and Transportation, DOE-EM

Mr. O'Connor's presentation is available [here](#).

Mr. O'Connor provided an overview of the EM transportation program, touching on its role in oversight and implementation, the Radioactive Materials Transportation Manual, WIPP shipments, the Brookhaven High Flux Beam Reactor shipments to NTS, and the Moab Uranium Mine Tailings Remediation Action. The presentation included a description of EM's Transportation Program activities to support expected increases in waste shipments due to ARRA activities.

The final segment of Mr. O'Connor's presentation concerned the Transportation Program's interaction with states and tribes through the four regional groups: the Western Governors' Association, Southern States Energy Board, Council of State Governments (CSG) – Midwest, and CSG - Eastern Regional Conference. Mr. O'Connor requested feedback from meeting participants on the establishment of a working group to replace the Transportation External Coordination working group (TEC), which focused on the proposed national repository at Yucca Mountain.

Mr. O'Connor made the following additional points in response to questions from Task Force and STGWG members:

- EM is sensitive to the potential loss of expertise that will occur if a successor to TEC is not formed.
- Several items on TEC's agenda are unresolved, such as transportation routes and status of affected tribes. Meeting participants affirmed that these items should be carried forward in the new working group.
- EM is awaiting the report from the President's Blue Ribbon Commission before proceeding with any work around potential interim storage sites.

DOE's Energy Parks Initiative - Mark Gilbertson, Deputy Assistant Secretary, DOE-EM

Mr. Gilbertson's presentation is available [here](#).

Mr. Gilbertson updated meeting participants on DOE's Energy Parks Initiative (EPI), the primary aims of which are investing in clean energy jobs, securing future energy sources, and reducing carbon emissions. EM is considering the full range of assets available to complement the Energy Parks Initiative, from

physical infrastructure to human capital. The Energy Parks Initiative dovetails with EM's focus on reducing the overall cleanup footprint across the complex and returning DOE-owned lands and facilities to local communities. ARRA provided significant support to these goals with over \$60 billion in clean energy investments. Recent outreach efforts for EPI include a workshop at Oak Ridge and a presentation to the Energy Communities Alliance during a meeting in Las Vegas.

Sealed Source Recovery - Abigail Cuthbertson, Federal Project Manager, Offsite Source Recovery Project, Office of Global Threat Reduction, NNSA, US DOE

Ms. Cuthbertson's presentation is available [here](#).

Ms. Cuthbertson's presentation addressed the mission and goals of the Global Threat Reduction Initiative's Off-Site Source Recovery Project (GTRI/OSRP), followed by background information on source recovery requirements from pre 9/11 through present day. She also discussed the recovery process, the number of recoveries made to date, and recovery locations. Due to their high activity and portability, radioactive sealed sources are seen to pose a potential national security concern.

Ms. Cuthbertson outlined the primary challenges facing GTRI/OSRP, two of which involve commercial disposition limitations (lack of facilities and lack of access). She emphasized that all 50 states have disused sealed sources, but currently only 14 states have access to a commercial disposal facility. DOE estimates that sealed sources comprise less than 1% of the country's total LLW as measured both by volume and activity.

One of NNSA's approaches to these challenges is a recently formed Focus Group on Recovery and Disposition Options for Disused Radioactive Sealed Sources. Focus group participants include representatives from Federal and state governments, Waste Compacts, and the private sector. Ms. Cuthbertson encouraged interested FFTF or STGWG members to contact her to discuss opportunities to participate.