

# Intergovernmental Meeting with the U.S. Department of Energy December 14-16, 2011 Summary of Plenary Sessions

On December 14, 15, and 16, 2011, representatives of six intergovernmental groups – the National Governors Association (NGA<sup>1</sup>) Center for Best Practices' Federal Facilities Task Force (FTFF), the Energy Communities Alliance (ECA), the State and Tribal Government Working Group (STGWG), the National Association of Attorneys General (NAAG), the National Conference of State Legislatures (NCSL), and the Environmental Council of the States (ECOS) – convened for their tenth joint meeting with the U.S. Department of Energy (DOE). The meeting was held at the Hotel Monteleone, New Orleans, Louisiana. The joint meeting was designed to help DOE officials communicate with all of the key intergovernmental groups simultaneously, and to provide an opportunity for the individual groups to communicate collectively with DOE and among each other. Key topics for this meeting included the intergovernmental groups' roles and priorities, how to achieve success in difficult fiscal times, waste management, footprint reduction, communications and transparency, and risk assessment. As noted below, all presentations are available online.

## **Thursday, December 15, 2011**

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### **Intergovernmental Group Priorities and Discussion of Recent History of the Weapons Complex and the Role of the Intergovernmental Groups**

**Andrew Kambour, NGA**

*PowerPoint slides are available [here](#).*

Mr. Kambour provided an overview of the intergovernmental groups' priorities for 2011, highlighting several common themes including: compliance with cleanup agreements, budget concerns, transparency, and open communications. Mr. Kambour then itemized the priorities and key issues for each of the six intergovernmental groups (refer to slides for each group's list).

The presentation was followed by a roundtable discussion with Gabe Bohnee (STGWG), John Heaton (NCSL), Brian Hembacher (NAAG), Seth Kirshenberg (ECA), and David Wilson (NGA/ECOS). Andrew Kambour (NGA) led the roundtable discussion.

#### **Panelist Introductory Remarks**

Seth Kirshenberg: Previous discussions of various issues like compliance or cleanup funding have been highly successful. For example, the intergovernmental groups and DOE have worked together to ensure sufficient funding for DOE over the years. All of the parties have accomplished a significant amount by working together.

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<sup>1</sup>See list of acronyms at the end of this document.

Gabe Bohnee: The primary concern for STGWG is the American Indian Policy (AIP), which was redrafted in 2001. There was a major emphasis on the AIP after President Clinton's order on consultation was circulated. As the policy has evolved over time, STGWG has worked to ensure its implementation.

David Wilson: The NGA Federal Facilities Task Force (FFTF) formed in 1992 in response to the Federal Facilities Compliance Act (FFCA). The group's greatest success was to provide DOE with state principles to ensure equity and fairness. Initially the FFTF included state environmental commissioners; more recent FFTF membership consists of a governor's policy representative and a regulatory representative. The FFTF is uniquely situated to provide information to DOE to ensure equitable decision-making.

John Heaton: NCSL is the largest group of non-partisan legislators that meets regularly. NCSL policies are supported by a super-majority of representatives: NCSL committee decisions require 75% approval to advance to the full group for consideration, which then requires 75% membership endorsement for adoption. NCSL members lobby Congress based on adopted policies. Given the high turnover rate in state legislatures, NCSL also serves a valuable educational role for new members. NCSL's EM roundtable, for example, provides site tours for legislators as well as other educational opportunities.

Brian Hembacher: Early experiences with DOE were adversarial in nature, and the current atmosphere is vastly improved. NAAG members consider themselves not only stakeholders but also regulators of DOE, and as such should be consulted prior to DOE decision-making.

### Panelist and Participant Comments and Questions

#### *On the topic of the evolution of the intergovernmental groups' priorities*

- Several issues have evolved over the 20 or so years of the cleanup program. For example, previously the discussion of high level waste (HLW) disposition centered on moving the process forward whereas currently DOE is awaiting the recommendations of the Blue Ribbon Commission on America's Nuclear Future (BRC). Another example is transfer of DOE assets; earlier in the program, closure of DOE sites such as Rocky Flats and Mound resulted in discussion of asset transfer and reuse but this was followed by several years of inactivity. Recently, activity in this area has increased. In addition, every few years or so an event such as the Fukushima disaster or the wildfires at Los Alamos National Laboratory (LANL) will push priorities in a certain direction.
- State regulators' twin priorities - compliance and equity - have remained consistent throughout the life of the cleanup program.
- State legislators' priorities have evolved as cleanup has progressed and the public has grown to accept the need for a national repository for nuclear waste. In 1998 Carlsbad was the only city willing to consider a repository, and the Waste Isolation Pilot Plant (WIPP) has now worked successfully for 13 years. Recently several hundred cities expressed interest in a proposed Areva enrichment facility.

- Natural Resource Damages Assessment and Restoration (NRDAR) is an issue that has developed in importance for several of the intergovernmental groups.
- Consent agreements and consent decrees represent a certain amount of compromise between the negotiating parties and therefore must be fully funded in order to minimize safety risks.
- The American Indian Policy (AIP) calls for annual consultation between tribes and the Secretary of Energy. During the last administration one unsuccessful tribal summit took place, and consultation has now evolved into periodic meetings. Similar to states, tribes do not regard themselves as stakeholders.

*On the topic of the purpose of convening the intergovernmental groups*

- Prior to the Federal Facilities Compliance Act (FFCA), DOE's self-monitoring was not beneficial to the cleanup program. Involvement of states, tribes, and local communities helps to push forward major projects such as the weapons complex cleanup.
- Cleanup of the nuclear weapons complex is a non-partisan issue, and assembling the various groups allows for discussion of common interests and advancement of the agenda.
- DOE recognizes that each of the intergovernmental groups have a role to play in decision-making. For example, the groups recently provided input into ARRA funding decisions.
- Intergovernmental group meetings provide an opportunity for education, and many issues evolve through the continuous refinement of ideas within the context of the meetings.

*On the topic of addressing risk during reduced budget periods*

- The scope of risks being considered continues to grow; whereas the groups' historic focus has been on defense waste cleanup, there is a large amount of spent nuclear fuel (SNF) across the country as well. The groups should consider broadening the discussion beyond materials covered under federal facility cleanup agreements.
- From the tribal perspective, lower budgets and lower cleanup standards increase risk. Tribes advocate cleaning up to a level such that institutional controls are not required, as this reduce risk.
- To the extent that budgets are reduced, there is a tension between an ideal cleanup and what is realistic. States must consider what risks are acceptable today. However, it is important not to use budget constraints as an excuse to back away from specific work that has been negotiated with states.
- While state legislators want DOE to carry out its cleanup mission, they also recognize the need to plan for future U.S. energy needs. NCSL is supportive of all sources of energy generation, including nuclear power. There are difficulties however in persuading the public to fully support nuclear power given the amount of SNF stored at commercial nuclear facilities across the country.
- Legislators and local communities support discussing the "decoupling" concept in relation to co-mingling of defense nuclear waste and civilian SNF (a policy which originated in the Reagan administration), given the decision on recycling of nuclear material or use of high flux reactors is at least thirty years in the future.

- It is important to consider the complex-wide impacts of cleanup decisions, since an action such as a missed milestone at one site will invariably affect cleanup work at other sites.

*On the topic of citizen familiarity with nuclear cleanup and other nuclear issues*

- At the local government level there is an extremely active and educated citizenry on issues related to DOE and its program. The site-specific advisory boards (SSAB) have subcommittees that focus on cleanup and reuse, and they provide education to local communities. Often, however, there is a lack of funding to send citizens to Washington D.C. to educate members of Congress, so they rely on local politicians to serve in that capacity.
- Tribal community leaders remain uninformed, partly due to the exclusionary tradition at sites such as Hanford. Tribal people continue to harbor fears around nuclear work; these fears are reinforced by events such as the Fukushima disaster.
- The vast majority of the public is unaware of the presence of DOE sites within their state, and this lack of knowledge results in funding problems.
- There is significant local support for the Yucca Mountain repository in the area immediately surrounding the site, as evidenced by strong local advocacy for DOE's completion of the repository's license application.

## **Update on Environmental Management**

**David Huizenga, Assistant Secretary (Acting), DOE-EM**

### Presentation Summary

The success of previous Assistant Secretaries is attributable to strong relationships with regulators, stakeholders, and tribes. DOE participation at the intergovernmental meeting is intended to accomplish three primary goals:

1. To enable EM to share its current vision, as assembled by senior management
2. To build consensus through transparent discussion of sensitive issues
3. To learn and benefit from the collective knowledge of meeting participants

The current EM leadership does not intend to make any big changes to the EM vision, given the twenty year history of the program and knowledge of the most critical issues. EM has a corps of high-quality contractors working to solve cleanup problems, with experience cleaning up and closing sites such as Rocky Flats, and the EM mission is well-understood both at DOE headquarters and at its field offices.

Energy Secretary Stephen Chu recently requested DOE Office of Science review four large EM projects to identify optimization opportunities both within those projects and across EM; EM management is on a path toward implementing the recommendations from this review. Secretary Chu is also interested in "flattening" the EM organizational structure by placing further responsibility at the various field offices, and to this end EM recently announced a reorganization of its approximately 350 headquarters staff to maximize effectiveness in supporting EM's mission in the field. The reorganization included moving the Office of Public and Intergovernmental Accountability under the Office of External Affairs. EM leadership

recognizes the concerns that this will “politicize” the Office of Public and Intergovernmental Accountability but believes the issues dealt with under that office are beyond partisan. Several groups have raised questions regarding the migration of the EM program into the National Nuclear Security Administration (NNSA), and NNSA Assistant Secretary Tom D’Agostino is aware of concerns around the relative allocation of resources between NNSA and EM.

The FY12 budget is close to final, and each of the intergovernmental groups has expressed interest in this subject. The next few years will be difficult from a budget standpoint, and it is important for the various intergovernmental groups to use their power in combination with DOE field office managers to give the EM program the best chance for success. EM and OMB are currently involved in discussions around the FY13 budget.

The recent report from the DOE Office of Inspector General ([\*Management Challenges at the Department of Energy – Fiscal Year 2012\*](#)) includes suggestions around rethinking EM’s approach to risks and cleanup, however EM leadership does not envision a top-to-bottom reassessment of risk at EM sites.

Assistant Secretary Huizenga has met with several tribal chairpersons. EM continues to respect its unique government-to-government relationship with tribal nations.

#### Roundtable Discussion and Panelist Remarks

The presentation was followed by a roundtable discussion with David Huizenga. The discussion was moderated by Mayor Tom Beehan (ECA) and included John Eschenberg (DOE - Oak Ridge Reservation), David Moody (DOE - Savannah River Site), Scott Samuelson (DOE- Office of River Protection), and Bill Murphie (DOE - Portsmouth/Paducah field office).

John Eschenberg: The Oak Ridge Reservation is located entirely within the city of Oak Ridge and overlaps two counties, creating a politically complex situation. The Oak Ridge Reservation has continuing missions such as energy efficiency research, scientific missions, and defense work, all of which operate in conjunction with EM’s cleanup work. The site office is considering various alternatives to reduce cleanup costs such as jointly investing with NNSA to reduce the footprint of the Y-12 defense facility, which will lower the cost of environmental cleanup in the area.

David Moody: DOE works with five counties and two states on activities at Savannah River Site (SRS), all of which provide feedback on how to reuse the 310 square miles at the site. ARRA project funding allowed EM to reduce the active remediation footprint at the site by 70%, and EM is now exploring reuse alternatives such as clean energy production.

Scott Samuelson: Hanford is a large site, and the Office of River Protection (ORP) has a small piece of it. EM would prefer to begin treating low-level waste (LLW) sooner at the Waste Treatment Plant (WTP), which might require some tradeoffs. WTP is 60% complete and EM will start bringing the facility online in about 2 years. ORP utilized ARRA funding to revitalize infrastructure in preparation for waste input to the WTP. A major continuing task at ORP is devising a method for retrieving semi-solid waste from single-shell tanks.

Bill Murphie: The Paducah and Portsmouth sites represent a small land footprint but include relatively large facilities with associated “hotel” costs. Both sites have experienced recent success but will be challenged by constrained budgets during the next few years.

### Panelist and Participant Comments and Questions

#### *On the topic of maintaining cleanup levels during periods of reduced budget*

- The result of reduced budgets is often less (or lower quality) cleanup, rather than longer cleanup.
- Assistant Secretary Huizenga reported there has been no discussion of reduced cleanup levels in his discussions with OMB.
- Austere budget periods have forced DOE to think about working more efficiently or creatively, rather than reducing the amount of cleanup work to be done. This can include, for example, taking advantage of natural attenuation of liquid waste, rather than pumping and treating.
- EM and regulators spend a great deal of time focusing on risk and consequences but not enough time focusing on the *probability* of an occurrence. Balancing this side of the risk equation will likely provide some relief during tight budget periods.
- State regulators encourage site offices and DOE headquarters to collaborate with states at sites where EM is not the primary landlord, in order to find greater efficiencies.
- Regarding risk, there should be much more explicit recognition that tribal people are the most susceptible to environmental contamination.

#### *On the topic of asset revitalization*

- ORR pioneered the concept of asset revitalization and has been working in this area for over 15 years. For example, The K-25 site was renamed the East Tennessee Technology Park based on a vision of beating swords into ploughshares; the site was deeded to the community for reuse as a small business park. ORR is also hoping to develop small modular reactor technology for widespread use.
- The footprint reduction area at SRS is expected to be available for reuse. SRS is also strongly engaged in alternative fuels initiatives, including hydrogen fuel.
- At Paducah and Portsmouth there is a strong need for asset reuse. Because there is no fall-back option such as a national laboratory at the sites, the loss of jobs as a result of site closure has a significant impact on the local community.

### **Luncheon Presentation**

**Lisa Feldt, Deputy Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER), US EPA**

#### Presentation Summary

A key factor in difficult budget periods is working in close collaboration with all affected parties. EPA’s Integrated Cleanup Initiative is designed to leverage the resources involved in

environmental cleanup, some of which affect federal facilities. Three EPA programs that impact cleanup at federal facilities are: Uniform Federal Facility Quality Program, harmonization effort with the Department of Defense (DOD), and the Stalled Sites Effort.

EPA's efforts to streamline cleanup work at federal facilities include working at SRS to streamline documents and renegotiate milestones, and reducing the amount of required sampling at the Santa Susana Field Laboratory.

EPA recognizes the need to look beyond the cleanup phase to long-term facility remediation and has embarked on efforts such as a community engagement initiative to discuss how to take care of communities most affected by cleanup activities.

The principles outlined in the [final report](#) of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) remain applicable today, and the intergovernmental groups and DOE should revisit Chapter Five in particular, as it discusses budgets and priority setting.

From EPA's perspective, the recent report from the DOE-IG implies that priorities should be set nationally and only for high risk activities. This strategy is problematic for several reasons: it countermands the FFERDC principles, assumes enforceable milestones cannot be renegotiated<sup>2</sup>, and does not account for the interests of tribes, regulators, and stakeholders.

Notable successes in federal facility cleanup include the closures of Rocky Flats, Mound, and Fernald, the reactor closure at SRS, and acceleration of cleanup from ARRA funding.

### **Achieving Success in Difficult Fiscal Times**

**Terry Tyborowski, Deputy Assistant Secretary (Acting) for Program Planning and Budget, DOE-EM**

**Steve Trischman, Deputy Director of Strategic Planning and Analysis, DOE-EM**

*Ms. Tyborowski and Mr. Trischman's PowerPoint slides are available [here](#).*

#### Presentation Summary

For EM's FY12 appropriations, the current omnibus appropriations bill contains approximately \$399 million less than EM's expectations. The FY13 budget is in process and the time for stakeholder involvement is now. In September, DOE sent its proposed budget to OMB for consideration. DOE recently received OMB's passback budget, and the two agencies are negotiating through the budget appeal process.

In the near term, current planning estimates exceed anticipated available funding. The disjoint between EM's funding levels and planning levels is between 12 and 26 billion dollars between now and 2020 depending on the continued availability of target funding as sites are cleaned up and closed. It is important for Congress to see the difference between approved funding and the funding needed for EM commitments, and EM has not traditionally done a good job of

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<sup>2</sup> As stated on page 10 of the DOE-IG report: "Modifying these agreements would be a very costly and time consuming process and would, understandably, be extremely unpopular with a variety of constituencies."

communicating this information to Congress. The funding shortfall results in an unrealistic baseline, which EM is now updating to reflect the current budget scenario.

### Roundtable Discussion and Panelist Remarks

The presentation was followed by a roundtable discussion with Terry Tyborowski, Steve Trischman, Peter Chestnut (STGWG), John Eschenberg (DOE - Oak Ridge Reservation), Andy Fitz (NAAG), and Rick McLeod (ECA). Jane Hedges (NGA) led the roundtable discussion.

Rick McLeod: From the workforce perspective, a \$100 million budget change results in approximately 450 layoffs or hirings. At SRS there is a local strategic plan that involves the community reuse organization and looks at private ventures both inside SRS and in the surrounding communities.

Andy Fitz: Success is contingent upon DOE embracing EM as a program priority. When a program is not considered a priority, it becomes easy to try to redefine the problem or minimize it. This appears to be the case with the DOE-IG report - another attempt to redefine the problem. Cleanup is legally mandated through nuanced agreements, and many cleanup elements (e.g., tribal interests) are not accounted for in the IG report. There appears to be a tendency for new DOE management to rethink what needs to be done, when success is better defined as “weathering the storm”.

Peter Chestnut: It is important to protect previous investments in tribal interests, as well as maintain negotiated milestones. If projections call for cleanup to extend beyond currently negotiated time frames, DOE and affected parties should adjust the time frame as opposed to adjusting cleanup quality.

John Eschenberg: ARRA distributed a significant amount of cleanup work, and much of its success is attributable to prudent contract management. EM must be more creative with contract deployment, including the structure of contractor incentives to maximize quality and efficiency. EM must also account for the advantages and disadvantages of working with small and large contractors.

### Panelist and Participant Comments and Questions

- As DOE moves forward with recalculation of lifecycle costs for each site, the information should be shared with stakeholders to the extent possible, as they discuss cleanup with Congressional leaders.
- EM’s approach to footprint reduction conveys significant progress, as reducing the amount of area requiring intensive maintenance is a critical component of cleanup.
- EM has collected lifecycle costs since 1995 and updates its data regularly. One of the problems with the variation in lifecycle costs is that it damages EM’s credibility with Congress, which is why EM developed a tool that immediately demonstrates the impact of budget changes; EM would like to make this tool available via web interface. The current tool is *not* able to analyze additional maintenance costs incurred through delays.

- It is important to emphasize that members of Congress and Congressional committee staff are interested in hearing from constituents and other interested groups.
- The state of Washington strongly believes that vitrifying the liquid tank waste at Hanford is the best disposition method to ensure the protection of the Columbia River corridor.
- During the first Clinton Administration under Assistant Secretary Tom Grumbly, EM provided regulator and stakeholder representatives extensive access to its internal budget priority-setting discussions and process before submitting its budget to DOE headquarters, a practice that was curtailed and then abolished by the time of the George W. Bush Administration. EM should consider moving back to a model of greater budget process transparency.
- Integrating NRDAR costs into cleanup budgets at the outset has proven successful at the Fernald Site and should be put into practice with greater frequency.

## **Waste Management, Footprint Reduction, and the Long-term View of the Complex**

**Christine Gelles, Director of Disposal Operations, DOE-EM**

*Ms. Gelles' PowerPoint slides are available [here](#).*

### Presentation Summary

Ms. Gelles provided an overview of EM's waste management and footprint reduction activities, as well as the long-term view of the complex. The presentation included information on the following:

- EM's programmatic priorities
- Benefits of ARRA work (such as 66% footprint reduction at Recovery Act sites and \$7 billion in lifecycle cost savings)
- DOE's six waste management priorities
- Treatment of radioactive tank wastes, SNF storage, and disposal of TRU waste
- Status of remote- and contact-handled TRU waste shipments to WIPP
- Disposal status of low-level waste (LLW) and mixed low-level waste (MLLW)
- Status of the revision process for DOE Order 435.1
- Status of the environmental impact statement (EIS) for disposal of Greater than Class C (GTCC) LLW

### Roundtable Discussion and Panelist Remarks

The presentation was followed by a roundtable discussion with Christine Gelles, Sue Cange (DOE-Oak Ridge Office), Dennis Faulk (US EPA), and David Moody (DOE-SRS). Ken Niles (NGA) led the roundtable discussion.

#### *On the topic of footprint reduction*

- EM acknowledges that its current method for measuring footprint reduction differs from the pure footprint reduction measurement used in the past. However, EM still considers an area of land "reduced", even if passive treatment systems remain on-site.

- At ORR, footprint reduction means enabling ongoing missions and allowing development and operations at ETTP to progress. ORR is currently 53 square miles and DOE is working with EPA and the State of Tennessee to reduce the official footprint on the National Priorities List to less than 20 square miles.
- It is important to remember that the definition of footprint reduction varies among DOE, EPA, and other stakeholders.

*On the topic of recent success and upcoming success*

- At SRS some of the work done under ARRA has been completed ahead of schedule and below cost. EM is using these savings to accomplish additional footprint reduction work.
- Removal of the Idaho site from the NPL is on the horizon.
- In January 2012 an 18 MW biomass energy plant at SRS will be officially connected to the local power grid. The plant, currently the largest biomass facility with DOE, is undergoing readiness review.
- SRS recently received approval to purify 1 metric ton per year of plutonium for the mixed oxide fuel (MOX) fabrication facility.

## **The Blue Ribbon Commission on America's Nuclear Future**

**Tim Frazier, Designated Federal Officer, DOE**

*Mr. Frazier's PowerPoint slides are available [here](#).*

### Presentation Summary

Mr. Frazier briefly reviewed the mandate, membership, and recent activities of the Blue Ribbon Commission. He described the seven key recommendations from the Commission's draft report, which was issued for public comment in July 2011. The recommendations are:

1. A new approach to siting and development
2. A new, single-purpose organization focused on nuclear waste in the United States
3. Have assured access to funding
4. Develop permanent deep geological disposal site(s) for spent fuel and high-level nuclear waste
5. Develop one or more consolidated interim storage facilities as part of managing back end of nuclear fuel cycle
6. Create stable, long-term support for research, development, and demonstration (RD&D)
7. Need international leadership

The BRC received several thousand public comments on the draft report through written and electronic correspondence and during a series of public meetings. The BRC considered all of the public comments and is revising its final report to reflect this input. Notably, the BRC will add an eighth item to its list of key recommendations:

- Prompt initiation of programs to prepare for future large-scale transportation of spent nuclear fuel and high-level waste to consolidated storage and disposal facilities... undertaking planning activities with potentially affected states and tribes, and providing funding and technical assistance for related activities.

The Commission's final report is not expected to include a recommendation regarding the commingling of defense and civilian waste.

Once the BRC issues its final report in January 2012, the Obama Administration and Secretary Chu will consider its recommendations. By design, DOE has not taken a position on the BRC's recommendations. Secretary Chu and Deputy Secretary Poneman specifically mandated that the BRC remain independent of DOE.

The BRC's report describes a series of near-term actions that can be accomplished via executive order, such as changing the manner in which the fee for waste storage is currently collected.

#### Participant Comments and Questions

- The BRC should consider prioritizing emplacement of defense waste over civilian nuclear waste, thereby "decoupling" defense and civilian waste. Decoupling is not the same as reversing the commingling policy.

## **Friday, December 16, 2011**

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### **Opportunities and Strategies for Increased Communication and Transparency**

**Colin Jones, Senior Policy Advisor, Office of Communications and External Affairs, DOE-EM**

*Mr. Jones' PowerPoint slides are available [here](#).*

#### Presentation Summary

The Office of Communications and External Affairs strives to prevent surprises, whenever possible. However, there are occasions when news items come from organizations outside of EM, such as *Weapons Complex Monitor*. Other important points regarding communications and transparency include:

- Home state constituents always receive priority
- EM is working to incorporate lessons learned on transparency from ARRA projects into the base program

Members of each intergovernmental group should sign up for EM's communications products such as newsletters, bulletins, and other updates.

#### Roundtable Discussion and Panelist Remarks

The presentation was followed by a roundtable discussion with Colin Jones, Delegate Sally L. Jameson (NCSL), Willie Preacher (STGWG), Scott Samuelson (DOE-ORP), and Scott Wade (DOE-NNSA Nevada Site Office). Pam Larsen (ECA) led the roundtable discussion.

Scott Samuelson: There is significant outreach and outside involvement in the EM program, with continuing need for further communication between people and not just on paper. At times EM should slow down and just talk with people, as it is a constant struggle to keep communications open and get people involved.

Scott Wade: EM and NNSA operate in different ways. At NNSA there is general outside interest in current activities but not a dialogue. There are certain activities that NNSA is unable to discuss but there is still need for effective engagement. At the Nevada Site Office one success is a community air and water quality monitoring program. The program uses 29 monitoring stations, 19 of which have their data collected by local citizens.

Sally Jameson: It is important to ensure local and state citizens are involved, including through the convening of meetings such as the intergovernmental meeting. Each participating intergovernmental group should provide links to their own electronic updates.

Willie Preacher: Tribes communicate differently from the other groups, with a holistic view of what makes the earth complete. Tribes' basic communication relates to DOE plans, and how tribes can provide input. The Shoshone-Bannock Tribes have good communications with their local DOE contact, as he has earned the respect of the tribal council. The Shoshone-Bannock also have good communications with the State of Idaho. The Tribes would like more online communications from DOE on the model of the weekly ARRA update, as well as greater understanding at DOE headquarters of the tribal perspective on cleanup.

#### Panelist and Participant Comments and Questions

- The intergovernmental groups should reconvene shortly after the final BRC report is issued, to discuss the implications of the report's recommendations and develop strategies to deal with how the recommendations will impact each group.
- Communication has been a charged issue among Indian tribes for decades. As we continue to communicate, confusion remains. The relationship between the United States government and tribes has had a sorry history. Part of the selection criteria for Manhattan Project sites was isolation and expendability of the local people, including tribes. The logic of the uninformed did not take note of the foods or medicines found in the Hanford scrublands, but those foods and medicines are in the DNA of the local Indian people. Indian treaties are not taught in the U.S. educational curricula, but perhaps should be.
- DOE has frequent discussions around the definition of "independent", one of which recently centered on the investigation of the safety culture at the Hanford Waste Treatment Plant. DOE funded an independent report which concluded that although there are safety-related issues at WTP, the culture of safety at the facility is not flawed. This contradicts the general conclusion reached in a [report](#) from the Defense Nuclear Facilities Safety Board (DNFSB).
- Approximately 11 years ago Congress approved the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) as a result of then Secretary of Energy Bill Richardson's visit to the Hanford Site. The fact that there were individuals attempting to receive compensation for illnesses attributed to DOE work exposure was never communicated to DOE senior management and only came to light upon the

Secretary's site visit. The point is, many times there are issues that are not communicated up the DOE chain of command and DOE should have better systems in place for doing so.

## **Risk Assessment and Cleanup Decisionmaking**

**Bill Levitan, Director of Environmental Compliance, DOE-EM**

*Mr. Levitan's PowerPoint slides are available [here](#).*

### Presentation Summary

There have been several key developments during the past five years of the EM program, including budget adjustments such as ARRA funding, renegotiation of milestones, new project scopes, and certain projects not being executed as anticipated. Environmental compliance remains one of EM's top program drivers, with tension arising in the conflict between top down pressure (Federal budget process and targets) and bottom up pressure (site-specific needs). As a result, EM employs existing processes to provide a framework for risk characterization. However, it is important to note that decisions regarding cleanup priorities are risk-informed, not risk-based.

The intergovernmental groups and DOE should revisit the FFERDC [final report](#), with particular attention to the report's process recommendations and description of "risk plus other factors".

### Roundtable Discussion and Panelist Remarks

The presentation was followed by a roundtable discussion with Bill Levitan, David Abelson (Rocky Flats Stewardship Council), Joanna Burger (Consortium for Risk Evaluation with Stakeholder Participation), and Bill Murphie (DOE - Portsmouth/Paducah Project Office). John Owsley (NGA) moderated the discussion.

John Owsley: The State of Tennessee is a member of a tri-party agreement governing cleanup of the Oak Ridge Reservation. In 2009 the agreement was compromised and Tennessee began assessing fines and penalties against DOE for missed milestones. Tennessee has now concluded that collaboration with DOE is a more productive route to achieving cleanup milestones.

Bill Levitan: DOE sets targets under an assumed funding level, which is not always realized. By working with advisory boards and state regulators, however, EM is currently meeting 95% of negotiated milestones.

Joanna Burger (Dr. Burger's PowerPoint slides are available [here](#)): CRESP is developing a prioritization tool that might be useful to sites. The tool, which is still in progress, takes several variables as inputs and develops a risk rating of low, medium, high, or very high. The tool is under development for use at the Oak Ridge Reservation but it is hoped that once completed it will be widely applicable at cleanup sites across the complex.

David Abelson: "[The Politics of Cleanup](#)" discusses the meaning of cleanup sites as community assets. DOE's goals are to reduce liability, protect human health and the environment, and

ensure these sites remain an ongoing community asset. The distinction between “risk-based” and “risk-informed” is important. When communicating risk it is not just the responsibility of DOE and regulators to communicate risk to human health and the environment but also the risks to the community’s ability to redevelop in whatever capacity is desired.

Bill Murphie: As evidenced by a 1997 [report](#) by the National Academy of Public Administration about intergenerational decision-making, future impacts should be weighted differently from impacts on current generations. Although many elements of risk analysis are very precise and scientific, it remains difficult to account for intergenerational impacts.

### Panelist and Participant Comments and Questions

- The intergovernmental groups and DOE discussed risk years ago in the form of the “risk-based end-states” initiative. Cleaning up to an appropriate level at the outset lowers overall risks associated with handling, transportation, and storage of nuclear materials.

### **Intergovernmental Groups: Next Steps**

**Facilitator: Bill Ross, Ross and Associates**

**Panelists: Willie Preacher (STGWG), Todd Mullins (ECOS), Tom Schneider (NGA), Sally Jameson (NCSL), Amy Fitzgerald (ECA), Timothy Kern (NAAG)**

### Panelist Introductory Remarks

Willie Preacher: Tribes have attended these meetings for many years and have seen some new issues and some recurring issues. Tribes would like to see communications with DOE continue and be more transparent. Also, some tribes have treaties and some cleanup sites are located in aboriginal areas, facts which require DOE sensitivity. Tribes also would like DOE to understand that native people want to protect all living things and removal of one thing upsets the balance of nature. The top issues for tribes are NRDAR, funding, and addressing Indian policy.

Todd Mullins: ECOS urges the White House and OMB to request a fully compliant budget in FY13, and ECOS will continue to advocate for a full budget whenever possible. ECOS is also considering writing a report on cleanup decisions during difficult fiscal times and is scheduled to release a report on green and sustainable remediation methods. ECOS also hopes for continued participation in conference calls to discuss environmental compliance as well as input on milestones and priorities prior to decision-making. Among other updates, ECOS requests regular DOE information on NRDAR policy and the siting of a mercury storage facility. ECOS will continue to participate in the annual intergovernmental meeting and other events and extends an invitation to Assistant Secretary Huizenga to attend the ECOS Spring meeting in Austin, Texas.

Tom Schneider: NGA looks forward to aligning multi-state initiatives with DOE activities, similar to the coordination of multi-state TRU shipments. This reflects a larger need to align state priorities with those of DOE. States would like to avoid revisiting the “risk based end states” process.

Sally Jameson: NCSL's federal facilities cleanup policy and HLW/SNF policy were agreed upon by approximately 7,300 state legislators. NCSL believes that the Land Withdrawal Act should be amended to allow storage of various types of waste at WIPP in addition to expanded capacity at the facility. NCSL also believes the civilian nuclear waste fund should be changed to an "enterprise" type fund, and interim storage for HLW should be explored. A discussion of reprocessing would be helpful to reduce the amount of waste that will eventually be disposed in an interim storage facility. Finally, the BRC's recommendations will affect all of the intergovernmental groups, and it will be important to stay informed of any developments.

Tim Kern: In the mid-1980's, when Ohio filed suit against DOE, the Agency's policy was: Decide, act, and defend. This stance has thankfully changed over the years. With respect to budget, DOE is requesting full funding but due to difficult fiscal times, states must be flexible and work with DOE.

Amy Fitzgerald: All cleanup is local, and at the end of the day the local community wants new investments and energy infrastructure, and the ability to host DOE for many years. DOE has made a commitment to local communities to do so, in exchange for these communities' willingness to host DOE facilities that served U.S. national interests. Continuous education is critical, as political turnover as well as turnover in cleanup personnel puts pressure on tribes, stakeholders, and regulators to communicate their priorities.

#### Panelist and Participant Comments and Questions

- DOE should ask more questions of tribes.
- Perspective is key: The cost to create the weapons complex was approximately \$6 trillion, and \$300 billion estimated lifecycle cleanup cost is only 5% of that total.
- Many of the BRC's recommendations integrate well with defense cleanup, and the intergovernmental groups should begin to make decisions about next steps. One possibility is to reconvene in March or April, after the BRC's report is issued, and discuss which principles to support and whether changes need to be made to the law.
- Early meetings with DOE consisted of DOE talking at the groups for 56 minutes, followed by four minute of discussion; recent meetings are much more productive.
- A key message from this meeting is to weather the storm. Many of the meeting participants have seen budget crises before, and all participants acknowledge and understand that cleanup completion is far into the future.
- Questions to consider: What do the groups want to do together? What do they want to do individually? Which policymakers need to be educated and how will this be done? How shall we continue to communicate among the groups and with DOE?

[Meeting Adjourned]

## Acronyms

AIP	American Indian Policy
ARRA	American Recovery and Reinvestment Act
BRC	Blue Ribbon Commission (on America's Nuclear Future)
CAB	Citizen Advisory Board
DNSFB	Defense Nuclear Facilities Safety Advisory Board
DOD	Department of Defense
DOE	Department of Energy
ECA	Energy Communities Alliance
ECOS	Environmental Council of the States
EEOICPA	Energy Employees Occupational Illness Compensation Program Act
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ECOS	Environmental Council of the States
EM	Environmental Management
FFCA	Federal Facilities Compliance Act
FFERDC	Federal Facilities Environmental Restoration Dialogue Committee
FETF	Federal Facilities Task Force
FY	Fiscal Year
GTCC	Greater than Class C waste
HLW	High Level Waste
LANL	Los Alamos National Laboratory
LLW	Low Level Waste
MLLW	Mixed Low Level Waste
MOX	Mixed Oxide Fuel
NAAG	National Association of Attorneys General
NCSL	National Council of State Legislatures
NGA	National Governors Association
NNSA	National Nuclear Security Administration
NPL	National Priorities List
NRDAR	Natural Resource Damages Assessment and Restoration
OMB	Office of Management and Budget
ORP	Office of River Protection
OSWER	Office of Solid Waste and Emergency Response (US EPA)
SNF	Spent Nuclear Fuel
SRS	Savannah River Site
SSAB	Site Specific Advisory Board
STGWG	State and Tribal Governmental Working Group
WIPP	Waste Isolation Pilot Plant
WTP	Waste Treatment Plant