

NGA FEDERAL FACILITIES TASK FORCE
SPRING MEETING WITH THE U.S. DEPARTMENT OF ENERGY
JUNE 21-22, 2005
MEETING SUMMARY

On June 21-22, 2005, the National Governors Association's Center for Best Practices hosted a meeting of the NGA Federal Facilities Task Force and U.S. Department of Energy (DOE) officials at the Phoenix Park Hotel in Washington D.C. The meeting served as a forum for dialogue between state representatives and U.S. DOE management on their respective concerns and priorities, as well as recent developments at DOE headquarters. Key topic areas for this meeting included waste management, natural resource damage assessment issues, EM program updates, and perspectives from Capitol Hill. Meeting presentations and materials can be found at: <http://www.fffcleanupnews.org/meetings.htm>

Keynote Speaker: Kevin D. Crowley, Director, Nuclear and Radiation Studies Board, National Academies
PowerPoint presentation is available [on-line](#).

- A recent report by the National Academies suggests that DOE should have an outsider regulator. DOE has not yet responded.
- A forthcoming report on certain tank wastes will focus on tank space issues, salt storage of waste, and some specific recommendations on actual closure processes. Those concerned with SRS will want to read the report.
- The planned release date of the interim report discussing certain tank wastes at SRS, Hanford, and INL is July 29, 2005. The final version of the report is due out in January 2006. (For more, see: <http://del.nas.edu/nrsb/ctw>).
- The new report on biological effects of ionizing radiation ("BEIR VII") was released on June 29, 2005. (See: <http://www.nationalacademies.org/morenews/>).

Budget Briefing: Mark Frei, Deputy Assistant Secretary for Business Operations, DOE-EM
PowerPoint presentation is available [on-line](#).

- House and Senate appropriations have been generous – the House has the budget at \$6.9 billion for DOE-EM and the Senate is at \$6.8 billion.
- Acquisitions at Hanford and SRS account for 40% of the EM budget.
- DOE's Consolidated Business Center (CBC) in Cincinnati, supported by non-defense funds, will manage pensions, benefits, medical and legal support, and contract work (even for closure sites like Rocky Flats, Mound, and Fernald). The CBC will also support some small sites that are not yet closed.
- Future budgets for FY 2007-2012 (five year budgets) will probably assume that current environmental functions will be transferred from DOE-EM to NNSA sites despite Congress' decisions to hold off on EM transfers to NNSA this year.
- DOE-EM plans to look at LANL in 2007 and Y-12 in 2009 as additional sites for transfer to NNSA.
- Charlie Anderson is pushing risk reduction and worker safety.
- Safeguards and security budget will rise with time into the out years.
- DOE-EM is investing more in pensions for workers. Over time money will move from cleanup to pensions.

Debrief on End States:

Bob Goldsmith, Director of Office of Core Technical Group, DOE-EM

Doug Frost, Public Participation Specialist, DOE-EM

- DOE-EM is preparing a letter to the participants of the Chicago Risk-based End States Workshop (of October 2004). The letter will discuss the "periodicity" of end states and the idea of a follow-up workshop in late 2005 on cross-cutting issues, including ground water point of compliance, ICs at DOE sites, etc.

- DOE has a new interagency agreement with NRC to help with cross-cutting issues.
- There are currently four challenges to the End States program: (1) being creative, (2) initiating a national cross-cutting issues process, (3) melding the End States process with the transition process (from EM to LM), and (4) encouraging end states alternatives to come from states not just from DOE.
- Both speakers noted there are two steps in the near future for End States as DOE-EM looks to new leadership. The first is to initiate a cross-cutting issues discussion which may be led by groups at the site level. The second is to thoroughly discuss other issues with the sites and their stakeholders.
- Jim Woolford, EPA, suggested it would be useful to create a database of property restrictions, end states, and proposed property uses at the sites, as well as variances across sites.
- Dr. Goldsmith gave assurances that DOE-HQ is not *requiring* sites to come up with variances.

Remedy Process Optimization (RPO): Mark Gilbertson, Deputy Assistant Secretary for Environmental Cleanup and Acceleration, DOE-EM PowerPoint presentation is available [on-line](#).

- RPO is a supplemental project management tool which seeks to improve efficiency and progress on projects in the field. It allows program managers to receive a second opinion or a new perspective on how to solve problems.
- The RPO Teams combine people from different federal agencies, private industries, academia, and other technical experts. The teams are chosen through a networking and federal roundtable process – the core tenet being that outside viewpoints are needed from other federal agencies.
- The RPO tool is being piloted at three sites (Richland, Idaho, and Savannah River). States and sites may propose project ideas; such ideas are best proposed via DOE-EM headquarters.
- RPO does not preclude regulatory processes.
- Challenges for RPO include; technical, institutional, contractual and regulatory hurdles.
- DOE is still determining when to implement RPO and how it fits into regulatory framework.
- RPO won't be instituted so as to be another RBES initiative, but will be done on a case by case basis.

Natural Resource Damage Assessment Panel –

John Bascietto, Environmental Protection Specialist, DOE-EH

Matthew Duchesne, Environmental Compliance Officer, DOE-EM

Larry Groner, Associate General Counsel, United States Air Force (USAF)

Shelly Hall, Attorney, Department of the Interior (DOI)

Graham Mitchell, Chief of Office of Federal Facilities Oversight, State of Ohio, NGA FFTF Member

Eli Reinharz, Ecologist, National Oceanic Atmospheric Administration (NOAA)

Jim Woolford, Director Federal Facilities Restoration and Reuse Office, US EPA

Mr. Woolford's PowerPoint presentation is available [on-line](#).

- DOI has launched a federal advisory committee on NRDA issues, it is a critical committee for the agency. The group will have their first meeting before the end of summer.
- In 1992, Congress authorized DOI to maintain an account funded by NRD collections to provide funding for other NRD cases. There is approximately \$237 million in this account, and it has provided funding for 50 NRDA cases.
- DOI has a ranking system to determine which NRDA cases to fund. The agency is also creating a database of restoration actions.
- Lessons learned by DOI include: work cooperatively with trustees and industries; measure benefits; and (because few enforcement tools exist) cooperate and prioritize with other parties.
- Regarding the complexity and cost of CERCLA/NRDA rules and procedures, Shelly Hall offered to provide examples of settlements that were "not too expensive" at the request of task force members.
- NOAA's cooperative assessments have been successful and NOAA's Damage Assessment and Restoration Program can be viewed at: <http://www.darp.noaa.gov/about/>
- Larry Groner outlined three key points (1) whenever practicable, integrate NRD issues with response actions, (2) NRDA represents the sleeping giant of Superfund (3) the next event on the horizon for NRDA is the DOI Federal Advisory Committee Act (FACA) committee.
- Graham Mitchell of Ohio said that Fernald has done an excellent job of integrating the NRDA assessment with cleanup, although the final legal settlement has not been forthcoming. Ohio feels the following

questions still exist (1) who has authority over groundwater ownership and (2) whether settlements may cover public information/education costs.

- DOJ involvement early on in the process has consistently benefited Ohio.
- John Bascietto explained that NRDA settlements do not always need to go before a judge – there is no need to sue in every case. The public process for NRDA is the same as what is required by CERCLA.
- Tennessee surmises that the structure of current incentive-based contracts has kept NRDA issues off the radar. Matthew Duchesne offered to visit Oak Ridge if there is a need to further discuss NRD issues at the site.

View from Capital Hill:

Martin Schneider Editor-in-Chief, *Weapons Complex Monitor*

Dixon Butler, House Appropriations Subcommittee on Energy and Water Development, Minority staff

- Fiscal year 2006 marks the first cut in the cleanup budget in years – a proposed cut of \$500 million in total. Hanford is one of the more visible cuts.
- The budget estimates for DOE-EM drop each year until 2010: \$6.1 billion for 2007, \$5.3 billion for 2008, and \$4.8 billion by 2010.
- DOE's Oak Ridge (OR) Office is making a bid to become the new "signature" clean-up site after Rocky Flats is completed. They may seek the \$1 billion formerly spent on Rocky Flats, Mound, and Fernald once these sites are closed. This would triple the OR budget.
- Problems with the construction of the Hanford Vitrification Plant, the biggest project in DOE-EM, are drawing attention from Congress. The fallout from this issue could affect all sites. The current baseline cost of \$5.9 billion is expected to rise to \$9 to \$10 billion with a 4 year delay in the opening of the plant.
- Mr. Schneider believes Associate Deputy Secretary Bruce Carnes will oversee DOE-EM and CCRWM and expects Jim Rispoli will report up through Mr. Carnes to David Garman.
- The transfer of environmental responsibilities to NNSA was strongly rejected by the Congressional committees this year. DOE may make the same proposal with new justifications next year.
- Mr. Schneider thinks the "original bargain" (that money saved by accelerating cleanup would be used to benefit other sites once the accelerated sites are closed) is still considered valid on the Hill.
- Mr. Butler stated the problems at the Hanford Vitrification Plant are disturbing, and DOE's credibility could be affected. One concern has been the wisdom of starting construction before completing the design of the plant.
- Mr. Butler commented that unless the U.S. wants to consider a *second* repository ("Yucca 2"), reprocessing of spent fuel needs to be on the table in the future as DOE and others struggle with interim and long term storage issues.
- The transfer of EM responsibilities to NNSA is not being considered further this year.
- Mr. Butler said the 2012 and 2035 closure sites will provide DOE with focus even as first generation sites close.

Waste Management Panel:

Christine Gelles, Director, Office of Commercial Disposition Options, DOE-EM

Gary Peterson, General Engineer, Office of Commercial Disposition Options, DOE-EM

Doug Tonkay, General Engineer, Office of Commercial Disposition Options, DOE-EM

PowerPoint presentations are available on-line ([Gelles](#), [Tonkay](#), [Peterson](#)).

- Goals for EM's new **national strategy for waste management** (aka National Business Strategy), include: integrating sites' baselines, targeting orphan waste streams, resuming a life-cycle waste data system, and providing corporate treatment opportunities.
- The Office of Commercial Disposition Options encourages the Task Force to look at the Waste Information Management System (WIMS) being developed by Florida International University. (See: <http://wimsweb.hcet.fiu.edu/wims/> No password is needed).
- The Office of Commercial Disposition Options is considering how to collect new data to support the National Business Strategy efforts. The goal is to have a waste disposition path for every waste stream. Some orphan wastes are still being discovered. Some sites will also have to do more characterization work.

- Phase I (of the National Business Strategy) cannot be completed until the data is received – the data request will ask for information by summer or fall at the latest. All sites will be included in this effort.
- Comments on the draft “National Business Strategy for MLLW and LLW” are due by August 1, 2005 (See the document [on-line](#)). Technical or grammar based edits are welcomed, but the staff is primarily looking for broader feedback if possible (i.e. Are we on the right path? What are your general impressions?). This document will be revised after August 1 and there will be additional opportunities to comment.
- The FEDRAD meeting in St. Louis focused on targeting problem waste streams and allowed contractors to hear DOE’s problems *now* so as to understand what DOE will need later. DOE hopes this will help contractors as they make R&D decisions.

Office of Environmental Management: Patrice Bubar, Deputy Assistant Secretary for ISM/Operations Oversight, DOE-EM

PowerPoint presentation is available [on-line](#).

- A Task Force member expressed concern about the West Valley procurement. He said the current practice of extending the existing contract is inefficient. Ms. Bubar said her office is working on the contract.
- DOE-EM is following the A-76 policy looking at which positions should be federal versus contracted out. Kathleen Trever of Idaho felt this has the potential to derail some short term EM work.
- The proposed transfer of some cleanup responsibilities to NNSA will probably be put forth again next year (2006).

Luncheon Speaker: Bill Breetz, President, Connecticut Urban Legal Initiative and representative of the National Conference of Commissioners on Uniform State Laws (NCCUSL)

- The Uniform Environmental Covenants Act (UECA) has been enacted in nine states so far this year and four additional states may pass it by the end of the state legislative year. NCCUSL expects up to 25 states will pass this act in the next 18 months. (See: <http://www.environmentalcovenants.org/>)
- Many stakeholders took part in authoring the act with NCCUSL, including DOD, DOE, state attorneys general, property owners, PRPs (i.e. GE), the lending community, the environmental community, and real estate attorneys.
- The NCCUSL version of the act does not address who has jurisdiction over federal facilities or properties. Nor does the act address long-term institutional controls at a site.
- The UECA does not address the level of cleanup at a site. This is controversial in some circles, but the drafters decided to leave this issue to be resolved through other forums.
- Dan Miller of Colorado was one of the original authors of Colorado’s environmental covenants act which uses a regulatory approach versus an approach that uses a real estate/private owner framework.
- Paula Cotter of NAAG mentioned the ASTSWMO policy statements on applying environmental covenants are useful for those wishing to learn more about this topic. (final version pending).

Report from the Office of Legacy Management: Dave Geiser, Deputy Director, DOE-LM

PowerPoint presentation is available [on-line](#).

- Bob Geller said it is important to show that the government can safely manage waste in place at a site such as Weldon Spring to demonstrate that leaving waste on-site can be a good decision.
- DOE-LM is looking at beneficial re-use of sites, i.e. wind turbines, energy efficiency and green space.
- Some sites could increase nearby property values due to the creation of green/open space.
- Dave Geiser said most of DOE-LM sites have a disposal site on them and there have not been any interested purchasers. He emphasized most of Legacy Management’s federally owned sites will probably stay in federal hands.
- The transition from DOE-EM to DOE-LM at Rocky Flats has been smooth. LM and EM staff worked well with the project coordinators at Rocky Flats and Fernald.
- Dave Geiser thanked the four states that provided written responses to his questions (about state cleanup programs) after the last meeting, and expressed interest in having a further discussion with these states.