

**NGA Task Force Conference Call  
with Matthew Duchesne, DOE-EM  
Tuesday, March 29, 2005**

Task Force representatives

*KY:* Tim Thomas, Virginia Baker  
*MO:* Larry Erickson  
*NV:* Chris Andres  
*OH:* Tom Winston, Tom Schneider  
*OR:* Susan Hughes  
*SC:* Richard Haynes, David Wilson  
*TN:* John Owsley, Joe Sanders  
*WA:* Mike Wilson

Ross & Associates

Jerry Boese, Eli Levitt

DOE

Matthew Duchesne, Doug Frost, Steve Miller

<p><b>PURPOSE:</b> For Matthew Duchesne, DOE-EM, to update the states on the status of Natural Resource Damage Assessment (NRDA) issues.</p>
--

Doug Frost introduced Matthew Duchesne, of DOE-EM, who then gave a brief introduction:

- He is new to DOE, the DOE-EM Office, and to NRDA issues in general.
- He is not necessarily able to represent official EM policy on this call.

Jerry Boese, Ross & Associates, provided background: nine months ago, the Task Force members called for new dialogue between states and DOE on NRDA. NRDA issues are becoming a higher priority because many such issues will need to be resolved at sites in the next few years.

- The Task Force is aware that ASTSWMO has a committee working on NRDA issues, primarily with DoD.
- State and other observers have noted DOE's apparent unwillingness to engage on the topic.
- In December 2004, the *Defense Environment Alert* reported that DOE was against NOAA's cooperative approach to NRDA.

Discussion then focused on questions included in the one-page [Overview—Natural Resource Damage Assessment Issues](#) dated March 9th.

## STATE Q & A

### **Where do NRDA issues rank in DOE's list of priorities?**

- NRDA is a priority for DOE. It is why DOE hired Matthew for his position at DOE-EM.
- Signs that NRDA is a high priority: Matthew has been given resources, access to Paul Golan, and a chance to coordinate with Hanford, Rocky Flats, and Fernald.
- Another sign of NRDA's priority: At Paul Golan's suggestion, DOE held a workshop in January on NRDA issues. Among other things, DOE employees discussed NRDA lessons learned. The meeting was for DOE staff only at the Fernald site.

### **How are NRDA issues managed within DOE organizationally? Where does decision-making authority lie? If not Matthew Duchesne, which office or individual is the best day-to-day point of contact at DOE?**

- In the past, NRDA work at DOE was "very decentralized." DOE-EM is trying to better coordinate current efforts without creating centralization.
- A set of questions was produced by DOE staff at the January workshop. Matthew is working to produce a document which answers many of the questions—an FAQ document on NRDA. Once approval is secured he will share it with the Task Force along with an update.
- Matthew is the best person to answer questions as a day-to-day contact on NRDA topics. While there are others involved: Steve Miller (DOE-OGC) and John Bascietto (DOE-ES&H)—it is best to approach Matthew first with any questions or concerns.

**What is the Office of General Counsel’s role and position on NRDA issues? (Ohio explains that there have been problems with negotiations in the past—the GC will put something important on the table to discuss, only to remove it again shortly thereafter.)**

- While NRDA discussions will remain decentralized, DOE’s goal is to improve communication and coordination. DOE knows that better communication means fewer surprises. The role of DOE-HQ (including GC) is to provide policy advice, guidance, and clearance of any proposed settlements.

**Additional state perceptions of DOE’s involvement in NRDA issues:**

- Tennessee has felt a general pull-back on NRDA issues from DOE. In their view, cooperation is not as good today as it was in the past.
- Oregon echoes the same sentiment, but feels they are getting closer to improving cooperation.
- Regarding NRDA discussions at Hanford, Matthew said there is more friction between groups there than he originally anticipated, and solicited any suggestions from participants.
- Ohio reports they have not had any NRDA-related meetings for two years. At one time the state felt the issue was much more important at the site than at DOE-HQ. In Ohio’s view there is work to be done before we get to a collaborative atmosphere. The last round of talks or meetings that produced a report on NRDA was in 1999 (almost six years ago).
- Missouri reports that they are focusing on other issues right now and they hope to get back to NRDA and collaboration issues in the near future.

**Was the 12/28/04 *Defense Environment Alert* article accurate? In light of Secretary Bodman’s history at the Department of Commerce and NOAA, is he already familiar with NOAA’s Cooperative Assessment approach? Is DOE considering it?**

- Matthew does not believe the 12/28 article is accurate. DOE feels that it *is* taking a cooperative approach—e.g., at sites such as Fernald and Hanford. There are groups like the Trustee Council working directly on cooperation issues.
- Oregon sees a need to have conversations on the difference between “communication” and “collaboration.” The Trustees at Hanford feel they are able to *communicate* with DOE and others. However, Oregon feels that the Trustees are not included or given influence in important projects (i.e., recent data assessment and integration projects have not been open to the Trustees despite repeated inquiries on the subject).
- Matthew is happy to interact regularly with any site or state group on the call.

**Is Al Alm’s 9/8/97 “Policy on Integration of Natural Resources Concerns into Response Actions” still in force, and is it being followed by sites?**

- Matthew notes that the 1997 policy by Al Alm is still a valid DOE policy. He notes that Jessie Roberson, early in her tenure, requested reports from each site on the implementation of this policy.
- The 1997 policy created an internal DOE Natural Resource Trustee Steering Committee to deal with NRDA issues. It does not exist now — it faded due to inactivity.
- As an attorney, Matthew feels that he is still lacking all of the technical knowledge required to understand site assessments and interim measures and their relationship to a final Record of Decision (ROD) at a site. In some cases it seems the interim measures are preventing or slowing work toward full integration. Sites are still working to implement the 1997 policy.
- Oregon agrees with the above point and considers this the crux of the issue: DOE is willing to do a *risk assessment* but not an *injury assessment* at Hanford. It is also problematic that DOE considers itself the “lead Trustee” at Hanford.
- Oregon notes that the idea that interim RODs may hinder final RODs is a very interesting one. Also, Oregon hears grumbings about the 1997 policy at Hanford. Some people say that the policy does not have any teeth and other see it more as guidance than actual policy.

**What is the role of Department of Justice (DoJ) in NRD injury decisions?**

- Matthew states that DoJ is involved in litigation cases only. In such cases, they steer the ship. They will not become involved at sites when no litigation has occurred to date.

**How is DOE linked to other Federal agencies on NRDA issues?**

- According to Matthew, there is not much coordination currently between agencies on the issue (DoD, DOE, DOI etc).

**Does DOE require litigation on NRDA to move forward? Are there any NRD settlements to date?**

- Matthew: NRD can move forward with agreements, it does not require litigation. DOE is in discussions now with Fernald for an NRD settlement. Presumably, a settlement would include a covenant not to sue. There are no NRD resolutions that Matthew is aware of currently.
- Tennessee noted a partial settlement involving a conservation set-aside for 3,000 acres of DOE-owned land. DOE will continue to own the land and the state will manage it. The land agreement and conservation easement took five years of planning and detailed work. The value of the conservation easement will be credited toward the final NRD claim.

**Is there a need to develop a “roadmap” of necessary steps to get to resolution of NRDA issues?**

- A roadmap could serve to provide clarification for the sites and for DOE. It helps to know where everyone is on NRDA issues — how did they get here? What is the history or summary of events leading to current situations?
- Any roadmap would need to be fairly flexible and/or skeletal to recognize differences between sites.
- An important goal is to not restate the process or progression required by law under CERCLA.
- DOE agrees that it would be useful to capture our ideas about the process – to enumerate it more clearly.
- A lessons-learned component of the roadmap or framework would be helpful from the states’ perspective.

**How does DOE address the inherent conflict of interest between its role as trustee and its role as responsible party?**

- Matthew responded that as a trustee, DOE has a mandatory fiduciary responsibility, and its role in cleanup should not affect that.
- In this regard, Oregon raised the issue that at Hanford, a DOE attorney recently said to someone, “We cannot keep funding you if you continue to sue us.”
- Matthew replied that the federal government can’t fund organizations *to* sue DOE; this is different from saying it can’t fund an organization if it is *going to* sue DOE.

**NEXT STEPS**

- States and DOE agreed to keep talking. The Task Force will schedule another conference call two to three weeks from today. The goal of that call will be to move forward on a structure for addressing the development of a “roadmap” and record of lessons-learned on NRDA issues to date.
- Doug Frost will consider the “project team” framework as a template for interaction between the Task Force and DOE on NRDA issues.
- Matthew Duchesne will try to provide additional information about the outcome of DOE’s January NRDA workshop held at Fernald, including the set of questions that emerged from the workshop.