

**Notes from the Joint Meeting of the
Environmental Council of the States (ECOS) Federal Facilities Forum (FFF) and the
ECOS-U.S. Department of Defense (DOD) Sustainability Work Group**

At the 2011 ECOS Annual Meeting Sept. 25, 2011

JW Marriott Hotel Indianapolis, Indiana

The following persons were in attendance:

Colleen Cripps (Administrator, Nevada Dept of Environmental Protection)
Robert King Jr (Deputy Commissioner, South Carolina Dept of Health and Environmental Control)
Mark Holocek (Kansas City Site Office Manager, National Nuclear Security Administration)
Maureen Sullivan (Director for Environmental Mngmt, Office of the Deputy Under Secy of Defense for Installations and the Environment, DOD)
Michael Gibbs (Deputy Secretary, California Environmental Protection Agency)
Lisa Bonnett (Interim Director, Illinois Environmental Protection Agency)
Leanne Tippet Mosby (Deputy Director, Missouri Dept of Natural Resources)
Ken Zarker (Washington State Dept of Ecology)
Shari Meghreblian (Deputy Commissioner, Tennessee Dept of Environment and Conservation)
Scott Nally (Director, Ohio Environmental Protection Agency)
David Martin (Secretary, New Mexico Environment Dept)
Jess Byrne (Idaho Dept of Environmental Quality)
Robin Stephens (South Carolina Dept of Health and Environmental Control)
Elaine Boyd (Tennessee Dept of Environment and Conservation)
Jennifer Roberts (Alaska Dept of Environmental Conservation)
Jim Sferra (Ohio Environmental Protection Agency)
Bonnie Buthker (Ohio Environmental Protection Agency)
Kurt Prinic (Ohio Environmental Protection Agency)
Stephen Cobb (Alabama Dept of Environmental Management)
Nancy Kruger (National Assoc of Clean Air Agencies)
Claire Dunne (Director for Intergovernmental Affairs, National Nuclear Security Administration)
Mike Murphy (Virginia Dept of Environmental Quality)
Mac McRae (TechLaw, Inc)
Sherry Boldt (BP America)
Brian McCormack (Edison Electric Institute)
Mark Anderson (Stateside Associates)
Pat Timm (U.S. Army, Regional Environmental and Energy Office- North)
Stan Rasmussen (U.S. Army, Regional Environmental and Energy Office- Central)
Steve Scanlon (U.S. Army Regional Environmental and Energy Office- Central)
Bob Boonstoppel (U.S. Army)
David Blalock (U.S. Army)
Susan Gibson (DOD Regional Environmental Coordinator, U.S. Army)
Matt Jones (Environmental Council of the States)

The following persons joined via speakerphone:

Bill Levitan (Director, Office of Compliance, U.S. Department of Energy Office of Environmental Management)
Reggie Cheatham (Acting Director, Federal Facilities Restoration and Reuse Office, U.S. Environmental Protection Agency)
Steven Chester (Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency)
David Kling (Director, Federal Facilities Enforcement Office, U.S. Environmental Protection Agency)

Chair Colleen Cripps (Administrator, Nevada DEP) brought the meeting to order at approximately 11:00am Eastern. Ms. Cripps welcomed members and guest speakers to the session. She also mentioned that ECOS has published two reports over the past few years per the request of ECOS Federal Facilities Forum members:

- An Examination of the Use of Engineered Cells for Onsite Disposal of Radioactive Waste (January 2009) available here: http://ecos.org/files/3426_file_January_2009_Green_Report.pdf
- State Experiences with Natural Resource Damage Assessment at Nuclear Weapons Complex Sites (September 2010) available here: http://ecos.org/files/4186_file_September_2010_Green_Report.doc

Ms. Cripps noted that these reports were available to ECOS members and the general public for reference purposes.

Next, Ms. Cripps introduced the first two guest speakers: Mr. Bill Levitan, Director for the Office of Compliance with the U.S. Department of Energy Office of Environmental Management (DOE-EM) and Mr. Mark Holocek, Kansas City Site Office Manager with the National Nuclear Security Administration (NNSA). Ms. Cripps said that she hoped Mr. Holocek could speak about the new dynamic of EM officials reporting to NNSA.

Mr. Levitan joined the session via speakerphone. Mr. Holocek attended the session in person.

Mr. Levitan thanked Ms. Cripps for allowing him to speak to ECOS members in lieu of Mr. David Huizenga (the recently-appointed Acting Assistant Secretary for Environmental Management at DOE) who had initially been invited. Mr. Levitan said that Mr. Huizenga has been very busy coming on board at DOE headquarters. Mr. Levitan noted that Mr. Huizenga has a background as a chemical engineer. Mr. Huizenga has also worked at DOE's Hanford site near Richland, Washington as well as previous posts at DOE headquarters (including Deputy Assistant Secretary for EM) and NNSA.

Mr. Levitan spoke on the history of cleanup of the DOE nuclear weapons complex. A short slideshow accompanied Mr. Levitan's presentation, which can be viewed here: http://www.ecos.org/files/4585_file_Levitan_ECOS_presentation_9_25_11.pdf

Mr. Levitan explained that EM leadership is now reporting to the Under Secretary of Nuclear Security, Mr. Tom D'Agostino, who also happens to be the Administrator of NNSA. Mr. Levitan acknowledged that Congressional members from the state of Washington have publicly expressed concerns that this recent organizational realignment might result in EM's budget getting lost to NNSA.

Mr. Levitan reviewed a number of cleanups that have been accomplished, including cleanup of the Rocky Flats site (Colorado) and the Fernald site (Ohio). Mr. Levitan also noted that funds from the American Recovery and Reinvestment Act of 2009 (ARRA) were used to accelerate 42 cleanup milestones. ARRA funds also provided many cleanup jobs, Mr. Levitan said.

Mr. Levitan noted that there is lots of work left to do at the Hanford site (Washington) and at the Savannah River site (South Carolina) to turn tank waste into a glass form for proper disposal.

Mr. Levitan noted that there are currently 40 consent orders in place which control cleanup of various nuclear weapons complex sites. He noted that EM requested \$6.1 B for its Fiscal Year 2012 budget. But appropriations bills currently being considered would result in \$5.6B (House) or \$5.65B (Senate) for EM in FY 2012. If funded at such lower levels, a larger percent of that money would go towards EM maintaining a safe posture for nuclear weapons complex cleanup sites.

Mr. Levitan mentioned the Federal Facilities Cleanup Dialogue meeting hosted by U.S. EPA on Sept. 14-15 in Arlington, Virginia. During the dialogue, the various agencies within the federal family worked together with representatives of stakeholder groups to recognize and address a number of issues. Chapter 5 of the Keystone Dialogue discusses setting cleanup priorities at federal facilities.

Mr. Levitan explained that in the 1990s there were budget issues then too, like we are experiencing again now. We are not going to have the funding we were hoping for to address existing federal facility agreements (FFAs) and milestones, he said. We negotiate rolling milestones on a yearly basis. We will need to work with states and ECOS on this moving forward. Mr. Huizenga has said that while he has a laid-back demeanor, he cares very much about cleanup of the nuclear sites and stakeholders' interests.

Mr. Levitan noted that DOE's draft policy on natural resource damage assessment (NRDA) has been worked on by one of his colleagues, Mr. Matthew Duchesne. The draft policy is now being processed within the agency to see if it can become an official DOE order.

Regarding the mercury storage facility DOE is responsible for siting under the Mercury Export Ban Act of 2008— DOE is at a standstill until Congress appropriates DOE funds for design and construction, Mr. Levitan explained. DOE is ready to issue a request for proposals (RFP) for building and operating the facility, but there are no congressional funds to initiate this process.

Mr. Levitan concluded his presentation by saying that he would have liked to have been at the meeting in person, but it is the end of the current fiscal year and travel funds have been tight.

Ms. Cripps thanked Mr. Levitan for his presentation and invited Mr. Holocek to speak next.

Mr. Holocek said that he works at the NNSA Kansas City Site Office, so he especially appreciates the opportunity the ECOS meeting affords him for meeting with the state of Missouri's environmental leaders.

Mr. Holocek noted that he was attending the meeting in order to represent Mr. Tom D'Agostino (the DOE Under Secretary for Nuclear Security) who looks forward to meeting with ECOS another time.

Mr. Holocek explained that NNSA was established in 2000 and is responsible for the non-proliferation of nuclear weapons, and for maintaining a safe posture of nuclear weapons for the United States. There are eight (8) NNSA sites, Mr. Holocek explained. These "sites" consist of a number of laboratories and

other facilities and are collectively located within the following seven (7) states: CA, NM, HI, TN, MO, NV and TX.

\$11.8B was requested for NNSA for FY 2012. The request will probably not be fully funded, Mr. Holocek speculated. Therefore, we must do more with less, he said. This is what Secretary of Energy, Dr. Steven Chu, was thinking when he realigned EM under NNSA. I support this decision, Mr. Holocek said.

Regarding communications and transparency, NNSA will continue to invite EM to participate in periodic planning calls for EM cleanup and project completion at NNSA sites and for NNSA annual work plans. EM funds the legacy cleanups at NNSA sites, Mr. Holocek explained.

Regarding the Kansas City Plant, DOE recently issued a letter on RCRA permitting for the facility. The 300-acre facility is owned by GSA and NNSA, Mr. Holocek said. Now NNSA is building a newer more modern facility to be finished by the end of next year. We seek to have the old facility re-used, Mr. Holocek said.

NNSA's work depends on having successful relationships with the states, Mr. Holocek said. This concluded Mr. Holocek's presentation. Mr. Holocek thanked ECOS for the speaking invitation.

Ms. Cripps thanked Mr. Holocek for his presentation and invited Reggie Cheatham, Acting Director for EPA's Federal Facilities Restoration and Reuse Office (FFRRO), to speak next. Mr. Cheatham and his colleagues from EPA joined the meeting via speakerphone.

Mr. Cheatham apologized for not attending the meeting in person, explaining that he is currently operating under travel limits.

Mr. Cheatham explained that EPA's Office of Solid Waste and Emergency Response (OSWER) – of which FFRRO is a part – started to integrate its cleanup operations in 2010 in order to initiate some operational improvements. The office is now in its second year leveraging opportunities to improve cleanups in partnership with the states. The action items being pursued are:

1. Improve documentation for Hazardous Waste Docket sites. In a previous study, it was determined that EPA was not thoroughly documenting site histories and records of decision (RODs). EPA has now reviewed 500 sites whose history was unclear, and will now categorize these sites. Some sites may be designated for no further remedial action. Others will need to be investigated further (these are called "stall sites").
2. Issue the ROD toolkit. EPA hopes to release this very soon.
3. Improve the timeliness of 5-year reviews. EPA has issued a memorandum to its Regional offices. A new policy was issued on August 1, 2011. EPA anticipates that more sites will be moving into long-term stewardship. EPA last week convened the Federal Facilities Cleanup Dialogue. EPA wants to make the 5-year reviews for efficient and more timely. EPA wants to ensure that the 5-year reviews clearly explain whether or not remedies put in place have been protective.

4. EPA-DOD Harmonization Project. Many states have expressed interest in EPA and DOD's "harmonization" process. The agencies are scheduled to issue a joint report on this subject later this year. Mr. Cheatham said he especially wanted to thank DOD leadership for their collaboration on this project.
5. More effective communication with federal agencies. More information on improving the effectiveness of EPA's communication with other federal agencies is available at: <http://www.epa.gov/fedfac>
6. Study conducted on why performance targets are sometimes missed. This study found that half of the targets missed are the fault of other federal agencies, but the report also found that many other missed targets were the fault of EPA. More information is available at: <http://www.epa.gov/fedfac>
7. Quality assurance project plans. EPA supports a uniform federal policy on quality assurance project plans. There is a proposal to explore the use of this policy at other cleanup programs.

Mr. Cheatham agreed with Mr. Levitan in that agency budgets are "difficult" right now. Chapter 5 of the 1996 Federal Facilities Environmental Restoration Dialogue Committee report notes that states and federal agencies may have to reevaluate how to take on cleanups considering limited resources.

Mr. Cheatham noted that the FY 2012 budget for EPA is expected to be 15% reduced from the previous fiscal year. With such funding, EPA should still be able to maintain oversight at sites on the National Priorities List (NPL). But EPA might be unable to keep up with all of the non-NPL sites if budgets are limited.

Ms. Cripps thanked Mr. Cheatham for his presentation and asked Mr. David Kling, Director of EPA's Federal Facilities Enforcement Office (FFEO), to speak next.

Before Mr. Kling spoke, Steve Chester, EPA's new Deputy Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), introduced himself to the forum. Mr. Chester, an ECOS member while Director of the Michigan Department of Environmental Quality for seven years beginning in 2003, will help oversee federal facility compliance and enforcement at EPA as part of his new responsibilities and looks forward to working with ECOS in this capacity.

Mr. Kling thanked ECOS for the invitation to speak and thanked the states for their great work as co-regulators, and noted that there is no viable federal facility enforcement program without the active efforts of the states. Mr. Kling also thanked DOD, DOE, and other federal agencies for their progress cleaning up hundreds of sites.

Mr. Kling noted that – when it was issued – Executive Order #13514 required federal agencies to increase their energy efficiency, conserve water and other resources, render facilities more sustainable, and to make higher achievements in pollution prevention.

As co-regulators, we have challenges, Mr. Kling said. Agency budgets are shrinking. Compliance indicators for several of the major media programs remain stable, but not as strong as they used to be, Mr. Kling said. Both state inspections and enforcement actions appear to be on the decline, which may raise questions about our monitoring veracity in this key sector, Mr. Kling said.

Mr. Kling explained that the federal land management agencies face substantial contamination not of their own making (at abandoned mines, for example). This is a challenge for them to address due to limited expertise and budgets.

Mr. Kling noted that there are a very few new federal facility NPL site listings—only 3 in the past 10 years.

Mr. Kling also mentioned challenges associated with chemicals of concern such as TCE and perchlorate, as well as munitions cleanups.

Mr. Kling emphasized that while agencies may use performance-based contracts to conduct cleanups, those contracts cannot impede EPA or state oversight required by law. Mr. Kling suggested the following website as a useful resource: <http://www.fedcenter.gov>

Mr. Kling said that EPA will retain a strong monitoring program and will do a better job targeting priority areas, such as stormwater, underground storage tanks, and RCRA corrective action sites. Mr. Kling discussed a Presidential initiative to re-use excess unneeded federal properties at civilian agencies, which must be conducted with proper regard for environmental requirements.

EPA has taken the agency's 1999 "Yellow Book" on compliance, updated it, and will repost it on the EPA website in November as an online searchable resource to the regulated community.

Finally, Mr. Kling said that he would work with Matt Jones at ECOS to encourage more follow-up co-regulator discussions to take place between ECOS and his office.

Ms. Cripps thanked Mr. Kling for his presentation and asked Mr. Bob King, Deputy Commissioner of South Carolina DHEC, to introduce the next speaker.

Mr. King introduced Ms. Maureen Sullivan as the Director of Environmental Management with the Office of the Deputy Under Secretary of Defense for Installations and the Environment at DOD.

Ms. Sullivan noted that DOD has been successful at moving \$141M worth of funding into the Formerly Used Defense Sites (FUDS) cleanup program.

For FY 2012, the House and Senate have kept DOD cleanup funding steady, and added money to FUDS, Ms. Sullivan explained. Although Congress supports the total funding amount for BRAC, the split between Legacy BRAC versus 2005 BRAC funding levels is still uncertain as the House and Senate are divided on what should happen regarding this.

Ms. Sullivan said that the Army has been working hard to establish a FUDS Forum meeting to occur in January 2012. The Forum will include state participation. She is working with DOD lawyers to assuage their concerns regarding FACA. She says that they have a list of issues to work on, which includes potentially responsible party (PRP) sites.

DOD in July 2011 set up new goals for their cleanup program to see sites being 95% “response complete” by 2015, and 99% “response complete” by 2025. But these goals do not apply to FUDS or BRAC sites. “Response complete” does not mean that the site is “done,” but it means we have achieved the remedial objectives for that site, and have regulator agreement on that. DOD will continue to have long-term stewardship responsibilities at these sites, Ms. Sullivan explained.

How to deal with unexploded ordinance (UXO) at cleanup sites is a big looming issue, Ms. Sullivan said. We successfully added funding for technical demonstration efforts. Ms. Sullivan thanked the states for nominating various sites. She also thanked the states for appointing representatives to the UXO advisory committee. The group will meet next week in Pole Mountain, Wyoming to view a tech demonstration and work on guidance for quality assurance project plans.

Ms. Cripps thanked Ms. Sullivan for her presentation. This concluded the meeting of the ECOS Federal Facilities Forum. There was no time remaining for questions. Ms. Cripps adjourned the meeting at approximately 12:00pm Noon Eastern.

All materials from this meeting, including the agenda, may be viewed here:
http://www.ecos.org/section/committees/cross_media/federal_facilities_forum/