

Notes from the Meeting of the
Environmental Council of the States (ECOS)
Cross-Media Committee (CMC)

at the 2008 ECOS Spring Meeting

Wednesday, April 16, 2008

Renaissance Arts Hotel, New Orleans, Louisiana

Compiled by Matthew C. Jones, ECOS Staff

This meeting was held in plenary as part of the 2008 ECOS Spring Meeting. The meeting was open to all Meeting attendees.

Welcoming Remarks and Vote to Fill Committee Vice-Chair Vacancy:

At approximately 8:30 am Central time, CMC Chair, David P. Littell (Maine) brought the meeting to order and welcomed everyone present:

- Opened the floor for nominations to fill the Committee's Vice-Chair vacancy. Mark McDermid (Wisconsin) nominated Shari T. Wilson (Maryland) for Vice-Chair. David K. Paylor (Virginia) seconded Ms. Wilson's nomination. Mr. Littell called for a vote, and Ms. Wilson was unanimously elected as CMC Vice-Chair.
- Noted that he had recently been elected Chair, and that he was looking forward to working with fellow Committee members.
- Noted that Matthew Jones was recently designated the new CMC Staff Liaison from ECOS. Mr. Littell requested that the membership recognize Mr. Jones as the Committee's new staffer, and thanked Mr. Jones for working with him to help organize the meeting.
- Noted Arlene O'Donnell (former member from Massachusetts) as present in the audience and recognized that she recently stepped down as CMC Chair. Mr. Littell expressed to Ms. O'Donnell the Committee's thanks and gratitude for her past leadership and service to ECOS and the CMC.

Guest Speaker:

Next, Mr. Littell introduced James B. Gulliford, Assistant Administrator of the United States Environmental Protection Agency (US EPA) Office of Prevention, Pesticides and Toxic Substances (OPPTS). Mr. Gulliford gave a presentation on three (3) topics:

- US EPA's New Rule to Control Lead (Pb) during Renovation and Remodeling Activities

- US EPA's New Chemical Assessment and Management Program (ChAMP)
- US EPA's Nanoscale Materials Stewardship Program

Following the presentation, Mr. Gulliford entertained a few questions/ comments from the membership at the request of Mr. Littell:

- Robert Mueller (New Jersey) commented that New Jersey is investigating whether regulatory approaches should be pursued for various nanomaterials. In turn, Mr. Gulliford commented that "the definition of 'chemicals' in TSCA [the Toxic Substance Control Act] is key."
- Dick Pederson (Oregon) asked Mr. Gulliford whether US EPA's REACH database has or had any bearing on the development or intended use of ChAMP. Mr. Gulliford replied that US EPA intends to use ChAMP to identify chemicals of interest for the agency to focus on in the future, and that the data available in the agency's REACH IT database will inform ChAMP's direction.
- Mr. Littell asked Mr. Gulliford whether US EPA has an inventory of consumer products containing nanoproducts. Mr. Gulliford responded by saying that "FIFRA [the Federal Insecticide, Fungicide and Rodenticide Act] requires items to be registered" if used for a FIFRA purpose and that other products containing nano particles have been on the market for years.
- Douglas E. Fine (Massachusetts) asked Mr. Gulliford whether US EPA collaborated with other federal agencies in developing its approach to nanomaterials. Mr. Gulliford replied in the affirmative and stated that US EPA has collaborated with the U.S. Department of Labor and the U.S. Department of Defense in an effort to gather and share information.

Mr. Littell thanked Mr. Gulliford for his presentation. Mr. Gulliford thanked the Committee for the opportunity to speak, and requested that his presentation slides be made available for download on the ECOS website.

Informational Updates:

Next, Mr. Littell invited Elizabeth A. Shaw (Director of US EPA's National Center for Environmental Innovation) to provide an update on the Innovation Action Council (IAC):

- Ms. Shaw presented some historical background information on the IAC. Noted that in 2002, US EPA developed its Innovation Action Strategy, which recommended that the agency continue to foster a good working relationship with state environmental agencies in order to continue improving environmental programming through innovation.
- Noted that, since 2004, the IAC and the ECOS CMC have been pursuing a joint work plan together. Noted that this workplan is due for an update before the end of summer 2008. Through use of a slideshow— Ms. Shaw presented highlights of the accomplishments both groups have made together, and noted work yet to be pursued.

- Noted that Mr. Littell would be attending the upcoming IAC meeting on April 30, 2008 in Philadelphia, Pennsylvania. Ms. Shaw noted that she would like to work with state officials to determine what “Partnership Programs” work could be pursued with the assistance of the IAC. She encouraged the Cross-Media Committee to continue to work closely with her and the IAC.

At the conclusion of Ms. Shaw’s presentation, Mr. Littell invited Mr. Paylor to give an informational update on a number of topics, including:

- The Recent “Innovations Symposium” in Cambridge, Massachusetts
- The Coglianesse and Nash Report
- Performance-based State Environmental Programs/ Metrics

Mr. Paylor began by talking about performance-based programs:

- Such programs can be described as “beyond compliance” programs.... for example, that one state allowed the American Paper company to propose an alternate methodology of how they could achieve greater mitigation of environmental degradation (at less expense) than otherwise would be realized through the state’s conventional regulatory program.... another example: a furniture company’s management told him that they would not have stayed in business had it not been for the cost savings afforded by the alternate approach to environmental protection they were allowed to pursue under a performance-based program.
- At least 20 states have performance-based programs (eg. Maine’s “Step-up Program”). Some states do not opt to establish performance-based programs, and that, sometimes, it promises too much extra effort on the part of a state for too little gain.
- There are national performance-based programs as well. The US EPA calls these “performance track programs.”
- Skeptics criticize them as a greenwashing scheme devised by the Bush (43) Administration. Mr. Paylor noted that, contrary to this perception, the movement towards trying such programs began during the Clinton (42) Administration.

Recent Coglianesse and Nash report AND Innovations Symposium topics:

- Investigated performance-based programs and concluded that they had mixed results. Mr. Paylor nonetheless expressed his confidence that such programs can be worthwhile, and cited the report as limited as it only analyzed older programs (Mr. Paylor said that newer programs had more chance of success due to the availability of new ideas and lessons learned). He noted that a similar consensus was reached at the “Innovations Symposium” held recently in Cambridge, Massachusetts: Despite the occasional lack of funding due to their not being legislatively mandated, performance-based programs could be useful.

Mr. Paylor noted that, despite recently shrinking budgets, Virginia will likely keep its performance-based “Environmental Excellence Program” for the foreseeable future.

At the conclusion of Mr. Paylor’s remarks, Mr. Littell opened the floor for questions and comments by members:

- Stephen Owens (Arizona) commented that Arizona had developed a performance-based program, and that it had so far proved successful. Mr. Owens also commented that “businesses like to say they’re doing the right thing.”
- Mr. McDermid noted his worries that possible future cuts in state environmental programming budgets might threaten the continued use of performance-based programs, and that though “there may be tough decisions ahead... we shouldn’t throw the baby out with the bathwater.”
- Marlin Gottschalk (Georgia) commented that Georgia had also developed a performance-based program that had so far proved successful and that he generally agreed with and supported all of the comments made during this discussion.

At the conclusion of the discussion, Mr. Littell thanked Mr. Paylor and Ms. Shaw for their updates, and thanked the membership for the lively discussion.

Noting that the meeting was running behind schedule, Mr. Littell offered to postpone delivery of his presentation on the State of Maine’s experience with emerging contaminants until the next meeting of the Cross-Media Committee (scheduled to occur during the 2008 ECOS Annual Meeting in September). Skipping his presentation, Mr. Littell invited Mr. McDermid to give an update on Committee resolutions and to report on any recent noteworthy activity of the Quicksilver Caucus (QSC).

Resolutions:

Mr. McDermid reported to the Committee that Resolution #05-3 “Need for State EPA Approach for Reducing Mercury in the Environment” was set to expire unless action was to be taken to renew it. Mr. McDermid noted that it was the Quicksilver Caucus’ recommendation to the Committee that no action be taken on this item; the QSC consensus was that all of the pertinent points made in Resolution #05-3 are doubly contained in other standing resolutions as well. Therefore, the QSC recommended that Resolution #05-3 be allowed to expire.

Next, Mr. McDermid requested that Matthew Jones (ECOS Staff) comment on a new draft resolution recently distributed to the membership “Supporting Work on Emerging Contaminants.” Mr. Jones explained that yesterday (April 15, 2008), the ECOS Executive Committee approved a number of ECOS subgroups organized under the ECOS Waste Committee to be transferred to be organized under the ECOS Cross-Media Committee. These groups include:

- The ECOS Federal Facilities Forum (FFF)
- The ECOS-U.S. Department of Defense (DOD) Sustainability Work Group (SWG)
- The ECOS-DOD Compatible Use and Sustainability Task Group (CUSTG)
- The ECOS-DOD Emerging Contaminants (EC) Task Group (TG)

Mr. Jones noted that the resolution “Supporting Work on Emerging Contaminants” was recently redrafted by the ECOS-DOD EC TG, and that the ECOS-DOD SWG anticipated that they would be recommending to the CMC that the draft resolution be considered by the Committee for adoption at the ECOS Annual Meeting in September 2008. Mr. Jones explained that, due to the recent relocation of these subgroups under the CMC, and due to the anticipated proposal of this resolution, it had been decided that the ECOS membership should get a “sneak peak” of the draft resolution as soon as possible. Thus, Mr. Jones had just distributed a copy to each state with a member present at the meeting.

In order to provide an update on the Quicksilver Caucus, Mr. McDermid noted that the QSC recently published two (2) new reports:

- Electric Arc Furnace Area Source Rule Mercury Requirements Factsheet for State and Local Agencies
- Dental Mercury Amalgam Waste Management White Paper

Mr. McDermid noted that electronic copies of these papers would be made available for download on the ECOS Quicksilver Caucus webpage.

Follow-up Questions/ Comments:

- Mr. Owens asked Mr. McDermid if he had heard correctly that the QSC membership was recently considering investigating how to increase prevention of mercury pollution from compact fluorescent lights (CFLs). Mr. McDermid answered in the affirmative.
- Mr. Fine recommended that the QSC should collect information on state CFL management programs and share it among the states (and publish such information on the internet as well)... he also raised the idea of considering approaching CFL manufacturers in an attempt to improve product stewardship.

Reports:

Mr. Littell invited William G. Ross (North Carolina) to provide the CMC a report on the organizational structure and recent activities of the ECOS FFF and the ECOS-DOD SWG; and Chris Russo (North Carolina) to provide a similar report on the ECOS-DOD CUSTG; and Shannon E. Cunniff (US DOD) to provide a similar report on the ECOS-DOD EC TG. At the conclusion of their presentations, Mr. Jones noted that members could learn more about these subgroups by viewing their respective webpages hosted on the ECOS website. Mr. Littell thanked Mr. Ross, Mr. Russo, and Ms. Cunniff for their

presentations, and expressed that the Committee was looking forward to working with these groups into the future.

Discussion:

Next, Mr. Littell invited Mr. Fine to update the Committee on its past discussions regarding how they might further pursue work to investigate issues regarding emerging contaminants, and to initiate a discussion on the topic.

Mr. Fine reminded the group that, when Ms. O'Donnell was still CMC Chair, the Committee had resolved to begin an initial investigation into the issue of emerging contaminants. As a result, two state staffers, Carol Rowan-West (Massachusetts) and Ginger Jordan-Hillier (Maine) had been tasked to develop a preliminary list of potential compounds of concern. Starting with data gathered by a survey conducted by the ECOS-DOD SWG, the two researchers developed a preliminary list.

With this initial work completed, Mr. Fine recommended that the CMC consider “where do [we] go with this?”

A discussion among Committee members ensued, and the following ideas were raised:

- Further research ECs/ gather more information
- Generate nation-wide strategy for better managing certain compounds
- Focus on nanomaterials and/ or pharmaceuticals
- Develop a subgroup
- Collaborate with the ECOS Water Committee and/ or the Interstate Technology and Regulatory Council (ITRC) where appropriate

As a result of the discussion, the Committee resolved to consider developing a subgroup dedicated to investigating Emerging Contaminants issues— a subgroup directly under the Cross-Media Committee comprised solely of state professionals (rather than comprised of both state and US DOD professionals).

Mr. Fine suggested that he be allowed to lead development of such a subgroup (with the help of Mr. Jones) and release “a call for volunteers.” Mr. Littell noted that the meeting was running overtime and that the discussion had to conclude soon. Mr. Littell suggested that Mr. Fine be in contact with him, Ms. Wilson, and Mr. Jones regarding such plans. Mr. Littell noted that it remained unclear whether sufficient funding existed to support and staff the efforts of such a subgroup. Mr. Littell suggested that the idea be reconsidered— perhaps during a future Committee conference call. Mr. Littell asked if there were any objections to the suggested follow-up, and there were none.

Adjournment: Mr. Littell adjourned the meeting.