

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 (SWG)**

at the **2009 ECOS Spring Meeting** Sunday, March 22, 2009

Hilton Old Town Alexandria, Virginia

Compiled by Matthew Jones, ECOS Staff, with assistance from Pete Maggiore, ECOS Consultant

This session was held as part of the 2009 ECOS Spring Meeting. The session was open to all Meeting attendees. The following persons attended this session:

- Mark Anderson (US DOD Consultant/ Stateside Associates)
- Linda Barr (US EPA, Office of Resource Conservation and Recovery)
- Aubrey Baure (U.S. Air Force, Regional Environmental Office, San Francisco, CA)
- Bob Boonstoppel (US DOD/ Army Northern Regional Environmental Office)
- David Borak (US DOE, Intergovernmental Relations Coordinator, Office of Environmental Management)
- Gaye Brewer (KY DEP, Division of Waste Management, Paducah Regional Office)
- Bob Carson (IL EPA, Federal Facilities Unit)
- Denise Chamberlain (Arcadis Civil Engineering Firm/ Phoenix Brownfields Awards/ ECOS Alum from PA)
- Betsy Child (Geothermal Utilities LLC/ ECOS Alum from TN)
- Colleen Cripps (NV DEP, Deputy Administrator)
- Shannon Cunniff (US DOD, Dir. for Emerging Contaminants, Office of Dep. Und. Sec'y of Defense for Env.)
- Dee Freeman (NC DENR, Secretary)
- Susan Gilbertson (US EPA)
- Babette Gordon (US DOD/ Navy Regions 1 and 3, Commander)
- Matthew Hale (US EPA, Office of Resource Conservation and Recovery)
- Jim Hartman (US DOD/ Army Region 5/ Co-Chair, ECOS-DOD SWG CUSTG)
- Matthew Jones (ECOS Staff)
- Jim Joy (SC DHEC, Asst. Deputy Commissioner)
- Janice Larkin (US DOD, Outreach Coord. for Sust. Ranges, Office of Dep. Und. Sec'y of Defense for Env.)
- Denise Levitan (USGS)
- William Levitan (US DOE Office of Environmental Management Office of Compliance)
- David Littell (ME DEP, Commissioner)
- Pete Maggiore (ECOS Consultant/ North Wind consultancy)
- Arlene O'Donnell (ERG consultancy/ ECOS Alum from MA)
- Margo Padgett (US EPA, Office of Chief Financial Officer)
- Stuart Parker (Inside Washington Publishers)
- Roger Petrie (TN DEC, Department of Energy Oversight Division)
- Tom Porta (NV DEP, Deputy Administrator)
- Jennifer Roberts (AK DEC, Contaminated Sites/ Federal Facilities Oversight Program)
- Martha Rudolph (CO DPHE, Director, Environmental Programs)
- Chris Russo (NC DENR, Co-Chair, ECOS-DOD SWG CUSTG)
- Steve Scanlon (US DOD/ Army)
- Tom Schneider (OH EPA, Federal Supervisor, Southwest District Office, Federal Facilities Oversight Office)
- Paul Sloan (TN DEC, Deputy Commissioner/ Co-Chair, ECOS Federal Facilities Forum)
- Robin Stephens (SC DHEC, Asst. to the Deputy Commissioner)
- Maureen Sullivan (US DOD, Director for Env. Management, Office of Dep. Und. Sec'y of Defense for Env.)
- Wendell Tomes (US EPA, Office of Resource Conservation and Recovery)
- Lynn Vendinello (US EPA, Office of Pollution Prevention and Toxics)
- Edward Winner (KY DEP, Division of Waste Management, Paducah Gaseous Diffusion Section Supervisor)

The meeting started about 20 minutes late (at approximately 11:35am Eastern) due to overrun of the preceding sessions. Jim Joy co-chaired the meeting on behalf of Bob King. Mr. King was unable to attend due to a conflict. Jim Joy welcomed everyone and offered to lead the agenda with no objections. Paul Sloan and David Borak were introduced as the new co-chairs for the FFF. Matthew Jones announced that, due to the late start, he would take the liberty of adjusting the order of speakers so as to accommodate John Reeder who was scheduled to call into the meeting to give his presentation via telephone at 11:50am Eastern. The new order would be:

Cunniff > Reeder (remotely) > Larkin > Sullivan > Hale > Levitan

Mr. Joy invited Ms. Cunniff to begin her presentation.

Ms. Cunniff began her presentation by noting that the post-election DOD transition is still underway and that much of the political leadership within DOD has still not yet been appointed or confirmed. Secretary Robert Gates has been held over from the previous administration. John Young is still serving as Under Secretary of Defense for Acquisition, Technology and Logistics, but President Obama has nominated Ashton Carter to succeed him. These positions oversee the Office of the Deputy Under Secretary of Defense for Installations and the Environment. Ms. Cunniff noted that it was unclear whether this organizational structure would survive the transition, or if a different structure would be established. Ms. Cunniff noted that future DOD collaborations with ECOS will have to be reconsidered after the new DOD leadership is in place. She noted that she was committed to exploring these possibilities, and had recently met briefly with Bob King to scope ideas. Ms. Cunniff noted that much of the work that the ECOS-DOD SWG was working on in the past was recently completed, and that circumstances might provide a good opportunity for pursuing new work. One idea Ms. Cunniff shared was for setting up a new internal structure for sustainability that would have a cross-ownership character. Ms. Cunniff expressed her hope that the ECOS sustainability initiative would remain intact.

Ms. Cunniff noted that after the November 2008 election, DOD underwent some preliminary reorganization. As a result, chemical and materials risk management technology requirements (Environmental Safety and Occupation Health work) will now reside in Ms. Cunniff's portfolio.

At the conclusion of her presentation, Ms. Cunniff fielded a question from David Littell. Mr. Littell asked Ms. Cunniff whether states would be granted access to DSMOA funds as they used to prior to a recent policy change. Ms. Cunniff acknowledged that the policy was recently changed again to allow this (and that Ms. Sullivan would share further details about this in her presentation).

Next, John Reeder joined the session by telephone and gave his presentation via audio speakers. Mr. Reeder announced that US EPA is committed to developing Federal Facility Agreements (FFAs) with DOD as appropriate. Mr. Reeder also noted that US EPA is supporting the states to organize a state-led forum around munitions response issues. Mr. Reeder noted that it was his understanding that US EPA might soon put Fort Detrick (Maryland) on the National Priorities List (NPL) for Superfund cleanup. Mr. Reeder announced that 50 % of the federal sites on the NPL are expected to undergo cleanup or see completed cleanup within the next few years. US EPA will be examining the 5-year CERCLA review program and the enforcement of institutional controls. The Inspector General will be examining US EPA's 5-year CERCLA review program as well.

Mr. Reeder predicted that the munitions workload for the states will be heavy. He predicted that there will be fewer new NPL listings and that US EPA will move toward growing involvement in non-NPL

sites. He also predicted that there would be increasing pressure for sites to be prepared for reuse. Mr. Reeder noted that US EPA's involvement with Base Realignment and Closure (BRAC) oversight work is ramping down.

Next, Mr. Reeder, outlined US EPA's strategy for the Federal Facility Reuse and Restoration Office program in three (3) key areas:

- 1) Focusing on Results – US EPA is aligning its goals in an effort to reach 50 % completion in the next 3 to 4 years. Mr. Reeder noted the challenge that discovery of munitions at sites can present. Such circumstances can prevent the agency from meeting its milestones. US EPA is looking to address issues of human exposure. Finally, US EPA will be showcasing acreages that are rendered available for reuse (approximately 300,000 acres have already been made available for reuse).
- 2) Strengthening Support to Regions and States – In the future, a lot of work might come to the states with regards to munitions. States may not be adequately prepared for overseeing a large body of munitions response work. US EPA will attempt to support states that experience a significant workload increase in munitions with tools and technical training. US EPA will also review Formerly Used Defense Sites (FUDS) work and attempt to revitalize the docket and pipeline process. Currently, there is no clear legislative strategy, but states that would like additional authority are encouraged to call US EPA to request this.
- 3) Mining, Munitions, and FUDS – The potential workload may be large. Funding will be prioritized to sites where existing work is already occurring. States likely will have a lot of munitions work to do in the future and US EPA is interested in determining if there are any technical capacity issues that the states will need to overcome. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is doing some work trying to clarify roles and responsibilities in this field. If ECOS has any recommendations for a statutory fix, US EPA would be interested to consider ideas. With regards to mining and FUDS, US EPA stands ready to work with the states and federal partners, and wants to ensure enforcement capacity.

With regards to the American Recovery and Reinvestment Act of 2009, some stimulus funds have been allocated for Superfund. US EPA will put most of these funds toward ongoing cleanups, but some funds might go to new cleanups. US EPA wants to work with the states to continue prioritizing these cleanups. This concluded Mr. Reeder's presentation.

Next, Jan Larkin began her presentation by highlighting the positive aspects of some regional partnerships between DOD and the states. Ms. Larkin noted that states and federal agencies have begun to look across broad ecological considerations in order to do better land use planning in and around defense sites. Ms. Larkin mentioned two (2) specific partnerships:

- 1) The Southeast Regional Partnership (NC SC, GA, FL, AL and DOD) meets regularly and has just rolled out a range-wide recovery program for a specific species of pine tree. The Partnership has a website: <http://www.serppas.org/>
- 2) The Southwest Regional Partnership (CA, NM, AZ, NV, UT and DOD) is looking at broad-based projects such as developing wildlife corridors and renewable energy projects. This group expects to hold a meeting in Nevada during the week of March 30, 2009.

Ms. Larkin noted that the ideas for both of these partnerships came out of previous ECOS meetings. It was also noted that Bob King is a participant in the Southeast Regional Partnership. This concluded Ms. Larkin's presentation.

Next, Maureen Sullivan began her presentation by announcing that DOD plans to use the Fort Eustis FFA as a template for development of future FFAs. The Air Force has agreed to negotiate and sign FFAs and work with US EPA regional offices to undertake the required work. The Navy has signed FFAs for the Whiting Field (Florida) and NCTAMS PAC (Hawaii) sites.

Ms. Sullivan announced that the DOD's Defense-State Memorandum of Agreement (DSMOA) policy was revised on December 19, 2008. The policy statement is available online. Ms. Sullivan said that states can now use DSMOA funds to attend meetings (such as meetings of the state munitions forum) so long as the meetings are in furtherance of the DSMOA program. Ms. Sullivan encouraged attendees to view the policy online for specific details.

Ms. Sullivan announced that there was also a new memo released December 29, 2008 regarding the Defense Environmental Restoration Program (DERP). Except for in cases regarding FUDS, the memo removes the 1986 date that had been used as the statute of limitation cutoff date.

Ms. Sullivan noted that DOD will release a report on the coming budget within 45 days of the release of the President's budget.

DOD is working to convert its guidance memos regarding DERP into an official DOD guidance manual and hopes to complete this work within the year. The manual may contain new definitions and guidance relating to vapor intrusion, 5-year reviews and third-party sites. Ms. Sullivan offered to present the new guidance if it is released in time for the ECOS Annual Meeting in September 2009.

In response to a question, Ms. Sullivan noted that the DOD policy on long-term stewardship is still being developed.

Next, Matt Hale began his presentation by noting US EPA's involvement in managing mercury stockpiles that may develop through implementation of the Mercury Export Ban Act of 2008. Mr. Hale acknowledged that the states have expressed an interest in this topic and noted that he has been in touch with the Federal Facilities Forum and the Quicksilver Caucus previously to discuss the issue via conference call with these groups. Mr. Hale noted that the Act will ban export of mercury from the U.S. by January 2013. The Act charges the U.S. Department of Energy (US DOE) to designate a storage facility (or storage facilities) by January 2010 for managing any mercury stockpiles that may result. A RCRA Subtitle C permit will need to be issued for the facility (or facilities) by January 2015. Mr. Hale noted that a state or states will likely have a role to play in issuing RCRA permits for the designated storage facility(/ies) as most states have secured primacy for running the RCRA program.

Pursuant to the Act, US DOE must develop guidance for storage of mercury stockpiles by October 2009. Mr. Hale said that William Levitan (US DOE) recently cited the Quicksilver Caucus 2003 Mercury Stewardship Best Management Practices and Storage of Mercury reports as being helpful resources for US DOE as they undertake their work.

Mr. Hale said that US EPA's Federal Facilities office will be following the siting process. Mr. Hale said that it is unclear to him whether elemental mercury will be regulated as a solid waste. US EPA currently does not have a formal opinion on the matter. One consequence of this decision will be

whether transported mercury will be required to be shipped with a manifest. US EPA will be required to release a report by 2015 on the law's impact on domestic mercury recycling. This concluded Mr. Hale's presentation.

Next, Bill Levitan began his presentation by noting that the post-election transition in leadership at US DOE has been going smoothly. Steven Chu has been confirmed as the new Secretary of Energy. On March 12, President Obama announced his intention to nominate Kristina M. Johnson to be Under Secretary of Energy. On March 13, the President announced his intention to nominate Ines R. Triay to be Assistant Secretary for Environmental Management at US DOE.

Mr. Levitan noted that US DOE's Office of Environmental Management (EM) is tasked with cleaning up hazardous and radiological waste from the nation's nuclear weapons complex. Mr. Levitan briefly expounded on the office's mission, noting that EM is responsible for 108 sites on 2 million acres in 35 states. Some of the important work that EM and their contractors perform includes:

- Radioactive waste tank stabilization, treatment and disposal;
- Spent nuclear fuel storage;
- High priority groundwater remediation;
- Transuranic and mixed low level waste dispositioning;
- Soil and groundwater remediation;
- Excess facility deactivation and decommissioning; and
- Implementation of the Mercury Export Ban Act of 2008

Mr. Levitan noted that the first two points (tank waste and spent nuclear fuel) are the most expensive and challenging tasks. Mr. Levitan noted that US DOE is committed to worker safety, risk reduction, and protection of the environment. Mr. Levitan also noted that US DOE looks to work in partnership with the various "energy communities" that host US DOE sites.

Mr. Levitan noted that US DOE is currently responsible for managing, administering, and complying with 37 cleanup agreements. In a typical year, US DOE is responsible for meeting 200 significant cleanup milestones.

Mr. Levitan then noted the importance of footprint reduction and that with the use of stimulus monies US DOE EM hopes to reduce the number of sites and the acreage of some sites. US DOE is also exploring ways to use remediated lands at current and former sites as "energy parks"— sites where new energy projects could be undertaken.

With regards to the Mercury Export Ban Act, Mr. Levitan acknowledged Mr. Hale's breakdown of important milestones as correct, and reiterated some of them:

- Guidance procedures for managing mercury stockpiles due by October 2009
- Mercury storage facility(/ies) must be designated by January 2010
- Mercury storage facility(/ies) must be operable by January 2013
- Ban of export of mercury effective January 2013
- Storage facility(/ies) must be issued RCRA permit by January 2015

Mr. Levitan noted that he has been tasked to lead the US DOE EM team responsible for designating the mercury storage facility.

To facilitate identification of a storage facility, US DOE has issued an Expression of Interest on the FedBizOps website. Mr. Levitan noted that US DOE interprets the Act's language requiring the storage facility to be a "DOE facility" to mean that as long as US DOE controls the facility (via lease

or purchase), that the facility is or will become a “DOE facility.” This allows US DOE to consider existing or newly proposed federal or commercial facilities as potential mercury storage sites. Mr. Levitan noted that he and his colleagues are already considering existing facilities as potential storage sites (except for the existing Oak Ridge, Tennessee site which was explicitly ruled out as an option by the Act through Sen. Alexander’s influence). This work will be undertaken through development of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). A range of alternative courses of action will be considered and one will be selected and announced through a Record of Decision (ROD). Official work on the EIS is expected to begin in the summer of 2009. Prior to this, US DOE will be reaching out to interested parties to scope issues (Mr. Levitan noted that in addition to ECOS, US DOE intends to reach out to the Chlorine Council, the National Resource Defense Council, and the National Mining Association— all groups who advocated for passage of the Export Ban prior to its adoption by the Congress and the President). Mr. Levitan noted that he had joined Mr. Hale on a recent joint conference call with the Quicksilver Caucus and the FFF to discuss these issues.

Mr. Levitan expressed his belief that the transportation of mercury will pose the highest risk in the management process and that he and his team will be focusing on this issue carefully. US DOE has begun to work with experts at the Oak Ridge National Laboratory, and with UT-Battelle to develop management guidance. He acknowledged the 2003 Quicksilver Caucus Mercury Stewardship Best Management Practices and Storage of Mercury reports as being helpful resources for US DOE as they undertake their work.

Mr. Levitan noted that US DOE received \$ 6 Billion in monies from the American Recovery and Reinvestment Act of 2009 to bolster cleanup activities. Mr. Levitan discussed a call that he recently had with senior state environmental oversight officials and stakeholder groups where the priorities for use of these funds were discussed:

- Validated cost and schedule baselines must be in place;
- Contracts must be in place;
- Regulatory requirements have already been agreed to and are achievable;
- Technologies are proven and readily available; and
- Significant accomplishments can be achieved by fiscal year 2011.

Mr. Levitan said that US DOE EM site managers are working with headquarters officials to determine how the stimulus monies will be spent. This concluded Mr. Levitan’s presentation.

This concluded the joint meeting of the ECOS Federal Facilities Forum and the ECOS-DOD Sustainability Work Group. Mr. Joy thanked the attendees for their participation, and adjourned the meeting approximately 20 minutes late— at approximately 1:05pm Eastern.