

Notes from the Environmental Council of the States (ECOS)

Cross-Media Committee

Mountain View Grand Resort

Whitefield, New Hampshire

Aug. 30, 2010

Compiled by Matthew Jones, Staff

Committee Chairwoman, Shari Wilson (Maryland) welcomed attendees and thanked committee members for their preparatory work leading up to the meeting. Next, she invited Ginger Jordan-Hillier (Maine) to provide an update on mercury issues.

Ms. Jordan-Hillier relayed highlights from the June 24 Mercury Dialogue meeting EPA held with the Quicksilver Caucus in Washington, DC. More than 30 EPA officials attended from across the various EPA media offices. Both state and EPA participants worked to identify gaps in mercury regulation and collaborative management processes, and opportunities for potential joint projects. The parties agreed to a number of themes including the notion that EPA should consult with the states earlier (rather than later) during mercury-related rulemaking processes. The parties also vowed to continue addressing issues related to managing the mercury contents of compact fluorescent lamps and thermostats, among other products. The groups vowed to continue exploring ways to leverage Clean Air Act (CAA) and Clean Water Act (CWA) authorities for reducing mercury pollution and alleviating fish consumption advisories.

Next, Ms. Jordan-Hillier conveyed highlights from the CWA 319g conference hosted by EPA on June 22 and 23 in Philadelphia, PA. The conference was held in response to a petition from Northeast states impacted by mercury pollution coming from upwind states. The meeting convened environmental agency representatives from both upwind and downwind states. During the conference, the Northeast states explained that in-region actions they are taking will not achieve mercury reduction goals. Out-of-region reductions would also be needed to achieve their goals. At the meeting, EPA officials explained various rulemaking initiatives underway. Upwind and downwind states also discussed their initiatives. Advances in management technologies, product stewardship, and increased international efforts were also discussed. The parties discussed the idea of developing a plan for a collaborative framework to achieve further reductions in mercury.

Ms. Jordan-Hillier invited Kathy Kinsey (Maryland), who also attended, to provide perspective from an upwind state and relay any information about the 319(g) conference she may have omitted in her summary. Ms. Kinsey noted that state participants at the conference agreed to draft a consensus letter to EPA outlining what actions states believe EPA should take; what joint state-federal efforts should be undertaken; and what efforts states should collaborate on.

Next, Ms. Jordan-Hillier provided an update regarding the developing international treaty on mercury. The first meeting of the International Negotiating Committee (INC) was recently held in Sweden. The meeting was Introductory and administrative in nature. The INC is gearing up to negotiate a treaty

among U.N. member nations for reducing mercury. A second meeting of the INC is planned to occur in Jan. 2011 in Chiba, Japan. That meeting is expected to involve more detailed negotiations regarding reduction agreements. Pursuant to existing ECOS resolutions, the Quicksilver Caucus International Workgroup is planning to provide input to EPA and the State Department leading up to the 2nd INC meeting with recommendations for the U.S. treaty position. The workgroup plans to draft a paper profiling state mercury-containing product bans and a narrative of what international reductions would be required to alleviate fish consumption advisories back in the U.S.

Ms. Wilson thanked Ms. Jordan-Hillier and Ms. Kinsey for their updates and next introduced the session's keynote speaker, Wendy Cleland-Hamnett, Director of EPA's Office of Pollution Prevention and Toxics (OPPT).

Ms. Cleland-Hamnett thanked Ms. Wilson and committee Vice-Chairman Ted Sturdevant (Washington) for inviting her to provide an update on OPPT plans and programming, and related issues. A slideshow accompanied Ms. Cleland-Hamnett's presentation (see ECOS website for a copy of the slideshow).

During her presentation, Ms. Cleland-Hamnett noted that OPPT is charged with implementing the Toxic Substances Control Act (TSCA) which was enacted in the year 1976. The work is very serious, but OPPT staff often refer to TSCA jokingly as EPA's "disco era" environmental legislation. TSCA was intended to provide EPA the power and authority to protect the public from harmful chemicals but it is the only major environmental law that has not been revised since the 1970s. In September 2009, EPA Administrator Lisa Jackson identified chemical safety as one of her top priorities. Since then, Administrator Jackson has issued her administration's principles for reforming TSCA (see slideshow). Nevertheless, the prospects for passage of TSCA reform by the Congress are uncertain. Therefore, EPA continues to use its existing authority under TSCA to manage chemicals.

Ms. Cleland-Hamnett noted that Senator Lautenberg (D-NJ) introduced a bill to reform TSCA earlier in the year. On the same day, House Energy and Commerce Committee members released a discussion draft bill. After five weeks of stakeholder meetings, a revised House bill was introduced by Representatives Rush (D-IL) and Waxman (D-CA) in July.

Ms. Wilson thanked Ms. Cleland-Hamnett for her presentation and asked members if they had any comments or questions.

Leo Henning (Kansas) noted that Kansas' pollution prevention grant is going to be cut again this year, which has happened for a number of years.

Ms. Cleland-Hamnett said that it was her hope that such cuts would end. She said that EPA acknowledges the value of pollution prevention programs and the agency is doing the best it can to keep those programs in place.

Ms. Wilson thanked Ms. Cleland-Hamnett again for taking the time to speak with ECOS members. Next, Ms. Wilson invited Cindy Tuck (California) to present information about state chemical policy reform efforts, and to introduce the proposed ECOS resolution on TSCA reform.

Per the request of Ken Zarker (Washington), ECOS staff distributed copies of a handout on state chemical management policy reform efforts compiled by the University of Massachusetts- Lowell (see ECOS website for a copy of the handout).

In order to illustrate an example of state chemicals policy reform, Ms. Tuck described in detail efforts underway in California. She said that California has passed a law that will require prioritization of chemicals of concern as well as an alternatives assessment. Regulations are being developed. In September, California plans to issue a formal rulemaking. Another regulation is being developed by the California Health Department. That regulation will enable the collection of information into a database so that the California Department of Toxic Substances Control can use the information to identify which chemicals have hazardous traits. A draft rule is due this fall... and due to be implemented as soon as by the end of the calendar year. Ms. Tuck said she would be happy to share more information about the developing rules with any other interested ECOS members.

Next, Ms. Tuck introduced the proposed resolution “Reforming the Toxic Substances Control Act.” Ms. Tuck noted that there was a set of key principles that she and other committee members agreed should be embodied in the resolution.

First, manufacturers should work to provide necessary information about chemicals to federal and state regulators so they can determine whether a chemical is safe for commercial use. Ms. Tuck noted that consumers rely on the federal government to keep products safe. But, she asked rhetorically, “Can EPA do so under current TSCA authorities? “Not very effectively, she answered... “There are limitations.” California spends a lot of money cleaning up groundwater at past industrial sites. When TSCA was passed in 1976— about 60,000 chemicals were “grandfathered in” as acceptable for use in commerce. Since then, EPA has only been able to evaluate approximately 200 chemicals using its existing TSCA authorities. Therefore, Ms. Tuck said, a new system should be instituted, and manufacturers should be required to provide information under the new system. A reformed TSCA should allow states access to information (rather than allow industries to claim such information confidential for business purposes).

Second – Ms. Tuck said – new TSCA legislation should not impinge upon state sovereignty. States should remain empowered to pass regulations more stringent than any federal rule.

With that, Ms. Wilson asked if there was any discussion, or if there was a motion.

After a brief discussion, there was a motion and a second. Then, members voted to adopt the resolution as written (without opposition).

Next, Ms. Wilson invited Ms. Jordan-Hillier to introduce the proposed resolution “Review and Reconsideration of Endorsement of the National Vehicle Mercury Switch Recovery Program Memorandum of Understanding (MOU).”

Ms. Jordan-Hillier noted that the purpose of the resolution was to provide ECOS and the Quicksilver Caucus an added bargaining chip for future negotiations regarding the program’s future. She noted that ECOS would not withdraw from the MOU without consulting the ECOS Officers and Committee

leadership at the appropriate time. It was noted that the Quicksilver Caucus supports EPA's plans for revising the Electric Arc Furnace (EAF) Rule.

Tom Easterly (Indiana) noted that he viewed the NVMSRP as a good program, and that he provided funds for vehicle switch collection in Indiana before the NVMSRP was instituted. However, Mr. Easterly did not feel comfortable supporting the resolution.

Ms. Jordan-Hillier noted that, if the national program were to dissolve due to lack of funds, it was the hope of Quicksilver Caucus members that states would pass their own vehicle switch collection programs.

Doug Fine (Massachusetts) asked what the ideal outcome of negotiations would be since the bounty was meant to be a "startup" incentive.

Ms. Jordan-Hillier responded that it would be ideal if additional bounty monies were provided so that the national program could keep going, and so that renewed outreach efforts could occur to keep the program moving forward. The bounty has been shown to be important (per program collection data) for program success. In Maine, with a separate law (and a higher bounty), that state has seen a 95% switch return rate. The national rate is now 30%. In the past, program participants had undertaken outreach to accelerate the program. But to do this with an EAF Rule with no teeth (that would require emissions monitoring), you would need a national collection program with a strong bounty and outreach to recyclers.

David Littell (Maine) noted that Maine has a mandatory bounty program. Maine also has 6 product stewardship laws on the books. One example of these is the Maine Electronic Waste (E-Waste) Law that was championed by a Republican state lawmaker because he liked the idea of incentivizing waste collection.

Chris Korleski (Ohio) asked, "Among the negotiating parties, who's fighting with whom?"

Ms. Jordan-Hillier said it appears that the Steel and Auto interests seem reluctant to fund the bounty. She also noted that certain Auto companies founded the End of Life Vehicle Solutions (ELVS) organization to run the program.

Steve Thompson (Oklahoma) said it appeared to him that ECOS is being asked to run a bluff. But can the bluff be effective? If you have your bluff called, and there are no consequences, it can be damaging to existing programs. I'm nervous to run this bluff.

Mr. Littell noted that some states were prepared to pass state vehicle switch collection laws prior to the national MOU and that the national MOU deflated those efforts.

Vice-Chairman Ted Sturdevant (Washington) noted that Washington had a switch collection bill stall in the state legislature when it became apparent that a national program might solve the problem. Mr. Sturdevant said that, if the national program isn't strengthened soon, then Washington will be revisiting the idea of establishing its own switch collection program via state legislation.

Mr. Fine asked when EPA was expected to revise the EAF Rule.

Ms. Kinsey said it was her understanding that a revised EAF Rule was at least a year or two away.

Ms. Wilson asked if there was a motion.

After a motion and a second, ECOS members voted to adopt the resolution as written (with two states in opposition).

Next, Ms. Wilson asked Jennifer Roberts (Alaska) to introduce proposed revisions to the resolution "On Sustainability and the Department of Defense."

Ms. Roberts noted that the resolution generally supports sustainability efforts of the Department of Defense (DOD) and collaborations/ information-sharing between DOD and the states regarding sustainability and environmental management topics. She said that she and other committee members want to keep the resolution in place, but update it to reflect the times. She noted that DOD has begun to pursue substantial sustainable building and energy-efficiency efforts for old and new facilities as well as water conservation efforts. She noted that many states are pursuing – or wish to pursue – similar efforts. This is a placeholder resolution so that states and DOD can continue to share information and collaborate.

Ms. Wilson asked if there was a motion.

After a motion and a second, ECOS members voted to adopt the resolution as revised (without opposition).

Lastly, Ms. Wilson invited Gary Baughman (Colorado) to introduce the draft resolution "Supporting Transfer of TSCA Authority for Management of PCB Wastes to Waste Management and Remediation Programs under RCRA and CERCLA."

Mr. Baughman noted that the aim of the resolution would be to remove duplicative and time-consuming controls for PCB wastes and residuals from TSCA (adequate controls already exist for PCBs in RCRA and CERCLA laws).

ECOS Executive Director, Steve Brown, noted that a 60% majority would be necessary to pass the resolution immediately because it was only in "discussion draft" form and because ECOS members had not been given a few weeks prior notice to vet the resolution.

Ms. Wilson asked if there was a motion, or whether further discussion on its merits or possible adoption process was necessary.

Martha Rudolph (Colorado) noted that she supported the proposed resolution and felt it was an important and timely issue meriting immediate adoption.

Amey Marrella (Connecticut) proposed to amend the 2nd "Therefore" clause as such:

ECOS urges the U.S. Congress to further strengthen management and disposal of chemical substances and mixtures by ~~including in Senate Bill 3209 and House Bill 5820~~ **passing an** amendments to TSCA § 6 (e)(1) to provide for regulation of the management and disposal of PCB waste and residuals under appropriate provisions of RCRA and CERCLA.

Upon a motion and a second, ECOS members voted to adopt the resolution as written (but with the addition of Ms. Marrella's proposed edits). There was one state opposed (therefore, a 60% majority was reached and the resolution passed).

This concluded the meeting of the ECOS Cross-Media Committee. Ms. Wilson thanked attendees for their participation, and the meeting adjourned.