

**Notes from the Meeting of the
Environmental Council of the States (ECOS)**

Cross-Media Committee

March 29, 2011

At the 2011 ECOS Spring Meeting

Hilton Hotel- Old Town

Alexandria, Virginia

Compiled by Matt Jones (Staff)

Committee Chairman Ted Sturdevant (Washington) called the meeting to order at approximately 2:45pm Eastern time.

Mr. Sturdevant noted that an opportunity was before the committee to fill its vacant Vice-Chair position. He said that – after an exhaustive solicitation process spanning several weeks – there was now only one nominee for the position: Justin Johnson of Vermont. Mr. Sturdevant asked if any members wished to second his nomination. Both Amey Marella (Connecticut) and Martha Rudolph (Colorado) seconded the nomination. Mr. Sturdevant called for a vote. Numerous members voted in favor of Mr. Johnson. None were opposed. Mr. Sturdevant congratulated Mr. Johnson on his election and welcomed him to the Vice-Chair position.

Next, Mr. Sturdevant introduced Stephen Owens, Assistant Administrator for U.S. EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and invited him to give his presentation.

Mr. Owens proceeded to present a slideshow (a copy of Mr. Owens' slideshow may be viewed here):
http://www.ecos.org/section/committees/cross_media/meetings/

The following are some highlights from Mr. Owen's remarks.

Mr. Owens began discussing the Toxic Substances Control Act (TSCA). He noted that he is proud EPA Administrator Lisa Jackson has praised his office for doing a good job managing chemicals as much as TSCA allows. TSCA is 35 years old and the legislation is showing its limitations.

Mr. Owens noted that EPA – when requested – continues to provide technical assistance to Congress as members work towards crafting bills for the possible reform of TSCA. Mr. Owens said that a TSCA reform bill might be possible in the current Senate but that there does not seem to be much interest in the topic in the House right now.

Mr. Owens noted that EPA continues to manage chemicals to the extent authorized by TSCA. In 2009, OCSPP developed Chemical Action Plans which identify certain chemicals for possible action. Mr. Owens noted that the EPA Administrator also has the authority under TSCA Section 5 to develop a Chemicals of Concern List—identifying those chemicals which may pose a threat to public health.

It was explained that EPA is piggybacking on work OSHA is undertaking. OSHA is interested in EPA's Chemical Action Plans because they will guide which chemicals EPA will focus on further if resources, time, and logic permit.

Mr. Owens outlined the other authorities granted EPA by TSCA. TSCA Section 4 allows EPA to require submission of certain data. TSCA Section 5 allows EPA to issue a Significant New Use Rule (SNUR). TSCA also allows EPA to look at existing uses of chemicals and determine if they need to be restricted, and allows EPA to require industry to provide additional information for EPA review. TSCA Section 6 allows EPA to ban or limit the use of a chemical.

EPA is now requiring new reporting for the Toxics Release Inventory (TRI) for 3 chemicals listed in Mr. Owen's slideshow.

EPA's proposed change to the Inventory reporting rule is currently under review at the U.S. Office of Management and Budget (OMB). The change would require industry to submit certain additional data. EPA wants to lower the reporting threshold so they can collect more information on more chemicals. EPA also wants to revise the rule to allow electronic reporting (and not require paper reporting).

Mr. Owens noted that, over the 35-year lifespan of TSCA, EPA has been able to control only a few of the hundreds of chemicals used in commerce.

Mr. Owens noted that EPA is looking to decrease industry claims of Confidential Business Information (CBI). Of the approximately 80,000 chemicals known to have been produced, basic information on approximately 16,000 of these chemicals has not yet been divulged to EPA. In many instances, the very names of the chemicals have been claimed as CBI by chemical firms.

EPA recently issued a notice in the Federal Register to declassify the identity of 530 chemicals. Another FR notice says that under certain circumstances, industry can no longer claim the identity of a chemical as CBI. Mr. Owens felt this was necessary because there were instances where industry was issuing public reports saying "XYZ Chemical" was hazardous without divulging its actual name.

EPA can insist that certain data are not CBI despite a company's claims to the contrary. In such instances, a company has 30 days to sue EPA. If they do not sue, EPA can then declassify chemical identities in question.

Mr. Owens next discussed nanomaterials under the broader context of chemicals management. He noted that OCSPP is now looking more closely at how we approach nanomaterials. He said that nanomaterials are not an entirely new phenomenon, but they feel as such to some people who may not yet be familiar with the subject.

Referring to his slideshow, Mr. Owens noted the acronym PMN stands for Pre-Manufacture Notice.

Mr. Owens said that EPA is using SNURs so the agency will be alerted when new nanomaterial uses are proposed. He said that EPA reserves the authority to use consent orders to limit the use of nanomaterials for certain purposes if necessary.

Mr. Owens noted that nanomaterials can behave differently in the environment than more regularly-sized substances of the same chemical composition with regards to fate and effect. He noted that EPA has so far declined to revise Bush (42) era policy established in 2008 which treats nanomaterials the same as more regularly-

sized substances of the same chemical composition. However, EPA has decided to take new steps under TSCA for addressing nanomaterials (listed on slideshow).

Mr. Owens said that EPA has not yet regulated nanomaterials and is currently just trying to “get a handle on what’s out there.” He said there are outstanding questions regarding how to address nanoscale pesticides that were not used in nanoscale form when first registered (for example, how to address nanosilver pesticides in a way that is different from conventionally-sized silver pesticides).

Mr. Owens said that yesterday he had participated in a side-meeting with Ted Sturdevant and other committee members to discuss chemicals management in more detail. He said that during the side-meeting, participants discussed how CBI and transparency of information is valuable for the public interest. Participants discussed how chemicals information could be collected in a way that makes sense and ensures that the information being collected is valuable.

Mr. Owens encouraged state officials to look at the various notices in the Federal Register mentioned previously and encouraged state officials to submit comments. He said that OCSPP has been given the charge to address chemicals management issues, and EPA wants to have the “state voice” included in ongoing public discussions on chemicals management.

This concluded Mr. Owen’s remarks. He offered to take a few questions from ECOS members. Mr. Sturdevant asked if there were any questions from the membership for Mr. Owens.

Amey Marella said she is intrigued by recent Green Chemistry efforts, ie. developing alternative substances that provide the same benefits of a certain chemical, but do not pose deleterious effects for human health and the environment. Ms. Marella asked Mr. Owens for his insights regarding how industry might be responding to Green Chemistry efforts.

Mr. Owens said that the industry’s response to the Green Chemistry movement has been encouraging. He noted that there has been a big push made by OCSPP and a number of private companies to find more benign chemical alternative substances. He noted that Bisphenol-A content in cash register receipts has cropped up as an issue, and this in part is driving increased interest in chemical safety on the part of industry and the public.

Mr. Owens invited Wendy Cleland-Hamnett, Director of EPA’s Office of Pollution Prevention and Toxics (OPPT) to add to his response. Ms. Cleland-Hamnett said that processes for conducting alternatives assessments were getting good responses and participation from industry, the general public, retailers, store clerk union representatives, and downstream users (such as the fire safety community, for example). Ms. Cleland-Hamnett said that some new chemicals have entered EPA’s review process and appear to have been designed as safer alternatives to other chemicals currently used in commerce.

Ms. Marella asked what authority EPA might have to facilitate or encourage development of safer chemicals.

Mr. Owens said that OCSPP has developed a Design-for-the-Environment (DfE) program. The DfE program has grown recently. Chemical companies can seek to meet certain requirements for certifying their product as DfE. If they pass all requirements, EPA allows them to apply a sticker to their product that says the product is DfE. Many companies have been working to achieve this designation for many of their products. EPA cannot require participation in the DfE program under TSCA, but Mr. Owens noted that industry participation in the program has been positive.

Ms. Cleland-Hamnett noted that OCSPP has provided industry a suite of models for how to develop chemicals and demonstrate that they are “green” or more environmental benign. She noted that newer greener chemicals often get through EPA’s review process in quicker fashion.

Bob King (South Carolina) noted that Mr. Owens is the former director of the Arizona Department of Environmental Quality (and former member of ECOS). Mr. King asked Mr. Owens – considering his experiences and perspective from having served the State of Arizona, and now being at U.S. EPA – what his recommendation regarding what states should be focusing on in the chemicals management arena. Mr. King asked how Mr. Owens could help states address the “maze of 80,000 chemicals currently in commerce.”

Mr. Owens responded that prioritization of chemicals is important to EPA. He encouraged state officials to focus on those chemicals that appear to be affecting their communities the most. Polybrominated Ethers (PBEs) have been identified in some areas as a concern. Also, certain nanoproducts wash away in the laundry and get into the wastewater stream. EPA is interested in working with the states to focus on prioritization and make sure that states are at the table for this discussion.

Dick Pedersen (Oregon) thanked Mr. Owens for his good work and leadership. Mr. Pederson commented that he is acquainted with the University of Oregon’s work on Green Chemistry. He said that there is no requirement for study of toxicology in the university’s departments, but now the university is trying to find linkages between chemicals and suspected impacts. He said that there is some good pioneering work being undertaken at the University of Oregon and at other academic institutions.

Mr. Sturdevant said that he has heard from many state officials that they are concerned about the CBI issue. Mr. Sturdevant asked Mr. Owens what his sense was regarding how far he can go with the authority available to him as he works to declassify information on chemicals.

Mr. Owens said the agency can make some progress with existing authorities, but to accomplish thorough resolution of the issue, legislative reform likely will be needed. Mr. Owens conceded that the agency has “almost given up” that is can achieve everything it wishes to achieve regarding chemicals management given current limitations to its authority. He noted that, in 1976, when TSCA was enacted, it “grandfathered” scores of chemicals. Many CBI claims have been made for chemicals since 1976, but EPA is now working to “clean out” what should not be considered CBI.

Mr. Sturdevant thanked Mr. Owens and Ms. Cleland-Hamnett for making themselves available to discuss chemicals management with ECOS.

Next, Mr. Sturdevant introduced Jeffery Morris, National Program Director for Nanotechnology with EPA’s Office of Research and Development (ORD).

Mr. Morris thanked Mr. Sturdevant for the introduction and noted that Ramona Trovato (Associate Assistant Administrator for ORD) sends her regrets for being unable to speak to the group due to a conflict. Mr. Morris said that they had intended to give a joint slideshow but that he would now present Ms. Trovato’s slides (see copy of Mr. Morris’ slideshow on the ECOS website): http://www.ecos.org/section/committees/cross_media/meetings/

The following are highlights from Mr. Morris’ presentation.

Mr. Morris noted that ORD is looking to reorient its research program around the concept of sustainability. Nevertheless, ORD will retain a robust risk research program.

Mr. Morris noted that ORD currently has six (6) research programs for various purposes (on chemical safety, nanomaterials, etc), but now ORD is integrating these into a single catch-all chemicals research program.

Mr. Morris said that data for assessing the possible risks of nanomaterials are limited to some knowledge on the acute risks of these substances. There is little information on possible carcinogenic or reproductive effects. However, some knowledge gained from researching nanomaterials can affect how EPA researches other conventionally-sized chemicals broadly.

EPA now has a better ability to arrange nanomaterials in ways where they are less likely to be in a scattered arrangement like asbestos. Using more advanced computational toxicology, EPA can assess more chemicals using much less funding. But EPA's research program is still not sufficient for addressing every possible concern.

Mr. Morris noted that there are Green Chemistry opportunities for nanomaterials.

Mr. Morris said he expects the reconfiguration of ORD's research program will be finalized by October, assuming Congress provides EPA a final budget for fiscal year 2011.

This concluded Mr. Morris' presentation, and he offered to take a few questions from the audience.

Kathy Kinsey (Maryland) asked: To what extent is industry pursuing Green Chemistry for nanomaterials?

Mr. Morris said that some good work has been undertaken, but due to the stakes being considered low right now, industries have not yet "grabbed their turf" in this arena. Cooperation between EPA and industry around nanomaterials has been positive. The nanomaterials experience has so far been the opposite of the Bisphenol-A experience (this product is already manifest in many products).

Paul Yaroshak with the U.S. Department of Defense (DOD) made a comment from the audience. Mr. Yaroshak noted that DOD has a robust program on sustainable chemicals management which has been well-received by industry.

Ken Zarker (Washington) asked: How can regulatory agencies get industry more engaged on alternatives assessments? He said it seems to him that government is currently doing all of the work in this area.

Mr. Morris said that these efforts have to be developed collaboratively. He said that OCSPP is collaborating with industry to assess new batteries which contain nanomaterials.

Ms. Marella said she was curious to know how ongoing efforts in the United States compare to efforts in other nations. She wondered if the U.S. situation was unique due to the economic opportunities this nation provides.

Mr. Morris said that EPA has leveraged an industry-federal working group on nanomaterials. The group has collaborated for a few years now and has been helpful for getting EPA and industry "on the same page."

Ms. Cleland-Hamnett noted that OCSPP has also partnered with ORD to address nanomaterials. For more than 30 years there has been work on chemicals assessments. She said there remains a lot of opportunity for the U.S. economy to create markets for safer chemicals, along with Europe. She noted that older more problematic products are still being imported from other nations. EPA has signed a memorandum of understanding with European Union authorities to share information on chemicals management. The U.S. will gain information collected via the European Registration, Evaluation, Authorisation, and Restriction of Chemical Substances (REACH)

legislation and related regulations/ programming (enacted June 1, 2007). The U.S. is also working with the French on chemical risk assessments.

Mr. Sturdevant thanked Mr. Morris and the other EPA leaders present for making themselves available to discuss nanomaterials. He said he appreciated their leadership on chemicals and nanomaterials management, and said it was his hope that these issues do not “slip through the cracks.”

Next, Mr. Sturdevant asked Ms. Kinsey to further discuss the potential for TSCA reform and how ECOS might continue to address this issue.

Ms. Kinsey said she was making a pitch for more states to actively involve themselves in the TSCA reform effort. She noted that ECOS has taken positions on the issue by passing three (3) policy resolutions on the matter. The most recent resolution – passed August 2010 – is the most comprehensive for addressing the issue (see link 3 of 3):

http://ecos.org/files/4024_file_Resolution_01_6_2010_version.doc

http://ecos.org/files/4197_file_Resolution_10_10_TSCA_PCB.DOC

http://ecos.org/files/4195_file_Resolution_10_8_TSCA_reform.DOC

Ms. Kinsey said that, previously, a group of state officials have traveled to Capitol Hill with the most recent resolution on TSCA reform in hand to advocate the ECOS position.

Ms. Kinsey said that It appears unlikely that there will be a new law enacted in this session of Congress, but that a bill from Sen. Frank Lautenberg (D-NJ) is likely to re-introduced eventually in the Senate. She said that, on the House side, it appears that a companion bill is unlikely to be introduced in the near future. Rep. John Shimkus (R-IL) has publicly stated his unwillingness to entertain a comprehensive TSCA reform bill, but has said he is open to discussing certain provisions of TSCA.

Ms. Kinsey acknowledge that – as state officials – “we have a lot on our plates,” and TSCA reform may not be the most important issue facing state environmental agencies. But she urged states to remain concerned about the state preemption issue, and the issue of duplicative requirements for Polychlorinated Biphenols (PCBs) in TSCA and CERCLA/ RCRA.

Ms. Kinsey noted that numerous individual states have put out statements of support for ambitious reform of TSCA, and of opposition to state preemption. Ms. Kinsey said that retention of state authority will be a big issue whenever bills are proposed on this matter.

It was noted that nearly 70% of chemicals information submitted to EPA had claims of CBI. Ms. Kinsey said that EPA cannot tackle the CBI issue using current authorities despite its great efforts to address the issue to date. She noted that it is quite possible for future bills to increase transparency and that that would be a good development.

Ms. Kinsey noted that TSCA is unlike other environmental statutes because it has not resulted in any state-delegated programs, so there is no official state-federal framework for coordinating the issue under existing law. Ms. Kinsey noted that delegation authority would be necessary for states to implement any federal program.

She noted that the PCB issue is an opportunity for states to consolidate authorities for regulating this substance, and to eliminate costly duplicative mechanisms.

Mr. Sturdevant thanked Ms. Kinsey for speaking to the subject of TSCA reform.

Looking to the agenda, Mr. Sturdevant noted that the other ECOS committees had adequately addressed the topic of retrospective review of rules. After a weeks-long solicitation, no issues had been identified by Cross-Media Committee members on this issue, so Mr. Sturdevant decided to remove this topic from the agenda, in the interests of time.

Regarding the committee's focus on future issues, Mr. Sturdevant noted that the committee has a good set of issues to work on via conference calls in the coming months. He said that, for the past few years, the committee has largely focused on chemicals management, but if ECOS members have other issues to bring to the committee, he will be happy to accommodate their discussion.

Mr. Sturdevant thanked both new and veteran ECOS members for attending the session, and encouraged state environmental commissioners to contact staffer Matt Jones (mjones@ecos.org) if they wish to join the committee's distribution list.

This concluded the meeting of the ECOS Cross-Media Committee. Mr. Sturdevant adjourned the session at approximately 4:15pm.