

**2001 ASTSWMO FEDERAL FACILITIES
MANAGERS SYMPOSIUM
PROCEEDINGS DOCUMENT**



**“ENVIRONMENTAL CHALLENGES AT FEDERAL
FACILITIES: PAST, PRESENT & FUTURE”**

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Solid Waste Management Officials

PROCEEDINGS

Association of State and Territorial Solid Waste Management Officials (ASTSWMO) August 20-22, 2001 Federal Facilities Managers Symposium Environmental Challenges at Federal Facilities: Past Present and Future

REGULATOR PERSPECTIVE

Moderated by: Jim Ussery, GA

ASTSWMO

Stan Phillippe, California, ASTSWMO Federal Facilities Subcommittee Chair, discussed the need for the Department of Defense (DOD) to recognize States' role in the decision-making process. States are an important part of the cleanup process and must be viewed as equals. Other important and necessary factors in addressing the challenge of cleanup are the need to identify cleanup criteria for residential reuse of ordnance and explosive (OE) contaminated property adequate funding of federal facilities and the evolution of Privatized Cleanups such as Fixed Price Contracts with Environment Insurance.

Department of Defense

Kurt Kratz, DOD Cleanup Program Director, stated that DOD's future commitment is related to the investigation and cleanup of contaminated federal facilities. DOD also recognizes the States' requests for flexibility in the cleanup process and is committed to being flexible in the cleanup process. Another request from the States and EPA is to elevate requirements and the need for enforcement up the chain of command, and DOD is committed to do the same.

Environmental Protection Agency

Jim Woolford, Director, EPA Federal Facilities Restoration Reuse Office (FFRRO), stated that 90% of the challenges EPA faces could be solved with additional funding. EPA has noticed a trend that cleanups seem to be moving away from partnering to enforcement. EPA recently released the following two documents for review and comments due by August 31, 2001: EPA Formerly Used Defense Sites (FUDS) Policy and the Unexploded Ordnance (UXO) Handbook and Policy.

Another issue that will present a challenge to EPA is the overall performance issues from the Government Performance Requirements Act (GPRA). These include:

- a. Resource Conservation and Recovery Act (RCRA) short term indicates that Federal Facilities are lagging behind private sector sites, and teaching the goal of 95% by 2005 could be satisfied if Federal Facilities improved performance.

Since the withdrawal of the RR by DOD on November 14, 2000, States, EPA and DOD are attempting to grasp the opportunity to work in a collaborative effort in developing a new approach in the management of OEW and UXO. This session was to present an update on these collaborative efforts.

Stan Phillippe, CA, informed the meeting attendees of the development of the Munitions Response Committee, comprised of representatives from DOD, EPA, ASTSWMO, National Association of Attorneys General (NAAG), and the Environmental Council of the States (ECOS) which meets to discuss UXO issues. Their goal is to develop a set of tools for project managers to outline a process of how to conduct a response action at a range sites from start to finish. They are developing a matrix to guide UXO response actions. They have tried to identify the needs of project managers, i.e. how to make "how clean is clean" decisions. Another goal is to clarify roles within the process for tribes, community members, and the Interstate Technology and Regulatory Council (ITRC), in addition to the State, DOD, and EPA. Mr. Phillippe emphasized that the States need a meaningful role in the decision making process.

Principle issues for ASTSWMO in range cleanup are:

- State decision making role
- Adequate funding for range cleanup
- Elimination of immediate threats
- Improved detection technology
- Acceptable risk
- Management of found items (is OB/OD acceptable?)
- Long-term monitoring and recurring reviews
- The use of improved technology in the future

DOD Range and Military Munitions Response Program

Col. John Selstrom, DOD, is responsible for building the DOD Range and Military Munitions Response Program. DOD sent a UXO Report to Congress in May, which provided information on UXO program costs and a technology investment strategy. The proposed defense budget includes a proposal for addressing UXO sites. UXO costs are to be separated from cleanup costs, which will help with planning and funding.

His solution set for developing a UXO program includes: Inventory, process model, cost model, prioritization and sequencing, communication, technical applications, science, vision, and conceptual site models. His goal is "getting to done, permanent, accepted, and agreed."

EPA FFRRO Ordnance and Explosives Initiatives

Jim Woolford, EPA FFRRO, discussed Ordnance and Explosives Initiatives, and EPA's OE Policy. In the fall of 1999, EPA distributed their draft UXO management principles statement and in July 2001 released the draft policy handbook. Comments on the draft policy were due by

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM (FUSRAP)

Moderated by: Jeff Deckler, CO

State Perspective

Graham Mitchell, OH, began by summarizing the history of the FUSRAP program. He described the use of small private sites in the early stages of the Manhattan Project, the subsequent cleanup of these properties to the standards of the day, and the current program to re-evaluate these sites to ensure that they meet today's standards. He noted that the private ownership of the FUSRAP sites makes this program different from most of the federal facilities programs. For example, institutional controls are harder to implement on FUSRAP properties because the federal government does not have control of the land. He went on to note that there might be a universe of additional sites that have not yet been investigated, and cited the article that appeared in USA Today several months ago.

Graham then summarized the ASTSWMO FUSRAP Position Paper, which was included in the Symposium packet. The major issue of the paper is the need for communication. ASTSWMO believes that there needs to be improved communication between the Army Corps of Engineers (ACOE) and the Department of Energy (DOE) in the various phases of the program. In addition, States are not included in important program and site-specific decisions. The memorandum of agreement between ACOE and DOE does not even mention a State role in implementing the program. Second, there are several issues regarding funding. DOE and the States do not have sufficient funding to participate in the program. ACOE does not have sufficient funding to maintain an aggressive cleanup schedule. Lastly, States believe that there are issues regarding CERCLA compliance. Specifically, ACOE has a policy whereby they do not follow EPA CERCLA guidance; they only follow promulgated regulations.

DOE and FUSRAP

Chris Clayton, DOE, has recently taken over as the manager of the FUSRAP program for DOE. He gave an overview of the program that included the original Atomic Energy Commission authorization, and the transfer of the cleanup responsibilities by Congress from DOE to ACOE in 1997. He noted that of the 48 sites identified, 26 had been completed. This list included 4 new site inclusions since 1997.

Chris discussed the universe of 600 unknown sites in the DOE database. He noted that many of these sites have been cleaned up under other authorities, that some were referred to other jurisdictions (State, local) because DOE had no authority, and that a majority of these sites (over 400) had no indication that radioactive material had ever been handled.

Chris then noted that the National Defense Authorization Act did not provide DOE with funding for treatment, storage, or disposal activities in the FUSRAP program. Although this was not discussed further, there may be a question about how broadly or narrowly DOE is interpreting that language. For example, would DOE consultation on cleanup options be in or out of this exclusion? Chris stated the need for DOE to develop long-range budgets in order to provide an

Donna also mentioned the ACOE/DOE task force. She said it is providing the needed coordination between the agencies, and that her office is confident that they are prepared to perform the necessary activities as a result of this coordination. She noted that for each FUSRAP site a Land Use Control Plan is written, and that by the time DOE takes over the site USACE has had two years' experience implementing the plan. This helps to identify any changes that need to be made.

Donna noted that one of the biggest challenges ahead was how to keep future generations informed and interested in the land use controls and stewardship responsibilities, in order to ensure proper implementation and compliance.

There were several questions regarding the universe of potential sites. States (and EPA) want access to this database, and want to be able to independently evaluate the supporting information on which decisions to exclude properties were based. DOE responding by saying that they are currently focusing on site transfers, but will be engaging in efforts to make information more available.

States again expressed the need for funding to participate in the FUSRAP program. An agreement with ACOE was suggested as the appropriate mechanism for this. Some States are currently using DSMOA money for this purpose. Regarding site specific funding, ACOE noted that they seek to expend all appropriated funding each year. Therefore, at the end of a year they may transfer funds to a lower priority site that is "ready to go" so they can spend the money.

There was a question about how the program addresses mixed waste. Because the program focuses on radioactive waste, states had concerns about whether ACOE even looks for mixed waste. ACOE stated that if DOE didn't use it, they don't look for it – they are only cleaning up DOE waste. It was noted that in States where different divisions or departments handle radioactive waste and CERCLA (hazardous waste), coordination could be a problem.

A comment was made regarding the ACOE's use of supplemental standards and how or what LUCs would be used. EPA indicated that a recent guidance has been issued that calls for a review of all upcoming Records of Decision with emphasis on a description of institutional controls (IC). If the IC or LUC are not described in sufficient detail, headquarters will not support the ROD until expanded details are given.

The federal agencies agreed that ASTSWMO would be a good venue for information transfer to States, including distributing draft documents for comment.

Regulatory agencies treat MNA differently. Typically, CERCLA has been biased towards action, whereas MNA is perceived to be a non-action remedy. There is a higher level of concern about remedy failure, which is why the Navy guidance recommends a monitoring program that allows for a timely implementation of a contingent remedy in case of failure. Although MNA is not typically the sole remedy, there are cases where it is appropriate.

Alaska's MNA Guidance and its Approach to MNA Using Case Studies

John Halverson, AK, began his presentation with a discussion on Alaska's *Guidance on Selecting Natural Attenuation as a Cleanup Alternative for Soil and Groundwater at a Contaminated Site*. Alaska's guidance is based on EPA and other States' guidance. Two approaches to MNA were discussed using case studies. One case study was at Eileson Air Force Base (EAFB) and the other at Ft. Wainwright.

The differences between these two sites were discussed as far as the remedial action taken. Although the contaminants of concern are similar at these two sites, they differ in their approach to MNA. The Record of Decision (ROD) was signed at EAFB in 1994. At that time, there was limited MNA guidance. The reliance was more on institutional controls and limited monitoring. Unfortunately, the monitoring plan did not include MNA parameters. No modeling was done to determine the time needed for the site to naturally attenuate. There was minimal source identification and plume delineation. As a result, areas of undocumented sources and contaminated media were found during construction projects. Not only did this lead to down time on contracts, the Air Force (AF) found it difficult to find funding for the treatment or disposal of the soil/groundwater.

The ROD at Ft. Wainwright was signed in 1999. More information on natural attenuation was available in 1999. A more thorough remedial investigation was conducted to identify the source and delineate the plume. Because there were higher potential risks, a more aggressive source removal and treatment along with MNA was used. Investigations were able to demonstrate that MNA was working.

Experiences and Lessons Learned From the ITRC Work Group's Natural Attenuation Training Efforts

Paul Hadley, California – ITRC Representative, began his presentation with an overview of the early history of natural attenuation (NA). In 1995, MNA was not well understood by the regulatory community, and therefore, most discussions on it were relatively short. Virtually no guidance on MNA existed. Now, there is much guidance and it has been well documented on many sites.

Another focus was on the success of ITRC's Natural Attenuation of Chlorinated Solvents training efforts. Training has increased from 1600 students in classroom sessions (1997–1999) in 10 cities to about 2000 students through Internet sessions (1999–present) worldwide.

Basic approach includes: 1) Bringing tools of all agencies together for the goal of site closeout; 2) Management level commitment to empower staff (project)-level partnering; 3) facilitate communication so that all understand problems; and 4) provide training for staff and RABs (public).

The three-tiered approach was also cited: Tier I (PM level) is the key to partnering success; Tier II is at the state and EPA levels to clarify issues and policy; and Tier III is at the Regional level (State and EPA directors, DOD regional headquarters) and serves to support and unite agencies at all levels.

Jon concluded his presentation with the thought that partnering is the preferred approach to cleanup rather than enforcement. This will result in both reducing the cleanup timeframe and cost savings.

The ACOE and Real Partnering

Jerry Hodgson, ACOE, cited "Real partnering" examples from two Colorado UXO projects – Former Lowry Bombing and Gunnery Range and Camp Hale were presented. Lowry began as litigation by Colorado to evolve into a real partnering approach that was extended to Camp Hale.

Key concepts include: 1) Identify all stakeholders and keep them involved throughout the cleanup process. This includes State, local, and federal agencies as well as the public. RABs are important to make citizens "owners" of project success and "buy in" to cleanup process. 2) While the goal is cleanup, priorities may be different among stakeholders. At Lowry, a voting process was used at the RAB to involve stakeholders in priority rating. 3) Ensure open communication and provide access to all data. 4) Negotiate and compromise – have an open mind and when possible always be flexible. 5) Recognize personalities and bring a sense of humor.

Questions/Answers:

Q: What is the appropriate level of authority for PMs to partner?

A: Use Federal Facility Agreements to define authority.
Agencies must define it; such as Program Managers (PM) cannot sign-off on Decision Documents independently.
Delegate as much day-to-day authority to PMs as possible, but recognize when decisions must go to upper levels.

Q: How is community involvement done in Region 4?

A: Done through RABs with the Tier I teams.

Q: Role of Natural Resource Trustees?

A: Understand their level of responsibility and if they have time to participate throughout entire project.

involved in property transfers. Craig stated that States should be involved in these transfers, and would also like to see States involved in compliance monitoring.

Perspective from a CFA

Bernie Hyde, Group Manager, Bureau of Land Management (BLM) started his presentation by describing the types of land BLM manages, including mineral and oil leases, grazing lands, and rights of way. BLM manages 12 percent of the United States land area. The BLM Hazmat program started in 1984. It currently has a budget of \$16M, which includes emergency management and planning. There is also an "extra" Hazmat pot of \$10M. The program has 90 FTE (or pieces thereof) nation-wide. They also have an Abandoned Mines program with 40 FTE and a \$10M budget.

BLM has dealt with thousands of properties and issues for the Hazmat program include illegal dumping, drug labs, and legacy site cleanups. First they evaluate the need for a short-term response, and then perform the necessary follow-up. They do pursue PRPs and try to coordinate Natural Resource Damages (NRD) with CERCLA cleanups. However, success with this coordination has been limited.

Although BLM does not have a lot of money to support State participation in their CERCLA activities, they do have a model agreement with Idaho that provides such support. BLM also noted that States could impact site prioritization by writing enforcement actions. He also noted the ability of BLM to provide State or local governments with land for solid waste facilities, in order to combat illegal dumping in remote locations. Lastly, BLM will begin to approach States with UXO issues on National Guard sites.

Case Study

Dennis Hall, National Oceanic Atmospheric Association (NOAA), presented a case study on cleanup efforts in the Pribilof Islands of Alaska. There are over 40 sites on the two islands, and contamination includes petroleum contaminated soils, debris, and drums of waste oil. He noted that 5 statutes govern these cleanups. Interagency agreements have been negotiated between NOAA and the State that set schedules, cleanup protocols, and provide funding for State oversight.

The main issue discussed during Q&A was the need for CFAs to fund State oversight and participation in the CERCLA cleanups. It was suggested that this funding should be included in the CFA budget. It was also suggested that EPA might be able to provide CORE funding for this purpose.

impact from the demilitarization of the mustard gas that has the community concerned. With the draft Environmental Impact Statement (EIS) for the demilitarization of mustard gas out for review, the Army has been working on community involvement. Meetings with the community have taken place, and interviews and education of community members has occurred. A better understanding of how EJ fits in is being relayed to the community.

The challenges faced by all parties involved include communication, and understanding the differences in operating styles and cultures. The Army believes it has been cooperative whereas the community wants more. The purpose of EJ principles is to help bridge the different operating styles. The presentation ended with a discussion of why EJ principles may help at federal facilities. The importance of communicating with the affected communities was stressed. By involving the community, there is a long-term advantage as projects continue to move forward.

Environmental Racism

Saul Bloom, Arc Ecology, stated that context is everything when dealing with Environmental Justice and that environmental racism and poverty do exist. This can be seen by comparing the location of people of color in relation to industrial areas. Because of the need for cheap land, the same set of factors that attract heavy industrial activities to a community also attract low-income people. Because of historic racial prejudice, low-income communities are also frequently communities of people of color as well. The result is that poor people and communities of color are exposed to higher levels of environmental hazards than are wealthier and predominantly white communities. Disparity is found around military bases because of these same factors. Because of the size of military facilities, cheap and isolated land is often required. The requirement for large areas of cheap isolated land means Latinos, Native Americans, Native Alaskans, Native Hawaiians, and farmers typically populate these. The military's role in the larger society also gives it a larger stake in the Environmental Justice issue. For example, during the Second World War, African-Americans were brought into communities around bases, not because they were allowed to serve in the military (the military was still segregated at the time) but because the military needed workers at the bases. These factors combined with its poorly managed environmental restoration program, poor training of its environmental managers, and its reliance on its limited Sovereign Immunity to avoid environmental regulatory compliance, makes the Defense Department a significant and frequently negative factor as regards environmental justice.

Mr. Bloom summarized his presentation by reiterating the fact that EJ is contextual. The federal government needs to acknowledge its role in EJ. Low-income, communities of color want a partnership and a desegregation of the process. Unfortunately, these communities have the fewest resources to make an impact on the process.

Tribal Perspective on Long Term Stewardship

This session discussed the tribal perspective of ancestral homelands or aboriginal lands occupied by federal facilities. Neil Weber, Pueblo of San Ildefonso, NM, explained how many federal

The most popular aspect of ITRC is the regularly scheduled Internet training seminars in coordination with EPA TIO. Seminar schedules and descriptions can be found at www.itrcweb.org.

EarthSoft

EarthSoft is an environmental software company, which features EQUIS (Environmental Quality Information System). This system manages environmental data and is currently in use by 10 States, a number of EPA regions, and several large DOE and DOD facilities.

Mitch Beard, EQUIS, informed the participants that EQUIS allows storage, quality control, and manipulation of chemical, geological, and hydrological data, which can be used with a variety of mapping and geographical information systems (GIS) programs. Examples were presented for several sites including mapping groundwater contamination zones to evaluate extent of contamination, placement of monitoring wells, and real-time site investigation decision-making.

GAEA Corporation

Arnold Gray, GAEA, briefed the participants on the role of GAEA, which is the governmental coordinator of EQUIS for several States and EPA regions. They assist in implementation activities, which place environmental data into EQUIS and use that data to make regulatory decisions. Dr. Gray gave an on-line demonstration of using EQUIS and provided hands-on training after the session.

CLOSEOUT/SITE PRIVATIZATION

Moderated by: Steve Nussbaum, IL

Privatization in Colorado

Jeff Edson, CO Department of Public Health and Environment (DPHE), centered his presentation on the effects of privatizing Lowry Air Force Base and Fitzsimmons Army Medical Hospital. Lowry was slated for closure in 1991 and approximately 900 acres were targeted for early transfer. The site includes 11 groundwater plumes, landfill and three contaminated soil sites. The site is near completion of the remedial investigation and has been proposed to be transferred to the Lowry Redevelopment Authority, and will privatize the cleanup through a cooperative agreement with a private firm. Fitzsimmons was closed in 1995 and the contamination is limited to three solid/hazardous waste landfills. This site is also near completion of the remedial investigation and is proposed for transfer to the City of Aurora also with a privatized cleanup through a cooperative agreement with a private firm.

Jeff also outlined the requirements to complete early transfer/privatization:

- Findings of Suitability for Early Transfer (FOSET)
- Deferral Application as per E.O. 06 13 98
- Enforceable as per E Agreement .0. 06 13 98

Early Transfer

- CERCLA 120 (h)(3)(C) allows the transfer of property owned by the United States without complete remediation.
- EPA must approve an "early transfer" with State concurrence (NPL) or the Governor of the State (Non-NPL).
- After transfer, remediation is completed by DOD or a private entity (i.e., LRA, developer, etc.).

Isabella stressed that early transfer should benefit all parties involved. The transfer could be complex, and may involve numerous negotiations and documents (i.e., FFSRA/FFA, ESCA, Consent Agreement, Insurance, LUCs, etc.). Also consider that if DOD spends a large dollar amount up front, then do other sites suffer?

Isabella noted that a significant portion of cleanup at closed bases is not completed or funded. The cleanup process is too lengthy partly due to funding inadequacies. For example, DTSC has been involved in the cleanup of McClellan since 1979. Most importantly, all parties must coordinate early to determine reuse and should consider alternative methods of managing remediation at closed bases.

DEPARTMENT OF DEFENSE AND STATE MEMORANDUM OF AGREEMENT (DSMOA) Moderated by: Jennifer Roberts, AK

Center for Naval Analysis (CNA)

Paul Speer, CNA Director, began his presentation with an overview of the CNA study entitled, "DSMOA Post Development Program Review" to examine problems with DERA and the 6 step DSMOA process. Thirty-one States responded to the DSMOA survey, and approximately half of the States expressed concern with administrative burdens of the 6-step process. Only 20% of States saw an improvement in the 6-step CA process, States want to be able to transfer funds among services, and year to year funding variability is a problem.

CNA recommended that nothing is fundamentally broken but improvements are possible. DOD should focus on the following:

- Improve communication
- Implement guidance by service
- Improve information on DENIX DSMOA Website
- Define "reasonableness" for service reviews
- Provide training in advance of each CA round
- Services should not micromanage State's accounts
- As clean up program winds down, need to think about DSMOA future.

For some States, the only way to address the historical Inventory Project Reports or assessing sites that have never been investigated means sacrificing progress at the active sites. Some States pointed out that they had to use EPA site assessment funds to perform this work at FUDS sites. Again, it was urged that DOD provide greater funding for INPR reviews through the DSMOA Cooperative Agreements.

Additionally, in several States urban encroachment is progressing further in areas that were historically isolated hence increasing human exposure to the contamination at sites located in such area. Additional funding should be planned for such sites.

Information Sharing and Information Management

Information sharing at PRP sites continues to be a problem. ACOE should provide complete PRP information to the State and EPA so that the government funds are not spent twice to accomplish the same task. It was also pointed out that the lack of real time information sharing caused States to be unable to keep abreast of the ACOE's changing priorities for the FUDS sites. This made it harder for the States to accurately estimate the State activities at the FUDS sites. It was stressed that DOD should make more effort to follow the DOD guidance and procedures and exhibit more enthusiasm developing DSMOA work plans with the States in order to make the DSMOA process easier. Furthermore, workplans should be developed to address the States' regulatory requirements in order to ensure that all information necessary to make a regulatory decision is obtained and presented.

Additionally, there is a need to incorporate information regarding the Federal Facilities into the Geographic Information System (GIS) so that the information generated by various agencies can be utilized in an efficient manner to make sound decisions. This can also aid in the Land Use Control (LUC) databases that the States may be developing in relation to the LUC issues. There should some DSMOA funding to the States for this purpose.

Site Prioritization

States would like to be involved in the FUDS site prioritization process and would like it to be State specific. The DOD's risk based approach focuses more on the health hazards than environmental hazards, which results in assignment of low priority to the sites that do not affect humans. This has left some State that are sparsely populated in certain areas with inadequate funds to address FUDS sites that they consider high priority. The States believe that most FUDS sites require additional investigation in order to better prioritize them. They feel that the ACOE's risk based prioritization of sites or the RAC scores are based on very limited knowledge. As an example, several sites that have been assigned a low ground water contamination potential have never been tested for ground water contamination. It was suggested that further site assessment at all FUDS sites should be performed and the prioritization be based on that information. It was also stressed that at sites that are not being addressed currently, the public should be updated and signs should be displayed so that potential human exposure is reduced.

Integration Policy, Air Force Environmental Restoration and Cleanup Agreement Policy, April 16, 2001: "To the maximum extent possible, AF installations should utilize our CERCLA authority ... to address, or where necessary integrate, overlapping cleanup requirements of other applicable state response laws at non-NPL facilities, and RCRA corrective action and closure requirements at all facilities."

AF integrates other cleanup requirements to the extent they are: promulgated and applicable; timely identified; more stringent than or additive; non-discriminatory; and not in conflict with CERCLA nor inconsistent with the NCP.

There are provisions for exceptions. If a base is headed down the RCRA path, the base can request (from AF headquarters) to clean up another (RCRA) authority. Regarding petroleum sites, since petroleum is excluded from the list of CERCLA contaminants, the policy does not apply. A question was raised on how public participation requirements are fulfilled? Since Congress did not want CERCLA response actions to be subject to lengthy requirements, public participation is provided for under CERCLA and DERP has RABs, so there is still significant opportunity for public participation.

States consider the public comment process to be a substantive requirement. The Air Force response is that anything procedural is administrative (and do not need to comply with). However, the Air Force will work through issues with States on important concerns. At non-NPL sites, States do not have mechanisms to ensure that substantive requirements are being followed and actions are subject to State enforcement under CERCLA.

National Association of Attorney Generals (NAAG)

Paula Cotter, NAAG, stated that the Association does not have a formal position on this issue. However, there are some common concerns among the States. According to the AF policy, CERCLA preempts State law. For instance in the integration policy, CERCLA is over RCRA, but not equal. However, the Air Force contends that both processes can be followed at once, such is the case for a site in Colorado. If the States/site follows RCRA, then the Air Force still has the legal requirement to follow CERCLA (because of exposure to citizen suits, etc). There are also situations where the base is following a "hybrid" program and not fully complying with either.

- 1) The States have a position that if conflicts arise, State law overrides any exclusion. For example, if a State law requires a permit, the base will be expected to obtain a permit.
- 2) Issues are not ready for litigation.
- 3) Who makes the decision on which policy to follow?
- 4) Public participation – under the AF policy, the AF eliminates public input provisions under State law.

The Air Force believes that under this integration policy, the base would have to meet both requirements (of CERCLA and the State law) as long as they are not in conflict. An example of

INSTITUTIONAL CONTROLS/LAND USE CONTROLS (IC/LUC)

Moderated by: Isabella Alasti, CA

Navy Prescription for Land Use Controls (LUC)

Bernie Schafer, Senior Counsel, U.S. Navy, focused his presentation on a "Prescription for Land Use Controls (LUC)". Two DOD policies on LUC were released last June and March. The Navy was motivated to develop these policies by the CERCLA comeback policy concerns about personal injury and property damage after they no longer control the property.

Policies include:

- Institutional controls and engineering controls
- 5-Year Reviews
- More LUC flexibility at active bases
- Can do deed restrictions on transferring property, not on retained property
- For retained property, support LUC implementation plans (LUCIP)

In selecting LUCs: want known information cycle costs, long-term availability, enforcement, layering approach, property interest for regulators, and public participation.

The Navy is extremely interested in the possibility of State laws that allow LUC to "run with land" and hope that States will develop legislation and the ability to enter State LUCs into a registry. Memorialization in a GIS is also a necessity. The Navy is developing a Land Use Control Info System (LUCIS).

Improving the Reliability of ICs

Alison Abernathy, EPA FFRRO, focused on improving the reliability of IC's-EPA Data, Guidance & Efforts. Currently, EPA is gathering data on IC failures, ROD documentation, and 5-Year Reviews. A 1998 survey found damaged or failed remedies (destroyed wells, breached caps, land developer damage, trespass). Of 108 RODs signed in 1998 and 1999, half did not address monitoring, reporting, and enforcement. This improved for RODs signed in 2000. In August 2001, EPA released a directive that requires draft and final RODs to adequately document IC objective, implementation, reporting, and enforcement responsibility.

EPA Guidance "IC and Real Property Transfer under CERCLA"; January 2000 provides guidance for property transfer, federal agency requirements. EPA Region 4, 5 and 10 have guidance for active facilities, model ROD language, and requirements for IC language. EPA is planning to review/examine 67 5-Year Reviews and to develop an IC tracking system.

State Enforcement of Environmental Covenants

Howard Roitman, CO DPHE, discussed Colorado's New Environmental Covenants Law. Various organizations such as ASTSWMO and ECOS have been researching the issues of stewardship in remedy decisions, funding approach for quite some time. SB 145 provides for enforceability of environmental covenants in Colorado. It applies to decisions after July 1, 2001

- Q: Do any States have a mechanism where landowners can call-in to State reporting on status of IC?
- A: Massachusetts places such requirements on Army for reporting on integrity of physical barrier. However, it does require a lot of work from the State.
- Q: Is NAAG developing model ordinance?
- A: State commissioners of uniform building codes are working on this issue.
- Q: Are Operating Properly and Successfully determinations needed for IC's?
- A: No, EPA does not require it for property transfer.
- Q: Is LUCIP a primary document?
- A: DOD activity discussing this, uncertain at present. Have a LUCIP in transferring Army property in Utah. As LUC is not a "core mission", need for long-term State role. DOD is uncertain about long-term role.

Formerly Used Defense Sites (FUDS) Program Update

Moderated by: Ed LaRock, CO

FUDS Improvement Working Group:

- Rick Newsome, Army
- Jennifer Roberts, Alaska
- Renee Wynn, EPA

ACOE Perspective:

- Dave Nusz, US Army Corps of Engineers

MAP Pilot States:

- Jeff Edson, CO
- Bonnie Buthker, OH
- Randy Carlson, KS

FUDS Improvement Working Group

Army

The FUDS Improvement Working Group was formed in October 2000 to respond to stakeholder concerns and to improve the FUDS program. Rick Newsome stated that one of the first challenges of FUDS improvement is to correct the inventory of sites with help from the States through site review. On the issue of site completion, he indicated that there was some flexibility in the guidance to use funding not strictly in accordance with the relative risk rubric in order to accommodate State requests where possible, and enhance close outs.

ASTSWMO

Jennifer Roberts, AK, reported on issues raised in the ASTSWMO 2001 FUDS Symposium held in Austin, Texas. The #1 priority was the budget issue. She discussed the Matrix, which is

Pilots are being developed independently, but the goal is to share lessons learned from pilot MAP efforts and apply them to preparation of other Statewide MAPs. David covered a number of Statewide MAPs "lessons learned" from the Corps' perspective, including: 1) adequate time is needed to develop them - a 9 month schedule requiring 80 –160 hours is recommended; 2) all key stakeholders should draft portions of the MAP which promotes communication, teamwork and cooperation, better understanding of roles, and strengths, and ownership of the MAP as a living document; 3) all information in the MAP must be acceptable to all key stakeholders; 4) all key stakeholders should be engaged together from the very beginning of the Map process and differences and conflicts need to be addressed and resolved up front; 5) a common format for the MAPs is a good goal, but a "cookie cutter" approach will not work as flexibility to incorporate individual stakeholder interests is necessary (e.g. unconstrained budget requirements desired by a State); 6) Tribal involvement presents unique challenges when developing a statewide map including federal trust responsibility, relationships with State and EPA, establishment of priorities and allocation of funds; and 7) budget year funding allocation must initially be established for each state to facilitate joint development of the annual workplan as part of the MAP process (he stated "we're dealing with very little money"), flexibility to reprogram limited annual funds from State to State is needed in the event that unplanned but imminent situations arise during the FY.

Miscellaneous benefits of the ongoing pilot MAP process as expressed by several stakeholders include: improved quality of FUDS inventory data; ability to cross reference specific FUDS known to different stakeholders by various names and project numbers; provides an avenue to recognize efforts at specific sites by stakeholders in addition to the Corps; and provides an identification of sites which warrant immediate increased funding priority.

Colorado

Jeff Edson, CO, stated that there have been significant budget cuts for Colorado. In negotiating next year's budget, it was apparent that all of the funding could be applied toward Lowry Bombing Range through 2008 to meet cleanup goals for just that one site. Later the ACOE did find some additional money, but funding is still insufficient to make adequate progress on sites (including Lowry Bombing Range.) He was also asked to develop MAPs for all sites in the State. He expressed skepticism about the need for MAPs. For instance, the Air Force required MAPS since the late 1980's and has apparently never used them.

Jeff's main concerns included: 1) which audience are the MAPs are intended for? Colorado has a great relationship with Omaha District, USACE. If the MAP is for Omaha and Headquarters—it may not be a problem; 2) what is the goal? A MAP requirement seems to assume that good communication is lacking. An open team approach should be encouraged. Rather than requiring them for all States, it may be more important for States without good communication and relationships with the Corps to do MAPs; 3) how and when will the MAPs be updated--on an annual basis, or as needed? He indicated there was not much enthusiasm from the Project Manager on down to implement the MAPs; and 4) what pot of money will MAPs come from?

The State worked on a MAP for non-DSMOA, the ACOE worked on a MAP for DSMOA, and EPA reviewed the work. Randall indicated it was a very cooperative process including weekly exchanges of e-mail and several working sessions. He handed out MAP information on Forbes AF Base located in Topeka, KS.

Randall indicated that what remained to be done included: integration of Program Objective Memorandum (POM – the DOD 5-year budget plan) into the MAP, periodic updates (meeting quarterly), and to begin actually using the MAP.

Question/Answers:

Q: Is the workgroup discussed finding new FUDS that are not on the list?

A: Rick Newsome indicated that they had not specifically discussed this, but acknowledged that the list has grown. New properties are added as additional information comes in.

Q: Omaha District indicated that funding had increased from \$190 M to \$230M and asked if that was the most money they could get, or are additional funds available?

A: Rick Newsome answered that heroic efforts had been made to get additional money, and they were not successful. He added that ECOS and others might need to let Congressional lawmakers know these are serious commitments.

Q: Certain issues have brought FUDS onto the radar screen and this States has been told that PA/SI program funding to screen FUDS is not available. They have also tried to use DSMOA funding to screen FUDS and found it was not available either (duplicating work). He asked how many States had the flexibility to use PA/SI dollars to screen for FUDS?

A: Renee Wynn answered that she would like to go back and check, but that States should be able to use PA/SI dollars for sites that are privately owned. She indicated funds out of her office for Federal Facilities were depleted, there were no additional dollars to address these sites, but they are trying to get more funding. EPA believes the ACOE should continue to fund States. She stated she would check into the matter.

Q: What funding sources will be used on MAPS?

A: DSMOA

Q: If there isn't adequate funding, will the States promulgate sites and pursue more funding that way?

A: CO—not yet. KS—not yet, still working with the ACOE as viable. OH—depends on priorities-- doing \$5 million plus up. What could we do with \$5M more? We'll look at it in the next MAP revision.

Q: If by July 1, 2002 the FUDS budget is unchanged –do we keep moving to do 2-5 history reviews and State-wide MAP, and do we any have preliminary costs of the MAP?

A: States want feedback from pilot to see if it works and how to implement within the next level with funding. These are valid questions that we don't have answers for yet. Rick

follow-up of institutional controls and LUCs in general was a partnership issue between States, EPA and DOD. Craig Hooks, Director, EPA FFEO, also stated that EPA has been trying to engage in this issue. EPA went further to state that the positions have been laid-out, and now the political leadership must engage to resolve the issue. A potential solution is the reservation of rights in the document or the use of a dispute resolution process.

One comment highlighted that there was no structure within many States to implement LTS issues. Stan Phillippe stated that Howard Roitman is the States' representative on the LTS issue with ECOS. Another comment was that post ROD enforcement and monitoring of LUCs and ICs is a significant issue. California went further to state that there needs to be a workshop from the States' point of view on State needs under the DSMOA. Kurt Kratz responded that DOD would be very interested in working with ASTSWMO in sponsoring such a workshop. DOD went further to state that DOD is looking for a better way to resolve the LUC policy issue rather than exchanging letters. DOD is very interested in finding a solution.

Mr. Kratz thanked ASTSWMO for allowing himself and DOD to participate in the symposium. Mr. Kratz also made the commitment to work better together and stated that meetings like this one was a good example of that joint commitment. Some of the topics that DOD is interested in looking at are: A DSMOA workgroup, a LUC/IC workgroup, overall finding and oversight of the program, and the wrap-up and finish of the program. Alaska made the request that DOD fund ASTSWMO for the various Federal Facility Workgroups. DOD stated that he would add it to the list. There was an additional question from the group regarding the LUC workgroup. DOD stated that it was a beginning rather an end.

Stan Phillippe responded that there was a concern among States regarding the timeliness and the implementation of the recommendation. DOD responded that they were unsure of the timeline, but would find out.

The issue regarding Federal Facilities transferred after 1986 was raised. By definition, these properties are not FUDS. The question raised from the audience was if there was a list available of these properties. The Army stated that GSA would probably be the best source of information. However, DOD or the Army does not have a system that tracks the properties. The agency that owned the properties at the time of transfer would retain the liability. Colorado stated that there was a forum at ECOS with DOI to work the issue. EPA stated that based on the FFEO experiences, the information is not readily available. Illinois asked if this issue would be appropriate for the FFELC to work. EPA noted that they were trying to get the effort going, but resources limit the effort. The Air Force stated that the Air Force manages post 1986 properties in the IRP.

The final question of the session asked if there existed a database of new and innovative technologies available. EPA stated that the EPA website www.clu-in.org hosted by the EPA Technology Innovation Office has such a database.

The symposium then adjourned.

AUGUST 20-22, 2001
ASTSWMO
FEDERAL FACILITY MANAGERS SYMPOSIUM
**“Environmental Challenges at Federal Facilities:
Past, Present, and Future”**

DAY ONE – Monday, August 20, 2001

7:30 – 8:30 AM **REGISTRATION** – Regency Ballroom Foyer
Coffee will be served for meeting attendees in the registration area

8:30 – 9:00 **INTRODUCTION AND WELCOME** - Regency Ballroom 5-7
Opening Remarks:

- Jim Ussery, Program Manager, Georgia Department of Environmental Protection & Chair, ASTSWMO Training and Technology, Transfer Focus Group
- John Ruddell, Director, Division of Waste Management, Florida Department of Environmental Protection
- Mark Giesfeldt, Director, Wisconsin Department of Natural Resources & ASTSWMO Vice-President: *The Senior Cleanup Council: The Role of State Program Managers in the Cleanup of Federal Facilities*
- Jeff Deckler, Program Manager, Colorado Department of Public Health & Environment, (CO DPHE), & ASTSWMO Secretary/Treasurer

9:00 – 10:00 **PLENARY SESSION: Regulator Perspectives on the Future
Challenges at Federal Facilities** - Regency Ballroom 5-7
Moderated by: Jim Ussery, GA

This panel will feature representatives from ASTSWMO, DOD/Services, and EPA discussing the future challenges at federal facilities.

- Stan Phillippe, Chief, Military Facilities, California Department of Toxics Substance Control (CA DTSC)



2. Monitored Natural Attenuation - Regency Ballroom 6
Moderated by: Richard Pease, NH

This session will focus on the use of monitored natural attenuation in the cleanup of federal facilities.

- William O'Steen, Environmental Scientist, EPA Region 4
- Mike Pound, Deputy Chief for Restoration, U.S. Navy, Southwest Division
- John Halverson, Environmental Specialist, Alaska Department of Environmental Conservation (AK DEC)
- Paul Hadley, CA DTSC - ITRC Representative

3. The Partnering Process - Regency Ballroom 7
Moderated by: Jeff Edson, CO

This session will highlight the pitfalls and successes of the partnering process.

- Jon Johnston, Federal Facilities Branch Chief, EPA Region 4
- Steve Mihalko, Project Manager, Virginia Department of Environmental Quality (VA DEQ)
- Jerry Hodgson, Project Manager, ACOE Omaha District

3:00 – 3:30

BREAK - Regency Ballroom Foyer

3:30 – 5:00

CONCURRENT SESSIONS

1. Civilian Federal Agencies (CFAs) - Regency Ballroom 5
Moderated by: Jennifer Roberts, AK

This session will feature speakers from various agencies discussing their roles in property transfer, the implementation of CERCLA, and coordination with States.

- Craig Hooks, Director, EPA Federal Facilities Enforcement Office (FFEO)
- Bernard Hyde, Group Manager, Protection & Response, Bureau of Land Management (BLM)
- Dennis Hall, National Oceanic Atmospheric Administration (NOAA)

8:30 – 10:00

PLENARY SESSION: Site Closeout & Cleanup Privatization

Regency Ballroom 2

Moderated by: Steve Nussbaum, IL

This session will focus on various roles in property transfer/privatization and will discuss funding, liability, insurance and other issues associated with achieving site closeout.

- Isabella Alasti, Staff Counsel, CA DTSC
- Mike McMullen, Product Line Manager, Zurich North America
- David Knisely, Garrity & Knisely
- Jeff Edson, Manager, Remediation & Restoration Unit, CO DPHE

10:00 – 10:15

BREAK – Regency Ballroom Foyer

10:15- 11:45

PLENARY SESSION: DSMOA - Regency Ballroom 2

Moderated by: Jennifer Roberts, AK

This panel will feature representatives from the Center for Naval Analysis (CNA), ACOE and a State Department of Defense and State Memorandum of Agreement (DSMOA) program.

- Center for Naval Analysis (CNA) DSMOA Survey: Paul Speer, Director, Environment & Safety, CNA
- Evolution of the DSMOA Process: Paul Lancer, DSMOA Team Leader, ACOE HQ
- DSMOA - State Perspective: Bonnie Buthker, DSMOA Program Manager, OH EPA

11:45 – 1:15 PM

LUNCH (on your own)

1:30 – 3:00

CONCURRENT SESSIONS

1. Small States Session – Regency Ballroom 5

Moderated by: Richard Pease, NH

This session is designed for States to discuss the challenges and innovative ways to achieve success in the cleanup of federal facilities in small State programs.

- Mary Sanderson, Section Chief/Federal Facilities & Superfund, EPA Region 1
- Paul Lancer, DSMOA Team Leader, ACOE HQ

- Donna Bergman-Tabbert, General Manager, DOE, Grand Junction, CO

5:00 PM

ADJOURN FOR THE DAY

DAY THREE – Wednesday, August 22, 2001

8:30 – 10:30 AM

FUDS PROGRAM UPDATE - Regency Ballroom 2
Moderated by: Ed LaRock, CO

This plenary session will discuss the re-engineering workgroup efforts and the Management Action Plan (MAP) Pilots.

FUDS Improvement Workgroup:

- Jennifer Roberts, Contaminated Sites Section Manager, AK DEC
- Rick Newsome, Assistant for Environmental Restoration, U.S. Army
- Renee Wynn, Associate Director, EPA FFRRO

ACOE Perspective:

- David Nusz, FUDS Program Manager, ACOE NW Division

MAP Pilot States:

- Jeff Edson, Manager, Remediation & Restoration Unit, CO DPHE
- Bonnie Buthker, DSMOA Program Manager, OH EPA
- Randall Carlson, Unit Chief, Kansas Department of Health & Environment

10:30 – 11:00

BREAK - Regency Ballroom Foyer

11:00 – 12:00

Open Forum - Regency Ballroom 2
Moderated by: Stan Phillippe, CA

An opportunity will be provided in this session to share views and opinions about the issues that matter most to State and Federal remediation managers and to discuss any new topics.

- Renee Wynn, Associate Director, EPA FFRRO
- Kurt Kratz, Acting Assistant Deputy Under Secretary of Defense for Environmental Cleanup

12:00 Noon

ADJOURN

Association of State and Territorial

ASTSWMO

Solid Waste Management Officials

Attendance List

**2001 ASTSWMO FEDERAL
FACILITIES SYMPOSIUM**

**“Environmental Challenges at Federal
Facilities: Past, Present, & Future”**

August 20-22, 2001

Tampa, Florida

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