



Department of Energy

Washington, DC 20585

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Land & Waste Management

Ms. Shelly Sherritt
Department of Health and Environmental Control
Bureau of Land & Waste Management
8911 Farrow Road
Columbia, SC 29203

Dear Ms. Sherritt:

I wish to extend my appreciation for your participation in the Sustainable Solutions Workshop on August 27, 2003. The frank, open and constructive discussion by everyone provided an opportunity to exchange information regarding our interests to accelerated cleanup and other initiatives. As I indicated both prior to and during the meeting, a major goal of this and follow-up discussions is my personal commitment to improve communications. These discussions clearly demonstrated that we share many common goals, a framework for success, and a willingness to work together cooperatively. It was also obvious from discussions, that there have been a number of successes that we share in the cleanup effort, and there is the immediate opportunity to build upon these successes that demonstrate innovative, creative, and common sense ways to solve some of our issues.

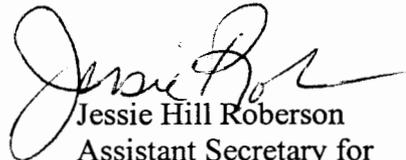
I am committed to making certain that this meeting is one of a continuing dialogue with State and Federal environmental officials either through specific meetings by topic or through your vital associations and organizations. From this meeting, we have already begun to develop the core for a meeting with a small group of senior management representatives from my agency and with State Environmental Commissioners and Environmental Protection Agency Regional Administrators. With regard to our important Department of Energy (DOE) initiatives and new programs and policies, I will make every effort to continue to engage the regulators and other stakeholder groups requesting your participation and input as these new developments arise. At our meeting, two key topics were identified as most important for immediate discussion. These topics were: (a) jurisdictional issues related to shipping and disposing waste around the DOE complex, minimizing impact upon State officials and stakeholders; and (b) the DOE Environmental Management to Legacy Management transition and the integration of long-term stewardship including risk based end-state planning and institutional controls. Your suggestions on how we can best influence success are critical. We will work closely with you and your management to further develop these two subject matter areas along with others prior to the above-mentioned meeting.



We recognize the importance of regular face-to-face communication. Therefore, you are always welcome to meet with me or Mr. Thomas Adams, my Senior Advisor, to continue the dialogue.

I cannot accomplish the important accelerated cleanup mission without your participation and support. I have enclosed the summary of the meeting for your review and comments.

Sincerely,


Jessie Hill Roberson
Assistant Secretary for
Environmental Management

Enclosure

**Department of Energy Sustainable Solutions Workshop
August 27, 2003**

Meeting Minutes

Purpose: To provide an opportunity for state, Environmental Protection Agency, and Department of Energy officials to exchange information regarding issues of interest related to DOE's accelerated cleanup and other initiatives. See agenda at Appendix A.

Date/Time/Location: August 27, 2003/8:00 am–5:00 pm/Omni Interlocken Resort, Denver, Colorado

Participants:

See Appendix B for a list of attendees.

Welcome and Introductions

Mr. Tom Adams, Department of Energy (DOE), introduced Ms. Jessie Roberson, Assistant Secretary for Environmental Management, DOE. Ms. Roberson thanked the participants for taking the time to attend this workshop. She stated that this workshop was an opportunity to share information, to listen to issues of concern to the states and the Environmental Protection Agency (EPA), and to provide the states and the EPA with information on what DOE is doing. One of her goals for this meeting is for the DOE to listen more than talk.

Participant Introductions and Workshop Objectives

Workshop participants introduced themselves and provided their expectations and objectives of this meeting. These expectations and objectives included:

- Observing the cooperative process at work during this meeting
- Continuing information exchange, such as that experienced during the Environmental Council of the States (ECOS) DOE Forum
- Getting a sense of what DOE is trying to accomplish and its strategy for doing so through its programs; becoming more acquainted with DOE initiatives; getting a sense of DOE's game plan, especially from technical, regulatory, and political perspectives
- Obtaining information on risk-based waste management, grants, and improving state, EPA, and DOE relationships
- Discussing ways to further accelerate cleanup, including transuranic waste, in a safe and efficient manner
- Discussing ways to improve communications and issues surrounding disposal of greater-than-Class C waste

- Exploring how national issues impact states and understanding various perspectives (e.g., local and national)
- Engaging in possible problem-solving discussions for some of the issues raised
- Identifying (tee-up) issues for a collective dialogue and future discussions among DOE, state commissioners, and EPA regional administrators
- Discussing the Rocky Flats site as a model of working together and of DOE fulfilling its commitments
- Learning more about legacy waste management and DOE organizational changes
- Discussing ways to improve accountability
- Building on DOE's successes and improving DOE, state, and EPA relationships
- Developing a path forward regarding how long-term stewardship is integrated within DOE's cleanup program.

Many participants wished to listen to the group and learn about issues important to the parties. Several DOE participants expressed the goal of imparting an understanding of the work DOE is doing to the group and of obtaining feedback on DOE programs from the states and the EPA.

Ms. Roberson added that this meeting is not really about improving relationships among the DOE, the states, and the EPA, because these relationships are good. Rather, she would like to discuss ways to change the poor reputation that the DOE has for their work. Ms. Roberson noted that the DOE has had successful projects, positive relationships with regulatory agencies, good people, and that the DOE fulfills its commitments.

Observations from ECOS DOE Forum

Mr. Adams noted that the ECOS DOE Forum provided valuable insight into issues relevant to states and the EPA and that this insight formed the basis for refining the agenda for this workshop. Further, the DOE has committed to one or more follow-on meetings of this workshop to focus on some key issues. One of the goals of this workshop will be to identify and frame these issues. Mr. Jon Sandoval, State of Idaho Department of Environmental Quality, added that the ECOS DOE Forum provided an opportunity for candid communication. The relationship among the DOE, EPA, and the states should be that of a partnership rather than a stakeholder.

Environmental Auditing Initiatives and Grants Management

Mr. Adams discussed current DOE efforts in environmental auditing and grants management. For environmental auditing, the DOE is currently considering systems for providing up-to-date information on the compliance status at DOE sites. The DOE has not made any decisions regarding implementing such a system and is seeking input from states. For example, the Construction Engineering Research Laboratory (CERL) system being used by the Corps of Engineers may serve the DOE. The EPA's ECHO database system may also be appropriate for the DOE.

The group also discussed self-audits or state voluntary audits, which raises the immunity issue. However, federal agencies to date have not engaged in such audits.

Regarding grants management, Mr. Adams stated that the DOE is interested in ways to improve its process, especially in specifying to grant recipients DOE's expectations, reporting requirements, and accountability. The DOE must be able to accurately report to Congress how these funds were spent and for what purposes. The DOE is planning to establish a group to work on the negotiation of new grants and monitoring existing grants and is interested in systems states use to track grants and whether states have grant system problems. One participant noted that states support better accountability across the board. State oversight affects credibility at the local level, and states look forward to having a dialogue on this issue with the DOE.

The DOE cannot accomplish its improvements without the support and partnership of state agencies. For example, the DOE needs to improve communication with its grant recipients when budget requests are not fulfilled. In some instances, the DOE has not provided feedback on why a funding request was modified. Also, another participant understands that the DOE is reviewing agreements-in-principle but has not heard anything on the status of the review. One workshop participant suggested establishing some sort of structure with program board involvement to improve communications.

DOE Budget Overview

Mr. Roger Butler, DOE, presented an overview of the status of the DOE's fiscal year 2004 budget request.

Achieving Risk-Based Solutions

Mr. David Geiser, DOE, discussed achieving risk-based end-state solutions. For example, using risk-based criteria may require changing an approved record of the decision for the better, but such a change would cause such major bureaucratic issues that often agencies would rather implement its existing plan. An important issue is how to facilitate promoting change and alternatives.

Mr. Geiser stated that the DOE is moving from a cold war era need of about 120 mission-related sites to about 20 mission-related sites, resulting in the need to plan for the use of about 100 sites. The proper use of the land, the optimal use of resources on the land, as well as protection of human health and the environment must be considered in planning for the end-use of these sites.

Mr. Geiser's project includes three deliverables: 1) a policy statement, which has been issued and is available on the DOE Environmental Management Web site; 2) a corporate strategy; and 3) a guidance document. The corporate strategy has been drafted and has been distributed for comment. The guidance document is ready for release. The guidance includes developing a clear picture of the end-state, maps, and a conceptual site model. Risk-based end-state planning requires balance between spending too much money to be over-protective and increasing liability by being under-protective. Partnership means sharing the risk.

Risk-based end-state planning is an iterative process. The DOE has developed land-use plans, but they have not been used for risk determination. After a risk determination, the regulatory structure must be reviewed to determine what is allowed and not allowed. Mr. Geiser stressed that the DOE will comply fully with the law. However, the agency must be willing to consider change to existing laws via appropriate avenues when justified.

Mr. Geiser suggested that given changes in cleanup technologies and changes in demographics, which may affect end-state planning, the proposed risk-based end-state implementation plan should be revisited periodically, for example, every 5 years. For DOE's ongoing mission sites, end-state planning is being built into their 10-year infrastructure plans. One participant suggested that factoring in cleanup results and milestones achieved is important, since increasing credibility is in part a function of accomplishing something.

Using risk-based planning raises the perception issues, including using risk to eliminate meeting regulatory requirements and using risk as a basis to ease cleanup levels. The use of waivers (technical impracticality) versus changing regulations to meet requirements to accommodate needed flexibility in the regulations should be explored. However, one participant noted that no one wants to pursue these waivers because no precedent for their use has been established.

Risk-based planning may also lead to the perception that the DOE is backsliding on its implementation plans. However, Ms. Roberson stated that the underlying message to addressing that perception is that people are only happy if we do not change anything, and that approach is unacceptable. We must instead work to change the perception. One participant suggested that changes might best be raised first at the local level rather than at the national level.

The perception that DOE would use risk-based planning to get around ARARs also exists, and one participant suggested that the term risk-based might need to be changed. While DOE made the decision to retain the term risk-based, Ms. Roberson stated that such a change might need to be considered.

One participant expressed concern that DOE would want to renegotiate established milestones. Ms. Roberson stated that such renegotiation is not the goal of DOE, but that milestones would be renegotiated if necessary. She added that she views the number of milestone changes as a performance indicator for DOE.

Another participant cited an example of a state accepting part of the liability in supporting DOE's decision to build an on-site disposal cell. Such final decisions are critical, and warranty issues arise and must be considered.

A certain degree of skepticism is expected once the plans are issued. The DOE must establish a clear, credible case, and the agency must work interactively with regulators, and the big picture must be considered. For example, if the DOE is considering opening a record of decision, not only must the effects of the record of decision remedy on the cleanup be considered, but the other effects of remedies should be considered as well. Risk-based end-state planning also opens the sensitive issue of incentives.

One participant suggested that the need and sense of urgency for end-state planning should be developed as much as that for accelerated cleanup.

National Focus Project

Ms. Cynthia Anderson, DOE, discussed DOE's National Focus Project on small sites accelerated cleanup. Some sites will be cleaned to free release, and some will be cleaned for industrial use. Over 100 small sites were identified, and 26 sites were selected for Phase I. Two criteria were used to select Phase I sites: 1) whether the site was a big site and 2) whether cleanup could be performed by 2006.

The public has a perception that after DOE's Office of Environmental Management completes its closure, then DOE's responsibility for the site is complete. Actually, another DOE office assumes landlord responsibility for the site. The DOE Office of Legacy Management will be responsible for environmental

records (or the appropriate DOE landlord office). However, the Office of Legacy Management is not staffed to perform remediation, and as such may not be involved in remedy selection. One participant suggested that DOE involve the Office of Legacy Management early in future land use decisions.

Some participants noted that those present at this workshop were comfortable with the risk-based end-state concept. However, perhaps DOE needed to examine this issue internally. Participants from the State of Colorado expressed their willingness to work collaboratively on delivering the risk-based cleanup and closure message. Information on this concept needs to be disseminated so that contractors do not hide behind state regulators in their decision-making.

Disposing Waste and Reducing Risk

Mr. Reinhard Knerr, DOE, discussed reducing risk by identifying and resolving barriers to low-level, low-level mixed, and transuranic waste disposal and by supporting DOE's accelerated cleanup schedules. The DOE has developed Immediate Risk Reduction Action Plans for these wastes. Mr. Knerr also discussed efforts related to the Toxic Substances Control Act incinerator, projectizing legacy low-level waste, projectizing mixed low-level waste, contract terms and initiatives, load management, the National Consolidation and Acceleration Facility, and complex-wide incentivization.

State- and EPA-Led Discussion

Mr. Sandoval led a discussion on issues of interest to state and EPA participants that they wished to communicate to the DOE. Mr. Sandoval stated that his message for DOE would be "work with us." He noted that an early ECOS slogan was "states are not branches of the federal government." The DOE has demonstrated successes at the local level (e.g., Rocky Flats and the tank closures at the Idaho National Engineering and Environmental Laboratory). States are willing to share risk as long as the state is party to discussions and decision-making. States know what accountability means; they must demonstrate on-the-ground results.

Other points made by the participants include:

- Existing state agreements were put in place for a reason, so the parties must respect them. Funding needs to be predictable, balanced, and consistent. Local politics must be understood.
- Agencies need to start addressing transportation issues, e.g., inter- and intrastate issues, tribal lands, and transfer points.
- The EPA has demonstrated flexibility with the states and DOE, and the EPA will continue to do so. However, EPA is often caught in the middle.
- The states, EPA, and DOE must show respect for each other's roles. These parties should reduce unilateral actions and work more collaboratively. Often stalemates occur because a position is taken personally. Continuity of staff is also important.
- The DOE needs to improve its communication of budget reduction decisions to states.
- Generally the long-term stakeholder involvement process at the Rocky Flats site is generally viewed as impressive. However, the Rocky Flats model is often assumed to be the model to apply to all sites, which may not be appropriate.

- States look at court solutions as good solutions, and DOE enforces this perception. Need palpable accountability, and setting enforceable milestones have become the only way to get things done. Solutions other than court-mandated solutions need to be pursued; otherwise accelerated cleanup will be in the courts for several years. Parties need to compromise instead of litigate.
- Developing an end-state vision will require more investment by states and the EPA, because the DOE needs to be certain that the vision is a good investment.
- States and EPA want to help DOE meet its commitments. If the closure date (2006) for the Mound, Fernald, and Rocky Flats sites is not met, DOE's credibility will be damaged.
- Risk-based end-state planning approach shows that DOE lacks faith in processes established by the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act.
- The DOE needs to provide useful data to regulators (e.g., how many, how long, what kind, where).
- National-level initiatives
 - Build upon national information infrastructure to diagnose and communicate successes
 - Consider a memorandum of understanding that engages DOE, and the National Governors Association. Key principles:
 - Key links in cleanup chain
 - Principles of relationship
 - Focus on regional, local level
 - Follow-up meeting with Ms. Roberson
 - Identify high-leverage, high-profile wins.
- Consider when the DOE, states, and EPA, as partners, should engage stakeholders.
- Core group of state commissioners believes that the reasons for DOE changes were not understood. An Assistant Administrator, Regional Administrator, and Assistant Secretary for Environmental Management meeting should be held prior to a state commissioners meeting to clarify administration perspective and justification for change.
- Potential lack of funding is appealing to EPA management.

Considerations for Future Meetings

Participants raised several points for consideration in planning the follow on meeting.

- The DOE game plan is not clear. The DOE must show succinctly why DOE's game plan is important to the state commissioner in their state. The game plan should be a joint game plan with DOE, states, and EPA.

- The agenda should be developed jointly; this action would send a clear signal of cooperation among DOE, states, and the EPA. Mr. James Woolford, EPA, will work with ECOS and Mr. Sandoval.
- Ms. Roberson's expectation for future meetings is
 - Strong communication. Keep door open with progress that has been made.
 - Move away from problem-to-problem, crisis-to-crisis management
 - Develop a process and procedure for information sharing to determine what states want and what EPA wants.
- Need a compelling reason to make a case for EPA Assistant Administrators and Regional Administrators to attend the next meeting. Communicate a win-win-win reasoning and formulate issues for Regional Administrators prior to meeting.
- White papers and outlines with background information should be prepared for briefing state commissioners and EPA Regional Administrators prior to the follow on meeting.

Issues to be Discussed at Next Meeting

Two issues were identified as important agenda items for the follow on meeting:

- Jurisdictional issues related to shipping and disposing waste around the DOE-complex
- The DOE Environmental Management to Legacy Management transition and the integration of long-term stewardship (risk-based end-state planning and institutional controls).

Summary of Action Items

- Review EPA ECHO database system (regulatory compliance information system) and its applicability to DOE
- Discuss grant systems with states and follow up with states to review results of grants management
- Frame up issues and specific action items for future meeting with Ms. Roberson, state commissioners, and EPA administrators.

Appendix A

DEPARTMENT OF ENERGY SUSTAINABLE SOLUTIONS WORKSHOP OMNI INTERLOCKEN RESORT ♦ DENVER (BROOMFIELD), COLORADO ♦ AUGUST 26–27, 2003

Revised Agenda

Tuesday, August 26

- 1:00–4:00 pm Optional Tour–Rocky Flats Environmental Technology Site
(Participants should meet in the Omni Interlocken Resort lobby at 1:00 pm)
- 6:00 pm Reception–Omni Interlocken Resort (Sponsored by Kaiser-Hill)–**Lobby Court Terrace**

Wednesday, August 27–Interlocken A

- 7:00–8:00 am Continental Breakfast–opportunity for informal discussions among participants
- 8:00–8:15 am Welcome and Introductions–Jessie Hill Roberson,
Assistant Secretary for Environmental Management, Department of Energy
- 8:15–8:30 am Participant Introductions and What We Hope to Accomplish Today
State Environmental Commissioners, Environmental Protection Agency Regional
Administrators and Representatives (attendees invited to provide comments on their meeting
objectives)
- 8:30–8:40 am Introduction to DOE-Led Discussion Group / Observations from ECOS DOE Forum–Tom
Adams, Senior Policy Advisor, Department of Energy
- 8:40–9:00 am Environmental Auditing Initiatives: Opportunities for State Participation
Tom Adams, Senior Policy Advisor, Department of Energy
- 9:00–9:30 am Grants Management and a Look Ahead at the Budget
Roger Butler, Deputy Assistant Secretary for Policy Planning and Budget,
Office of Environmental Management, Department of Energy
- 9:30–10:15 am Integrated Project Team–Achieving Risk-Based Solutions
David Geiser, Project Leader, Department of Energy
- 10:15–10:30 am Break
- 10:30–11:00 am Integrated Project Team–Disposing Waste, Reducing Risk
Reinhard Knerr, Project Leader, Department of Energy
- 11:00–11:30 am Integrated Project Team–National Focus Project
Cynthia Anderson, Project Manager, Department of Energy
- 11:30–12:00 noon Open Discussion–Victoria Soberinsky, Senior Policy Advisor, Department of Energy, Presiding
- Noon–1:30 pm Catered Lunch / Keynote Speaker–Hank Habicht, CEO, Global Environment and Technology
Foundation (former Deputy Administrator, Environmental Protection Agency)
- 1:30–1:40 pm Introduction to State- and EPA-Led Discussion Group / Observations from ECOS DOE Forum:
Jon Sandoval, Chief of Staff to Commissioner Steve Allred, and Jim Woolford, Director,
Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency
Response, Environmental Protection Agency, Presiding
- 1:40–3:30 pm State and EPA Presentations (To be arranged)
- 3:30–3:45 pm Break
- 3:45–4:45 pm Open Discussion–Tom Adams, Senior Policy Advisor, Department of Energy and Jon Sandoval,
Chief of Staff to Commissioner Steve Allred, Presiding
- 4:45–5:00 pm Closing Comments
- 5:00 pm Adjourn

Appendix B

List of Attendees

Name	Organization	Telephone	e-mail
Tom Adams	Department of Energy	202.586.3179	thomas.adams@em.doe.gov
Joanna Allen	Portage Environmental, Inc.	208.528.6608	jcallen@portageenv.com
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Cynthia Anderson	Department of Energy Environmental Management National Focus Project	803.952.7656	cynthia.anderson@srs.gov
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Steve Gunderson	Colorado Department of Public Health and Environment	303.692.3367	steve.gunderson@state.co.us
Hank Habicht	Global Environment and Technology Foundation	941.489.1647	hhabicht@getf.org
Susan Jablonski	Texas Commission on Environmental Quality	512.239.6731	sjablons@tceq.state.tx.us
John Johnson	Department of Energy	703.415.1122	john.h.johnson@hq.doe.gov

Appendix B

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Appendix B

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Tom Winston	Ohio Environmental Protection Agency	937.285.6016	tom.winston@epa.state.oh.us
Karen Wnukoski	Department of Energy	202.586.8917	karen.wnukoski@em.doe.gov
James Woolford	Environmental Protection Agency Office of Solid Waste and Emergency Response	703.603.9089	woolford.james@epa.gov