

**Department of the Interior - Office of the Secretary
Natural Resource Damage Assessment and Restoration Program**

**Natural Resource Damage Assessment and Restoration Advisory Committee
Summary of Committee Meeting**

December 1, 2005

The first meeting of the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Advisory Committee was convened at 8:35 AM at the US Fish and Wildlife Service National Conservation Training Center in Shepherdstown, West Virginia. The Committee members and Department of the Interior staff started the meeting by introducing themselves by name, title, and affiliation. The members of the public (see attached list) were then offered the opportunity to introduce themselves by name, title, and affiliation.

In accordance with the provisions of Public Law 92-463, the meeting activities were open to the public from 8:35 AM until adjournment.

Committee members present (for member details see attached list):

Frank DeLuise	William Bresnick
Charlie Wooley	Patricia Casano
John Carlucci	Barbara Goldsmith
Roger Helm	Barry Hartman
John Bascietto	Thomas Jensen
Alex Beehler	J. Craig Potter
William Brighton	Michael Smith
Patricia Montanio	Ralph Stahl
Robert Ricker	Lynelle Hanson
Sharmian White	Gregory Butcher (Alt. for Stephen Kress)
Richard Seiler	Jon Mueller
Dale Young	William Clements
Shannon Work	Stephen Polasky

Department of the Interior FACA Committee Staff Present:

Steve Glomb, Assistant Program Manger for Restoration
Barbara Schmalz, NRDAR Regional Coordinator (Denver)
Robin Burr, NRDAR Regional Coordinator (Philadelphia)

Designated Federal Officer – Committee Introduction

Mr. Frank DeLuise, Program Manager of the DOI NRDAR Program, introduced himself as the Committee Chair and Designated Federal Officer (DFO) and provided remarks regarding the role of the DFO. Mr. DeLuise noted that the Department of the Interior had decided to

utilize a FACA Committee, with a diverse group of stakeholders, to develop consensus advice on appropriate changes to the Department's NRDAR regulations, implementation guidelines, and/or procedures in order to achieve restoration more efficiently. Though the goal is consensus advice, the Committee may, if needed, provide majority and minority reports. He specified that the Committee approach is being undertaken because DOI wanted to provide all stakeholders an opportunity to participate in an open forum. He emphasized that the work of the Committee would not address case-specific issues, or issues outside the control of DOI. The DOI is not looking to recommend actions to other agencies. The DOI wants the Committee to come together and provide consensus recommendations on ways of achieving cost effective restoration, reducing unnecessary contention, increasing certainty, and reducing litigation.

Mr. Wooley, as Committee Vice-Chair, offered a summary of the DFO's opening remarks by reiterating the four basic themes for the Committee: everyone's opinion counts, no case-specific discussions, drive to consensus, and provide constructive advice and recommendations to Secretary Norton.

Committee Bylaws Discussed and Finalized

Mr. John Carlucci introduced the proposed Bylaws by noting they were based on the NRDAR Advisory Committee's May 24, 2005, Charter. He discussed Section by Section the November 30, 2005 Final Draft, highlighting the major points of each Section and noting any final proposed edits. He emphasized the following points: the discretion allowed the Committee or Subcommittees to make decisions or conduct business is constrained only by the guidance and directives in the Charter and Bylaws; the ability to establish a Steering Committee to consider only administrative or non-substantive matters; the need for all Committee meetings to be fully transparent to the public; and the ability to close a Committee meeting under limited circumstances and by permission of the DOI Committee Management Officer (CMO) 30 days in advance of the proposed meeting. He noted the meetings of the Steering Committee or Subcommittees will be closed, but that minutes of the Steering Committee meetings or any working papers, data, or other information utilized by a Subcommittee to make a recommendation or as a component of a recommendation will be made available to the public.

The Committee asked two questions regarding Section VII, Deliberations. The first question was why the Bylaws allowed for a Committee vote when the objective is consensus. Mr. Carlucci explained that, if consensus can not be reached, voting allows the Committee to identify majority and minority opinions. A follow-up question was then asked as to why, if a vote is taken, is the DFO allowed to decide to forward majority and minority opinions. Mr. DeLuise answered that the DFO has no intention to withhold or keep back minority opinions.

At the conclusion of the discussion, with no further questions on the Bylaws, Vice-Chair Wooley asked for the Committee's agreement to adopt the November 30, 2005 Final Draft, including the noted additions or deletions. By consensus, those Bylaws and Operating Procedures of the NRDAR Advisory Committee were adopted.

NRDAR Authorities, Responsibilities, and Practice Challenges

Mr. John Carlucci and Mr. Roger Helm jointly presented a power point presentation, available on the DOI NRDAR web page (URL: restoration.doi.gov/faca), on the authorities and responsibilities that provide the basis for and the elements associated with the conduct of NRDAR activities for natural resource injuries caused by the release of hazardous substances. They identified four challenging issues associated with the conduct of four specific parts of the NRDAR process. The four specific parts of the NRDAR process are injury quantification, restoration/damage determination, calculation of interim losses, and restoration implementation. The following corresponding four issues are those for which the DOI requested the NRDAR Advisory Committee provide consensus advice and recommendations:

1. What are the best available procedures for quantifying natural resource injury on a population, habitat or ecosystem level? What guidance is appropriate for the utilization of these procedures?
2. Should DOI's Regulations provide additional guidance for determining whether direct restoration, rehabilitation, replacement, or acquisition of equivalent resources is the best strategy for addressing natural resource injuries?
3. Should DOI revise the CERCLA NRD Regulations to encourage compensating for interim losses with additional restoration projects (in lieu of monetary damages)? How should project-based interim loss compensation claims be calculated?
4. What additional measures should DOI consider to expedite planning and implementation of restoration projects and to ensure effective and efficient restoration *after* awards or settlements are secured?

Deputy Assistant Secretary Chris Kearney Keynote Message

Mr. Chris Kearney, on behalf of Secretary Norton and Deputy Secretary Lynn Scarlett, opened by giving his endorsement of the value and use of the Advisory Committee process and noted the support of the Department and the Congress. He observed that the DOI NRDAR program has evolved into an integrated Departmental program and that after many years of conducting NRDAR and through interaction with the NRDAR stakeholders, he believes there is interest among all parties to explore coordination and cooperation in lieu of litigation to accomplish restoration. He has seen increased interest in achieving timely restoration through cooperative conservation, and this interest has come not only from the natural resource trustees and responsible parties, but the non-governmental organizations who often partner with them to augment the restoration. He noted how such NRDAR activity embraces and has become a model of both Secretary Norton's 4 Cs Philosophy (Communication, Consultation, and Cooperation in the service of Conservation) and the White House initiative on Cooperative Conservation. He quoted from Secretary Norton's presentation on Monday August 29, 2005, at the White House Conference on Cooperative

Conservation held in St. Louis, Missouri (URL for Conference proceedings: conservation.ceq.gov/agenda) and noted that the Committee is an example of applying cooperative conservation. The experience of the members and their work on the Committee and subcommittees can help DOI address and move forward on the identified NRDAR issues. He concluded by thanking the Committee members in advance for their time and effort and looks forward to hearing about their progress.

Ms. Casano asked if Mr. Kearney's work on the National Environmental Policy Act (NEPA) Federal Advisory Committee could provide some useful insights to this Committee. Mr. Kearney stated the recommendations to DOI from that Committee were very useful (report available at www.ecr.gov/necrac/index.html) and that the experiences from the work of DOI and other Agency's Committees were considered in the formation of the NRDAR Committee. Various Committee members then made statements on the value of the Federal Advisory Committee process based upon their personal experiences.

Assignment of Members to Subcommittees

DOI distributed a listing of the four issues for which the DOI seeks NRDAR Advisory Committee consensus advice and recommendations, with the DOI's suggested assignment of each Committee member to a Subcommittee (see the list of Proposed Subcommittees on the FACA portion of the DOI Restoration web page: restoration.doi.gov/faca). Each Subcommittee has been assigned one issue for which the Subcommittee will provide the Committee the first draft of the advice or recommendations that the Committee could forward to the Secretary of the Interior. Mr. DeLuise prefaced the Committee discussion on the issues, the Committee Member assignments to a specific issue, the operation of the Subcommittees, and the interaction with or among Subcommittees, by noting that each Committee member will have an opportunity to provide input on the advice or recommendations for each issue; therefore he requested that each member stay with the subcommittee to which they were assigned.

Vice-Chair Wooley opened the meeting to questions or statements by the Members. Through a series of questions or statements from the Members and responses by Mr. Carlucci, Mr. Helm, or Mr. DeLuise, the following elaborations on the four issues or the scope of the Subcommittee activities were made:

1. Mr. Carlucci observed, and other Members concurred, that the four issues embrace or cover most of the questions or concerns DOI has heard about the current Regulations;
2. Advice or recommendations on all the issues should be presented from a perspective that encourages a settlement approach (versus a litigation approach) for the conduct of NRDAR activities;
3. For issue #4, advice or recommendations are sought on what are appropriate measures both before and after awards or settlements are secured in order to expedite planning and implementation of restoration projects and to ensure effective and efficient restoration;
4. On the concept of accomplishing revision of the NRDAR Regulations by first starting with the OPA Regulations as the base, Mr. Carlucci and Mr. Helm agreed that the subcommittees can use the OPA Regulations as a guide, but since CERCLA events

- are so different from OPA events, need to maintain the form, substance, and process of the current CERCLA Regulations;
5. The advice or recommendations may also address the DOI NRDAR Policy and Guidance and general practices. The Subcommittees may reshape or modify any of the four issues; and
 6. Each Subcommittee may identify additional or ad-hoc issues associated with the issue assigned to them.

The question or statement session ended with a suggestion from Ms. Casano that DOI make a presentation at the next Committee meeting on how DOI conducts the NRDAR process, with an emphasis on items or directions that are in addition to the DOI guidance or policies available on the DOI Restoration web page.

Vice-Chair Wooley asked the Members to break into their subcommittees and identify who will be the coordinator for that subcommittee and to be prepared after lunch to report back to the Committee. He noted DOI will be asking the subcommittees to report back to the Committee by late February or early March, and hence the need to now identify subcommittee coordinators.

Meeting adjourned for a group photograph and lunch at 11:45 AM.

Public Statements

The meeting was reconvened at 1:00 PM. Vice-Chair Wooley asked if any member of the public wanted to make a statement to the Committee. Mr. Gordon Johnson, Assistant Attorney General for the State of New York and representing the National Association of Attorneys General, raised the issue of subcommittee meetings being closed to the public and encouraged as open a process as possible. Mr. Johnson also asked whether the subcommittees' reports and materials used by the subcommittees would be available to the public. Mr. Carlucci observed that the task of planning and holding subcommittee meetings that could be open to the public would require too much time and resources, and that with one-fourth of the two-year period of the Committee's charter having already elapsed, it was important to proceed as expeditiously as possible. Mr. DeLuise advised that materials used or referenced by subcommittees in their reports would be publicly available if the Committee decided to forward the recommendations in that report. Mr. Johnson then asked if any individual member of a subcommittee could provide subcommittee materials to members of the public. Mr. Carlucci advised that there was no legal bar to the distribution of materials by any member, but that information or notes provided by one individual member should not be construed as materials used by the subcommittee as part of their recommendation.

Subcommittee Coordinators

Mr. DeLuise advised that DOI would prefer to schedule the next Committee meeting in late February or early March at NCTC. Several Committee members suggested alternate locations, raising concerns that the NCTC auditorium did not allow for easy interaction between the Committee members. Also, Ms. Young asked that Members be polled for

potential scheduling conflicts with dates being considered. Mr. Potter asked whether a one or two day meeting was anticipated; Mr. DeLuise advised that one day would likely be sufficient.

Each subcommittee was asked to provide the name of the person who will coordinate their meetings/telephone calls over the next several months as they scope their issue and prepare for the next Committee meeting. The subcommittee coordinators chosen by the subcommittee members during their break-out session prior to the lunch period were reported to be:

- Issue 1: Mr. Helm
- Issue 2: Mr. Brighton
- Issue 3: Mr. Carlucci and Ms. Casano
- Issue 4: Mr. Jensen

Mr. DeLuise again thanked the Committee members for agreeing to serve on the Committee.

Adjournment

Vice-Chair Wooley asked for a motion to adjourn, it was so moved and seconded. The meeting was adjourned at 2:00 PM.

Committee Chair's Certification

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



Frank DeLuise
Committee Chair and Designated Federal Officer
NRDAR Federal Advisory Committee