

**Department of the Interior**  
**Natural Resource Damage Assessment and Restoration**  
**Federal Advisory Committee Meeting**  
**May 1, 2007**

The fifth meeting of the Department of the Interior's Natural Resource Damage Assessment and Restoration Federal Advisory Committee was held May 1 in the Rio Grande Room of Building 67, on the Denver Federal Center, Denver, Colorado. Vice-Chair Charlie Wooley called the meeting to order at 8:45 AM. He began the meeting by welcoming all the Committee members and the members of the public. He asked everyone to introduce themselves. After the introductions, the Committee Chair and Designated Federal Officer (DFO), Frank DeLuise, welcomed everyone on behalf of the Secretary of the Interior and other departmental officials.

In accordance with the provisions of Public Law 92-463, the meeting was open to the public from the time it was convened until adjournment at the end of the day.

**Committee Members Present:**

|                     |                      |
|---------------------|----------------------|
| Frank DeLuise       | Nancy King           |
| Charlie Wooley      | Mark Shurtleff       |
| John Carlucci       | Shannon Work         |
| Roger Helm          | William O. Bresnick  |
| John Bascietto      | Patricia K. Casano   |
| William D. Brighton | Barbara J. Goldsmith |
| Linda Burlington    | Michael F. Smith     |
| Robert W. Ricker    | Ralph G. Stahl, Jr.  |
| Sharmian White      | Stephen Kress        |
| Richard D. Seiler   | Jon Mueller          |
| Dale C. Young       |                      |

Laurence M. Groner (officially designated alternate for Alex Beehler)  
 Vicky L. Peters (officially designated alternate for Mark Shurtleff)

**Department of the Interior FACA Committee Staff Present:**

Steve Glomb, NRDAR Assistant Program Manager for Restoration  
 Robin Burr, NRDAR Regional Coordinator, Philadelphia  
 Barbara Schmalz, NRDAR Restoration Support Unit Field Liaison/Coordinator, Denver

**Opening Comments**

DFO DeLuise commended the progress the Committee had made and thanked the eight member drafting team who worked through numerous drafts to prepare the draft final report. He noted the Committees' responses on the team's first draft of March 30 indicated that most Committee members were generally pleased with some sections of the report, okay with other sections, and could live with other sections knowing those sections were important to other Committee members. He emphasized that to him the most important message from the Committee's initial responses was that we have a report

that all could live with. He then reminded the Committee that the report is not the end of their work; he anticipates that many Committee members will be involved in addressing and implementing the report's recommendations.

Although the meeting was originally scheduled for three days with a possible follow-up meeting, Mr. DeLuise noted that because of the progress made by the drafting team and the positive tone of comments received to date, he sensed that this meeting would not need multiple days or another follow-up meeting. He encouraged reaching consensus to meet the expectations of the Secretary and Deputy Secretary of the Interior and cautioned the Committee to be mindful that the audience for the report is departmental senior managers and therefore, the Committee should not get too technical as they finalize the report. As a way to reach consensus, he recommended the Committee start with the draft before them, dated April 26, identify and discuss any remaining issues, have the drafting team revise the report reflective of the discussion, and take the time needed to review, discuss, and further revise the drafts to reach a consensus report. Vice-Chair Wooley then briefly reviewed the meeting agenda:

Goal: Finalize Consensus FACA Committee Report

1. Welcome & Introductions (Frank DeLuise - DFO, Charlie Wooley - Meeting Chair)
2. Public Input
3. Review of Drafting Team Process (John Carlucci and Drafting Team)
4. Identification and Resolution of Remaining Issues
5. Breakout by Drafting Team to Incorporate Agreed-Upon Changes and to Develop Executive Summary
6. Review of Revised Report and Executive Summary
7. Sign-off by Committee
8. Briefing on Next Steps (Frank DeLuise - DFO)
9. Adjourn

### **Public Input**

Vice-Chair Wooley invited the one member of the public in attendance to provide input or comments. Richard Curley with the Holland and Hart Law Firm started by noting that he thought the current draft report was much improved from the March 30 draft, for it had rounded off many of the rough edges in the four Subcommittee reports, but in his opinion from an industry perspective the Committee report "is not yet quite there".

He liked the report's proposed "tiering" approach for implementing the report's recommendations. He encouraged using the Tier 1 approach (i.e., activities that could be undertaken immediately, such as sponsoring technical workshops, research papers, and symposiums to assist development of guidance documents) for implementing as many of the report recommendations as possible. He strongly encouraged using Tier 1 methods for addressing the recommendations associated with Question 3, which are to use a restoration-based approach for calculating the compensation for interim public losses pending natural resource restoration, in lieu of revising the CERCLA NRDAR Regulations (i.e., rule making).



He noted that he sees the current Type B NRDAR Regulations as providing for and ensuring there is “due process” for all parties to use in their conduct of NRDAR activities at complex sites. He viewed the Committee work as identifying and recommending procedures for the conduct of NRDAR at less complex sites. He did not define what he meant by complex site. He cautioned that if rulemaking (i.e., revision of the CERCLA NRDAR Regulations) is undertaken to implement any of the Committee recommendations, the Federal Register Notice for the rulemaking should state that no changes will be proposed to the “due process” provisions of the current Regulations.

### **Review of Drafting Team Process**

Vice-Chair Wooley asked Mr. John Carlucci, DOI attorney, to provide a summary of the drafting team’s efforts. Mr. Carlucci started by noting that the drafting team was charged by DFO DeLuise to take all analysis and discussion in the Subcommittee reports and boil the material down to a set of consensus recommendations the DFO will present to DOI Managers. He reminded the Committee the final report does not preclude future discussion in other forums of the issues considered by the Committee.

The drafting team (John Carlucci, William Brighton, Richard Seiler, Dale Young, Shannon Work, Patricia Casano, Barry Hartman, and Jon Mueller) focused the first two drafts on the deliberations and recommendations of the four Subcommittees on their assigned questions. Subsequent drafts brought in the background material assembled and considered by the Subcommittees. The drafting team’s fourth draft was the first draft released to the Committee on March 30, 2007. To start to reconcile comments on the March 30 draft, the drafting team contacted the commenters to identify concerns or needs and to work with the commenters to reach consensus on the report’s wording.

An executive summary was not prepared by the drafting team prior to this meeting due to the dynamic nature of the report preparation and pending Committee agreement on a final report. Mr. Carlucci stated that for this meeting he had prepared an initial draft of the executive summary by extracting material from the draft report. This initial draft executive summary was handed out later in the day for Committee discussion. Based upon the Committee’s input, the drafting team revised the executive summary with the goal of achieving consensus approval on the final executive summary.

Vice-Chair Wooley asked the drafting team members for any comments they had from drafting the final report and on using the Subcommittee reports. Mr. Carlucci responded that the Subcommittee reports provide good analysis, but reminded the Committee they need not seek nor need consensus on these reports. DFO DeLuise confirmed this statement.

Mr. Stahl, who was not on the drafting team, asked how the Committee then planned to deal with the Subcommittee reports. DFO DeLuise responded the Subcommittee reports are on the DOI Restoration web site in the [FACA section](#), and that the reports will be attached as appendices to the Committee report. DFO DeLuise specifically asked that this disposition of the Subcommittee reports be noted in the executive summary. DFO DeLuise then concluded that the executive summary should be kept short and note



specific actions and recommendations from the Committee report that will focus further future work.

Ms. Casano also asked that this discussion and decision on the use and final status of the Subcommittee reports be included in the executive summary. She noted problems she had experienced from working on a FACA Committee report for another agency that was not a consensus report, and was exceptionally voluminous in trying to convey the views of all involved. As a result she expects that few people have ever read that report. In contrast, she applauded DOI on a Committee report that is short, a good crystallization of the issues discussed, and sets the table for future discussions, workshops, and reaching resolution of any remaining issues. She noted that the Committee, by having dealt with the abstract concepts, has set the stage for the discussion of real issues. She thanked Mr. Carlucci for his leadership with the drafting team and on the final Committee report.

Several other drafting team members provided comments on the work of the team, Subcommittee reports, and the Committee report. Many of their comments revolved around the challenges inherent in eliminating some of the details from the Subcommittee reports, which provided good analysis, but could detract from the desired focus on the big picture and collective issues that need and will benefit from future work. Some drafting team members noted that they initially wanted the report to be more technical, but heeded Mr. Carlucci's advice to not be too technical. In many instances, the drafting team was able to find common ground through developing 'consensus by deletion' of detail and focusing on the bigger picture. DFO DeLuise concluded this discussion by thanking Ms. Gover and Mr. Work for their work to help the Committee understand tribal issues.

#### **Identification and Resolution of Remaining Issues and Sign-off by Committee**

Only a limited number of report sections or issues were identified as needing further resolution. These included the glossary of key terms; the summaries of two key NRDAR court cases (Ohio v. DOI and Kennecott v. DOI); the question of appropriate biological scale for use in injury quantification; the question of threshold versus balancing factors and conformity with OPA regulations; the appropriate relationship between restoration alternatives and injuries; coordination between hazardous substance response and damage assessment and restoration activities; and the establishment of priorities among the recommendations.

After each discussion session, the drafting team met to revise the draft final report and bring their subsequent draft back to the Committee for further discussion and clarification. Revisions were made to the draft executive summary in the same fashion. After several rounds of discussion and revisions, all members of the Committee who were present at the meeting expressed their consensus on the executive summary and final report.

#### **Closing Remarks**

Upon reaching consensus on the report including the executive summary, the work of the Committee was essentially completed, and DFO DeLuise outlined next steps for DOI in response to the Committee. DFO DeLuise said that he would poll the members of the

Committee who were not present at the meeting to determine if they would join in consensus agreement on the report. Out of respect for the process and the hard work of the members present in crafting compromises necessary to reach group consensus, and cognizant of the difficulty in getting the whole group together again, DFO DeLuise noted that members not present would not be able to make revisions to the report. Subsequent to the meeting, all members of the Committee not present for the fifth meeting joined in expressing unanimous consensus on the final Committee report. There were no abstentions and no members opposed to the report (including the executive summary).

DFO DeLuise said that the next steps for DOI include printing/production of the final committee report, transmittal of the report through the management chain to the Secretary of the Interior, briefing management on the contents of the report, and preparation of a plan to implement the Committee recommendations. These steps are expected to be completed in early summer, some time after the expiration of the Committee Charter on May 24, 2007.

#### **Adjournment**

The meeting was adjourned at 8:00 PM and DFO DeLuise again thanked everyone for their work, input, and dedication to the task.

#### **DFO Certification**

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



Frank DeLuise  
Designated Federal Officer  
DOI NRDAR Federal Advisory Committee



Date