

## Summary of Mid-Atlantic Joint Assessment Team Meeting of Oct 5, 2005

The Mid-Atlantic Joint Assessment Team (JAT) met on Oct 5, 2005 at NOAA's facility in Silver Spring, MD. The focus of the meeting (see agenda below) was to discuss some of industry's concerns respecting natural resource damage assessment (NRDA). The Nature Conservancy (TNC) could not attend the meeting due to last-minute conflicts. (I'll attach the attendees list later)

The bullets below summarize the JAT discussion relative to the questions posed by the PRPs and points made by the different attendees. The points below do not necessarily indicate consensus among the attendees on these issues but indicate open exchange of ideas among the attendees.

1. What can we do to facilitate early agreement and workable definitions and practices regarding "reasonable and successful restoration"? (Session facilitated by Steve Brown, Rohm and Haas)
  - a. Get folks to table early to discuss the universe of issues for the site (e.g., parties affected, potential resources/services affected, potential scale of injury, restoration opportunities, optimal coordination, etc.); each side should do their homework prior to meeting with one another or soon afterward.
  - b. PRPs should be more active to move the process as they are the focus of response and NRDA actions.
  - c. There should be an understanding on the degree of openness.
  - d. There is a collective preference to focus on remediation and restoration.
  - e. Cooperative Funding and Participation agreements can be useful mechanisms to initiate and move the process forward (see NOA CAP web site for examples: <http://www.darp.noaa.gov/partner/cap/index.html>, look at Related Documents section, CAP Compendium of Additional Ideas and Example Documents).
  - f. There needs to be a single point of coordination on all sides; not all participants in a site need to be involved in all activities – participation should be focused and tailored to the particular needs t that time.
  - g. There needs to be greater accountability for actions and decisions, e.g., cost projections and expense.
  - h. Where opportunities for flexibility exist, they should be exercised. Perhaps we out to consider facilitators or other mechanisms to facilitate coordination and discussions.
  - i. Attend to what can be accomplished; sideline issues (legal or otherwise) of potential disagreement, but do not ignore them as they will need to be attended. With time, progress, and trust, it is likely the more challenging issues can be resolved.
  - j. Asking for upfront funding may be hazardous to NRDA health; hold off funding concerns until there is agreement/understanding of the NRDA universe. Funding requirements (e.g., in an NOI) trigger industry to evaluate a suite of reporting on liability (via Sarbanes-Oxley), etc.

- k. Take advantage of existing resources, e.g., BTAGs, TNC, Wildlife Habitat Council, etc. Explore opportunities for leveraging.
2. How can we move toward an NRDA model that would *a/ways* involve multi-party cooperative assessments, leading to rapid settlements and restoration? (Session facilitated by Ralph Stahl of DuPont)
  - a. Cooperative assessment path work best, especially when it starts with the integration of remediation and restoration.
  - b. The challenge is defining what it takes to get to settlement, often translated to the types and scale of restoration.
  - c. We need to be creative, e.g., consider opportunities for restoration banking, synergizing with other restoration projects outside the NRDA context, exploring PRP surplus land parcels to address restoration needs, etc. This is especially important in urban settings where restoration is not so clear cut.
3. Can we do a better job in identifying the specific incentives for the different parties to engage in cooperative assessments, including documenting successful outcomes in quantifiable terms? (Session facilitated by Steve Brown, Rohm and Haas)
  - a. We should encourage the use of EPA's BTAGs.
  - b. PRPs should encourage EPA to ensure that trustees are engaged and that remediation/restoration is integrated.
  - c. The most realistic way to engage PRPs is to identify what level of assessment injuries is commensurate with viable restoration opportunities.
  - d. Perhaps industry can start to promote the message in the Mid-Atlantic area that the Federal and state participants are interested in cooperative, expedited approaches to resolution. The idea is to translate what we're talking about into practical application in the Mid-Atlantic.

Possible actions coming out of the JAT meeting include:

- Identify and share sound and useful agreements, e.g., Funding and Participation Agreements, etc. Compile success stories.
- Provide success stories.
- Provide state contacts. Erica Dameron (Commonwealth of Virginia Department of Environmental Quality) is doing this on behalf of ASTSWMO and will provide this information.
- Develop a checklist of potential needs/actions for the first meeting of a NRDA event. (The Pacific Coast JAT is producing a report on cooperative assessments. Let's wait to see if they address 1<sup>st</sup> date needs.).
- Future JAT meetings should perhaps focus on cooperative examples that exist, specifically in the Mid-Atlantic.
- Next meeting of the Mid-Atlantic JAT will be set after the NE CAP workshop slated for 5/31-6/1 in Newport, RI.

We can post useful materials on the NOAA CAP web site and elsewhere (e.g., ASTSWMO); note that the NOAA CAP site is intended to serve as a clearinghouse to facilitate cooperative NRDA's. *Please provide any materials that you think may be helpful in future NRDA cases?*

## Mid-Atlantic JAT Meeting Agenda

Oct. 5, 2005

**Location:** NOAA, 1305 East-West Hgwy, Building 4, Silver Spring, MD 20910 – Room 13153

Contact at Site: Eli Reinharz, 301-713-3038, ext 193, [eli.reinharz@noaa.gov](mailto:eli.reinharz@noaa.gov)

Please check Mapquest (<http://www.mapquest.com/>) or Yahoo (<http://maps.yahoo.com/>) for directions.

### Agenda

- 10:00 - 10:15 Introduction and Kick-off (Reinharz/Brown)
- 10:15 – 10:30 Update on NRDA – Events of Note
- 10:30 – 12:00 Issues of Interest (Facilitated by Steven Brown, Rohm and Hass)
1. How can we move toward an NRDA model that would *always* involve multi-party cooperative assessments, leading to rapid settlements and restoration?
  2. What can we do to facilitate early agreement and workable definitions and practices regarding “reasonable and successful restoration”?
  3. Can we do a better job in identifying the specific incentives for the different parties to engage in cooperative assessments, including documenting successful outcomes in quantifiable terms?
- 12:00 - 1:30 Lunch  
Luncheon Talk -- How to Facilitate Restoration Settlements: The Nature Conservancy's Assets
- 1:30 - 3:00 Issues of Interest (cont.)
- 3:00 – 3:30 Establish time, location and issue for next meeting and ID those to set up.

**Facilitator:** Steven S. Brown, Senior Scientist, Toxicology Department, Rohm and Haas Company, 727 Norristown Road, Building 5, PO Box 904, Spring House, PA 19477-0904  
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### Desirable JAT Goals

- Focus on both CERCLA and OPA NRDA issues – scientific/technical/legal/logistical/etc. Refrain from discussions of any issues of ongoing NRDA cases except where past case circumstances can enhance understanding.
- Build on existing communication, coordination, understanding, and trust.
- Stimulate new relationships outside of chaotic times of spill response and adversarial situations

### Considerations for JAT Organization

- Level of participation should be maintained at the NRDA practitioner level.
- Core group of participants should be small enough to promote constructive discussions and participation of JAT members.
- Featured speakers/experts can be brought in as needed.
- Candor is desirable in both agreement and disagreement.
- Organization of each meeting is performed on a rotating basis.
- Selection of topics and forum is by consensus.
- Level and type of documentation should be minimal and as needed, e.g., agendas, development/use of discussion materials, etc.
- At the end of each meeting, we should verbally summarize highlights of the meeting to ensure we are all on the same page, e.g., issues discussed, actions taken and to be undertaken, etc. Each participant will take their own notes.