

Summary of CAP Stakeholders Working Group Meeting Silver Spring, MD – May14, 2003

Acronyms:

CAP – Cooperative Assessment Project

CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act

DOI – U.S. Department of the Interior

DOJ – U.S. Department of Justice

EPA – U.S. Environmental Protection Agency

NOAA – National Oceanic and Atmospheric Administration

NRD – natural resource damages

NRDA – natural resource damage assessment

PRP – potentially responsible party

I. Introduction

The CAP Stakeholders Working Group (SWG) met at the NOAA facilities in Silver Spring, MD, on May 14, 2003. The list of attendees is attached. The agenda for the meeting called for discussions on: the CAP Web site and draft Compendium of Materials; an outreach strategy for CAP; an update on current cooperative assessments; the developing Louisiana Regional Restoration Planning Program (La. RRP Program); and other issues of interest to the SWG.

II. CAP Web site and Compendium of Materials

The meeting began with a discussion of the CAP Web site and the draft Compendium of Materials (www.darp.noaa.gov/cap.htm). NOAA noted that the Web site and Compendium should be viewed as a work in progress, easily revised and supplemented. The purpose of the Web site is to explain the concept of cooperative assessment and provide potential approaches on how to accomplish such assessments. Although the materials on the Web site have been reviewed by the SWG, the Web site is not intended to be a formal policy statement, but documents a group effort to provide lessons learned from past assessments and how current and future assessments may work more smoothly. CAP is intended to be a toolbox of ideas and options for cooperative assessments, not a prescription for how one must conduct assessments. The point of CAP is to encourage creativity and innovation in natural resource damage assessments.

Several specific suggestions were given for the CAP Web site. One participant noted that the CAP Web site should be added to the NOAA search engine so that one could easily reach the site. Another participant suggested links for various industry newsletters to the CAP Web site to broaden its exposure. Finally, it was suggested that a counter be added to the CAP Web site to document interest in CAP.

The group also discussed the draft Compendium of Materials. The group agreed that more materials should be added to the Compendium. One participant promised to add two papers from the Restore America's Estuaries conference on cooperative assessments. Another participant agreed to add a structured settlement document from a recent case. Finally, it was noted that the Association of State and Territorial Solid Waste Management Officials' (ASTSWMO) compendium of cooperative assessments should be completed by the end of the year, and made available to the CAP Web site.

III. Outreach Efforts

The group next considered a draft outreach strategy for CAP (attached) that was produced by the outreach subgroup of the SWG. The group agreed on three priorities for outreach efforts. First, the group decided to plan and host a workshop on "lessons learned" on cooperative assessments, particularly from settled CERCLA natural resource damage (NRD) cases. Various members of the SWG would serve as co-sponsors, along with other organizations that might be interested. The conference would be held in the spring or summer of 2004.

The second outreach priority would be for SWG members to develop articles on cooperative assessments for publication in company newsletters, the Society of Environmental Toxicology and Chemistry (SETAC) Journal, the ABA Marine Resources Committee newsletter, and others. Various Web sites of the SWG members could link to those articles. Papers on cooperative assessments could be presented at various fora. One participant noted that a session is being planned for the SETAC conference in November 2003 that would speak to cooperative work integrating remedial and restoration work. Another participant noted that presentations at various industry "brown bags" would be helpful to encourage cooperative work. Finally, other participants suggested that trustee representatives could facilitate cooperative efforts at remedial sites by meeting with and briefing remedial agencies on how cooperative assessments can expedite natural resource concerns at sites. The cooperative message could also be presented to the National Association of Remedial Project Managers and National On-Scene Coordinators Association meetings. Certain industry members might also participate in these meetings.

The third outreach priority is to include a brief paragraph on CAP for various existing "listservers" lists. NOAA will work with SWG members to develop this language and identify such lists for placement.

IV. Louisiana Regional Restoration Planning Program

NOAA gave a brief presentation on the developing Louisiana Regional Restoration Planning Program (La. RRP Program) (see www.darp.noaa.gov/seregion/larrplan.htm). This program's goals are to establish a statewide program that will: expedite and potentially reduce the cost of the Natural Resource Damage Assessment (NRDA) process; provide for consistency and predictability by detailing the NRDA process, thereby minimizing uncertainty to the public and industry; and increase restoration of lost

natural resources and services. The SWG discussed three specific elements of the La. RRP Program as possible tools for cooperative assessments. First, the group discussed the inventory of restoration projects developed for the La. RRP Program. The SWG agreed that such an inventory would be useful so long as projects in the inventory were at least regionally specific and demonstrated a reasonable nexus to the injuries resulting from a specific site. The group discussed the following possible sources for other restoration inventories, in addition to the La. RRP Program: a possible project data base in Texas; Coastal Zone Management efforts; scoping work done in the New York/Hudson River Valley; Washington state data bases; work done by the National Estuary Program; Nature Conservancy plans; Endangered Species Act species recovery plans; Corps of Engineers data base of projects; and possible mitigation bank lists. The group agreed to consider the concept of developing such an inventory that might serve as a resource to be used at CAP sites. Participants agreed to discuss this idea further.

Another component of the La. RRP Program discussed by the SWG was that of developing unit costs for certain types of restoration actions. The group discussed the possibility of developing average costs that are still site-specific for a particular incident. Some participants noted that the unit costs concept might work best for CAP on sites where there are several PRPs, particularly in sites involving a typical contaminated sediments scenario. The group agreed that allocating such costs among PRPs is a big issue. However, some participants discussed using the concept of restoration banking, where one PRP conducts a restoration project producing services greater than those needed to resolve that PRP's liability at the site, then offering the excess units of services at an appropriate cost to other PRPs. One participant mentioned the R.S. Means company, which has a large experience in costing complex items. The SWG agreed that an important consideration for exploring the idea of unit costs is that the effort to produce this type of information may be high compared to its usefulness. The group agreed to keep this concept as a possible tool to use in cooperative assessments where appropriate.

The final concept from the La. RRP Program discussed by the group was that of building a library of components typically used in Draft Damage Assessment and Restoration Plans (DARPs). It was agreed that some components of DARPs drafted in various regions could be used as samples on which one can build for a particular DARP. For example, many DARPs have sections demonstrating compliance with such laws as NEPA, Endangered Species Act, Essential Fish Habitat, CZM consistency, Information Quality Act, etc. It was agreed that drafters of a DARP for a specific site could use such language as a model for that DARP, so long as the actual consultations and analyses were conducted for the specific site. The SWG members agreed to look for and identify such modules and, perhaps, include them in the CAP Compendium. This discussion also led to the consideration of categorical exclusions for common restoration actions as a way of expediting the restoration planning process for some sites.

V. Other Issues

Several other issues were discussed during the meeting. Four on-going sites, in Texas, Delaware, and Illinois were discussed. Questions on these presentations included

timeframe for completion, level of public interest, possible restoration options, need for funding agreements, and in some cases, balancing the need for common goals with varied agendas and experiences of the parties. The group also discussed the issue of “successful” restoration. This discussion centered around the need to ensure and document successful completion of restoration projects. The group agreed that, on a case-by-case basis, the participants in a cooperative assessment need to effectively deal with setting up performance criteria, integrating adaptive management concepts in settlement agreements, identifying the need for and extent of monitoring and corrective actions for projects, and documenting the progress and success of projects.

The group also discussed the concept from the La. RRP Program of “pooling” recoveries from two or more incidents to implement one restoration project and agreed that pooling recoveries from several incidents could be done in certain contexts. Also, the idea of developing “model” consent decrees for NRD cases may result in more efficient settlements. NOAA is working with DOI and DOJ on some current consent decrees that may be included in the CAP Compendium when they are in final form. Another issue considered by the group was that of dealing up front with the possibility of failure of cooperative efforts. NOAA pointed out that the CAP “Framework” document, found on the CAP Web site, provides suggestions on dealing with such a scenario. NOAA also noted that NOAA and DOI are exploring the idea of developing a mid-Atlantic Joint Assessment Team (JAT) comparable to the JAT in operation on the west coast. Finally, the group discussed recurring issues in conservation easements to ensure continued existence of restoration projects.

VI. Conclusion

Action items developed during the meeting are:

- Cooperative Workshop – NOAA will convene a conference call among the outreach subgroup to begin plans for the CAP workshop
- Restoration Projects Data Base – NOAA will explore with the SWG members who expressed an interest in the idea of developing an inventory of lists of restoration projects
- Sample Documents Library – NOAA will explore with those SWG members interested in compiling a data base of sample documents
- Unit Costs – AIG will provide information to NOAA on the R.S. Means costing of certain types of actions

The group concluded that it would be premature to schedule the next meeting. Instead, the group will convene another meeting when work on some of the action items from this meeting, particularly actions dealing with outreach efforts, produces concrete items for the group evaluate.

Attachment 1

CAP Attendees to the Stakeholder Workgroup Meeting of May 14, 2003

<p>ChevronTexaco Energy Research and Technology Company 100 Chevron Way (the street name doesn't change) P.O. Box 1627 Richmond, CA 94802-0627</p>	<p>Michael Ammann Ph: 510-242-4366 Fax: 510-242-5577 E-mail: ammm@chevrontexaco.com</p>
<p>Dupont Specialty Chemicals Corporate Remediation Group Barley Mill Plaza, No. 27, Route 141 Wilmington, Delaware 19805</p>	<p>Ralph Stahl, Jr. Ph: 302-892-1369 Fax: 302-892-7641 E-mail: ralph.g.stahl-jr@usa.dupont.com</p>
<p>ALCOA Alcoa Technical Center 100 Technical Drive Alcoa Center, Pennsylvania 15069-0001</p>	<p>Kirk Gribben Ph: 724-337-5502 Fax: 724-337-2451 E-mail: kirk.gribben@alcoa.com</p>
<p>American International Companies (AIG) American International Companies (AIG) AIG Consultants, Inc. Two Rincon Center 121 Spear Street, 3rd Floor San Francisco, CA 94105</p>	<p>Dr. Kenneth A. Pisciotto Ph: 415-836-2728 Fax: 415-836-3167 E-mail: ken.pisciotto@aig.com</p>
<p>AIG Consultants, Inc. Environmental Management Division 520 Pike Street, Suite 2700 Seattle, WA. 98101</p>	<p>Jeffrey S. Andrienas Ph: 206-344-3235 Fax: 206-467-6232 E-mail: jeff.andrienas@aig.com</p>
<p>Patton Boggs LLP 2550 M. St., NW Washington, D.C. 20037-1350</p>	<p>Daniel Addison Ph: 202-457-6489 Fax: 202-457-6482 E-mail: daddison@pattonboggs.com</p>
<p>State of California Office of Spill Prevention and Response 1700 K St., Suite 250 Sacramento, California 95814</p>	<p>Ken Mayer Ph: 916-324-9784 Fax: 916-324-8829 E-mail: kmayer@ospr.dfg.ca.gov</p>
<p>State of Massachusetts (ASTSWMO) Executive Office of Environmental Affairs 251 Causeway Street, Suite 900 Boston, Massachusetts 02114</p>	<p>Dale Young Ph: 617-626-1134 Fax: 617-626-1181 E-mail: dale.young@state.ma.us</p>
<p>State of New Jersey Department of Environmental Protection 501 East State St., Station Plaza 5 Trenton, New Jersey 08625</p>	<p>John Sacco Ph: 609-292-2938 Fax: 609-984-0836 E-mail: jsacco@dep.state.nj.us</p>
<p>Oneida Tribe of Wisconsin 3759 W. Mason St. P.O. Box 365 Oneida, Wisconsin 54155</p>	<p>Tom Nelson Ph: 920-497-5812, ext 146 Fax: 920-496-7883 E-mail: tnelson@oneidanation.org</p>
<p>U.S. Department of the Interior NRDAR Program Office MS-4449 1849 C Street, NW Washington, D.C. 20240</p>	<p>David Morrow Ph: 202-208-6528 Fax: 202-208-2681 E-mail: david_m_morrow@ios.doi.gov</p>

<p>U.S. Department of Justice Environmental Enforcement Section Ben Franklin Station P.O. Box 7611 Washington, D.C. 20005</p>	<p>Bill Brighton Ph: 202-514-2244 Fax: 202-514-4180 E-mail: william.brighton@usdoj.gov <i>and</i> Elizabeth Edmonds Ph: 202-514-1032 Fax: 202-514-8395 E-mail: elizabeth.edmonds@usdoj.gov</p>
<p>U.S. Environmental Protection Agency Office of Emergency and Remedial Response 1200 Pennsylvania Ave., NW (5202G) Washington, D.C. 20460</p>	<p>David Charters Ph: 732-906-6825 Fax: E-mail: charters.davidw@epa.gov</p>
<p>NOAA Damage Assessment Center 1305 East-West Hgwy SSMC #4, N/ORR3 Silver Spring, Maryland 20910</p>	<p>Bill Conner Ph: 301-713-3038, ext 190 Fax: 301-713-4387 E-mail: william.conner@noaa.gov, <i>and</i> Eli Reinharz Ph: 301-713-3038, ext 193 Fax: 301-713-4387 E-mail: eli.reinharz@noaa.gov</p>
<p>NOAA Office of General Counsel for Natural Resources 1315 East-West Hgwy SSMC#3, Rm 15132 Silver Spring, Maryland 20910</p>	<p>Linda Burlington Ph: 301-713-1332 Fax: 301-713-1229 E-mail: linda.b.burlington@noaa.gov</p>
<p>NOAA Coastal Protection and Restoration Division c/o NOAA/HAZMAT, EPA Region 6 Superfund Management Branch 1445 Ross Ave., 10th Floor Dallas, Texas 75202</p>	<p>Ron Gouguet Ph: 214-665-2232 Fax: 214-665-6460 E-mail: ron.gouguet@noaa.gov</p>
<p>NOAA Restoration Center 1315 East-West Hgwy SSMC #3, Rm 15317 Silver Spring, Maryland 20910</p>	<p>Jennifer Macal Ph: 301-713-0174 Fax: 301-713-0184 E-mail: jennifer.macal@noaa.gov</p>

Attachment 2

DRAFT Outreach Strategy for CAP

April 8, 2003

Overview

This document identifies outreach actions that the CAP stakeholder group may undertake to highlight the benefits of cooperative NRDA's. Effective outreach is expected to stimulate support for cooperative assessments. This document provides some ideas for messages that may resonate with target audiences and presents some initial actions that may help achieve the following goal.

Goal for CAP Outreach

Educate target audiences about the benefits of cooperative assessments to promote the idea and conduct of cooperative assessments.

Target Audiences

1. Industry
2. Trustees (general practitioners and senior management)
3. Non-governmental organizations (NGOs)
4. Response Agencies

Audience Messages

Industry

Working cooperatively during a natural resource damage assessment helps resolve corporate liability more efficiently and reduces transaction costs.

By working cooperatively, injured natural resources are restored faster—resulting in positive public recognition and increasing trust from the local community and government.

Trustees

By working cooperatively with industry, trustees can address significantly contaminated sites and achieve restoration faster.

In a cooperative NRDA, industry agrees to fully fund trustee assessment costs.

As state financial resources and staff decline, focusing efforts on cooperative, restoration-based assessments can allow damage assessment programs to produce results with less investment in the process, studies, and litigation.

We need your help to work with us on future sites for CAP and learn how to do cooperative assessments.

NGOs

Citizen and environmental groups will have the opportunity for meaningful engagement during cooperative NRDA's and their concerns considered.

Response Agencies

It's most efficient to address cleanup and NRDA liability at the same time through coordination between the natural resource trustees and the response agencies.

Overview of Outreach Actions

This list is not in order of priority.

- Develop a co-authored stakeholder paper on the benefits of cooperative assessments that can be published by various stakeholder newsletters or relevant environmental publications. For example, publish CAP paper in company newsletters and/or a policy journal like *The Environmental Forum*.
- Hold discussions on cooperative assessments/CAP effort with targeted stakeholders groups or representatives. For example, meet with representatives from National Association of Attorneys General (NAAG), Environmental Council of the States, EPA Offices of Solid Waste and Emergency Response, etc.
- Enlist help of existing list-servers to advertise CAP and to solicit potential CAP projects. For example, solicit possible CAP sites through Environmental Law Institute listserv, CPEO Brownfields listserv, etc.
- Provide presentations or participate in panels at relevant conferences, workshops, and meetings to promote cooperative assessments. For example, develop a panel presentation for Environmental Law Institute policy seminars, ABA Annual CERCLA conference, SETAC, etc.
- Continue to encourage documenting and publishing cooperative assessment cases and experiences.
- Co-host a workshop on cooperative assessments. For example, workshop would be co-sponsored by trustee agencies and trustee associations, industry or industry trade association, and NGOs. Some potential sponsors could include ACC, API, and ASTSWMO.

- Encourage and help develop web page information on the websites of industry trade, state trustee, and NGO associations to communicate efforts and progress on cooperative assessments in general, with a link to NOAA's CAP website. For example, some associations that could be targeted are ACC, API, ASTSWMO, NAAG, and NRDC.