NAAG

PRESIDENT
Charles W. Burson
Attorney General of Tennessee

PRESIDENT-ELECT
Tom Udall
Attorney General of New Mexico

VICE PRESIDENT
Scott Harshbarger
Attorney General of Massachusetts

IMMEDIATE PAST PRESIDENT
Hubert H. Humphrey III
Attorney General of Minnesota

DOE ENVIRONMENTAL ISSUES BULLETIN

MARCH-APRIL 1995

FOCUS ON FEDERAL LEGISLATIVE ISSUES

PROPOSED BUDGET CUTS TO DOE'S EM BUDGET

by Michele Gagnon
NAAG Environment Program Manager

Two rounds of rescissions will most likely result in a $200 million cut in this year's Fiscal Year 1995 (FY 95) budget for the Department of Energy's (DOE's) Environmental Management (EM) program. Thomas Grumbly, Assistant Secretary for Environmental Management, has stated that these rescissions could ultimately impact 133 of DOE's sites in 26 states, and will seriously hamper efforts by DOE to comply with the more than 70 legal agreements that the Department has with states and the Environmental Protection Agency (EPA) to bring facilities into compliance with environmental laws. Furthermore, he stated that the bill, if passed, would cause DOE to be "wildly out of compliance" with its cleanup agreements with states and local regulators. The states, he said, would likely respond by suing DOE, and the program could end up being administered by federal judges. He also added that any further cuts (more than the $251 million that DOE has already proposed) to his funding request of $6.6 billion for FY 96 could jeopardize the basic funding necessary to protect the health and safety of workers at the former DOE production sites.

In early February, DOE proposed a $6.592 billion Environmental Management (EM) program budget for FY 96 and pledged to reduce EM costs by $4.4 billion over the next five years. The FY 96 request is $251 million less for the same activities than last year's budget. The EM program is responsible for waste management, nuclear facilities management including decommissioning and decontamination, plutonium stabilization, technology development, and environmental restoration activities at DOE sites. The bulk of the EM budget is divided into three areas: 37 percent is appropriated for general waste management, 23 percent for nuclear materials and facilities stabilization, and 27 percent for environmental restoration, which includes cleanup programs. The remaining 13 percent is almost equally divided among: Program Management, Analysis, and

Integration; Technology Development; and the Uranium Enrichment Decontamination and Decommissioning Fund. In addition to the sites the EM program currently manages, it will also assume responsibility from Defense Programs, for environmental management activities at the Savannah River Site in South Carolina, the Mound Site in Ohio, and the Pinellas Site in Florida in FY 96. For these additional sites, Congress has appropriated an additional $843 million for the EM program.

On March 8, 1995, Assistant Secretary Grumbly testified before the House Appropriations Subcommittee On Energy and Water Development that the EM program was reinventing itselfand significantly reducing costs on its own He concluded that an inflexible budget structure and long-term agreements that emphasized the regulatory process, and a "cost is no object" mentality was not the most cost-efficient strategy.

The new paradigm for the EM program, according to Grumbly, allows for flexibility to direct resources where they are most needed at a site, obtains the maximum performance per dollar spent, and emphasizes that cost and schedule performance are important factors to be considered. One of the ways DOE plans to achieve cost reductions in the EM program is to reduce the number of contract employees at its sites. Currently, 70 percent of EM's expenditures is for personnel (in 1994, the EM program had a base of 52,000 contractor employees, but DOE is projecting to eliminate 17,508 contractor employees by the end of 1996), but Grumbly is projecting that by 1996, the number of contractors will be reduced by 17 percent. In addition, DOE officials anticipate a 20 percent productivity increase, generated by improving management and cost controls, and reducing overhead costs.

Hanford Example

Currently, individual sites are trying to cope with flat budgets and surging regulatory commitments, while preparing for further budget reductions and streamlining, as DOE headquarters attempts to fulfill its promise of reduced costs for the EM program over the next five years. For example, at the Hanford site in Richland, Washington, one of DOE's largest facilities involved in waste management, cleanup, and restoration projects, the cleanup budget is projected to decline from $2 billion to $1.9 billion in FY 96. If the FY 96 budget request is approved, further reductions are expected in 1997. Almost half of the Hanford budget, $946 million, is used to simply manage and maintain the waste in a stable form; $173 million is for actual restoration activities; and $286 million is for facility transition. The Hanford cleanup activities are governed by a Tri-Party Agreement, among DOE, EPA, and the state of Washington. This agreement was revised last year, and may be revised again in light of impending budget cuts. Although minor revisions to the agreement are not uncommon, the state of Washington has not expressed interest in a major revision. The reductions in the cleanup portion of the EM program will likely result in the delay of meeting milestones set forth in the agreement again and may ultimately cause DOE to violate parts of the Hanford compliance agreement.

Revising agreements with states and local regulators is not unknown to the Department. In response to a recommendation from DOE's independent Nuclear Safety Advisory Board, DOE has already reshuffled its schedule for completing the stabilization ofplutonium solutions at the Hanford and Rocky Flats sites. In light of the proposed reduction in DOE's budget over the next five years and the rescissions for the current year, it is becoming increasingly clear that nuclear waste cleanup decisions at DOE facilities and the agreements that govern them may once again have to be revised.

The U.S. General Accounting Office prepared a *report* to *the Secretary* of Energy *titled, DEPARTMENT OF ENERGY National Priorities Needed for Meeting Environmental Agreements* in March 1995. This report examines DOE's use of environmental agreements with state and federal regulators, many of which are legally binding, and recommends changes in DOE's current approach to cleanup. In sum, further budget reductions will place already dangerous facilities and waste storage systems in an even more precarious condition with the potential for enormous public health and environmental damage.

DOE FACA COMMITTEE ON EXTERNAL REGULATION

by Michele Gagnon
NAAG Environment Program Manager

The Department of Energy (DOE) recently formed an Advisory Committee on External Regulation of Department of Energy Nuclear Safety in accordance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to provide advice, information, and recommendations on how new and existing DOE facilities and operations might best be regulated to protect the environment, safety and health, and to eliminate redundant oversight and reduce costs. Operations covered under the Naval Propulsion Program (Executive Order 12344) are not included within the committee's scope. The committee will make its recommendations by the end of this year to the Secretary of Energy, the White House Counsel on Environmental Quality, and the Office of Management and Budget.

The Department currently has no external regulation for many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The FACA committee's charter, approved January 25, 1995, responds to a growing sentiment within the Department and elsewhere that DOE's "self-regulation" is cumbersome and inefficient. Secretary Hazel O'Leary proposed convening an independent panel to explore nuclear health and safety issues within the Agency at hearings before the Subcommittee on Energy and Mineral Resources held March 1 and 8, 1994. In addition, the Galvin Task Force Report on the DOE Laboratories concluded that the Department should shift laboratory oversight and inspection functions to other federal agencies.

The committee's charter outlines its objectives and scope and provides guidance for committee members to begintheir assessment on external nuclear regulation. The charter dictates the assessment begin with identifying existing DOE nuclear facilities and projected facilities for the future. It asks the members for a comprehensive appraisal of the current nuclear safety oversight structure to compare andmeasure meaningful improvements to nuclear safety. The assessment will also include an evaluation of the historical separation between commercial and defense nuclear activities. The committee is authorized under the charter to recommend a set of regulatory options or a single recommendation for establishing external regulation of nuclear safety at Department nuclear facilities and their operations.

The Committee consists of 24 members drawn from federal and state governments and the private sector. The Committee is co-chaired by John F. Ahearne, Executive Director of Sigma Xi (The Scientific Research Society) and Gerard F. Scannell, President of the National Safety Council. The Executive Director is Thomas H. Isaacs, a senior DOE official. James 0. Payne, Jr., Assistant Attorney General of Ohio and an active NAAG member participant in the DOE/NAAG workgroup, represents the Ohio Office of the Attorney General on the committee. Although the charter allows members to be appointed for a term of two years, Secretary Hazel O'Leary requested that the committee complete its work and submit final recommendations to the Secretary this calendar year. In addition, the Committee is scheduled to submit an interim report six months after the first meeting.

The first meeting was held March 9-l0, 1995, at DOE Headquarters. During the first meeting, the committee received information from DOE officials and began to organize its fulure work. The Committee asked the staff to develop a report concerning the criteria for evaluating options for regulation. A second meeting was held April 13-14, 1995, at the Rocky Flats facility in Colorado. The next meeting is scheduled for May 15-16, 1994, in Richland, Washington at the DOE Hanford Facility.

If you would like more information on the Committee, call l-800-736-3282 and you can request future meeting notices, minutes from the meetings, and be added to their mailing list The committee members are listed on the following page.

MEMBERS OF ADVISORY COMMITTEE ON EXTERNAL REGULATION OF DEPARTMENT OF ENERGY NUCLEAR SAFETY

Andrew D. Caputo	Attorney	Natural Resources Defense Council
Joseph A. Dear	Assistant Secretary Occupational Safety and Health	U.S. Department of Labor
Victor A. Franklin	Chief Environmental Counsel	Westinghouse
Dr. Jerry Friedman	Deputy Assistant to the Secretary of Defense	Department of Defense
Beverly E. C. Gattis		Serious Texans Against Nuclear Dumping
T.J. Glauthier	Program Associate Director Natural Resources, Energy and Science	OMB
Sheri W. Goodman	Deputy	Under Secretary of Defense for Environmental Security
Dr. Andrew C. Kadak	President and Chief Executive Officer	Yankee Atomic Electric Company
Mathew Leivas, Sr.	Chairman and Chief Executive	Chemhuayi Tribe, Havasu Lake, CA
Dr. Walter E. Massey	Provost and Sr. Vice President of Academic Affairs	University of California
Dr. Mildred McClain	Executive Director	Citizens for Environmental Justice, Georgia
Dr. James Melius	Scientific and Medical Director	Center to Protect Workers' Rights AFL-CIO
Michael H. Mobley	Director	Department of Environment and Conservation; and Council of Radiation Control program Directors
Dr. Thomas E. Murley	Consultant, Former Director Nuclear Reactor Regulation	U.S. Nuclear Regulatory Commission
Robert H. Neil1	Director	Environmental Evaluation Group
Mary D. Nichols	Assistant Administrator	Air and Radiation, U.S. EPA
Dr. Tara O'Toole	Assistant Secretary	Environment, Safety and Health, U.S. DOE
James O. Payne, Jr.	Assistant Attorney General	Office of the Ohio Attorney General
Stephen D. Ramsey	Vice President Corporate Environmental programs	General Electric Company
Gail Schoettler	Lieutenant Governor	State of Colorado
Bruce G. Twining	Manager Albuquerque Operations Office	U.S. DOE
Troy E. Wade II	Former Assistant Secretary for Defense Programs, DOE, Nevada	Wade Associates

NEWS BRIEFS

Unless otherwise indicated, please call DOE News Media contact Amber Jones at 202-586-5819 or Wib Chesser of NAAG at 202-434-8062 for further information on News Briefs.

- *GAO Notes Difficulties of Coordinating RCRA and CERCLA.* In December 1994, the General Accounting Office (GAO) issued a report titled *Nuclear Cleanup: Difficulties Coordinating Activities Under Two Environmental Laws* (GAO/RCED-95-66), which describes difficulties the U.S. Department of Energy (DOE), the U.S. Environmental Protection Agency (EPA), and states have had implementing the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs at DOE sites. The report notes that, in response to these difficulties, DOE plans to issue additional guidance and work with EPA and states to improve strategies. Additionally, DOE plans to obtain input on ways to coordinate activities under RCRA and CERCLA from the NAAG Compliance and Legislative Workgroups.

- *DOE Plutonium Storage Vulnerabilities Assessed.* A DOE Plutonium Working Group issued a draft survey of DOE facilities on December 6, 1994 (Document number DOE/EH-0415). The survey found that DOE's inventory of plutonium presents significant hazards to workers, the public, and the environment. A total of 299 environmental "vulnerabilities" were discovered at 13 sites. The survey concluded that DOE's plutonium storage problems arise from the fact that the current facilities were designed for weapons production and not long-term storage.

- *NRC Releases Strategy On High-Level Waste Program.* On December 23, 1994, the Nuclear Regulatory Commission (NRC) announced in the *Federal Register (59* Fed. Reg. 66380) the availability of a document outlining its review strategy for the United States' high-level radioactive waste (HLW) repository program. DOE is currently conducting site characterization studies at Yucca Mountain to determine its suitability as a permanent storage site for HLW.

- *Senator Johnston Introduces "interim" HLW Storage Bill.* On January 5, 1995, Senator J. Bennett Johnston (D-LA) introduced S. 167, a bill that would name Yucca Mountain as the "interim" repository for HLW from power plants. Interim storage would begin in 1998 under the bill and would occur pending opening of a permanent repository at the site, which is expected to occur after 2010.

- *Proposed Criteria Standards for WIPP Released* On January 11, 1995, EPA Administrator Carol Browner signed proposed criteria designed to determine whether the Waste Isolation Pilot Plant (WIPP) in New Mexico complies with EPA's high level waste and transuranic waste disposal standards. The proposed criteria were published at 30 Fed. Reg. 5766 (January 30, 1995).

- *DOE Revises EM PEIS.* On January 24, 1995, DOE proposed revision to the Environmental Restoration and Waste Management (EM) Programmatic Environmental Impact Statement (PEIS). The proposed revision would rename the PEIS the "Waste Management Programmatic Environmental Impact Statement," eliminating analysis of environmental restoration alternatives, instead focusing on *management* of DOE wastes.

NEWS BRIEFS (cont.)

- *Texas and EPA Sign Agreement for Cleanup of Federal Facilities.* On January 31, 1995, the Texas Natural Resource Conservation Commission and Region VI of EPA released a memorandum of agreement between the agencies that establishes a system for integrating state and federal CERCLA and RCRA activities at federal facilities. A primary motivation for this agreement was a need for coordination of activities at DOE's Pantex facility. EPA sources have said that the MOA will allow parties to use RCRA information to satisfy Super-fund requirements. The MOA is intended to cover the investigation, development, selection and implementation of corrective action/remediation for all releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants (as those terms are defined in CERCLA and RCRA).

- *DOE Cites Budget Needs for Plans to Revise Cleanup Agreements.* Following the Administration's release of its proposed budget for DOE on February 6, 1995, Thomas Grumbly, DOE Assistant Secretary for Environmental Restoration and Waste Management, admitted that DOE will need to renegotiate "some if not all compliance agreements." Grumbly said he hopes states will agree to renegotiate deadlines, otherwise, the Department may have to resort to "forcibly reopening compliance agreements." Among his proposals, rather than setting 20-year timelines, Grumbly suggested DOE, EPA and the states revisit cleanup agreements every one, two, or three years to ensure the agreements remain achievable.

- *Senator Murkowski Introduces DOE Risk Assessment Bill.* On February 2, 1995, Senator Frank H. Murkowski (R-AK) introduced S. 333, the Energy Risk Management Act of 1995, a bill that would require the performance of risk assessments in connection with environmental restoration activities. Among its other requirements, the bill would mandate that prioritization of resources for environmental restoration be based on the seriousness of the risk and cost-effectiveness.

Printed on paper containing 50% recycled fibers.
Copyright 1994 by the National Association of Attorneys General.

DOE ENVIRONMENTAL ISSUES BULLETIN is published 10 times per year by the Environment Project of the National Association of Attorneys General, 444 North Capitol Street, Suite 339, Washington, D.C. 20001. This bulletin is edited by Wilburn L. Chesser, Environment Counsel. Subscription rate: $75.00 per year. For subscription services, call (202) 434-8030. For general inquiries, call NAAG Director of Information Services, (202) 434-8022.

The publication of this bulletin is funded, in part, by the U.S. Environmental Protection Agency and the U.S. Department of Energy under cooperative agreement number CX-821045-01-O. The contents of this bulletin do not necessarily reflect the views and policies of the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the National Association of Attorneys General, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.