

INTEGRATING DOE'S NATURAL RESOURCE TRUSTEE ROLE INTO ENVIRONMENTAL RESTORATION EFFORTS

Issue:

Natural resource damage (NRD) awards represent potential costs for DOE which are in addition to the costs of cleaning up existing contamination resulting from past operations and waste disposal practices.

Background

Under CERCLA, parties responsible for contaminating a particular site with a hazardous substance are liable for cleanup and damages to natural resources caused by that release. Natural resources "trustees" may file claims for residual damages, seeking compensation for injuries that are not or can not be addressed by clean up or "response" actions. The natural resource trustees (specific Federal agencies, States, and Tribes) are to ensure that the public is adequately compensated for lost or injured resources. The Secretary of Energy is one of several federal natural resource trustees, appointed by the president in Executive Order 12580. Other trustees may have overlapping or co-jurisdiction with respect to natural resources located within the DOE complex.

In addition to paying for the cost of restoring the resources, responsible parties must also pay the costs of assessing damages to the natural resources. Recoveries must be used for restoring the resource or acquisition of resource services equivalent to those that were injured or lost, e.g., fish stocking. DOE is in the unique position of being both a natural resource trustee for the resources it manages and a party responsible for damage assessment and resource restoration.

Discussion:

- o It is expected that certain co-trustees will present claims for natural resource damages. For example, in 1987 the State of Ohio filed a \$206 million NRD claim against DOE.
- o In August 1996, the General Accounting Office (GAO) estimated DOE's potential NRD liability at \$2.3 billion to \$20.5 billion.
- o In December 1996, a second GAO report cited DOE's attempts to limit potential liability by integration of NRD concerns into clean-ups and working with federal, state and tribal trustees on site "trustee councils."
- o The Department prepared, and submitted in February 1997, a report that builds upon previous Administration and General Accounting Office estimates of potential natural resource damage liabilities at Department facilities. The Department believes that the estimate presented in its report, \$1.4 billion to \$2.5 billion is a more reasonable estimate than that of the General Accounting Office, notwithstanding the large range of uncertainty associated with any estimate.

- o The Department is working hard to minimize potential claims by working closely with the other Federal, State and Tribal trustees as well as interested citizens and other parties early in the cleanup process to ensure that their concerns are addressed and to select, to the extent possible, a cleanup remedy that will minimize or eliminate the potential for significant natural resource damage liability. The Department has formed natural resource trustee councils at facilities where there is sufficient interest.
- o In September 1997, EM issued a policy to integrate existing NRD requirements with response actions. The policy provides for assessment and management of NRD concerns by DOE sites, primarily through collaboration with natural resource trustees that have co-jurisdictions at DOE sites. Activities under the policy could include trustee coordination on clean-ups, integrated risk investigations, stakeholder dialogue, and restoration or replacement of resources. The preferred context is to address NRD concerns early in the clean-up mode, rather than during possible future litigation . (The September 8, 1997 "Policy on Integrating Natural Resource Concerns into Response Actions," can be obtained from the Office of Environmental Restoration web site at [*http://www.em.doe.gov/er/nrdrev.html*](http://www.em.doe.gov/er/nrdrev.html)).
- o The Office of Environmental Policy and Assistance (EH-413), of the Office of Environment, Safety and Health, established and currently chairs a DOE-wide steering committee, which is being used as the vehicle for implementing the September 8, 1997 EM integration policy. The steering committee consists of key HQ members (EH, EM and GC), and Natural Resource Trustee Coordinators at DOE facilities. The web page for the Natural Resource Trustee Coordinators Steering Committee can be accessed at [*http://tis-nt.eh.doe.gov/oepa/*](http://tis-nt.eh.doe.gov/oepa/).
- o Members of the Steering Committee are providing guidance and assistance with NRD integration projects at the Hanford Site and the Columbia River, the Oak Ridge Reservation, the Savannah River Site, Los Alamos National Laboratory, the Idaho National Engineering Laboratory, and the Fernald Environmental Management Project. (Success at the Fernald site has been particularly notable. The site has tentatively settled the lawsuit with the Ohio trustees. There is to be no damage award paid; instead there will be extensive habitat construction and reclamation, with a substantial portion of the site (875 acres of 1,013) ultimately becoming a "undeveloped park."
- o DOE continues to support legislation and regulatory reform that would make the integration of NRD concerns with response actions routine at federal facilities.