# Natural Resource Damage Assessment and Restoration Advisory Committee

Subcommittee 4

July 26-27, 2006
Denver Federal Center, Colorado

# Question #4:

- What additional measures should DOI consider to expedite planning and implementation of restoration projects and to ensure effective and efficient restoration after awards or settlements are secured?

# Four Categories of Measures Suggested to the Committee at the March, 2006 Meeting

Measures to:

1. promote the use of consensus-building resources by all parties affected by an incident that causes natural resource damage;
2. encourage coordination and cooperation between cleanup agencies and trustees;
3. encourage full and constructive participation by responsible parties with cleanup agencies, restoration agencies, and trustees, and with their activities;
4. encourage flexibility and creativity in the design of settlements.

# 1. Promote the use of consensus-building resources by all parties affected by an NRD incident

Subcommittee said it would:

- Review case studies and other information on cooperative assessment to determine if it should make recommendations about cooperative assessment;
- Examine ways that tailored dispute resolution resources can be made available to parties;
- Consider how DOI can more fully integrate NEPA into the decision-making process;
- Explore the potential for additional funding sources to allow broader participation in assessment and restoration planning activities.

# 2. Encourage coordination and cooperation between cleanup agencies and trustees

Subcommittee said it would:

- Consider ways to improve the involvement of trustees in cleanup deliberations;
- Review existing coordination agreements between trustee agencies and response agencies to consider their terms and their implementation;
- Consider whether the limitation on the use of the Superfund related to NRDA is an actual barrier to DOI officials serving at EPA from also being involved in NRDAR;
- Examine other trustees' approaches to coordination with EPA and consider whether DOI should adopt similar approaches.

# 3. Encourage full and constructive participation by responsible parties with cleanup agencies, restoration agencies and trustees

Subcommittee said it would:

- Consider incentives DOI might use to promote constructive engagement by responsible parties;
- Consider whether the Executive Branch should identify goals regarding desired outcomes, without impairing trustee authorities or discretion;
- Explore whether it would be beneficial for the trustees to identify/develop a portfolio of categories or locations of potential restoration opportunities.

# 4. Encourage flexibility and creativity in the design of settlements

Subcommittee said it would:

- Consider incentives for innovative, effective restoration proposals which emphasize restoration metrics rather than financial metrics whenever possible and appropriate;
- Consider whether it would be appropriate to develop specific strategies to further the interest that restoration can provide offsetting compensation when cleanup can't be completed or would cause unacceptable harm;
- Examine what actions DOI could take toward having the current cap on administrative settlements raised.

# Additional Resources Needed/ Discussion Needed by Full Committee

- Outreach for access to a diverse set of case studies of “successful” and “unsuccessful” NRD settlements/cases.

- Suggested that there be Committee discussion of “what’s over the horizon” -- ways that circumstances giving rise to NRD may differ in the coming years.

# Feedback Received from Committee, March, 2006 Meeting

- Some members felt scope was ambitious, subcommittee might want to pick a few of the items/areas to focus on; others felt strongly that it was too early to drop anything from the list of items to be considered.

- Subcommittee should add measures that could be taken post-settlement and/or that are more specifically targeted to addressing post-settlement "stagnation" of restoration planning and/or implementation.

# Subcommittee Activities Since March, 2006 Committee Meeting

- In the months since the last meeting, the subcommittee has not been able to coordinate on direction or ideas.
  - Drafted and submitted outreach questions and submitted them to outreach coordinator.
  - Had discussions about measures to combat post-settlement restoration logjam.
  - Had two conference calls. Both calls had participation of only about half of the subcommittee. Subcommittee is also short two subcommittee members, -- one was replaced shortly before this meeting.
- However, some members have been working toward the stated goals on their own, there has been some progression of thought and effort, though full subcommittee hasn't signed off on ideas.

# Areas of Recent Focus

- Cooperative Assessment
- Streamlining Integration of Restoration Planning and NEPA Requirements
- Regional Restoration Planning/Prospective Restoration
- Restoration Grant Program

# Cooperative Assessment

Members of the subcommittee:

- have been conducting informal outreach efforts to gain new perspectives/"lessons learned"
- have reviewed what the statute and regulations provide that is relevant to cooperative assessment
- have reviewed the material regarding NOAA's cooperative assessment initiative and about cooperative assessment issues generally, available on the NOAA website
- have been considering our own experiences on NRD cases and the generally acknowledged pros and cons of cooperative assessment

# Cooperative Assessment

Over the next several months, Subcommittee expects to:

- Develop the content of a recommendation for development of DOI guidance on cooperative assessment;
- Consider feasibility of DOI developing model cooperative assessment agreement(s) to use with PRPs and others to help set expectations and minimize concerns that can exist about cooperative assessment.

# Streamlining the Fulfillment of NEPA Requirements in Restoration Planning

- NEPA and Restoration Plan Development
  - Approaches taken to fulfill NEPA requirements vary among DOI agencies.
  - Each bureau/regional office that is the lead on a case handles NEPA its own way.
    - In some cases, NEPA is integrated into restoration planning procedures.
    - In other cases, restoration plan development is followed by independent NEPA review which can take some time.

# Streamlining the Fulfillment of NEPA Requirements in Restoration Planning

- Subcommittee will review case law on functional equivalency, review NEPA and CERCLA NRDAR regulations, and develop content of a recommendation for the creation of national DOI guidance on integrating NEPA requirements into the CERCLA restoration planning process.

# Streamlining the Fulfillment of NEPA in the Restoration Planning Process

- Identification of Categorical Exclusions
  - Are there types of common restoration activities which might properly qualify for categorical exclusion from further NEPA analysis?
  - Can a type of categorical exclusion be established to apply to settlements which have been supported by consensus processes?

# Regional Restoration Planning

- Subcommittee members are currently reviewing regional restoration planning initiatives around the country to see what works well, what doesn't.

- In the coming months, the subcommittee will consider whether to make a recommendation about regional restoration planning.

# Restoration Grant Program

- Idea:  Use settlement funds to offer grants for restoration projects.
- Solicit bids for restoration projects; bids received are alternatives considered.
- Subcommittee will review relevant authorities to answer the question of whether statute or regulations or any other authorities would preclude/prohibit the use of restoration settlements for grant program to help accomplish restoration more quickly and to promote innovation in restoration planning and implementation.

# END