

Minutes of the MOCAA Spring Meeting
April 5, 2002
Law Offices of McKenna & Cuneo, LLP
Washington, DC

Presentation by Tyler Przybylek, General Counsel of the National Nuclear Security Administration

Tyler Przybylek, General Counsel of the National Nuclear Security Administration (NNSA), spoke on the creation and evolution of the NNSA. NNSA is "separately organized," not "semi-autonomous." NNSA has its own statutory authority, NNSA continues to derive substantial support from DOE, principally through various memorandum agreements, and may receive policy direction from the Secretary of Energy.

Mr. Przybylek described some of the consequences of the September terrorist attack on the activities of NNSA. The NNSA capabilities developed for its traditional nuclear weapons mission has application to counterterrorism, as well. NNSA is working with the Office of Homeland Security to define activities that NNSA can perform in support of homeland security.

NNSA has published a proposed reorganization plan for the agency, that describes the desired end state, while continuing to work out how to implement the plan. The concept is to transfer substantial authority to site offices at Y-12, the Kansas City Plant, Pantex, the Nevada Test Site, and the three weapons laboratories. The senior federal official at each site would report directly to the Deputy Administrator. NNSA operations offices would be converted to support center, from whom the various site offices would "buy" services.

Mr. Przybylek also discussed Price-Anderson Act reauthorization. NNSA prefers the "clean" reauthorization contained in the Senate bill and has concerns with efforts both in the House and in the Senate to add provisions on worker safety that are not limited to nuclear safety requirements.

Mr. Przybylek indicated that there will be rulemaking announced in the Federal Register in a couple of weeks that will integrate the Personnel Assurance and the Personnel Security Assurance Programs. There will also be new rules on the use of polygraphs. Some hold the view that too many people are being polygraphed but there is no agreement yet on the correct set of individuals to be polygraphed. There is also discussion about the timing and involvement of Laboratory directors when the security access of research personnel is called into question as a result of a polygraph examination.

The Administration has a bill to consolidate all federal boards of contract appeals into three – the General Services (GSBCA), the Armed Services (ASBCA), and Postal

Service Board. Mr. Przybylek indicated that NNSA would like to be included in the ASBCA as more consistent with its defense mission than that of other civilian agencies that will be included in the GSBCA.

Mr. Przybylek shared his view that he had hoped that NNSA would be able to develop a new type of contract – an award term contract – for federally-funded research and development centers (FFRDCs) such as Sandia National Laboratory. But he indicated that he believed the current debate regarding competing that contract based on the interest expressed by the University of Texas, some private concerns and the University of New Mexico, appears to have foreclosed that opportunity. However, no expend/compete decision has been made with regard to the existing contract.

The only "clouds" on the current NNSA horizon, Mr. Przybylek indicated, involved the problem of establishing a permanent repository for nuclear waste and a disposition program for plutonium. He discussed briefly the concerns of the states of Nevada and South Carolina regarding proposals for storage in those states.

Mr. Przybylek's talk was followed by a Q&A session. In response to questions and comments from attendees Mr. Przybylek made the following points:

NNSA believes it has all the legislation they need to accomplish the mission established by Congress.

Naval Reactors are their own world and will remain so.

The Sandia "governance model" involves finding a less formal, more cooperative means of accomplishing mission work under an FFRDC operating agreement. The "model" involves two separate tracks: (1) Track A -- keep contract but work on functional area improvement to define better ways than directives and reduce work in the total government-contractor system. Eighteen functional areas are being reviewed; five are on a fast track; facilities and technology transfer will take longer than any of the other areas. A report on Track A observations is due this month. (2) Track B – take a fresh look at what would a contract should look like for a non-financially motivated operator. Public comment has been solicited through a CBD notice. NNSA is receiving input from industry.

The NNSA Administrator supports the work being done at SC labs and values them.

There is currently no consideration of "privatizing" the labs.

Presentation by Herb Fenster, Partner in McKenna & Cuneo, LLP

Herb Fenster, partner in McKenna & Cuneo, LLP provided observations about the federal approach to cleanup of the nuclear and other toxic waste legacy of the federally-

sponsored military industrial base that started in 1913 and ended with significant contraction in the passing of the Cold War. Mr. Fenster made reference to two documents and some news accounts to set a foundation for his remarks. The two documents were "Linking Legacies" DOE/EM-0319 January 1997, and "Closing the Circle" (draft) March 1994. The latter document Mr. Fenster described as a very ad hominem and critical document, but nevertheless very informative.

Mr. Fenster expressed the view that Congress has failed to live up to the obligation for clean up through its unwillingness to appropriate the necessary funds for full remediation and return of land and facilities to unrestricted use. Rather, the government was creating numerous bird sanctuaries and fencing off sites for some future remediation in the hopes that clean up technology will drop in cost. Mary Anne Sullivan, former DOE General Counsel, took issue with a number of Mr. Fenster's remarks and asserted that although problems remain, the federal government during the 1990's had taken substantial steps toward remediation, and, in fact, had successfully cleaned up a number of sites.

Presentation by Mary Anne Sullivan, Partner in Hogan & Hartson, LLP

Mary Anne Sullivan, partner in Hogan & Hartson, LLP discussed the ongoing debate over whether there should be "external regulation" of DOE facilities. The 2002 Energy & Water conference report, but not the law itself, asked DOE to develop an implementation plan for external regulation of FFRDCs operated for DOE's Office of Science. The report is due May 1, but may be delayed. The conference report language is nonbinding, and the implementation plan does not appear to be a priority for a political leadership that is contending with implementation of the President's Energy Plan, FOIA requests regarding the development of the Energy Plan and the nuclear waste storage disputes with the states of Nevada and South Carolina.

Ms. Sullivan indicated that "external regulation" has lost a lot of momentum and is now very unlikely. She cited a number of factors that lead her to that conclusion: (1) The principal career advocate for external regulation in DOE's Office of Environment, Health & Safety (EH) has left the department. (2) From 1995-2000, the Nuclear Regulatory Commission (NRC) was hungry for a new mission. NRC now has a full plate in dealing with security issues not envisioned prior to September 11; NRC has the prospect of a new nuke plant licensing proceeding and the near certainty of a new design licensing; Yucca Mountain licensing, although it will proceed slowly, will continue to absorb NRC's attention. (3) The Occupational Safety and Health Administration (OSHA) wanted regulatory cognizance of DOE facilities only if they were provided the resources to replicate DOE's EH. OSHA is principally reactive to complaints in the private sector, and feels it will need to be proactive for DOE sites.

Ms. Sullivan recommended that SC laboratories might be better served in the current climate to work on the "how" of regulation, rather than the "who." Ms. Sullivan indicated that the current head of EH, Bev Cook might be open to a dialogue on changes to regulatory approaches.

Business Meeting

President's Report – Rachel Claus, Laboratory Counsel for the Stanford Linear Accelerator Center

April 2001 meeting minutes not yet available. Waived approval of April 2001 minutes until distributed to the membership.

Ms. Claus and other MOCAA officers met with DOE General Counsel Otis and have had other discussions with DOE General Counsel staff regarding integrating meetings of MOCAA members and DOE legal staff. There is no agreement to formally integrate meetings but MOCAA will continue to have two annual meetings and invite DOE attorneys to attend one of the meetings.

MOCAA will continue to be a clearinghouse for membership comments on proposed federal regulations. Gregg McKenna, MOCAA Secretary, is the MOCAA point of contact to whom members can submit comments for inclusion in a MOCAA comment.

In the future, there will be some MOCAA member-only emails, rather than distribution to all names on the MOCAA mailing list. This will begin a development of benefits limited to MOCAA members and encourage others to join.

Election of Directors

A quorum of the members by attendance and proxy being determined, the floor was opened for nominations of two director positions – a 2 year and a 3 year term.

Nominations for the 2 year term were closed after the nomination of Jim Stout. Mr. Stout was elected by acclamation.

Nominations for the 3 year term were closed after the nomination of Mary Anne Sullivan. Ms. Sullivan was elected by acclamation.

Treasurer's Report – Gregory Scott, General Counsel for Kaiser-Hill Company, LLC

Gregory Scott, MOCAA treasurer, reported on the financial status of MOCAA. Reconciling the beginning balance on February 28, 2001 with subsequent income and expenses, the current balance in the MOCAA account as of April 4, 2002 is \$3,974.21. Additional income and expenses from the MOCAA Spring Meeting will be reflected in the next annual report. The MOCAA bank account is in the First Bank branch in Denver, Colorado. Officer expenses associated with the meeting with DOE General Counsel Otis

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described above were not charged to the corporation, but were incurred as part of other business the officers conducted on behalf of their clients.

Consideration of adopting annual membership dues was discussed, but tabled until the MOCAA Fall Conference.

Program Committee Report – David Kasanow, Partner in McKenna & Cuneo, LLP

The Fall Conference was proposed for October 10-11 at the L’Enfant Plaza Hotel in Washington, DC. After discussion the proposal was approved by the membership.

Discussion regarding program planning for the Fall Conference included a recommendation that there be a “member only” email to solicit suggestions for topics, an effort be made to get legislative staff involve in Congressional appropriations and authorizations committees, get Marcia Madsen and ABA subcommittee on government contracts to present information on contract law trends.

There was a general discussion of how to increase membership. The focus was on recruiting members through contacts with the ABA subcommittee on government contracts, and providing information and services limited to MOCAA members. MOCAA director Schmidt and MOCAA Webmaster Nelson were tasked to develop a brochure about MOCAA that would be suitable in a member recruitment campaign.

MOCAA Website Report – Ron Nelson, Director of Contracts Management, University of California

Mr. Nelson reported on the redesign and updating of the MOCAA website (<http://www.mocaa.com>) and solicited input from the membership on desired features and improvements. As a result of the discussion the following action items were identified: (1) Develop a capability for “member-only” pages and data, (2) develop a member only email list (3) develop a capability for a member only discussion forum, and (4) investigate use of an on-line payment service for membership dues and meeting fees.

There being no further business the meeting adjourned.