

National Conference of State Legislatures State and Tribal Government Working Group October 27 - 28, 1998 Charleston, South Carolina

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Key Outcomes

The members of STGWG developed the following key outcomes from their meeting. The findings were finalized and submitted to DOE on October 28, 1998, before adjournment of the meeting.

MEMBERSHIP

- The State and Tribal Government Working Group requested that DOE invite the Santa Clara Pueblo of New Mexico to join STGWG.

RELATIONSHIP WITH DOE

- In negotiations with Indian Tribes, the U. S. Department of Energy should send representatives who have decision-making authority.
- Representatives from the State and Tribal Government Working Group would like to meet with the new Assistant Secretary for Environmental Management as soon as possible after the appointment is sent to Congress and/or confirmed.

DECONTAMINATION AND DECOMMISSIONING

- The State and Tribal Government Working Group formed a Subcommittee on Decontamination and Decommissioning to focus on retirement of facilities at DOE sites.

DOE TRIBAL CULTURAL RESOURCES POLICY

- The State and Tribal Government Working Group recommends that Indian Tribes be directly involved in developing DOE's draft Tribal Cultural Resources Policy before the policy is issued for review. The State and Tribal Government Working Group recommends that its Subcommittee on Tribal Cultural Resources be one focus group for this direct partnering.

EXTERNAL REGULATION

- The State and Tribal Government Working Group recommends that the DOE reaffirm its commitment to external regulation and cooperate with regulators and clarify the goal(s) for its pilot projects addressing external regulation.

INTERSITE WASTE DISPOSITION

- States with DOE facilities that will act as receiver sites for offsite radioactive waste should have clear regulatory authority over the waste and waste operations at those sites. This should include a mechanism for inspection and approval of generator sites.
- The STGWWG is concerned about expansion of waste disposal at sites such as Los Alamos National Laboratory and the Hanford Site, where such expansion may affect significant natural and Tribal Cultural Resources and sites of spiritual significance.

STEWARDSHIP

- The State and Tribal Government Working Group has completed and approved a survey of stewardship status across the DOE complex, including key conclusions and recommendations. The group's White Paper on this subject will be presented to DOE soon.
- DOE should not transfer or release DOE-owned land until long-term stewardship issues (including long-term assurance of institutional controls) are adequately addressed. This includes funding commitments.
- The State and Tribal Government Working Group recommends long-term stewardship activities be supported throughout DOE, not just within Environmental Management.
- The State and Tribal Government Working Group considers it essential that long-term "institutional memories" be created where key data and information concerning long term stewardship (especially institutional controls) be developed and maintained.

TRANSPORTATION

- The State and Tribal Government Working Group recommends that DOE consider response to emergencies involving transportation of chemically hazardous materials as well as radioactive materials.
- The State and Tribal Government Working Group notes that DOE's specialized training for local responders will be effective only if basic hazardous materials first response capabilities are in place for tribal and local communities. DOE's commitment to supporting that capability is important.

- The State and Tribal Government Working Group recommends that state and tribal governments and the DOE proactively begin preparations now for implementation of the plutonium disposition plan, including public education and outreach.
- The State and Tribal Government Working Group recommends that the DOE include states and tribes along transportation routes for plutonium disposition in development of transportation plans. Agreement by these states and tribes concerning transportation routes will avoid potential "road blocks" to shipments between originating and receiving sites.
- A real-time materials transportation tracking program is important to the states and tribes and should be supported and effectively conducted by DOE.

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**National Conference of State Legislatures
State and Tribal Government Working Group
October 27 - 28, 1998
Charleston, South Carolina**

MEETING NOTES

These meeting notes are a summary of notes recorded on easel charts during sessions of the State and Tribal Government Working Group (STGWG) Meeting on October 27 - 28, 1998. The notes reflect key comments and discussions among the Working Group members and key questions/answers between Working Group members and presenters. Individual briefings are not summarized in this record.

OCTOBER 27, 1998

Session: Executive Session

Administrative

- The Steering Committee is working with U. S. Department of Energy (DOE) Headquarters on administrative issues.
- Several states are electing Governors in November.

Membership from Other Pueblos

- Membership criteria: "Is the pueblo/tribe affected by DOE operations to the same degree as existing STGWG members?"
- The Santa Clara Pueblo of New Mexico has requested membership.
- STGWG will recommend that DOE invite Santa Clara Pueblo to join the Working Group.

DOE Indian Policy

- Letters to DOE on Indian Policy have been submitted.
- The content of the letters reflects the position of the Working Group.
- Interest in having DOE revisit and revise Indian Policy was noted.

Objectives for STGWG Meeting

- Develop and send a clear message to DOE concerning plutonium disposition.
- Develop and send a message to DOE about agreements with governments concerning WIPP shipments.
- Urge DOE to coordinate effectively among its internal organizations.
- Urge DOE to speak with one voice concerning transportation.
- Send specific expectations to DOE regarding transportation.
- Identify lessons learned - states/tribes and DOE - from recent transportation efforts.
- Identify DOE's plans for emergency response training of states/tribes and local communities.
- Urge DOE to send representatives with decision-making authority to negotiations with tribes.
- Get clarification of DOE position on external regulation.
- Develop an approach to creating a relationship between STGWG and the "New" DOE (new Secretary, new Assistant Secretary).
- Develop and provide guidance to DOE regarding DOE's decisions on disposal of Low Level Waste (LLW) and Mixed Low Level Waste (MLLW).
- Get information on DOE process and schedule for reaching decisions on disposal of LLW and MLLW.
- Get a clear understanding from DOE regarding its stewardship policy and plan.
- Give clear guidance to DOE regarding stewardship.
- Bring lessons learned on reuse within Department of Defense to the table.
- Plan for a STGWG delegation to meet with DOE-HQ (new Assistant Secretary) before the next STGWG meeting - Action: Tom Winston and Armand Minthorn to arrange.
- Invite the new Assistant Secretary to the next STGWG meeting.
- Discuss experience at sites with external oversight of Decontamination and Decommissioning (D&D) efforts.

D&D Subcommittee

- A Decontamination and Decommissioning Subcommittee was formed; Dan Miller will serve as chair.

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Session: Full Session

Membership

STGWG requested that the Santa Clara Pueblo be invited to join STGWG.

Tribal Cultural Resources Policy

- ***Briefing/Statement by Lois Thompson, DOE***

Q: What is the timeline for the draft policy?

A: The draft policy will be issued for review within 1-2 months.

Q: Who will review the policy?

A: There will be interaction through each DOE field office.

Comment: Suggest direct contact between DOE-HQ and tribes for review - with enough time for consideration.

Comment: Suggest that tribes be involved in development of draft policy (a partnership approach). The issue is very sensitive - tribes should be involved in the formative stages of the policy.

Comment: Suggest the DOE involve STGWG as catalyst in process.

Comment: Early involvement by tribes reemphasized.

Comment: The Federal Register provides adequate guidance for involvement and should be followed.

Comment: The Federal Register provides adequate guidance for involvement and should be followed.

DOE Response:

- DOE will utilize STGWG Tribal Cultural Resources Subcommittee as a resource for input before issuing draft policy.
- DOE will also establish some direct interaction with tribes.

External Regulation

- ***Briefing by Joseph Fitzgerald, Jr., DOE***

Q: Is Secretary's position a retreat from O'Leary policy?

A: Change in policy was made by Pena - Richardson is remaining consistent with Pena policy. The Berkeley pilot project indicated that DOE is some distance from being ready for external regulation.

Comment: DOE should either commit to external regulation and move forward or acknowledge that it doesn't support the policy.

Response: Congress has mandated that pilot projects continue with full state/tribe and local involvement.

Q: What will be the roles of "combined regulators"?

A: Do not primarily envision new "joint" regulation, but expect normal regulator involvement similar to regulation of private industry.

Q: What are the scheduled release dates for the Savannah River and Oak Ridge reports?

A: December, 1998.

Q: Where is the policy going (what happens after the pilot projects are completed)?

A: DOE will define a clear path, value, and cost based on pilot projects and make a recommendation to Congress.

Comment: State regulation may be more effective than federal regulation for some issues and at some sites - the Secretary should address this.

Q: What about external regulation of D&D?

A: The Nuclear Regulatory Commission (NRC) has very specific requirements that are different from DOE's - the commercial sector approach may not be appropriate for DOE sites. Use of the NRC model might result in site-by-site regulations rather than a complex-wide strategy.

Intersite Waste Disposition

- ***Briefing by Karen Guevara, DOE***

Comment: Much analytical work has been conducted on LLW and MLLW disposition.

Comment: Implementation details are not there yet.

Comment: There is concern about the conflict between site cleanup and disposal of others' waste at Hanford.

Comment: There is concern that all designated waste may not fit at Hanford.

Q: What about intersite equity?

A: Intersite equity will be assessed with groups such as STGWG.

Comment: Compensation for waste receiver sites is an important issue.

Comment: Finding acceptable receiver site(s) is the primary issue at Rocky Flats, rather than the Programmatic Environmental Impact Statement (PEIS).

Response: The PEIS must also go forward, to provide an overall strategy for disposal at DOE sites.

Comment: DOE has excluded commercial disposal from the PEIS - commercial disposal should be included in the PEIS and considered in the strategy.

Response: The PEIS represents a worst case analysis for disposal of all waste onsite.

Q: Is there legal action regarding the PEIS?

A: Yes, the Natural Resources Defense Council (NRDC) has brought suit against DOE for failure to complete the PEIS. A trial date of 12/98 is anticipated. Meanwhile, DOE is proceeding with its analysis and decisions. The PEIS will consider environmental impacts of environmental restoration wastes.

Q: Are CERCLA wastes considered in the PEIS?

A: Yes, at a programmatic level (with approved generator list). The details will depend on site-specific agreements.

Comment: An equity issue: Should receiver site states have clear regulatory authority over receiver sites?

Comment: Should receiver site regulation include inspection of generator sites?

Comment: DOE is beginning to address this issue in Nevada.

Comment: There should not be much study needed to address many external regulation issues - e.g., disposal of radioactive waste

in cells.

Comment: There is concern about disposal of self-generated waste at a Los Alamos National Laboratory (LANL) disposal site near the San Ildefonso Pueblo.

Response: A portion of that waste would be disposed of offsite.

Comment: All future LANL-generated waste should be disposed of offsite.

Response: The PEIS is focused on designating regional sites for receiving others' wastes - if LANL decides to ship all waste, the PEIS will be reviewed.

Comment: A concern remains that there will be significant future disposal at LANL.

Comment: There is concern regarding a single site both receiving and shipping the same waste category.

Comment: State regulation of receiver sites will result in a second planning process.

Comment: Expansion of the LANL disposal site will result in destruction of several tribal spiritual sites.

Response: Some PEIS options are based on sites disposing of their own waste where possible to avoid shipping waste.

Comment: Tennessee has a policy of working with DOE to dispose of Oak Ridge generated waste onsite where possible.

Comment: There is a problem at Oak Ridge - disposal of long half-life waste.

Comment: It is important to receiver states that generator sites manage their own waste and risk where possible.

Comment: The Governor of Washington is concerned about accepting offsite waste at Hanford when significant onsite risks are yet to be addressed properly.

Stewardship

- ***Briefing on DOE Stewardship approach by Jim Werner, DOE***
- ***Briefing on results of STGWWG Stewardship survey by Earl Leming, Tennessee***

- Q: What happens if the U.S. has to rearm?
- A: Processing of plutonium (Pu) is the biggest waste producer - enough Pu already exists for rearming if necessary.
- Q: Does DOE have adequate legal authority to carry out Stewardship responsibilities?
- A: DOE does not have authority to establish long-term funding - Congress must authorize.
- Comment: DOE, as land owner, has legal authority for long-term stewardship (institutional controls) until it releases the land. There may be no enforcement authority over future land owners.
- Comment: DOE should not transfer land ownership until easement issues are clarified.
- Comment: Institutional controls did not survive closure and turn-over at several DOD sites.

Site Reuse Experiences

K-25 (Earl Leming)

- The original gaseous diffusion plant in the U.S.
- Now the "East Tennessee Technology Park."
- There are a number of facilities to be industrialized.
- A problem: K-25 is a National Priority List CERCLA site.
- A Reuse organization has been established.
- An issue: How to clean the facility up enough for reuse - what standards to use?
- An issue: Many reindustrialized facilities have been cleaned up to institutional control level, not full D&D.
- Those facilities will return to DOE control after leases are up.
- Oversight, funding, and management of long-term institutional controls are not clear.

Rocky Flats (Steve Tarlton)

- There has been strong public involvement at Rocky Flats since 1993.
- The National Conversion Pilot Project was started there, then terminated in 1993.
- A Future Site Use study was conducted in 1994. Findings:

- Keep most of site open space
- Restrict land use
- DOE risk estimates distrusted
- Rocky Flats Cleanup Agreement includes a Future Use Vision.
- Industrial area reuse has been evaluated. Findings:
 - Buildings and infrastructure will not be useable for future reindustrialization
 - The entire site should be D&D'ed
 - Land use options should be kept open
- A Stewardship dialogue group is developing a process for public involvement.

Mound Site (Tom Winston)

- A small site.
- Developed in 1940s.
- A variety of missions.
- Has enjoyed good relationship with public.
- Citizens fought to retain mission.
- The key to cleanup at Mound - reuse.
- Contamination at Mound: radioactive and hazardous waste, mostly due to spills.
- A number of remediation activities are in progress.
- CERCLA is the primary regulatory driver.
- Site is to be transformed into an industrial park.
- Risk-based cleanup standards are in place.
- Other restrictions will be implemented - e.g., limitations on ground water use.
- The stewardship mechanism is to be developed.

Los Alamos National Laboratory (Peter Chestnut)

- Completely contained within the San Ildefonso aboriginal boundaries.
- 1997 Federal law requires DOE to identify lands unneeded for future missions and to return those lands to the Pueblo de San Ildefonso and the county; both parties have asked for the return of the lands.
- LANL has identified some sites for release (mostly buffer land). The release process includes:
 - Identify sites
 - Determine ownership
 - Identify environmental restoration needs

- Restore land
- Return land to the Pueblo and county
- Allowed uses for returned land are broad:
 - Preservation
 - Economic development
 - Industrial park
- EIS is in process.

General Stewardship Discussion

- Stewardship is linked to end states.
- Partnership with the community is important to effective stewardship.
- There is a precedent for tribes to have first right of refusal for reuse in some other cases. As a general rule, tribes have not been successful in getting a high priority.
- The distribution of land at LANL is specified by legislation.
- Reuse issues must be addressed with each new generation of stakeholders (especially cleanup/stewardship issues).
- At Department of Defense sites, DOD must agree to return after reuse to complete cleanup.
- A concern: Will knowledge of stewardship process and agreements be lost many years into the future?
- UMTRA - DOE has agreed to replace uranium-contaminated building foundations.
- EPA is considering a database to track institutional controls at CERCLA properties.
- EPA has problems with Oak Ridge not including EPA in its leasing process.
- The Hall Amendment provides a process for site reuse.

Environmental Management Advisory Board (EMAB) Long-Term Stewardship Committee (John Applegate)

- EMAB began addressing Stewardship issues in 1997.
- Addressed the question: "When is cleanup complete?"
- Determined that "complete" does not mean "greenfields."
- EMAB's role in stewardship discussion: help DOE determine what to do with large amounts of incoming information and keep DOE focused on stewardship.
- **EMAB Recommendations:**

- Take the issue of Stewardship seriously now.
 - Need to establish a central organizational unit within DOE to manage Stewardship.
 - There is a need to gather data for making Stewardship decisions.
 - There is a need to preserve data.
 - Current actions should be thoroughly documented and preserved.
 - Discussions must be inclusive.
 - Future plans must be specific (exactly what must be done to control risks).
 - Important to specify who will be responsible for stewardship and who will participate.
 - Important to identify areas of uncertainty.
 - Institutions must be established to manage institutional controls.
- EMAB plans to look closely at the Oak Ridge process and the UMTRA experience.

General Discussion on Stewardship

- Specific actions on stewardship can be developed and implemented through Site Stewardship Plans.
- Idea: A separate Federal organization should be established to coordinate stewardship at all Federal sites.
- Stewardship is not just a DOE issue - there are issues for other federal agencies, states, and local communities.
- STGWG members should get EPA involved in the process.
- Concern: The current Stewardship approach assumes that future generations will be ill-informed.
- Response: The current approach ensures that information is passed on and options are left open.
- There is a need for good and complete information - openness and declassification are key.
- It is important to create an institutional memory and pass it on to future generations.
- It is important to consider low-probability events and risks when considering very long time frames.

STGWG White Paper on Stewardship

- Site summaries should be included in final document.
- A combination of "*Should* DOE do Stewardship?" and "*How* should DOE do Stewardship?"
- Some conclusions are not supported - recommendations should be made bullet proof.
- Attachment 2 (reference material) provides the basis for some of the conclusions.
- "No future maintenance needed for a given site" is a good eventual goal for Stewardship.
- Language should be added on data preservation and institutional memory.
- After additional polishing, the white paper should be distributed to STGWG members for a final two week review.
- The subcommittee should address a federal umbrella agency next.
- Recommendations for further study should be included in the white paper.
- The report should consider broader institutional controls involving other agencies besides DOE.
- There is a need for partnering among federal agencies, states/tribes, and locals.
- It is also important to leave DOE in the process specifically.
- Idea: Establish legislation to require deconstruction plan as part of any construction project.
- Stewardship Subcommittee will work to extract specific recommendations from body of report for inclusion in executive summary or cover letter.
- STGWG will not address EMAB recommendations in STGWG report but will note similarities and concurrence in cover letter.
- Actions for Stewardship Subcommittee:
 - Examine the idea of an umbrella agency for long-term stewardship at federal sites.
 - Investigate other agencies' stewardship programs.
 - Bring EPA more into STGWG process.
 - Evaluate the concept of end states.
 - Examine legal mechanisms for institutional control.
 - Get the word out.

Transportation

- ***Briefing on DOE Senior Executive Transportation Forum by Kelvin Kelkenberg, DOE***

Comment: Shipping protocols, training, etc., should be consistent among states and tribes.

Response: DOE may publish "common protocols" in Federal Register.

Comment: There is a concern regarding the high volume of chemically hazardous materials used at Hanford - don't forget about transportation of HAZMAT.

Comment: There is a concern that a basic emergency response capability must be in place in a community as a base to build upon.

Comment: The emergency response program for a project/site must be individualized and coordinated with local responders.

Q: Why is Department of Transportation (DOT) regulation/oversight excluded on some shipments (especially high level waste and weapons components)?

A: High level waste is DOT regulated. DOT status on weapons shipments is not known - will investigate.

Q: What is the relationship with FEMA?

A: FEMA is involved - the primary point of contact within DOE is NN-60.

Comment: Need to add "States and Other" to requirements in DOE transportation brochure.

- ***Briefing on DOE Tribal Outreach by Kelvin Kelkenberg, DOE***
- ***Briefing on transportation across Pueblo de San Ildefonso by Bill Wyatt***

Comment: Concern that Pueblo de San Ildefonso does not have capability to respond to transportation accidents.

Comment: Pueblo needs to establish capability for first response to transportation accidents.

Comment: There is a problem getting DOE, federal agencies, and the state together on this issue.

Comment: The Pueblo needs response and communications equipment.

Comment: The Pueblo needs trained HAZMAT responders.

Comment: Once a basic capability is in place, then specialized DOE training will be useful.

Q: What is the schedule for improving capability at Pueblo de San Ildefonso?

A: Optimistic - action should begin within next 60 - 90 days.

Q: How will DOE coordinate among DOE, states, and tribes, especially with regard to funding?

A: DOE is working on this, the importance is understood.

Q: Is DOE still committed to begin WIPP shipments only after local agreements are in place (e.g., Pueblo de San Ildefonso)?

A: Yes.

DOE Comment: Five large site managers and the Assistant Secretary form an executive committee which controls funding for emergency response.

Q: Will funding for emergency response come from individual sites or from DOE-HQ?

A: If materials being transported are EM-related, the Executive Committee will direct funding. Program offices will be involved in decisions if non-EM materials are transported.

- ***Briefings on Plutonium Disposition by Bert Stevenson, DOE; and Jim Hardeman, Conference of Radiation Control Program Directors***
- Three facilities are needed for plutonium (Pu) disposition:
 - Pit disassembly and conversion facility: Savannah River or Pantex is preferred location.
 - Mixed oxide fuel fabrication facility: Savannah River is preferred location.
 - Immobilization facility: Savannah River is preferred location.
- The driver:
 - The U.S. wants Russia to dispose of its surplus Pu.
 - A bi-partite agreement has been reached to dispose of 50 tons of Pu.

- A disposition/transportation analysis is underway.
- A waste management/transportation analysis is underway (within the waste management PEIS).
- A study of spent MOX fuel transportation is underway.

Comment: All Pu will flow to Savannah River Site (SRS) - all roads in the region converge on Atlanta.

Comment: A majority of the Pu shipped to SRS will be shipped by the Safeguards Division - a recent DOE audit showed that the Division did not measure up.

Comment: Assumption of a rural location accident as a worst case scenario is a poor assumption.

Comment: There is a lack of attention to disposition of radioactive materials in an accident.

Q: How will the U.S./Russia agreement be enforced?

A: The U.S. is working to ensure that Russia's 50 tons are really from weapons.

Comment: The major decisions on Pu disposition will be political - it is important to prepare now for implementation and community education.

Comment: There is concern about including states and tribes along transportation routes in process. It is important to get buy-in of these states and tribes to avoid "roadblocks" between originators/receivers.

Q: Are Pu transportation routes known and published?

A: No, due to classification issues.

Comment: It is important to involve states, tribes, and local communities early in planning and education outreach for transportation program to succeed.

- ***Briefings by James Carlson, DOE; Peter Chestnut, Pueblo de San Ildefonso; Ann Dold, Idaho; Robert Bobo, Shoshone-Bannock Tribes; Mike Graine, Oregon***
 - The reference schedule for opening Yucca Mountain is 2010.
 - Defunding of NCSL Transportation Studies was the result of a budget cut. All funds are now going to Yucca Mountain characterization and

litigation.

General Discussion on Transportation

- Given current priorities, effective attention must be given to transportation - perhaps a separate organization should be established within DOE for transportation.
- We must find a way to produce more effective results with less money.
- 2 key transportation corridors run through Idaho (around 400 miles of road).
- Both routes go through the Shoshone-Bannock reservation.
- There are no alternative routes through Idaho.
- The major challenges for Idaho are:
 - Planning
 - Training
 - Public Involvement
- The transportation issue is very important to the Shoshone-Bannock Tribes.
- The Shoshone-Bannock population is anxious.
- Education of the Shoshone-Bannock population is very important.
- The Shoshone-Bannock Tribes have some Memoranda of Understanding in place now - an agreement regarding transportation is a critical need.
- The Shoshone-Bannock Tribes request that DOE work with the Tribe to establish an agreement.
- TRANSCOM is important to the states - DOE should pay significant attention to TRANSCOM.

DOE Indian Policy (Martha Crosland)

- DOE is open to revisiting the DOE Indian Policy.
- DOE will issue a letter on this subject in 1 - 2 months.

Next Meeting of STGWG

- Agenda items:
 - Keeping/shipping waste from originator sites
 - Configuration of shipping/receiving

- Deconstruction planning as a part of construction planning for new facilities
- The path forward for DOE (policy initiatives)
- The Secretary's Cleanup Summit
- Future Meeting Locations:
 - Hanford issued an invitation for the Spring 1999 meeting
 - Oak Ridge issued an invitation for the Fall 1999 meeting

Adjournment