

# **National Conference of State Legislatures State and Tribal Government Working Group March 13 – 14, 2002 - Washington, D.C.**

## **KEY OUTCOMES**

### **OVERARCHING ISSUES**

- STGWG supports the major themes in the Top-to-Bottom review conducted by Environmental Management and supports conducting cleanup in an accelerated risk-based manner; however, if DOE fails to address state integration for waste management issues, DOE cleanup reforms may be delayed. The states and tribes wish to help make implementation a success for all.
- STGWG expects DOE to recognize and adhere to the government-to-government relationships with tribes and states to adequately and effectively deal with issues of mutual concern.
- Participation in STGWG meetings by other parts of DOE (NNSA, DP, Science, etc.) would be beneficial to the states, tribes and the Department.

### **BUDGET ISSUES**

- STGWG agrees with the bias for action embodied in the accelerated cleanup reform budget. However, the program should be funded and administered so that sites and states are not forced to compete with each other for cleanup dollars.
- STGWG urges DOE not to use the recent Accelerated Cleanup Agreement at Hanford as leverage to force precipitous decisions in other states.
- Active cleanup depends on active disposal which depends on active state oversight and tribal consultation. State oversight and tribal consultation must be adequately funded in order to ensure accelerated cleanup.

### **TRIBAL ISSUES**

- Funding for tribal support, tribal participation on STGWG, site-level Indian liaisons and EMAB participation should be protected in current and future budgets.
- The January 2002 draft of the Implementation Plan for the American Indian Policy effectively addresses the primary questions and issues raised in earlier reviews. STGWG recommends that the plan be finalized and implemented both at DOE-HQ and in the field as rapidly as possible.
- If DOE makes further internal revisions to the Implementation Plan, Tribal Governments should be included in resolution of the changes as an application of the consultation requirements in the policy.
- The annual Tribal Summits committed to in the American Indian Policy should be implemented. STGWG recommits to working with DOE to organize the first Summit to help ensure its success.

- DOE did not comply with the consultation requirements in the American Indian Policy when establishing the recent Accelerated Cleanup Agreement at Hanford. This represents a failure of the policy. A lessons-learned and corrective action process should be conducted and the results reported to tribal governments and to STGWG. The corrective action plan should include a process for capturing and correcting future oversights of this sort.
- Tribes represent valuable resources for understanding long-term stewardship issues, including inter-generational transfer of information. The tribes recommit their offer to help DOE address such issues.
- Tribes see the Office of Indian Affairs as a key link in the chain of consultation between DOE and the tribes.
- Consultation should include budget issues where those issues directly affect resources critical to the lives of tribes.
- Cleanup end states must comply with federal trust responsibilities to tribes including honoring treaty provisions. The tribes commit to helping DOE achieve this goal.

## **INTEGRATION AND DISPOSITION**

- States need assurance that their support for onsite disposal of some wastes will be matched with performance in moving other wastes effectively to permanent offsite disposal.
- It is important to avoid focusing on cost as the only consideration in decisions about establishing onsite CERCLA disposal cells.
- STGWG urges DOE to ensure that EPA, states, tribes, and communities are fully involved in CERCLA Non-Time-Critical Removal Actions and that the process not be used as a means to exclude or limit EPA or other groups from the process.
- STGWG intends to incorporate the draft principles on communication and consultation developed at the May 2001 meeting into protocols for improved relations among the Department, states and tribes.

## **STEWARDSHIP**

- Long-term stewardship (LTS) is even more important and time-critical as closure is accelerated and more properties are transferred within the federal government and externally. STGWG requests detailed information on major planned LTS activities, who will perform them and the funding level.
- Site acceptance criteria will be very important to the tribes and states. STGWG looks forward to consultation on their development.
- Many states are less likely to be supportive of Institutional Controls if federal agencies are self-regulating on ROD implementation, and STGWG believes these requirements should be enforceable by those affected. STGWG will continue to monitor the current DOD-EPA dispute resolution process. Agencies need to demonstrate that they can enforce requirements upon themselves.

- The tribes' treaty rights and federal trust responsibilities to tribes need to be adhered to whenever land transfers are planned for federal-owned or DOE-managed properties.
- There needs to be a resolution of the issue of whether or not covenants can be placed on federal lands to be sold or transferred (GSA, DOD, DOE, etc.)
- States and tribes are closely tracking the development of a robust stewardship plan for the Weldon Spring (Mo.) site as a positive example for future actions.
- STGWG has observed that required Section 106 reviews for cultural resources are not being performed for some land transfers and other decisions, in violation of NHPA and presidential executive orders. A joint effort by STGWG/DOE to educate BIA on land transfer issues will be investigated.

### **TRANSPORTATION**

- TEC/WG continues to be a useful forum for tribes and states.
- DOE Indian Policy is not being used by some DOE offices in the transportation area.
- Tribes have a concern about the consolidated grant process and feel it ignores treaty rights and individual tribal needs.
- STGWG has a heightened interest in transportation security issues.