

National Conference of State Legislatures

# STGWG

## State and Tribal Government Working Group

March 26-27, 2003

Denver, Colorado

### MEETING SUMMARY & ACTION ITEMS

(Action Item chart on last page)

Wednesday, March 26, 2003

#### Executive Session

Personnel changes at DOE:

- Sandra Waisley is new Acting Director for Intergovernmental and Public Accountability, Office of Environmental Management (EM), replacing Martha Crosland who is now in DOE Office of General Counsel.
- Roger Butler is Deputy Assistant Secretary for Policy, Planning and Budget, EM.
- Brandt Petrasek, EM Tribal Programs, is the new point of contact for STGWG, replacing Catherine Volk who now works full time on EM Agreements in Principal.

#### Report out from Tribal Executive Session on March 25

Neil Weber, Pueblo of San Ildefonso

- Departure of Diana Yupe left Tribal Issues (TI) Committee with co-chair vacancy: Willie Preacher, Shoshone-Bannock Tribes, volunteered to co-chair with Peter Chestnut.
- DOE funding issues and commitment to Tribes:
  - Timing sometimes prevents adequate budgeting.
  - Change in fiscal year to calendar year has not made a difference.

- Implementation Plan for American Indian Policy:
  - Implementation Plan should be broader than EM programs.
  - American Indian Policy needs to be implemented by entire DOE.
  - Need more attention by DOE to implement American Indian Policy.
  - Need to inform EM about concerns with American Indian Policy.
  - A number of meetings have occurred without feedback from EM.
  - Still waiting for Tribal Summit (3 years).
  
- How to 'push' the issue?
  - Express concern at full STGWWG meeting.
  - Need to make feelings known at the highest levels.
  - **Action Item:** STGWWG letter to Secretary Abraham; Tribal Issues Committee will draft.
  - Suggestion: Letters to congressional delegations.
  
- Council of Energy Resource Tribes (CERT) request to join STGWWG:
  - TI Committee had reservations about request.
  - CERT mission different from current members; could dilute STGWWG focus.
  - Overlap of tribal membership in CERT and STGWWG.
  - Tribes felt CERT mission was broader than STGWWG.
  - TI Committee recommends against membership at this time.
  - Option: Invite CERT to meetings as observers, without offering membership.
  
- STGWWG recommendation to DOE will be that membership in STGWWG not be offered to CERT at this time.

### **Intergovernmental Groups & DOE/Streamlining: Discussion**

- DOE looking for efficiencies; how best to improve coordination among groups.
- DOE looking for groups to continue.
- Recommendations:
  - NGA website – 'one-stop shop' for member organizations.
  - Identify group by interest – NGA to organize.
  - High-level joint meeting in D.C. – to attract senior DOE leadership.
  
- Benefits to combining groups/efforts:
  - Travel efficiencies
  - Communication among state members

- Issues/Concerns:
  - How will DOE handle logistics of combined effort?
  - How will DOE handle different agendas of different groups and resolutions of key issues?
  - How to retain individual group dynamics and focus.
- Comments:
  - Logistical issues have not yet been addressed by the streamlining working group.
  - Tribal Summit with DOE Secretary could precede or follow intergovernmental meeting.
  - Need commitment of attendance by senior DOE staff.
  - Combined agendas should not preclude interactive discussions with DOE and members; STGWG issues still need to be heard.
- Combined meetings: Could be focused around single issues, e.g., Legacy Management
- Focus on decision-making rather than interests.
- Need **working meeting** versus ‘presentation’ meeting.
  - DOE needs to bring decision-makers to the meetings.
  - Staff other than EM need to attend (NNSA, Science, NE, OLM).
- Would size of meeting participation affect dialogue/decision-making with DOE?
  - Estimate: of approx. 50-60 people, plus DOE staff and miscellaneous attendees.
- Feedback received from other involved groups?
  - Yes, they have similar concerns; similar thoughts regarding benefits.
- STGWG has had difficulty engaging other offices within DOE.
- Willie Preacher and Tom Winston will represent STGWG in discussions with DOE on streamlining DOE interaction with intergovernmental groups and the joint Fall meeting.
- ECA interest in participation?
  - Officer level.
- Key issue: Office of Legacy Management (OLM) role, expectations.
- STGWG supports notion of joint meeting, provided agendas and logistics can be worked out.

- Efficiencies can be achieved by joint meeting in matter of timing: staggering vs. competing meetings.
- Letter to DOE needs to outline concerns and opportunities:
  - Concerns: Agendas / Presence of decision-makers
  - Opportunities: Tribal Summit proposed for pre- or post-meeting.
- Budget/funding re Agreements in Principals (AIPs) will be addressed in budget update and impact on sites.
  - Continued support?
  - By whom within DOE?
    - Environmental Management
    - NNSA
    - Legacy Management
    - Grand Junction
- AIP evaluation/report by Environmental Management:
  - Status?
  - Impact on Tribal programs?
- Goal of NNSA-Science-NE round robin session: Highlight issues at sites with multiple DOE office participation.
  - Overarching challenges among sites.
  - How to help EM with their relationships with counterparts within DOE?

Abbreviations in following sections: Q-Question; A-Answer; C-STGWG Comment; R-DOE Response to Comment

For referenced presentations in following sections, contact: Denise Griffin, NCSL, 303-364-7700; [denise.griffin@ncsl.org](mailto:denise.griffin@ncsl.org).

<b>Wednesday, March 26, 2003 cont'd</b>
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## STGWG Full Meeting

### Welcome from Co-Convenors and Invocation

**Dr. Raymond Loretto, Governor, Jemez Pueblo; and Tom Winston, Ohio EPA**

### Opening Comments and Agenda Review

**Sandra Waisley, Acting Director of Intergovernmental and Public Accountability,  
Office of Environmental Management (EM)**

- Welcomed Governor Loretto and new STGWWG members.
- Sandra replaces Martha Crosland; her direct phone number: 202-586-3087
- Shifts in responsibilities within her office.
  - Brandt Petrusek (202-586-4818) is new point of contact (POC) for STGWWG.
  - Catherine Volk will work full time on EM Agreements in Principal.

**Report Out from Executive Session**

- Concern about lack of forward movement on Implementation Plan for American Indian Policy.
- CERT request for membership: STGWWG recommends against at this time.
- Intergovernmental streamlining / joint Fall meeting proposal:
  - STGWWG supports; has some concerns but none considered roadblocks.
  - Presents an opportunity to move forward with Tribal Summit.

**DOE Budget Update**

**Roger Butler, DOE Deputy Assistant Secretary for Policy, Planning and Budget, EM**

(See presentation)

- EM is focused on accelerated cleanup; has strong support from OMB and congressional staff.
- The ten Top-to-Bottom Review project teams are all active and are expected to complete their work by end of the fiscal year.
- Projected: EM budget peak in FY05, with an FY08 budget down around \$5 billion.
- When the work is done at a facility, the dollars will go away.
- EM focusing now on separating direct cleanup costs from indirect or support activities.
- Performance metrics are available for each site and program.

Q: Timing on release of FY03 dollars: What happens if agreements can't be reached?

A: Assumption is that agreements will be reached.

Q: Tribal budget figures for FY04?

A: Sandra will provide detail for Tribal members.

### **Review of Tribal, State and Local Government and Other Stakeholder Activities, 1999-2002: S. Waisley**

- Reviewed universe of EM stakeholder activities.
- 140 activities complex-wide; \$170M in activity.
- To ensure that activities were requirement-based within EM mission.
  - Value added
  
- Analysis criteria:
  - Program requirement
  - Stakeholders following original agreement
  - Duplicative?
  - Scope/budget creep
  - Reporting requirements/enforcement
    - Tribal governments provide best reports; tie performance to budget.
  
- Categories
  - Agreements in Principal (AIPs)
  - State/county/city grants
  - Tribal agreements
  - Site-Specific Advisory Boards (SSABs)
  - Non-profits (NCSL, e.g.)
  - Impact assistance – NM
  - University/college grants
  - Minority education

Q: Evaluation available?

A: It's not an official report yet.

Q: Will Environmental Management try to phase out Tribal programs by '04?

A: No.

C: Timing of DOE funding cycles stress Tribes' ability to fund workplan and meet deliverables.

C: Same issue at Rocky Flats – issue is pervasive. Need to know when sites provide dollars vs. when headquarters puts it in its budget.

R: Should not happen normally – '03 is tough year.

C: More information offline is requested.

C: Feedback on evaluation would be helpful to program recipients of agreements to improve their performance.

R: Program analysis will be ongoing. Next phase is to develop action plan.

C: Would like to see more interaction with program recipients re lessons learned on both sides, e.g., performance measures quantified, etc.

R: Follow-up actions are to include feedback with recipients.

C: Recipients need to understand what is required by DOE.

Q: Copy of budget presentation?

**Action Item:** EM will send electronically.

Q: Project breakdown structures (PBSs) at website – by site?

A: Yes.

Q: Baselines to reflect how projects to be funded by both sites and HQ?

A: Yes.

Q: There are non-EM activities not accounted for in budget baselines or in other organizations within DOE. How to be accounted for and budgeted (excess facilities)?

A: Discussion ongoing at Jessie Roberson's level – how to address the inventory of facilities – early in the process.

Q: Will Rocky Flats' closing in '06 free up more dollars for other sites?

A: No, that is not included in the profiles.

C: Frustrating that there is little appreciation of past history efforts. It would be helpful to acknowledge that things have changed. More flexibility in dollar use would be appreciated.

C: Would be helpful to get status report on DOE's 10 Corporate Teams and be able to have input.

**Action Item:** S. Waisley will follow up and provide status where available.

C: Would like more information on the 16 metrics developed since the Fall. Some sites have been meeting the metrics for their sites, but entire 16 are not known

**Action Item:** EM will look into providing the 16 metrics to STGWWG members.

C: Information from field not always complete; need complete context and better information exchange. A website would be helpful in providing EM-wide information to both states and Tribes.

## **DOE Program Offices involved in Sites (EM, NNSA, Science, Nuclear Energy): Putting the Pieces Together**

### **STGWWG Round-robin Discussion**

- Greater cleanup and less reliance on perpetual institutional controls (ICs) can be achieved by working together.
- Excess facilities need to show up in 'someone's' long-term plan.
- Los Alamos National Lab – Joint and competitive funding within DOE.
- Would like DOE organizational chart and mission statements.
- EM incentives to transfer responsibility to Office of Legacy Management: May result in different remedial solutions.
- Will Office of Legacy Management allow for more robust LTS plans? What will the role of Legacy Management be?
- Who has responsibility for the integrated view and decision making?
  - Need to 'force' an integrated strategic plan vs. independent program plans.
  
- How to engage and obtain commitments from program areas other than EM?
  - Tribes experience similar issues.
  - Whom do we talk to and how do we communicate?
  
- Public views DOE as an entity vs. sub-parts of an entity.
- EM no longer primary decision-maker regarding cleanup and sites need to bring states, Tribes and others into the process.
- How to move forward with DOE? With whom do we work in moving forward

## Site-Specific Issues

- At Oak Ridge: DOE determines how issues will be addressed and by whom.
- Does CERCLA need to approve every Decommissioning & Decontamination (D&D)?
  - D & D falls within EM actions.
- Pathways can determine decision documents – CERCLA or active waste management.
- Idaho: How decisions made by one part of the organization affects other parts of the organization and DOE as a whole.
- Tribes/INEEL: Acceptance of new fuel and impacts of additional fuel acceptance. Where does LTS figure in new mission regarding nuclear issues?

## **Rocky Flats (RF) Closure Project**

**Richard DeSalvo, Acting Assistant Manager for Environment and Stewardship, DOE-RF**

**Mark Sattelberg, Senior Contaminants Biologist, U.S. Fish & Wildlife Service, RF**

**Dave Shelton, Vice President, Environmental Systems & Stewardship, Kaiser Hill**

**Steve Tarlton, Rocky Flats Oversight Unit Leader, Colo. Dept. of Public Health & Environment**

(See presentations)

Q: Remaining contamination will require enforceable Institutional Controls (ICs). Who pays?

A: Stewardship planning recognizes need for ICs to achieve regulatory compliance. Enforceability will rely on final site cleanup agreements including final land use. DOE will retain control of some contaminated land. Post-closure agreement could be part of final RFCA (Rocky Flats Cleanup Agreement) and final ROD (Record of Decision).

C: State of Colorado would like agreement on ICs sooner than DOE's timeline. State would like DOE to sign on to covenant.

Q: How many state people involved in Rocky Flats closure?

A: Three different teams of people working on different aspects of closure.

C: Description of project is classic emergency response effort.

Q: How are ICS being addressed within Colorado Dept. of Public Health and Environment?

A: Developing reporting requirements, documents and decisions, information management mechanisms. Processes and mechanisms continue to evolve with emphasis on continuous improvement.

C: Problematic issues for sites with continuing missions:

- Risk reduction of more complex issues, until wastes can be transported offsite.
- Stovepipe elimination easier with closure site vs. cleanup site; dealing with different missions of different program areas.

C: Common site vision doesn't have to be closure, but is necessary first step.

C: Prior to closure agreement, Rocky Flats had multiple missions, but single regulator aspect (state) was effective.

C: How to prioritize risk: Look at site holistically; easier with EM site.

C: Determine role of contractor in agreement discussions.

Q: How to put a funding mechanism in place with continuing cleanup missions?  
How to not have contractors make a career of site cleanup?

A: Kaiser-Hill must accomplish the mission. Define mission with DOE and **incentivize** accomplishment of mission.

A: Predictable, plannable project leads to stable funding; shows that specific things can be done.

Q: Does Fish and Wildlife Service (FWS) have requirements/criteria that DOE must meet?

A: Memorandum of Understanding (MOU) between DOE and DOI (Department of Interior) still in process; FWS has general idea of what to expect.

Q: Baseline process that enables priorities and roles in that process?

A: Consultative effort among parties early; realize that they're dealing with uncertainties, and remain flexible.

First, need credible baseline as detailed as possible, recognizing uncertainties. Could parties agree on 'reasonableness' of baseline issues? Develop performance-based approaches for each project. Need to be flexible.

Taking a problem-solving, collaborative approach helps drive to common, creative solutions/processes.

Q: Is part of the success due to allowing the contractor to talk directly with regulator?

A: Yes, DOE manages the contract, rather than the contractor.

Q: How does third party ownership of mineral rights affect agreement?

A: Issue will be negotiated in MOU between DOE and DOI.

Q: DOE thoughts on its resolution?

A: Title work has been completed to identify interests. Some mineral rights are subordinate to federal government rights. Still looking for solution.

Q: Some things still in place that will require perpetual oversight. Has state identified the required resources?

A: Still trying to get a handle on the resources; looking at the other sites for models.

Q: Issue of lead regulator?

A: State coordinates regulator authority among EPA, etc. – a collaborative process.

**Thursday, March 27, 2003**

**Transportation Update**

**Patrice Bubar, Associate Deputy Assistant Secretary, DOE Office of Integration and Disposition**

(See presentation)

- Waste shipments restarted 3-26-03.

Q: Identify waste streams that are non defense?

A: Yes, identify site-by-site the defense pedigree of the waste.

Q: Acceptance of PCB waste at WIPP?

A: Still working on issue. EPA/NEPA/NM all working to resolve issue.

Q: Characterization of shipments at WIPP facility vs. earlier in process?

A: Confirmation of characterization at facility; mobile units. Multiple paths currently trying to 'nail down' efforts. Mobile units at sites that need them.

Q: Legacy waste at Los Alamos to WIPP?

A: Characterization of waste at Los Alamos: Nuclear Regulatory Commission (NRC) agreed to scale back requirements of shipments to WIPP.

Q: Rail line at Carlsbad?

A: Yes, think so.

Q: Corporate team looking at transuranic (TRU) waste to particular sites? Will we be brought into loop?

A: Yes, will be fed into the baseline.

Q: To what extent is Envirocare being held to Class B-C license?

A: Effort is to send to DOE sites. It's a big issue for Rocky Flats -- not counting on commercial entity.

Q: How are materials transported via private couriers tracked, and how can Tribes learn more about these shipments vis-a-vis emergency response?

A: DOE does not track hazardous shipments; the site knows what is on the road.

Q: Defense pedigree of West Valley waste?

A: It's a high priority; attorneys are looking at issue.

Q: In one instance, waste was tracked by satellite, but took 90 minutes to communicate. Why not GPS tracking?

A: Time lapse was between connections via telephone.

Q: Re coordination with other DOE offices: Is NNSA on transportation teams?

A: NNSA is on packaging and transport, but not spent nuclear fuel (SNF). RW is on team for SNF.

## **DOE Risk-Based End States Cleanup Project**

**David Geiser, Director, DOE Office of Long-Term Stewardship**

(See presentation)

- Risk-Based End States (RBES) policy and guidance docs sent out in December:
  - Sent to 55 groups; received 700 comments.
  - Has just completed edits on comment resolution document; will go out in April.
- Grand Junction Office (GJO) -- Legacy Management operations in the field; 120 operating sites – down to 20 core sites by 2010.
- There has been little consistency in DOE land use planning, consistent standards.
  - Different groups at each site have differing views on land use.
  - There is not as much agreement as states sometimes think.
- Oak Ridge Reservation – ‘best in class’ in end use planning.
- Makes sense to move land off DOE books if no longer part of DOE mission; return to public domain or to private entities.
- Three main issues:
  - Corporate land use vision (what DOE expects of the site)
  - Groundwater strategy

- Cultural change (how DOE views its land holdings)

**Donna Bergman-Tabbert, DOE–Grand Junction**

**Dan Collette, Manager, Technical Services, S.M. Stoller Corp., Grand Junction**

(See presentations)

- Challenge is in achieving **enforceable** institutional controls (ICs).

Web Demonstration:

- Long-Term Surveillance and Maintenance (LTSM) homepage:  
<http://www.gjo.doe.gov/programs/ltsm>
- Geospatial Environmental Mapping System (GEMS) site:  
<http://gems.gjo.doe.gov>
- Only sites in Legacy Management will be on this web site (not NNSA, etc.).
- Information online is information already publicly available.
- Computer security issues were considered.

Q: A concern with electronic media is changing technology, wherewithal to update technology to review information?

A: Tool is seen as working tool – not only source for the information. Need to keep in nonproprietary formats.

**Office of Legacy Management (OLM)**

**Michael Owen, Director, DOE Office of Worker and Community Transition**

(See presentation)

- Office overview:
  - Principal secretarial office (PSO); will report directly to Undersecretary Bob Card.
  - Office of Long-Term Stewardship and National Energy Technology Laboratory (NETL) will move to OLM.
  - OLM funding starts in FY04; will have own budget.
  - OLM allows EM to focus on cleanup.
- OLM will handle:
  - Hard legacies – land, facilities.
  - Soft legacies – employees, contractor work force.

Q: Standards/criteria of Corps sites to move into Legacy Management?

A: Grand Junction Office (GJO) has developed protocols with the Corps to receive their sites – monitoring and documentation requirements. If remedy fails, then goes back to Corps for remediation. Corps is working with regulators to meet their requirements. GJO continues to work with Corps on requirements and for transfer.

Q: Legacy Management involved in LTS requirements: Can you refuse sites?

A: Long-Term Surveillance and Maintenance (LTSM) is mission; not involved in EM remediation decisions. Decisions to accept sites, or not, are still being determined.

Q: Merging of LTS and worker benefits: Resulting in competition for funding. Is there enough money?

A: Worker benefits come with specific line items -- earmarks pension trust funds – shouldn't be too much competition.

## **Video Presentations**

**Shoshone-Bannock Tribes: "Closing the Circle"**

**Nez Perce Tribe: "Oral History Perspectives on the Hanford Nuclear Site"**

**Nez Perce Treaty Book Presentation**

**Aaron Miles, Nez Perce Tribe**

## **Tribal Issues Session**

**Kristen Ellis, Intergovernmental Liaison Officer, Intergovernmental and External Affairs, Office of Congressional & Intergovernmental Affairs (CI)**

- Steve Grey unable to attend; apologies from HQ.
  - Steve currently serves as POC for Los Alamos.
  - General Counsel approval of Steve as Director of Indian Affairs (DIA) is pending; title of Acting Director was inadvertently being used without permission.
  - DIA position was previously held by Victoria Thornton; while Vicki was at Education Dept., Bob Paduchik answered those duties. Bob has left DOE.

- Changes in Office of Congressional and Intergovernmental Affairs
  - Acting Assistant Secretary is Shannon Henderson.
  - Herb Jones is Deputy Assistant Secretary.
    - Is from South Dakota; has experience with Tribes.
    - Has been with DOE two months.
    - Is motivated to move forward with the Indian Policy.
    - Has had multiple consultation visits with Tribes.
    - Recently convened an Indian POC conference call – first in over a year.
  
- Indian Policy Implementation Plan
  - DOE recognizes these are issues of great interest and concern and that there has been an appearance that the Indian Policy was being neglected.
  - Deputy Energy Secretary Kyle McSlarrow has just directed CI to address Implementation Plan and Tribal Summit and to invite POCs to assist with strategy and planning.
  - HQ is aware of STGWG involvement in drafting current version of IP specific to EM.
  - Integral problem at DOE: Multiple program offices; difficult to create a quick solution.
  - Will form committees to move forward on Implementation Plan (IP), as directed in McSlarrow memo.
    - STGWG welcome to participate.
    - CI will be creating a committee shortly.
    - **Action Item:** Contact Kristen directly to be included in the selection process.
    - Role of POCs: Coordinate Indian issues for specific program offices.
      - POC list available on request; contact Kristen.
    - CI is clearinghouse for all information.
  
- Tribal Summit
  - McSlarrow memo (above) represents front office commitment to having summit..
  - Will have committee within POCs and among others to determine needs.
  
- DOE would like to change the usual mechanism of doing things:
  - Has been too much focus on one person being able to carry things out.

- o Want to develop mechanism for events proceeding more orderly, consistently.

Q: Agenda of Tribal Summit?

A: Emerged from American Indian Policy – has been promised for some time – to fulfill Tribal consultative agreements.

C: "DOI doesn't do energy and DOE doesn't do Indians" – Bill S424 will help.

C: Helpful to have both States and Tribes involved in land management/use decisions – and have an office within DOE to get the States & Tribes involved.

R: Cory Flowers is main contact in Legacy Management. Legacy Management deals with sites with **no** ongoing mission.

C: Hope that commitment to get American Indian Policy Implementation Plan extends beyond EM. (See STGWG white paper Dec. 02.)

C: General counsel has concerns with application DOE-wide, but there are commitments to move forward.

C: Government-to-government relationships refers to relationship with each Tribe ; consultation is two-way street.

C: Consultation with/notification of Tribes must be early on; deadlines must be reasonable to Tribes. Phone consultations are not adequate/acceptable.

### **Wrap-Up/Next Steps**

- Key Outcomes/Summary should include action items clearly defined to hold people accountable.
- See attached Action Item chart.

### **State and Tribal Government Working Group (STGWG)**

**March 26-27, 2003**

**Denver, Colorado**

### **ACTION ITEMS**

action item	contact/s	status as of 4/30/03
Electronic version of R. Butler budget presentation to STGWG	EM – R. Butler/S. Waisley	Completed
STGWG letter to DOE-EM re CERT request for STGWG membership	T. Winston	Completed
STGWG letter to DOE-EM re streamlining & joint Fall meeting w/ other intergovernmental groups	T. Winston	Completed
DOE organizational chart and office mission statements to STGWG	S. Waisley	Completed
Update / Status of DOE's 10 Corporate Project Teams to STGWG	S. Waisley	Completed (website not yet loaded for all teams; three currently posted)
Risk-Based End State (RBES) Policy to STGWG for revcom	D. Geiser	Completed
STGWG comments on RBES Policy to Geiser	Full STGWG	Due May 12, 2003
STGWG work with D. Frost on joint Fall meeting with other intergovernmental groups	W. Preacher / T. Winston	Ongoing
STGWG letter to Secretary Abraham expressing concern re Indian Policy Implementation Plan and interest in Tribal Summit	STGWG Tribal Issues Committee	To be completed
16 metrics that have been developed since last Fall: Distribute to STGWG	EM	Completed
Compile list of issues/challenges from "Putting the Pieces Together" discussion	T. Winston	To be completed
Work with EM on involvement of other DOE program offices (NNSA, Science, NE, OLM) in Fall meeting	W. Preacher / T. Winston	Ongoing
STGWG: Improved performance reporting to EM	T. Winston / D. Griffin	Ongoing

Contact Kristen Ellis in Congressional and Intergovernmental Affairs to express interest in DOE committee to be formed on Implementation Plan: 202-586-5810; [kristen.ellis@hq.doe.gov](mailto:kristen.ellis@hq.doe.gov)

STGWG Tribal Issues Committee

As soon as practical