

# STGWG

## STATE AND TRIBAL GOVERNMENT WORKING GROUP

### MEETING WITH THE U.S. DEPARTMENT OF ENERGY

MAY 11-12, 2005

LEWISTON, IDAHO

## MEETING NOTES

Q-question (STGWG); A-answer (DOE) ; C-comment (STGWG) ; R-response (DOE)  
Presentation handouts available from Denise Griffin, NCSL, [denise.griffin@ncsl.org](mailto:denise.griffin@ncsl.org)  
Acronym list on last page

WEDNESDAY, MAY 11, 2005

## STGWG EXECUTIVE SESSION

Tom Winston, STGWG Co-Convenor, and Willie Preacher, Tribal Issues Committee Co-Chair, thanked the Nez Perce Tribe for their hospitality and for arranging the Snake River tour of Hell's Canyon on May 10.

### REPORT OUT FROM TRIBAL EXECUTIVE SESSION ON MAY 10

*Willie Preacher, Tribal Issues Committee Co-Chair*

*Neil Weber, Long-Term Stewardship Committee Co-Chair*

The following topics were discussed during the tribal session:

- o DOE Indian Policy Implementation Plan: It needs to be part of next Tribal Summit, date of which is not yet determined.
- o Environmental Justice
  - DOE and EPA are trying to ensure that environmental justice is considered as part of actions taken in communities.
  - There are concerns about the impact of new outside groups on established relationships. Tribal activist groups are going after funds and damaging the government-to-government relationship. We need to make DOE aware that these groups need to go through proper channels.
- o Inviting tribal state legislators to attend STGWG meetings
  - NCSL Roundtables bring together legislators from states that host DOE sites.
  - It's important to involve legislators in STGWG also because NCSL's constituency is legislative.
  - The fall meeting would provide an opportunity to bring legislators in for a separate meeting and attend STGWG sessions as well.
  - It would be good to include legislators from states with the big private waste operations: Utah-Envirocare, and Texas-Waste Control Specialists.
- o Inclusion of non-Environmental Management DOE programs at the fall meeting

- If there's time available on the agenda, they could do brief presentations on such areas as internships, grants, and technical assistance available to Tribes. These programs are sometimes slightly obscured, hard to find.
  - We would need to ensure this does not dilute environmental restoration efforts important to STGWW.
- o General agreement on :
- Inviting tribal state legislators to the fall meeting.
  - Inviting non-EM programs to do presentations or provide handouts.

### PEER REVIEW

*Stuart Harris, Confederated Tribes of the Umatilla Indian Reservation*

- o The quality of cleanup work at Hanford site is a major concern to the Confederated Tribes of the Umatilla Reservation (CTUIR). They fear a relaxation of health standards. Tribal scientists are using the same data as DOE but coming up with different interpretations.
- o CTUIR asked that STGWW support efforts to secure funding for peer review of cleanup work. Currently the Tribes have no recourse if they disagree with DOE interpretation of pollution data, projections, etc.

Q: How specifically can STGWW help or contribute?

A: We could use experts knowledgeable in the area.

C: Rocky Flats has used peer review extensively. There is some controversy now over soil action levels. It's an advantage to have national experts who are *objective*.

C: Yakama has witnessed many of the same issues when dealing with risk assessment. The problem is that there is no risk assessment model that allows inclusion and consideration of the cultural component. DOE and EPA have refused to allow them to help develop a proper national model.

C: We must bear in mind: "**An injury to a resource is an injury to people.**" A notable example is the known high risk of cancer from chemicals found in salmon.

C: STGWW would support peer review in general and seek out experts, but the group historically has refrained from making specific recommendations on specific sites. Peer reviews have been used with success in some instances, not in others. It's a valid mechanism if used properly.

C: Tennessee supports peer review, especially for technical data, e.g., groundwater modeling. They have had peer review of DOE *data* and require DOE to support independent review of its data. The state would not support peer review of final CERCLA decisions.

C: In California, peer review is used for cleanup of specific substances. Peer review should not be used to substitute for regulatory decisions. Scientists shouldn't be perceived as supplanting the regulatory process.

C: It's understood that peer review has its limitations.

- C: Missouri is willing to share experiences where peer review has worked positively.
- C: Colorado will send information on Rocky Flats peer reviews to NCSL for distribution to the group.

#### END STATES

- o There have been no major initiatives from DOE-HQ recently. It's an ongoing process but not the national rollout as envisioned by Jessie Roberson [former EM Assistant Secretary]. With Paul Golan's departure, the outlook is unclear.
- o The End States Working Group will work to shepherd issues from local sites on up the DOE ladder. [Tom Winston and Willie Preacher are STGWWG representatives to the working group.]

C: All the states and Tribes have different cultures, different concerns – end state visions won't be the same for all.

C: We can't let end states die on the vine with Paul Golan's departure because there *will be* end states.

#### OTHER ISSUES

- o STGWWG received a response from Secretary Bodman to the joint letter [NGA, NAAG, ECA, ECOS, STGWWG] sent to him in March in followup to the December 2004 intergovernmental meeting. The response was general in nature and did not address specific items outlined in the letter.

- o Steve Gunderson provided a status report on Rocky Flats (RF). See handout.
  - Last shipment of TRU waste left RF on April 19; shipped to WIPP.
  - Most of the remaining low-level waste being shipped by rail to Envirocare in Utah.
  - There are no orphan drums of waste remaining; all waste streams will be dispositioned offsite.
  - Preparations are underway for establishment of a Rocky Flats National Wildlife Refuge.
  - All work at RF has been conducted as accelerated actions. Once completed, traditional CERCLA process still needs to be conducted.
  - Negotiations on a post-closure regulatory long-term stewardship agreement are ongoing.
  - In the past month, DOE reversed its position and agreed to comply with the state's environmental covenant law; it had been a major obstacle to a successful regulatory closure. It's estimated that regulatory closure will take one year beyond physical closure.

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## STGWWG OPEN SESSION -- DAY ONE

### WELCOME, INVOCATION, OPENING REMARKS

*Tom Winston, Ohio EPA, STGWWG State Co-Convenor*

*Willie Preacher, Shoshone-Bannock Tribes, STGWWG Tribal Issues Committee Co-Chair*

*Governor Dale Martinez, Pueblo of San Ildefonso*

*Melissa Nielson, Director for Internal/External Coordination, DOE Office of Environmental Management*

## OFFICE OF NATIONAL TRANSPORTATION (ONT)

*Jay Jones, Office of Civilian Radioactive Waste Management (OCRWM), DOE Office of National Transportation*

Session conducted via teleconference. See presentation handouts: ONT update, matrix of 39 Tribes along potential shipping routes to Yucca Mountain, and sample of Gary Lanthrum letter to tribal leaders asking for input on protocols for consulting with affected Tribes.

- o Section 180(c) of Nuclear Waste Policy Act requires DOE to provide funding and technical assistance to states and Tribes for training local public safety officials for routine transportation and emergencies:
  - Covers all modes of transport
  - Funding will come from the Nuclear Waste Fund
  - Implementation of 180(c) was identified by stakeholders as most the significant issue for states, Tribes, and local communities.
- o OCRWM will rely on relationships developed through TEC and past DOE shipping campaigns to continue to develop tribal relationships.
- o A collaborative process with Tribes and other stakeholders will be integral in implementing a transportation system that's safe, secure and merits public confidence.
- o It's important for Tribes to attend Transportation External Coordination (TEC) meetings in order to stay involved. TEC web site: [www.ntp.doe.gov/tec](http://www.ntp.doe.gov/tec).

Q: What personnel changes have taken place since the election?

A: Margaret Chu has left; their deputy director is also leaving. Paul Golan just started. Eric Knox, who was chief of staff for Bob Card, has come to front office also.

Q: Will states and Tribes have access to DOE transportation models?

A: Yes. Jay will send the information on how to contact those with the models to NCSL for distribution.

## IDAHO NATIONAL LABORATORY (INL)

*Kathleen Trever, Coordinator for INL Oversight, Idaho*

- o Note new email: [ktrever@deq.idaho.gov](mailto:ktrever@deq.idaho.gov).
- o INEEL became the Idaho National Laboratory on Feb. 1, 2005. The facility now has separate contracts for cleanup and laboratory/research. The privatized treatment facility run by BNFL reverted to DOE ownership on May 1, 2005, and is now run by a third contractor.
- o Spent Nuclear Fuel. Doe is making progress on getting fuel into dry storage and out of aging basins. INL has received fuel from West Valley, Oak Ridge and other sites, consistent with the terms of the 1995 court settlement. INL has issues in common with basin cleanup with sites like Hanford and Savannah River. A key concern is the lack of a viable repository and the problems with Yucca Mountain.
- o Transuranic (TRU) Waste. INL contains most of the Rocky Flats TRU generated before the early 1980s. Idaho also received waste from some of the Ohio sites. Some waste from other sites - such as Los Alamos, Rocky and Ohio - has been sampled at specialized facilities in Idaho so it can meet WIPP requirements.

- o INL shares the issue of retrieval of TRU waste buried before 1970 with Hanford and Oak Ridge. DOE retrieved a small amount of waste from the Pit 9 project. Now the contractor is using a simplified backhoe and air support building approach – based on some Rocky Flats concepts – for a larger scale retrieval at a pit with higher concentrations of TRUs and volatile organics.
- o INL is behind on WIPP shipments. Because of an upcoming court deadline, INL will be taking up the bulk of WIPP's resources for the rest of the year.
- o Tank waste at INL involves two issues: management of residuals and soil contamination, and treatment of liquids. INL shares tank issues with Hanford, Savannah River and Oak Ridge. INL and Savannah River will use a classification process for tank residuals established by the 2005 Defense Authorization Act. The process involves consultation/oversight of the Nuclear Regulatory Commission and states. It allows DOE to leave some residuals on site if the residuals meet low-level waste disposal standards.
- o The new cleanup contractor proposes to treat remaining liquids using steam reforming. DOE proposes to classify this waste as TRU waste for disposal at WIPP. That classification will depend on New Mexico's acceptance. The National Academy of Sciences is conducting another evaluation of Hanford, Savannah River and INL tank waste.
- o INL must also decommission some of its old reactors. INL shares the issue of reactor decommissioning with Hanford and Savannah River.
- o Moving forward with cleanup and new research missions at INL involves the balancing of competing interests. Will have to address differences in values, philosophies and policies. INL is often referred to as being "in the middle of nowhere," e.g., but it is an important place to Tribes and others who value the desert, whether it be its history, geology or ecology.
- o A major question will focus on what contamination may stay behind and how to manage it – i.e., what should cleanup look like when we're "done" and how should the area be managed for the long term?
- o For new projects and new facilities that involve radiological materials, chemicals, explosives or other hazardous materials, we need to identify what will happen when the project ends. Some projects, like the proposal to consolidate production of plutonium-238 for generators for space exploration and national security uses, or a new nuclear reactor, will also involve the balance of differing values before they move forward.

C: DOE needs to remember Tribes in cleanup decisions. Treaty rights must be recognized and upheld. It's important to maintain an ongoing dialogue with Tribes as cleanup decisions are made.

### HANFORD NUCLEAR RESERVATION

*Shirley Olinger, Deputy Manager, DOE Office of River Protection (ORP)*

See presentation handout.

- o Closure of Hanford Site divided into two major scopes of work:
  - ORP – Retrieve and treat Hanford's tank waste and close tank farms
  - Richland – Disposition current waste inventory and cleanup and disposition Hanford's facilities and waste sites.
  - Completion date is 2033.
- o There have been construction delay issues for a variety of reasons, including seismic.

- o It's still the intent to send Hanford's high-level waste and spent nuclear fuel to Yucca Mountain.
- o Hanford Trustees. The relationship between DOE and the other Trustees has been strained over the last year due to a lawsuit by one of the Trustees and notices of intent to sue by three others. Trustees have been active in Hanford but would like to see more natural resource injury integration and technical assistance funded by DOE. Web page: [www.hanford.gov/public/boards/nrtc](http://www.hanford.gov/public/boards/nrtc).

Q: Who are the trustees of Hanford?

A: Department of Energy, Department of the Interior, Department of Commerce, Washington State, Oregon, Yakama Nation, Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation.

C: NGA has started discussions with Matt Duchesne, DOE-EM, to understand issues across the complex. NAAG is also interested in Natural Resource Damage Assessment.

C: It would be good to get Matt Duchesne's list of questions from the St. Louis Meeting in January.

R: When Tom Winston receives them, he'll forward to NCSL for distribution to the group.

Q: Is there NGA information that can be shared with STGWG?

A: Tom Winston will follow up and forward to NCSL as appropriate.

Q: What is the reason for the 12-13% budget cut in '06 and what does it mean?

A: ORP budget was cut to help decouple the technical issues from the vitrification facility. The ORP side has slowed TRU retrieval to work through technical and legal issues.

C: Washington State disagreed that "regulatory uncertainties" should slow the process of cleanup.

#### ENVIRONMENTAL JUSTICE NATIVE AMERICAN TASK FORCE

*Melinda Downing, Environmental Justice Program Manager, DOE Office of Legacy Management*

*Quentin Pair, Department of Justice, Chair, Federal Interagency Native American Task Force*

#### ENVIRONMENTAL JUSTICE AT DOE -- Melinda Downing

- o We are sometimes approached by outside groups wanting to be involved with our office, but we're respectful of existing government-to-government relationships and the DOE American Indian Policy.
- o Executive Order 12898, signed in April 1994, makes environmental justice (EJ) part of the decision-making process at DOE. EJ is being institutionalized. EPA is the lead agency.
- o DOE is committed to EJ at a national level. Technical assistance, training and computer access are part of DOE's EJ commitment.
- o Future success is based on paving the way for future leaders. DOE is providing education on environmental justice through the EM Education Initiative. The initiative provides internships and scholarships.

FEDERAL INTERAGENCY WORKING GROUP/NATIVE AMERICAN TASK FORCE -- *Quentin Pair*

- o Environmental justice comes out of several national movements, including the environmental and civil rights movements.
- o The Federal Interagency Working Group (IWG) resulted from Executive Order 12898 [see above].
- o A primary tenet of EJ is to **hear from the affected community** on what they feel is the problem and bring them to the table to help define the problem and sort out the solution.
- o The Native American Task Force is a subgroup of the IWG. The three things that make Tribes unique in the EJ realm are:
  - o Sovereignty
  - o Consultation
  - o Trust Responsibility.
- o At a roundtable held two years ago, more than 40 tribal, state and federal representatives met to discuss EJ in tribal areas, including recognition of sovereignty and implementation of government-to-government relations in EJ.
- o IWG established EJ demonstration projects; see [www.epa.gov](http://www.epa.gov), go to EJ link. Projects include:
  - Tribal wind power – effort to put generated power on grid;
  - Cheyenne River Sioux Tribal Park – cultural and spiritual park to pass on Tribe's culture to next generation;
  - Alaska Inuit village solid and hazardous waste project; and
  - Enhancing tribal consultation to protect resources of religious and cultural significance.

C: Those efforts are appreciated but a lot of proposals are patronizing at best. The black community in America has forced the government to take a hard look at itself. But a travesty continues in the denial of what's been done to indigenous people. EJ is a good start but does not get to the crux of the matter for Tribes.

R: There are those who do care and are affirmatively trying to address all the issues.

Q: Does DOE have guidance about implementing Executive Order 12898? What happens if it is not followed?

A: Each program manager is responsible for implementation.

A: The president has twice requested a report and one was submitted to EPA as a result of that request. More than 40 states have some environmental justice initiative.

Q: What happened in the Los Alamos collaboration with a tribal activist group?

A: Melinda's office met with communities at their request and then later met with LANL. There is an active EJ effort at LANL.

C: You need to involve DOE Tribal Points of Contact in EJ activities.

Q: What does environmental justice offer other than another place at the table?

A: It's a positive attempt to bring responsibility to the decision-making process and an effort to avoid wasteful lawsuits.

## NEZ PERCE TRIBAL PERSPECTIVE ON DOE-HANFORD ISSUES

*Aaron Miles Sr., Natural Resource Manager*

*Rebecca Miles, Tribal Council Chairman*

*Randy Minthorn, Tribal Council Member*

*Gabriel Bohnee, Director, Environmental Restoration and Waste Management*

Rebecca Miles, newly elected Tribal Council Chairman, and first female chairman in the Tribe's history, welcomed STGWG to Nez Perce country.

- o The Nez Perce are federally recognized as one of three Tribes affected by the Hanford Nuclear Reservation. [Yakama and Umatilla are the other two.]
- o In the Treaty of 1855 the Nez Perce ceded millions of acres of land to the federal government in exchange for hunting, fishing and gathering rights. The present boundary was formed in the Treaty of 1863, but ceded lands reach into Washington and Oregon.

VIDEO PRESENTATION: Closing the Circle: Nez Perce Perspective on the Hanford Nuclear Site.  
*"The land provides food and water, beauty and shelter, and a sense of place."*

### TRIBAL ENVIRONMENTAL RESTORATION ACTIVITIES

- o Biocontrol center -- Tribe is leading recovery efforts for restoring habitat from noxious, non-native species through use of insects that consume them
- o Wildlife -- Tribe is leading the recovery effort for wolves; received an award for work on reintroducing the grey wolf. They've shut down the big horn sheep harvest. Have asked U.S. to stop sheep grazing due to illness passed from domestic sheep to big horn.
- o Water resources -- Potlatch paper mill has been pouring effluent directly into the river; Tribe is working with them on ways to cut down on the pollution.
- o Biodiesel -- Tribe wants to grow its own fuel, plants that don't require a till system.
- o Tribe favors breaching of the Lower Snake River dams that adversely impact salmon populations.

### OTHER ACTIVITIES

- o Starting a Tribal Historic Preservation Office
- o Developing a new horse breed, the Nez Perce horse
- o Tribe's signature Lewis & Clark bicentennial event will be in June 2006.

Q: There are three Tribes affected by Hanford. How do you work together **and** maintain your distinct identities?

A: A good question. 99% of concerns may be the same; the remaining 1% is where the uniqueness comes in.

A: Also, the Tribes meet in settings other than with the federal government. They're affiliated with each other in many ways -- the Intertribal Timber Council and the Intertribal Transportation Forum, to give two examples.

C: The Intertribal Timber Council was created by those who have significant timber resources. Corporations, banks and other entities tried to resolve water rights without consulting with the Tribes. The Tribes made it known they were going to withdraw their money from the banks

involved. It led to involving Tribes in the water rights issue – a good example of Tribes working together to gain mutual benefit.

**THURSDAY, MAY 12, 2005**

**STGWG OPEN SESSION -- DAY TWO**

It was announced that Mary Ann Fresco, Director of Diversity and Outreach at the National Nuclear Security Administration, is looking for an intern to work with tribal programs. Interested parties can contact her at [maryann.fresco@nnsa.doe.gov](mailto:maryann.fresco@nnsa.doe.gov).

**TRIBAL ISSUES**

*Steve Grey, DOE Director of Indian Affairs, Office of Congressional and Intergovernmental Affairs (CI)*

- o The Acting Assistant Secretary of CI, Jill Segal, sent her regards to the working group.
- o The Department is very committed to government-to-government relations with Tribes; changes in administration have not changed that.
- o Communication with tribal leadership is very important to DOE. A big part of Steve's job is to follow up when tribal leadership contacts the Department.
- o Steve has delivered a comprehensive tribal packet of information to Secretary Bodman. There are still some key tribal area positions open at DOE following the election.
- o Was pleased to hear the Environmental Justice presentation. The Native American Task Force addresses all issues of concern. The ability to network within the government is a very good mechanism.
- o Steve's site visits to STGWG Tribes have been completed. He met with tribal leaders and took back to DOE the importance of work it does with Tribes. Good to see young people participating.
- o As his schedule allows, Steve will do his best to continue to visit the Tribes, listen to tribal leadership and take their concerns and advice to the Department.
- o Most Tribes are familiar with Environmental Management component of DOE but are also looking at other areas where DOE can contribute to and work with Tribes – education, internships, scholarships, and technical assistance, e.g. Steve noted that Rebecca Miles, Chairman of the Nez Perce, is a former DOE intern.
- o Economic development is another area where Tribes and DOE can work together to sustain economies and create jobs for young people.
- o Within headquarters and in the field, there's a strong need to let tribal leaders know about the vast resources available to them. Steve will continue to explore DOE resources and correspond with the Tribes and the tribal Points of Contact about opportunities.
- o Tribal Summit: Steve wants to let Secretary Bodman know about past efforts and where DOE should go next, but it takes time to get up the Department chain of command. CI has asked that tribal issues be elevated in the Department.
- o HR6 [Energy Policy Act of 2005] has passed House and moved to Senate. Steve's office is getting a lot of questions about what's in it, which Tribes will benefit, etc. Title V of the Act is the Indian Tribal Energy Development and Self-Determination Act of 2005. It addresses how to

look at Indian energy as whole across the nation and establishes an Office of Indian Energy Policy within DOE. Specific areas include:

- Promoting tribal energy development and efficiency
- Reducing or stabilizing energy costs
- Enhancing tribal energy and economic infrastructure
- Bringing electrical power to Indian lands
- Grants and low interest loans to carry out programs.

See <http://thomas.loc.gov/>; select "Enter bill number" and enter HR6 in search box. Senators Dorgan and McCain are very active in the legislation.

Q: Is it correct to say that no action will be taken on the Indian Policy Implementation Plan and the next Tribal Summit until the CI program office hierarchy is in place?

A: On the Summit, they're awaiting concurrence from the front office. Re the Implementation Plan - Steve has talked to programs that have a tribal component and has asked them to determine what process they'd use for implementation and try to bring it into one shop - to get at a comprehensive effort/approach. They're trying to assemble the pieces to put together the overall plan.

C: We need someone to tell DOE about the **substance** of tribal concerns. There's a problem in giving "titles" to certain issues, e.g., "Status of Implementation Plan for Indian Policy" - does this promote the idea that true consultation doesn't have to be done until the Implementation Plan is fully in place? **Consultation** is a primary provision of the DOE Indian Policy and should therefore be **ongoing and consistent**, regardless of the status of the Implementation Plan.

C: Yakama would like to have Steve come and visit them also, not just the Hanford site.

C: It's important to remember that economic development is not the same level of concern for all Tribes. Environmental cleanup remains the priority issue for STGWW Tribes.

C: Concur. Don't lose sight of largest concerns of STGWW Tribes. Don't put other issues ahead of cleanup.

C: Jemez received a letter in 2004 saying all money for renewable energy on tribal lands was being eliminated and the focus would be entirely on *non-renewable* energy sources. Jemez is looking at funding for *geothermal* and would like DOE to reconsider its focus on non-renewables.

#### **STGWW EXECUTIVE SESSION REPORT OUT**

Tom Winston provided a summary of the Executive Session on May 11, including three decisions that were reached during the session:

- STGWW will invite non-EM programs to do presentations at the fall intergovernmental meeting as an effective way of getting information out about resources available;
- STGWW endorses inviting state legislators to the fall meeting to take advantage of the natural synergy between state elected officials and STGWW; and
- STGWW endorses the peer review process and believes it is a tool that adds value but is not a substitute for regulatory processes.

## ENVIRONMENTAL MANAGEMENT UPDATE

*Frank Marcinowski, Deputy Assistant Secretary for Office of Logistics and Waste Disposition Enhancements, DOE Office of Environmental Management (EM)*

See presentation handout.

- o On the question of where EM fits within the Department, the job is to explain to the new Secretary what EM is about. Frank is a proponent of EM.
- o One aspect of Frank's management style carried over from work in the private sector: the relationship between *productivity* and *safety*. The most productive facilities had the best safety records; the least productive had the worst safety records. **Worker safety** is his number one priority.
- o He found that there has been a disconnect between contractor and subcontractor reporting requirements. That has been made uniform. Field managers are now responsible for seeing that the primes and subs meet reporting requirements.
- o Budget. It's been planned all along that '05 would be the peak budget year, with all major capital expenditures completed by that date. They're currently formulating the '07 budget.
- o Rocky Flats will close by the end of the year. Mound and Fernald [Ohio] will close in '06. The plan is to ship remote-handled waste to WIPP by the end of '06.

Q: How will reduced funding affect states and Tribes?

A: Major capital investments are to be completed in '05 – building construction and infrastructure completed.

C: Ohio has been cut significantly though oversight is still needed.

Q: The joint intergovernmental letter to Secretary Bodman asked that he address five areas of concern to the five signatories [NGA, NAAG, ECA, ECOS, STGWG]:

- Funding
- Long-Term Stewardship
- Waste Disposition
- End States
- Natural Resource Damage Assessment.

The reply was very general and did not address the specific issues. Is there a way to get a more substantive response?

A: There are Deputy Assistant Secretaries who have responsibility for each of these areas and are willing to work the issues.

Q: What is status of permitting at WIPP?

A: They're filling cells with contact-handled waste now; need to get permit to include remote handled. DOE is communicating with New Mexico on permit modification. Frank met with SSAB's recently and had the same discussion there – he reaffirmed the Department's commitment to stakeholders.

C: Yakama would like to invite Frank and his counterparts to visit. Safety and cost are important to Yakama too. They're on top of what's going on at Hanford but are not getting the dialogue needed with DOE. Hanford has at least three treaty Tribes. The turnover at the Department means starting over with a history lesson. Yakama can provide that.

Q: Any substance to the rumors that Environmental Management is being phased out?

A: Things actually seem to be moving in the opposite direction. EM is working well and there is no compelling reason to change something that's working well. Greater than Class C waste has come back to EM, e.g. No near-term phase-out of EM is anticipated, though the transfer of sites to NNSA is causing some concern in Congress.

Q: Are there plans for EM to acquire additional scope, particularly at Oak Ridge & Y-12?

A: There is an emerging proposal regarding Oak Ridge & Y-12 to get rid of non-jurisdictional waste. It is being received well but hasn't been completed or sent to Congress for approval.

Q: How will decrease in funding impact tribal efforts?

A: Unsure. Infrastructure funding is removed but it's difficult to predict the impact.

C: The EM recommendation is to maintain state and tribal funding.

C: Ohio is considering legal action regarding funding for oversight.

Q: Regarding remote-handled TRU transportation and disposition – does DOE have a good handle on the total inventory?

A: The Department is pretty confident on the inventory.

Q: What is NNSA's view on concerns regarding transfers of sites from EM to NNSA?

A: The idea of transfer made sense to DOE. Congressional concerns have been raised and DOE believes it has a good answer to each.

Q: Is funding in jeopardy due to uncertainties in this area?

A: Budget formulations were built so they can "live" under either EM or NNSA.

Q: Will there be an Office of Future Liability?

A: The Hill rejected a program secretarial office for future liability.

### **INTEGRATION & DISPOSITION (I&D) UPDATE**

*Frank Marcinowski, Deputy Assistant Secretary for Office of Logistics and Waste Disposition Enhancements, DOE Office of Environmental Management (EM)*

See presentation handout.

o EM's vision is to deliver risk reduction and environmental cleanup that is:

- Safe for the worker
- Protective of the environment
- Respectful of the taxpayer.

o EM wants to get input from groups like STGWG.

o Yucca opening is delayed – no firm target for when the facility will open. It isn't in RW, so not in Frank's purview.

o National Dialogue on Waste Disposal. There will be a workshop later this year on the strategies being developed – that will be used as a "launch point."

o There's a meeting in late May in St. Louis on the issue of orphan waste. The aim is to get "multiple people" to work the issue.

Q: States have been supportive of commercial options, but there's been some resistance in the past. Jessie Roberson [former EM Assistant Secretary] had strong reservations about dealing with Waste Control Specialists, e.g. Has this changed?

A: It's the interaction between the sites we're trying to foster. To the extent that commercial facilities are involved, that's part of the process. They're currently working on guidance for transport -- such as avoiding leaks due to improperly covered rail cars, e.g. It's expected to be out shortly.

Q: Any comments on the finding of the National Academy of Sciences (NAS) study on waste disposal that there would likely be more waste left in place than planned for?

[See study at [www.nap.edu/catalog/11223.html](http://www.nap.edu/catalog/11223.html).]

A: We don't expect that significantly more waste will be left on site than already planned for.

Q: When will we see options on greater than Class C waste?

A: The inventory is currently being pulled together; perhaps completed as early as the end of the year.

C: Yakama contribution to the Nuclear Waste Policy Act started in 1979; it passed in 1982. In 1983 Yakama filed for affected status. We're trying to look out for not just the Yakama but all affected people in the region.

C: There's a need to get at the "heart" of the situation. A three-day workshop would serve best.

### **LONG-TERM STEWARDSHIP (LTS)**

#### **TRANSITION OF LTS RESPONSIBILITIES TO PROGRAMS OUTSIDE**

#### **THE OFFICE OF ENVIRONMENTAL MANAGEMENT**

*Tony Carter, Acting Director, Office of Stakeholder Relations, DOE Office of Legacy Management*

*\*Leah Dever, Associate Director, Office of Laboratory Policy and Infrastructure, DOE Office of Science*

*\*Raymond Plienness, Acting Director, DOE Office of Legacy Management-Grand Junction  
Robert Pence, American Indian Program Manager, DOE Office of Nuclear Energy-Idaho Operations*

*\*Andrew Szilagyi, Office of Cleanup and Acceleration, DOE Office of Environmental Management*

*Alice Williams, Director, Office of Environmental Management Transition, National Nuclear Security Administration*

\*See presentation handouts.

Tom Winston read the following statement from the Yakama Nation:

YAKAMA NATION COMMENTS ON DOE LONG-TERM STEWARDSHIP  
Submitted to the State and Tribal Government Working Group  
Lewiston, Idaho  
May 12, 2005

The Yakama Nation declines, respectfully, to participate in the U.S. Department of Energy's Long-Term Stewardship planning session.

Indigenous people have practiced **true** long-term stewardship on this land since time immemorial – these practices speak for themselves, as each generation left a legacy of clean water, healthy resources, and diversity in the environment for the next generation.

The Yakama Nation believes that DOE's Long-Term Stewardship is stewardship in name only. Leaving hazardous waste in place, leaving this burden for future generations, is not stewardship. Rather, this planning is driven by a belief that some resources are expendable for hundreds or thousands of years. We should continue with this task of cleanup until the environment is truly restored, so the burden we leave is measured in years, not tens or hundreds of generation.

Russell Jim, Manager  
Environmental Restoration/Waste Management Program

OFFICE OF ENVIRONMENTAL MANAGEMENT (EM)- Andrew Szilagyi

- o Long-term stewardship transferred from EM to the Office of Legacy Management effective December 2003. For sites with DOE continuing missions, LTS responsibilities to be transferred to appropriate DOE program office.
- o Transition. Transition based on EM's completion of remediation and demonstration of the effectiveness of remediation. The majority of site transitions are planned to be completed by 2016. Planning for transition requires close coordination with LM, SC & NNSA.; site-specific coordinators and POCs established for LM and EM. [See handout for detailed schedule of site transfers.]
- o Funding. EM establishes remediation, long-term operations [e.g. pump & treat], S&M, and requests funding for first year after transfer. LM identified requirements and requests funding subsequently. Focus on both anticipated recurring and infrequent but anticipated requirements. While no single mechanism exists, DOE is committed to funding and managing unanticipated requirements, e.g. remedy failure.
- o Coordination with Other Programs. Coordination is progressing toward maturity. Includes weekly calls, concurrence on documents, established POCs, and frequent communication at senior and tech levels. End State Vision Documents. Expect submission of documents once satisfactory coordination with stakeholder and regulatory community is accomplished. Thinking is evolving from static to an ongoing, iterative and continuous process. End State Working Group focus is on a few broads issues that affect multiple sites, e.g. compliance, institutional controls.
- o Coordination with Tribes and States. Policy and procedures for coordination are in place with the DOE Indian Policy. Coordination and consultation will be implemented consistent with the Policy. Tribal and state representation on End States Working Group bridges the end state definition, EM completion and transition.

OFFICE OF LEGACY MANAGEMENT (LM) – Tony Carter, Ray Plieness

- o OLM was created to allow EM to focus on cleanup. Office of Worker and Community Transition became part of LM. They participate in as many public meetings with local stakeholder organizations (LSOs) as possible.
- o They have made special efforts to include Tribes in Environmental Justice activities, now housed in LM.
- o LM has embarked on a mission to become a high-performance organization – one that provides information and products in the most effective and cost-effective manner. They will be coming to groups like STGWG to get an accurate reading on how they're doing.
- o In the 2005 Defense Reauthorization Act Congress requested that community groups be formed to work post-closure; will include elected and non-elected officials.
- o Transition goals:
  - Achieve zero service disruption for critical activities
  - Achieve zero negative impact to closure mission or LM mission
  - Identify programs and activities requiring transition versus termination
  - Bring together separate EM and LM organizational initiatives
  - Identify schedule drivers and develop an action plan for each transition element
  - Actively engage stakeholders in transition
  - Complete transfer of functions as early as logically possible.
- o LM transition approach: Run the transition as a *project*:
  - Establish early communications – DOE-to-DOE; and expand to contractor-to-contractor as appropriate
  - Site visits by LM team
  - Establish transition plan that includes scope, cost and schedule:
    - An integrated EM-LM effort to greatest extent possible
    - Flexible along the way, but firm end points.
- o They currently have jurisdiction over 63 sites.

OFFICE OF SCIENCE (SC) – Leah Dever

- o Office of Science Approach to Transition
  - Terms and conditions: Presents roles and responsibilities for EM and SC. Lays out transition requirements -- DOE orders, budget.
  - Site Transition Plans -- unique to each site. Provides details on regulatory and administrative requirements, records management, etc.
- o Management of LTS by Office of Science
  - Fully integrated into environmental management systems at SC sites
  - Part of site-wide surveillance and maintenance activities
  - Funded as part of these programs and activities.
- o Coordination with EM and LM: Through established ongoing relationships with EM and LM. Headquarters develops policies and guidance.
- o Status of End State Vision Documents
  - ANL, BNL, and ORNL documents completed in 2004.
  - LBNL document will not be finalized since agreements for final cleanup were reached among EM and local regulators.
- o Closure of Science sites: No plans at this time to close any SC site. Final disposition of sites will follow DOE Long-Term Stewardship policy and programs.

o Stakeholder Involvement: Sites will continue to work with stakeholders and cleanup and long-term stewardship; will integrate stakeholder involvement with existing site programs.

NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA) – Alice Williams

o The Department has a good handle on the cost of long-term stewardship in the near run. But there are recognized vulnerabilities in these costs:

- As technology changes, there may be better methods of disposition to choose from.
- Benign disposed materials may turn out not to be benign.

Such costs can't be budgeted since what they might be or when they might occur can't be predicted.

o NNSA will be addressing three sites in 2006. Additional sites will follow in the out-years. Key questions for them are:

- What does LTS mean?
- How much will it cost?

o The main drivers will be the operating permits and compliance agreements.

o NNSA is also interested in how to revisit decisions periodically. This is seen as a *dynamic* process that could be impacted as land use and mission are revisited.

o A failure to institute long-term stewardship at NNSA sites would impact its mission and would not be acceptable.

o Land transfers -- the easier ones have already been done; they're now looking at more difficult sites.

o They are routinely meeting with LM to learn from their experiences since NNSA has much to learn in order to effectively achieve LTS at their sites.

o One thing to keep in mind is that there won't be a session like this one 20 years from now, talking about the same things – if there isn't a disposition plan for every bit of waste, it won't go forward.

OFFICE OF NUCLEAR ENERGY (NE) – Robert Pence

o The Department acknowledges receipt of letter from the STGWWG Long-Term Stewardship Committee. A response has been prepared and is being routed to various offices at the Idaho site and within headquarters. [June update: Letter from Shane Johnson has been received by the LTS Committee Co-Chairs and distributed to full STGWWG.]

o Continued communication between the Office of Nuclear Energy (NE) and STGWWG is critical to the success of our DOE operations, including long-term stewardship and legacy management.

o LTS strategies and End State Vision documents were developed through extensive input and discussions with Tribes, the State of Idaho, EPA and other stakeholders, regional advocacy groups and the EM Citizens Advisory Board.

o October 1, 2003, NE assumed the lead program secretarial office from EM for INL. LTS responsibilities will transfer during the transition after cleanup is completed.

o This will occur through formal agreement between NE and EM. Transfer and transition of responsibility will address scope, schedule, and funding requirements for the LTS program.

o After all DOE missions are completed at the Idaho site, land will revert back to the Bureau of Land Management (BLM). DOE does not own the vast majority of the Idaho site.

o When lands revert back to the BLM, the retained rights, expressed in the Shoshone-Bannock Tribes' 1868 Fort Bridger Treaty, will again be exercisable on all 'unoccupied' lands within the

Tribes' ancestral and aboriginal homelands. Lands will neither revert to private ownership nor tribal ownership, but rather the public domain. They will be managed and administered by the BLM.

### LTS Q&A

Q: Re the Yakama memo read earlier – Why can't we clean up legacy waste completely? The kind of contamination that's been done in the past would never be allowed today. It seems that if it occurred in the past, the view is "We've lived with it this long, there's not a pressing need to clean it up." Why can't the same aggressiveness used in the Cold War be used in the cleanup?

A: That aggressiveness cost society. One question to ask: Are we willing to pay 10% more in taxes in order to pay for a more thorough cleanup?

C: Complete cleanup should be a higher priority for all offices, especially Science.

R: Secretary Bodman has a science background and he wants to see its influence across the complex. Agree that cleaning up now would benefit future generations; and it would **cost less** in the long run.

R: EM has been committed to cleanup, but we don't have all the technologies needed to help in the cleanup process. The concept of **balancing risk** is crucial. A fair question to ask is whether you take an action with a high risk level in order to do cleanup.

C: As a regulator, am aware of the difficult decisions that have to be made. You have to look at the risks of moving the contamination versus the risks for leaving it in place. At Rocky Flats, e.g., a citizen's group advocated cleanup to background levels. But there were two deep basements with low-level plutonium contamination. If they were required to remove the contaminated concrete, they would have had to be hoisted up 60 feet. The decision was made to leave it in place.

Q: STGWWG has had long involvement with LTS. We understand ;the need but still wish cleanup could be done that did not require LTS. How are you working to include **revisiting** cleanup that is done as the need arises?

A: Each LTS project has an annual review. CERCLA has an extensive five-year review of different remedies.

A: Expect revisits to occur and to be essentially forced by the cleanup agreements that were signed.

C: In many cases, we may be proved wrong in the future. At Weldon Springs, e.g., they've left large amounts of waste close to the community. A difficult decision but the best they could make at the time.

C: The unknowns related to current risk calculations are a big concern. **How** the risk is calculated is a critical factor.

o The Department has a good handle on the cost of long-term stewardship in the near run. But there are recognized vulnerabilities in these costs:

- As technology changes, there may be better methods of disposition to choose from.
- Benign disposed materials may turn out not to be benign.

Such costs can't be budgeted since what they might be or when they might occur can't be predicted.

Q: Who decides which agency a site transitions to?

A: For a closed site with no further DOE mission, it will transition to LM. For a continuing mission site with a landlord, it will go to a program office.

Q: Will the states have any say in which program office the site transitions to?

A: Will check at HQ and get back with an answer.

### WRAP UP

- o For the fall meeting, the plan is to go forward with the Intergovernmental Meeting in Washington, DC. Tom Winston and Willie Preacher will be on the planning committee with NGA, NAAG, ECA, and ECOS.
- o For the spring 2006 meeting, South Carolina/Savannah River was suggested but no decision was made.
- o The Nez Perce arranged for a previously unscheduled trip to the Wolf Education Research Center immediately following the meeting.

Adjourn.

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### ACRONYMS

ANL	Argonne National Lab
BNL	Brookhaven National Lab
CI	Office of Congressional and Intergovernmental Affairs
ECA	Energy Communities Alliance
ECOS	Environmental Council of the States
EJ	Environmental Justice
EM	Office of Environmental Management
ES	End states
I & D	Integration and Disposition
INL	Idaho National Lab
IWG	Inter-agency Working Group
LBNL	Lawrence Berkeley National Lab
LM	Office of Legacy Management
NAAG	National Assn. of Attorneys General
NCSL	National Conference of State Legislatures
NE	Office of Nuclear Energy
NGA	National Governors Assn.
NNSA	National Nuclear Security Administration
OCRWM	Office of Civilian Radioactive Waste Management
ONT	Office of National Transportation
ORNL	Oak Ridge National Lab
SC	Office of Science
TEC/WG	Transportation External Coordination Working Group
WIPP	Waste Isolation Pilot Plant