

**STATE AND TRIBAL GOVERNMENT WORKING GROUP (STGWG)**  
**Snowbird, Utah**  
**October 18, 2007**

**MEETING NOTES**

**STGWG Full Session with DOE**

(C = STGWG participant comment; Q = STGWG participant question; A = DOE answer)

*Christine Gelles:* Gave a presentation relating to Greater Than Class C Low-Level Waste (GTCC LLW). *(Copy of the presentation was distributed via email the week after the meeting).*

*(Consultation on GTCC LLW to be discussed after the first part of the presentation).*

This topic is rooted in the 1985 Policy Act Amendments. It is a relatively small volume of waste, especially when compared to annual volumes shipped to WIPP, but the curie counts are high. They have already received over 250 comments. They are working on the draft EIS, and hope to have it available by mid-2008 for comments; the FEIS should be completed in early 2009. GTCC LLW is defined “by what it is not.” “There’s not a disposal crisis in anybody’s minds.” Statutory constraints may exist. The hardened, on-site storage possibility is more like a no-action alternative; statutorily, they are required to develop a disposal alternative.

Consultation with Tribes

DOE has developed a white paper. (Case Study handout, entitled *American Indian Involvement and Participation in the Development of an Environmental Impact Statement (EIS) for the U.S. Department of Energy's Nevada Test Site*, was handed out during the meeting, via Linda Cohn, Tribal Point of Contact for the NNSA Nevada Test Site Office).

**Q:** What is the sequence of events if the EIS comes up with something that would require the Nuclear Regulatory Commission (NRC) to change its requirements?

**A:** Recommend to Congress that the NRC promulgate rules; may need some specific rulemaking to occur.

*Christine Gelles:* They could come up with a proposed design, but would not know whether it would comply with NRC requirements. They have just (now) chosen to identify those waste streams that do not currently have disposal pathways.

**Q:** What are disposal alternatives? Are they really alternatives, or more like no-action options? They seem more like options and not alternatives.

*Christine Gelles:* DOE has heard from tribes that they are late in consulting with them. It is a little premature to discuss this right now for particular sites; they will be looking at particular designs for the various sites. Currently see it as more than just options, but it is too early to see what the impacts would be right now (and not just at Hanford). The draft EIS will provide some more information on this.

*Ines Triay (to Christine):* Maybe consult on the methods, criteria, types of facilities and analysis you will use. These may be topics for consultations.

**C:** Maybe have technical discussions/meetings that would not be consultations, but would lead to consultations. Suggest embarking on these as soon as possible and not wait on the EIS. This would form the basis for consultations between governments.

**C:** Likes and supports this kind of approach; seems to be a more productive form of consultation process. Technical meetings are a vital place to start; until technical questions have been answered, it is not really ripe for policy discussions. It is good to recognize that this is a two-step process.

**Q:** Does it need to be individual tribes, or can tribes work together on this?

**C:** Tribes want one-on-one, leader-to-leader consultation.

**Q:** What about on technical meetings?

**C:** Maybe not such a problem; should not be much of a problem.

**C:** Maybe leave it to four tribes or so at a time.

*(Discussion relating to the aforementioned Case Study):* They started off with technical discussions, schedule considerations, and the manner and actual development of the EIS. Richard Arnold first informed DOE of the process and what was really achieved during the Nevada Test Site process.

**C:** One way to go forward with this is with a letter to tribal leaders, starting with the STGWG people who are here, making them aware of this type of consideration. Lay out what you have in mind, and this would provide the best opportunity to get the kind of consultation the tribes are looking forward.

**Q:** Has transportation been considered?

**A:** It is part of the process.

**C:** This may then involve all 500-plus tribes.

**C:** We are caught up in a schedule-based process, and timing (timelines) may be an issue, especially if DOE is going to consult with all the tribes.

*Christine Gelles:* Already knows that costs and schedules will need to be revisited in order to accommodate appropriate consultation achievements.

*Richard Arnold:* He has tried to share the Nevada experience, and if he finds something that works, he wants to share it with other people. Identified the fact that tribes wanted to not just submit comments, but actually be involved in the process and the actual writing of the document. They had their own appendix (G) with specific Indian concerns. Need to strike some real fine balances, and they did that. They did not focus just on cultural concerns ("stones and bones"); they looked at economic development, social issues, etc. Tribal representatives were responsible for taking the text back to tribes to make sure they were okay with it, but they had to realize that tribes still had the right to suggest changes, disagree, etc. They tried to share the information and make sure it was workable, but nothing was "set in stone." For other tribes, it is still not too late to become involved. Equally important are the schedules and timelines; it is not a tribal document, and all parties need to work with each other and respect "various boundaries." Not all tribes are equal; some are ready to start right away, whereas others may have no resources at all. Be respectful of what is needed by each tribe, as this helps the process. This involvement allowed tribes to springboard to other agencies' processes (e.g., Dept. of Defense). It is a new opportunity; it has worked, and has/can serve as precedent, but needs to be done tribe-by-tribe.

*Linda Cohn:* DOE experience with this model has been very fulfilling; it has enhanced their processes, especially with their documents, and has given tribes a larger voice. Underlying beliefs of tribes have been identified, which has helped; some are shared by all indigenous peoples. Tribes were ready to jump in on this process, whereas the federal government was somewhat reluctant. They are willing to help any tribes who want to go through this process.

*Gilbert Gutierrez:* They (Santa Clara Pueblo) submitted comments on the site-wide EIS, but a year later they still have not received a response, so now they have to submit another letter requesting a response. (John Lehr will take this back to his immediate supervisor to address this issue).

**C:** Getting responses is an issue.

*Tom Winston:* Thanks to the tribes for letting the state representatives participate in this discussion. This is really the first effective discussion on consultation in all his years with this group.

*Next Steps:* Letter that Christine Gelles' office would send out to tribal leaders, with a copy to STGWG tribes, having discussions at technical levels, that could then lead to policy discussions.

*Christine Gelles:* How do we want her office to interact with STGWG in the future?

**C:** Meet twice a year to give updates as appropriate, present a slide show as appropriate, etc.

**C:** STGWG has two committees for this: Integration & Disposition and the Tribal Issues Committees. Distribute information through NCSL and conduct conference calls. Also, this is a good way to get information to DOE from the tribes.

*(Break)*

Report out from Tribal Session, by Peter Chestnut:

Seven tribes participated in our meeting on Tuesday. An update was given by the Yakama, and they presented a useful handout regarding what NRDA is about. We talked about how to prepare for the meeting with Mr. Morello, who gave his vision for his next 15 months in office. Mr. Morello mentioned the possibility of a two-day summit in February 2008; he will check on the schedules and such of relevant DOE personnel. Today (Thursday), we talked about our appreciation regarding his availability, as well as Ines Triay's presence. Was somewhat skeptical about meeting here, but this has proven to be a good way to build productive relationships. For the full STGWG, we would like a letter requesting a 90 day comment period for the EIS instead of the current 45 day period (holiday season, the changing of tribal leaders, etc. are issues). *(There were no objections from the group on requesting 90 day comment period; will try to get the letter out to DOE soon, with Tom Winston and Armand Minthorn signing it).*

We need to follow up on the idea of having a project management workshop, to better understand the ability of states and tribes to provide input, and to understand how they can/do fit into the DOE project management process. Maybe look at this idea in conjunction with the intergovernmental group, based upon what we have heard over the past two days. Look at the possibility of having a workshop on the Implementation Framework (IF) once it comes out in finalized form, and maybe invite the TEC tribes. Mr. Morello recognized that he was not in the IF, but realizing how long it took to get it out, he said to go on with it and make changes to it in the future as appropriate. Another thing to follow up on is a possible Tribal Summit; maybe find out about the schedules of key DOE personnel within the next month. An idea is to have plenary sessions, with breakouts, then report back to the full group like we have done this week. This is the model Mr. Morello suggested at the beginning of this process. We talked about possible agenda items, and talked about GNEP: what about the "extents/roles" of the labs involved in this process? Technical level people need to have their questions answered before we can get to policy level discussions.

*(Mr. Morello now in the room).*

The question was posed as to whether one month would be enough time to garner schedule availabilities; coordinate this issue through NCSL. What kind of time frame can we expect for finding out when/whether this would be possible, to get the ball rolling? It is really heartening to have Mr. Morello and Ines Triay here to respond right away to some of our questions.

*Mr. Morello:* He realizes how long it took to get the IF, and he will have to go to the same people to get the Tribal Summit idea going. (Lisa Epifani, assistant secretary for Congressional and Intergovernmental Affairs, is who Mr. Morello needs to go through to

start going to the higher-ups within DOE). He will be back in the office at the end of October, and thinks Thanksgiving would be a realistic time frame to get a yea or nay. The Tribal Summit will have to occur in Washington. He would like to have one when a large number of tribes are already in the city. He does not want it to conflict with other meetings. A day, day and a half, two days would probably work. Get working groups together that have common interests, with report back sessions, with a DOE panel to conclude things. He does not want to be involved if it is like the first one; wants a gathering where people leave with “hope in their hearts.”

*Ines Triay:* STGWG and Mr. Morello will have her support and that of Mr. Rispoli for anything we need from their perspectives; will have her commitment to support Mr. Morello.

Wrap-up Issues, by Tom Winston:

STGWG will reconstitute the LTS Committee (there is really only monitoring going on in this area right now) to incorporate the new Natural Resource Injury Assessment (NRIA) Committee, as there is now more to do here in this area. Neil, Tom, and John Owsley need to look at committee membership; need a baseline of information so they can be knowledgeable of issues (e.g., policy documents—create an inventory). Consideration should be given to networking with other groups on this (e.g., through Brian Hembacher and Paula Cotter). There is a sense that there is a lot of interest in this area. Because of our trustee roles, we are well-positioned to do this. Work with Matt Duchesne, and ask him to think of ways we can work with DOE on this.

There is some confusion about memberships in STGWG; NCSL will set-up a conference call with Neil, Willie, Tom and NCSL leadership to sort out any confusion.

We need to select two STGWG members to serve on the new intergovernmental committee, which will be looking for ways to track issues and take them to a higher level within DOE, and then report back to individual groups on what is happening. (Focus/goal of the committee is to have a standing committee to identify opportunities for partnering on certain issues, to add more accountability, and to be able to go on to the next step for issues presented). Maybe identify opportunities for face-to-face meetings with high-up DOE personnel; looking for more effectiveness of the five groups in dealing with DOE (rather than just the annual meeting). A lot has yet to be sorted out. Need to decide how it would work, so right now just asking for two representatives from each group to help decide the direction of the new committee. Work with Melissa Nielson to help identify who to interact with from DOE. (Willie Preacher and Brian Hembacher for STGWG; Mike Wilson and Robert Bulloch for NGA, with Ken Niles an alternate).

Location for next meeting? Executive Committee will need to discuss this.

Acknowledgment and appreciation were given to Kevin Clarke and his participation and services throughout the years (Kevin will be retiring).

Appreciation given for the participation of Steve Morello and Ines Triay (two consecutive meetings for her; want to keep her active participation), Brandt and Melissa, the STGWWG committee co-chairs and executive committee members, and NCSL staff.

**Q:** The more we integrate with other groups, is STGWWG losing its autonomy? Something to think about. If we have concerns about continuing to participate with the other groups, can address this during the spring meeting.

*(End of the week)*