

NATIONAL GOVERNORS ASSOCIATION
CENTER FOR BEST PRACTICES
FEDERAL FACILITIES TASK FORCE MEETING WITH THE
U.S. DEPARTMENT OF ENERGY

MAY 1-2, 2003

JURYS DOYLE HOTEL
1500 NEW HAMPSHIRE AVENUE NW
WASHINGTON, D.C.

On May 1st and 2nd, 2003, the National Governors' Association (NGA) Center for Best Practices hosted a meeting of the NGA Federal Facilities Task Force and U.S. Department of Energy (DOE) officials at the Jurys Doyle Hotel in Washington D.C. The meeting served as a forum for dialogue between state representatives and U.S. DOE management on their respective concerns and priorities, as well as recent developments at DOE headquarters. Key topic areas for this meeting included breakout sessions with three DOE Project Teams (Risk-Based End-States Project Team, Other-than-SNF-and-HLW Project Team, and National FOCUS Project Team), the proposed FY 2004 DOE-EM budget, and the status of the state-DOE dialogue.

DAY 1 - THURSDAY, MAY 1, 2003

~EXECUTIVE SESSION FOR STATE TASK FORCE MEMBERS~

Welcome/Overview of the Agenda

Joel S. Hirschhorn, Director of the Natural Resources Policy Studies, NGA Center for Best Practices, opened the meeting by welcoming the National Governors Association Federal Facilities Task Force representatives. Being Ethan Brown's last meeting as the NGA Task Force Program Director, Mr. Hirschhorn thanked him for his hard work and dedication to the Task Force and wished him good luck with his new position.

Bill Ross, the facilitator from Ross & Associates, reviewed the agenda (see [Attachment A](#)).

Review of Key Meeting Topics:

Jerry Boese, Ross & Associates, presented a PowerPoint presentation updating the Task Force on the following topics (see [Attachment B](#)).

- Ground rules for working with DOE Project Teams
- Risk Based End-State Working Group Update (Working Group Lead: Steve Gunderson, CO)
- National FOCUS Working Group Update (Working Group Lead: Bob Geller, MO)
- Other-than-High Level Waste (HLW) and-Spent Nuclear Fuel (SNF) Working Group Update (Working Group Lead: Max Power, WA)
- HLW/SNF Project Teams
- Intergovernmental Group Communications
 - Joint meeting scheduled for November 5-7, 2003
 - New website to facilitate communication
- DOE FY 2004 Budget proposal
- Status of state-DOE dialogue

After the presentation, the three Working Group leads gave a quick review of the Project Team—Working Group interactions. (See updates of each of the Project Teams as discussed on Day 2.)

Task Force Member Roundtable

State Task Force members discussed their top site-specific concerns and issues as well as overarching complex-wide issues. The following multi-state issues were identified.

- There has been a dramatic decrease in communication with states on the part of DOE Headquarters and from most DOE sites. Some sites exhibit a new unwillingness to discuss issues with state regulators unless they are specifically authorized to do so by the Assistant Secretary.
- Several states have concerns about DOE's commitment to grants for Agreements in Principle (AIPs) in terms of both level and timing of funding.
- Several states are concerned about DOE's increasing use of the "official use only" label on documents, in particular when such a label appears unnecessary and arbitrary, and hinders legitimate public discussion.

~DAY 1- ~

~ NGA TASK FORCE MEMBERS MEET WITH DOE ~

Welcome/Overview of Agenda

Sandra Waisley introduced herself as the new Director of DOE's Office of Intergovernmental and Public Accountability, Office of Environmental Management (EM), and welcomed the Task Force on behalf of DOE.

Mike Wilson, Program Manager of the Nuclear Waste Program at the Department of Ecology (WA), welcomed the meeting participants on behalf of Governor Locke, an NGA co-Chair, emphasizing that this meeting is an opportunity to renew the commitment to a "collaborative dialog" between DOE and the states. Steve Gunderson, Rocky Flats Project Coordinator, Colorado Department of Public Health and Environment, welcomed the Task Force and DOE on behalf of Governor Owens, the other NGA Task Force co-Chair. Mr. Gunderson emphasized the importance of candid, early communication between DOE and the states.

Lynne Smith - Mixed Remote-Handled TRU Discussion

Lynne Smith, Director, Waste Isolation Pilot Plant (WIPP) Office, U.S. DOE, presented overheads on the status of the WIPP Program (see [Attachment C](#)). Overall, Ms. Smith indicated DOE is making very good progress shipping transuranic (TRU) waste and that the Department is currently meeting its goals.

Discussion session: The question and answer session focused on the following key points:

- Remote handled (RH) TRU is currently being planned for shipment by truck, but eventually DOE would like to ship the waste via rail.
- The Carlsbad Office is engaged with the state of NM to discuss permit modifications for PCBs.
- New Mexico has approved a permit modification for "classified" TRU waste.
- The RH-TRU waste acceptance regulation is not finalized, but DOE is keeping the sites abreast of the current regulations to prepare them for the audits prior to shipping.
- The sequencing of RH-TRU shipping will be tied to the readiness to ship. DOE is currently acquiring RH72B containers in anticipation of future shipping needs.
- WIPP will have enough space for RH waste disposal.

- DOE's goal is to accelerate the disposal of legacy TRU waste at WIPP by about 20 years. Following disposal of all legacy waste, WIPP will remain open for newly generated waste.

Ms. Smith indicated that she would get back to Idaho on the question of whether DOE's TRU inventory planning accounted for the INEEL and Hanford tanks.

Mike Owen, Office of Legacy Management

Mike Owen, nominated as Director of the DOE Office of Legacy Management (LM), presented overheads to provide a status update on the new office (see [Attachment D](#)). LM is being set up as the Principal Secretarial Office with direct reporting lines to the Secretary. This new Office will have its own discreet budget line item to increase the visibility and accountability for legacy management. The Office of Legacy Management will include the following functions:

- Strategic materials (heavy water, gold, etc.),
- Asset and Land Management,
- Long-term Surveillance and Maintenance (LTSM),
- Records and Information Management,
- Workforce Restructuring and Pensions Medical Benefits, and
- Mitigating Community Impacts.

The Fiscal Year 2004 budget request is a 16% increase in funding for Legacy Management's functions. Currently, there are 33 sites in LTSM and eventually there will be 120 sites in LTSM.

Discussion Session: During the question in answer session, the states stressed the importance of the following topics to Mike Owen:

- **Recordkeeping** of information is necessary to carry out long-term stewardship (LTS). Mr. Owen acknowledged that there are issues with records management, especially with sites that are about to close, as well as the fact that the federal records center in Denver is full.
- **External interactions**, especially with the state regulators. States emphasized the importance not only for DOE to communicate with the states and local governments, but to actually involve them in remedy selection. Mr. Owen agreed that external communication is a big issue for the new office, and stated that the details were currently being worked out.
- **Enforceable institutional controls**, including compliance with state laws on ICs. Mr. Owen did not indicate whether DOE plans to comply with the state laws regarding institutional controls.
- **Full consideration of LTS at the time remediation decisions are made.** Mr. Owen indicated that Assistant Secretary Roberson will be making decisions on remediation and that he will be making decisions on LTS.

Mr. Owen explained that to date, he has not been very involved with the long-term stewardship issues. He added that he will be working very closely with Dave Geiser to come up to speed on LTS. Mr. Owen also stated that LM will be working very closely with EM.

Kevin Crowley, Director, Board on Radioactive Waste Management, The National Academies

Mr. Crowley gave a presentation on "Managing the Nation's Radioactive Waste Legacy: Role of the Board on Radioactive Waste Management" (see [Attachment E](#)). Mr. Crowley announced the new *Long-Term Institutional Management—Phase 2 (LTIM/2) Report* and provided copies to the Task Force. Also, Mr. Crowley solicited the Task Force to become involved in the National Academies' future studies.

The View from The Hill

Doug Clapp, Office of Senator Patty Murray, D-WA

Mr. Clapp announced this was the first time in four years where there has not been a big fight over the DOE-EM budget, and he commended the work of Under Secretary Card and Assistant Secretary Roberson in securing a good budget request from OMB. Many congressional representatives agree that DOE's new aggressive policies with the Top-to-Bottom Review are good, as long as they do not come at the cost of safety or the environment. There is some concern about creating expectations that cannot be met. He pointed out that Senators Domenici and Reid have been critical supporters of the cleanup. Mr. Clapp indicated that while it is good DOE is pushing the reforms, Congress is aware that at times DOE is allowing communication to lag and failing to bring states along. He noted several lawsuits are ongoing.

James Brown, Office of Representative Doc Hastings, R-WA

Mr. Brown indicated DOE has gone from appearing to "tread water," to moving forward aggressively. Congress is no longer trying to push DOE; rather, it is trying to "moderate" the fast pace of DOE. Faster is good, but DOE must keep in mind the need to work with the communities. Mr. Brown emphasized the increasing awareness about the issues and interconnectedness of the sites in the Complex on the part of the members of the Cleanup Caucus.

DOE Project Team Presentations and Break-Out Sessions

Three DOE Project Team leads (Risk Based End-State- Dave Geiser, National FOCUS- Rod Rimando, Other-than SNF-and-HLW- Reinhard Knerr) provided brief presentations to the entire Task Force. Immediately after the presentations, the Task Force and DOE broke into smaller groups to conduct more detailed conversations with the Project Team leads. The status reports from the three break-out groups (including the overview presentations) are listed below.

Risk Based End-State Project Team

Dave Geiser met with representatives of the states of ID, SC, and CO. Steve Gunderson, CO, is the state lead. The session was collaborative and productive. The following action items resulted from the sessions.

- **Guidance.** The DOE team will be meeting on May 6-7 and 13-14 to finalize the guidance and to begin work on the corporate strategy. A state representative is welcome at these meetings, and Kathleen Trever will try to attend on the 5th and/or the 6th. A key goal at this meeting will be to finalize the guidance, and in particular to work on the information needed to graphically display the current situation and anticipated end-state for each site. A crucial topic to be resolved is how the risk-related data, both human health and ecological, can be displayed (if at all) topographically.
- **Guidance: State review.** States will be given a brief window (two weeks) to review the final draft of the guidance; this review is anticipated to take place during the last two weeks in May.
- **Corporate Strategy.** States will also be engaged in the review of the corporate strategy, which is designed to lay out how DOE will implement the guidance across the complex. A conference call with Mr. Geiser should be set up for the end of May to start this collaboration, and it is anticipated that monthly calls would then commence until the strategy is completed.
- **Development of Site-specific End States.** DOE anticipates that each site will soon begin work (even before the corporate strategy is completed) on describing its desired end-state, based on the guidance, and to have completed this exercise, or have identified any gaps that prevent its completion, by early Fall. Each state should expect to have significant contact with its site(s) about this process, since Mr. Geiser stated that agreement with the State, the local community and, whenever possible, the stakeholders on the potential end-state is crucial for the process to continue. Once there is such an agreed-upon understanding of the potential end-state, a dialogue would begin with the State on ways, if any, that the cleanup agreements should be modified to either focus more on significant risk-reduction and/or to get to the desired end-state more efficiently and effectively. It was acknowledged that not all sites would necessarily be able to complete their description of the desired end-state by DOE's internal deadline. In particular, the larger, more complex sites that will be undergoing cleanup for many years might need more time and/or some other process to complete the dialogue on how to best focus cleanup on risk-based end-state cleanups.

National Focus Project Team

Rod Rimando, DOE Assistant Team Lead, gave a brief presentation on the status of the Project Team (see [Attachment F](#)). Mr. Rimando met with state representatives from IL, MO, and OH. Bob Geller, MO, is the state lead. Prior to the meeting, the Working Group did not receive any substantive documents, so they decided to use the time to discuss a path forward and how to be more involved with the project team. After viewing the Working Group proposal and ground rules, Rod indicated that a regular dialogue with the states could provide a positive influence on the project.

Rod outlined the project deliverables and the proposed timeline. Bob Geller requested the following documents:

- CD-1 Attachments 3 & 5 (Rod indicated that Attachment 4 would be business sensitive)
- Trip Summary Reports
- Letters from DOE to each of the National FOCUS Sites
- List of contacts for the National FOCUS Sites

The Working Group session ended with both parties eager to engage in a dialogue. Rod indicated that he would convey the document request to DOE Project Team lead Cynthia Anderson that evening and share the documents with the state Working Group as soon as possible. To facilitate communication, Rod suggested scheduling conference calls every two weeks-- the first conference call being on May 21st.

Other- Than-HLW-and-SNF Project Team

Reinhard Knerr, DOE Team Lead, gave a brief presentation to the Task Force on the status of the Project Team (see [Attachment G](#)). Mr. Knerr met with representatives from NV, SC, TN, TX, and WA. Max Power, WA, is the state lead. An agenda of discussion items had been arranged prior to the session, and discussion is summarized below. In general, Mr. Knerr indicated that he is very receptive to state input.

Discussion items:

- Classified waste is a subset of the “orphan waste” issue. The Project Team is aware of differing definitions of what constitutes orphan waste across the complex. The definition of classified waste (as opposed to classified material) is also inconsistent across the complex. This is an issue that may go to a “Corporate Board,” (see below) one of the alternatives the Team is considering. States provided examples of wastes, such as lab coats, that are considered classified only because they were used in labs where classified materials or classified work was conducted. One state observed that waste is “orphan” only because of the lack of a legal driver for disposing of it.
- Corporate Board. The Team is considering recommending the creation of one or two Corporate Boards similar to the WIPP corporate board, for LLW and MLLW, except with decisionmaking authority, rather than advisory authority. States suggested that WA and NV be invited to participate in these boards, perhaps on an *ex officio* basis.
- Hub concept. This concept would apply mostly to waste treatment. States expressed some concern about the loss of generator knowledge if waste is shipped from one site to another for storage or treatment.
- Employment impacts of projectizing. States indicated that this is low on the priority list of potential concerns.
- Status of “rejected” options. Reinhard indicated that these options could be sent to the Corporate Board(s) for further consideration when the current Project Team effort wraps up. States expressed concern about some of the “rejected” options, and want to be consulted before any of these options go forward.

Action Items:

Conference calls with States and DOE (to be scheduled before the end of May so the Team can complete its preliminary design in early June) on:

- TRU waste (CD-1c package)
- Hub concept & other specific options being considered (corresponding Project Team staff to participate in this call)

Documents:

- Reinhard will provide a copy of DOE's list of orphan wastes to the states via Doug Frost.
- The Team's final design document is due to Jessie Roberson in Mid-July; it will be provided to states after Jessie sees it.

State input:

- The State working group will consider developing a set of principles for supporting DOE's initiatives for LLW, MLLW, and TRU waste.
- States will consider a letter to DOE expressing support for some or all options being considered; states will give advance notice to Reinhard before sending any letter that expresses opposition/criticism of an option.

DAY 2- FRIDAY, MAY 2, 2003

~EXECUTIVE SESSION FOR STATE TASK FORCE MEMBERS~

Report-out from Breakout Sessions

Each of the state Working Group leads gave a brief report on the respective Project Team break-out sessions. The states outlined topics to discuss with Ms. Roberson.

Paula Cotter, National Association of Attorneys General

Ms. Cotter gave a brief update on the key topics of the National Association of Attorney Generals (NAAG). She indicated that DOE restriction of communications to "Official Use Only" is a key concern.

~ DOE-STATE DIALOGUE ~

Roger Butler, Deputy Assistant Secretary for Policy, Planning, and Budget, Office of Environmental Management, U.S. DOE

Roger Butler presented slides on the DOE FY 2003 (final) and FY 2004 (proposed) budget (see [Attachment H](#)). Mr. Butler explained the new structure for the FY'04 budget. He explained that even though the EM budget drops off after 2006, the same amount of funding, or even more, is going to each site because of the increase of funds over the past few years. He explained that DOE is trying to get rid of line item construction projects and has partially succeeded in the FY'04 budget with seven or eight line items in the entire budget. To verify that EM stays accountable to their budget, EM is implementing performance measures. Due to the new Office of Legacy Management and the new safety and security requirements, dollars will be transferred from EM to other offices.

Discussion Session: The Task Force requested a new chart or graph to explain the change in budget to help clarify DOE's intentions after 2006. The states indicated that it would be helpful to overlay the previous out-year funding proposal from the Al Alm Budget (promising an increase after 2006) with the current allocations proposed.

Many of the states were concerned about DOE's funding of the state grants (i.e., AIPs), including issues related to fund carryover from year to year. Sandra Waisley agreed to follow-up with the Task Force regarding these issues and her review of the grants.

Jessie Roberson, Assistant Secretary for Environmental Management, U.S. DOE

Mike Wilson and Steve Gunderson spoke on behalf of the Task Force, presenting five key topics to Assistant Secretary Roberson.

1. Office of Legacy Management- The states support the creation of the new Office of Legacy Management. The states emphasized that LTS requires immediate attention and the states see that the new LM, as the future landlord, must be involved in remedy selection for the sites. Task Force stands ready to help and work with LM.
2. Budget- The states agree the FY04 budget request is generally good and DOE should be commended for securing a good budget from OMB. The states reiterated they would like to have a written explanation to clarify the change from the previous assumption that a closed site's funding would accrue to other sites after 2006. The states also expressed their concern about the decrease in the budget for state grants (i.e., AIPs).
3. Missed Opportunities- There is a collective sense from the states that there are too many surprises and that DOE is moving into a risky "decide-announce-defend" mode of decisionmaking. States have observed that DOE field staff are increasingly unwilling to even discuss a pending decision before it is made under the new centralized corporate structure. DOE sometimes portrays states as a barrier to getting the job done — this becomes a self fulfilling prophesy if DOE fails to work collaboratively with the states. The states support DOE's efforts to accelerate cleanup and want to help DOE get the job done, but they must be fully involved in pre-decisional dialogue to do this without slowing the process down.
4. The Corporate Project Teams- The interactions with the Other-than-SNF-and-HLW Project Team, the Risk Based End-State Project Team, and the National FOCUS Project Team have been productive. Some of the Project Teams have been more interactive than others. The States requested again to be involved in the SNF and HLW Project Teams.
5. Documents for "Official Use Only"- Many state regulations require public involvement. Many states are having difficulty meeting these requirements because many documents are marked for "official use only." The Task Force requested that DOE block out sensitive information rather than restricting the entire document.

Discussion Session: Ms. Roberson guaranteed the states that EM and LM are currently working together and will continue to work together after the formal establishment of LM.

Ms. Roberson asked for specific examples of communication breakdowns between the states and the sites. Ms. Roberson agreed to talk with the field managers about improving communication with state regulators. She indicated an interest in attending a conference call with the Task Force to discuss a draft plan for improving communications and "alignment" between the states, DOE headquarters, and the site managers.

Ms. Roberson indicated that the Task Force could not be involved with the HLW Project Team due to litigation. She also said DOE is about the ratchet that team down, pending the outcome of the litigation. DOE will consider involving the Task Force on the SNF Project Team.

Ms. Roberson also said she would explore the possibility of creating two sets of documents: one for "official use only" and the other for assisting with public involvement.

Patrice Bubar, Associate Deputy Assistant Secretary, Office of Integration and Disposition, Office of Environmental Management, U.S. DOE

Patrice Bubar presented slides on the shipping schedule for WIPP (see [Attachment I](#)). DOE is trying to reach the capacity of 25 shipments a week. DOE plans on using rail in 2005. The WIPP baseline is locked under configuration control; any changes must go through the configuration board. Ms. Bubar said EM will handle legacy waste, but EM will not handle new waste at sites with ongoing missions (unless there is a change in corporate policy). A Task Force member observed that WIPP is a big success story for DOE, and expressed his appreciation for DOE's efforts to share up-to-date information with the states.

Wrap-up Discussion

Bill Ross reviewed a list of action items emerging from the meeting:

- Actions related to the three Project Teams as listed above.
- DOE (Roger Butler) will provide a chart or graph comparing overall funding under current plans versus under the previous strategy where the budget from closed sites was expected to transfer to sites still being cleaned up.
- DOE (Sandra Waisley) will provide information to the Task Force about her review of the contracts.
- NGA will reschedule Paul Golan so that he can provide a briefing about the remaining Project Teams.
- The Task Force anticipates preparing a welcome letter to Office of Legacy Management Director Mike Owen.
- DOE will get back to states regarding the question of "official use only" documents.
- DOE will talk with the field managers about improving communication with state regulators.
- NGA and DOE Staff will work on ideas for improving state-DOE alignment under EM's current system of corporate governance and decisionmaking.
- DOE (Lynne Smith) will get back to Idaho on the question of whether the TRU waste inventory reflects waste in tanks as INEEL and Hanford.

ATTACHMENTS

Attachment A: Meeting Agenda and Participant List

Attachment B: NGA Federal Facilities Task Force – Presentation by Ross & Associates.

Attachment C: *Waste Isolation Pilot Plant Program Status* – Presentation by Lynne Smith

Attachment D: Presentation by Mike Owen, Office of Legacy Management

Attachment E: *Managing the Nation's Radioactive Waste Legacy: Role of the Board on Radioactive Waste Management* – Presentation by Kevin Crowley, National Research Council of the National Academies.

Attachment F: National FOCUS Project Team – Presentation by Rod Rimando, Assistant Project Team Lead

Attachment G: Other-than-SNW-and-HLW Project Team – Presentation by Reinhard Knerr, Project Team Lead

Attachment H: *Environmental Management- FY 2004 Budget Request* – Presentation by Roger Butler, Deputy Assistant Secretary for Policy, Planning, and Budget

Attachment I: *Waste Isolation Pilot Plant Shipping Status* – Presentation by Patrice Bubar, Associate Deputy Assistant Secretary, Office of Integration and Disposition