

ASSESSING THE IMPACT OF THE STGWG ON DOE'S FIVE-YEAR PLAN: OBSERVATIONS AND RECOMMENDATIONS

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ABSTRACT

The paper analyzes the State and Tribal Government Working Group's substantive impacts on DOE's Five-Year Plan and argues that those impacts were made possible by the face-to-face dialogue that occurred in the initial meetings between DOE and the STGWG. The paper then suggests that the STGWG has lost some of its focus in recent meetings, and needs to return to a working group format if it is to continue to contribute to the planning process.

BACKGROUND

In June of 1989, the U.S. Department of Energy (DOE) initiated a dialogue concerning its proposed "Five-Year Plan" with representatives of several Native American tribes, States, and state organizations. The dialogue continues to this day. DOE's purpose in convening this group, known as the State and Tribal Government Working Group ("STGWG"), was to involve States and Tribes affected by environmental contamination at sites in DOE's nuclear weapons complex in the development of a strategy for cleaning up such contamination and for bringing DOE's facilities into compliance with State, Tribal and local environmental laws.

One and a half years later, DOE has issued two Five-Year Plans and is preparing a third. It is timely to assess the STGWG's impact, and to look at its future form and role.

STGWG'S INITIAL RESULTS: GENERALLY POSITIVE

In convening the STGWG, DOE invited representatives from 10 states whose governors had jointly sent a letter to Secretary Watkins in April 1989 regarding cleanup of the DOE complex. The letter suggested DOE adopt several initiatives to ensure a timely and adequate cleanup. Chief among these was the commitment to cleaning up all of DOE's facilities within 30 years. The initial draft of the Five-Year Plan did not acknowledge this goal. At the first STGWG meeting, State and Tribal representatives strongly urged DOE to commit to clean up its facilities within 30 years. DOE essentially agreed, and in the next draft of the Plan explicitly adopted the 30-year cleanup as a goal. While one might argue that committing to the goal is not the same as committing to the actual cleanup, in practice any distinction is likely to be negligible.

Would this same commitment have been made if there had been no STGWG, and the request had come as a comment on a *Federal Register* notice? The fact that the first draft of the Five-Year Plan did not establish any deadline for cleanup, even though ten affected Governors had requested one, suggests that the answer is "no." The Five-Year Plan acknowledges the need for DOE to "change its culture" and become more open and responsive to concerns of

interest groups outside DOE (and outside Congressional committees with jurisdiction over its activities). The Plan also recognizes that changing the culture of a large institution -- especially one as insular as DOE has been -- takes time. Convincing DOE that adopting the 30-year goal was a necessary symbol of this culture change involved some up-front culture change on the part of the DOE Five-Year Plan task force members and Secretary Watkins. The face-to-face discussions made possible by convening the STGWG were an integral force in causing this change.

The first few meetings of the STGWG resulted in other substantive changes in the Plan. The most significant of these are the recognition that DOE must comply with State environmental laws, and the elimination of a push for uniform national standards. At these meetings, the STGWG argued persuasively that recognizing the breadth of the waivers of federal sovereign immunity contained in RCRA, CERCLA and other federal environmental statutes was another essential part of DOE's culture change. Federal agencies generally -- and DOE in particular -- have strongly resisted State environmental enforcement (as well as Tribal efforts to assert treaty rights). For example, DOE maintained for years that RCRA did not apply to it, even though RCRA 6001 waives the federal government's immunity from application of state, federal and local hazardous and solid waste laws, and the waiver applies to "[e]ach department ... of the executive ... branch[]...." (emphasis added). This resistance, combined with the growing recognition of the massive amounts of environmental contamination at DOE facilities, has created a severe credibility problem for DOE.

The States and Tribes argued to DOE that if Secretary Watkins were really determined to aggressively address DOE's environmental problems and to meaningfully involve States and Tribes in developing and implementing the Plan, the Plan should reflect a clear break from DOE's past hostility to outside regulation. By incorporating this policy change in such a significant and high-profile document as the Five-Year Plan, DOE would send this message to its personnel, contractors, and the general public. By acknowledging States' and Tribes' authority over its activities in the Five-Year Plan, DOE would take simultaneous steps to

ward changing DOE's culture and restoring its credibility. Again, the face-to-face communication at these initial STGWG meetings was a key factor in convincing DOE to accept this advice and acknowledge States' and Tribes' authorities.

Similarly, convincing DOE that it should abandon its push for uniform national environmental quality standards required the sort of debate that the STGWG meetings allowed. Here, State and Tribal representatives were able to persuade DOE that because Congress had already decided -- on several occasions -- that States and Tribes should be able to establish more stringent environmental standards than EPA, and apply them to federal agencies as well as private firms, DOE should stop beating a dead horse, and abandon its efforts to raise this issue again.

The STGWG also proved influential in persuading DOE to reject its view that "corrective activities," i.e., actions needed to bring DOE facilities into compliance with existing environmental requirements, could be prioritized. Although DOE did not change its position on this issue until the second Five-Year Plan, the change occurred in response to STGWG concerns. Again, the STGWG argued that if DOE were committed to compliance with environmental requirements, and wanted to convince the world that it seriously intended to comply with them, it would have to correct its ongoing violations of environmental requirements in a timely manner. The STGWG insisted that compliance with environmental requirements was a cost of doing business, and could not be subject to prioritization due to budgetary considerations. The STGWG also argued that as a matter of equity, DOE's budgetary concerns should not be treated differently than private industry's. In the second Five-Year Plan, DOE adopted this position by making all corrective activities "priority one."

The STGWG has not managed to convince DOE to adopt all of its suggestions, of course, and there remains the matter of implementing the recommendations that have been adopted. Perhaps the most contentious issues that have arisen to date are the development and application of a prioritization system. The States and Tribes felt that DOE was trying to rush the process and was not addressing their concerns with the system. Recently, DOE has slowed development of the system, and it has announced it has revised the system to reflect the States' and Tribes' concerns. Although the issues have not yet been resolved, the dialogue is continuing with good faith on both sides. Despite this and some other less significant sticking points, as the above discussion illustrates, the STGWG has significantly affected the development of the first two Five-Year Plans.

CHARTING A NEW COURSE

Although the first few meetings of the STGWG were productive and markedly altered the content of the Plan, the group seemed to lose its focus in subsequent meetings. In large part, this was due to the lack of a particular goal once

the first Five-Year Plan had been issued. At the initial meetings, the STGWG's purpose was clear: review the Plan and suggest improvements. After the Plan was issued, some meetings were held to discuss the budget for the Plan, and the two most recent meetings were held primarily to brief STGWG members on DOE's actions to implement the Plan. Due to timing problems, new agendas had to be substituted at two of the meetings scheduled to discuss the budget. At each of these meetings, the STGWG's role was largely passive: mostly, the representatives listened to DOE speakers. Without any intentional action on anyone's part, the STGWG meetings ceased to be real working group sessions, and became 1-day seminars, with little actual discussion among the STGWG members or between DOE and the STGWG.

That the STGWG had lost its rudder became quite clear by the last meeting, held in February 1991 at the Yakima Indian Nation cultural center in Toppenish, Washington. During a working lunch session, the STGWG members discussed their dissatisfaction with the lack of any significant impact from recent meetings. The STGWG decided that it needed to chart a new course. There was not sufficient time at that meeting to fully define the future nature of the STGWG's participation in the 5-year planning process. In fact, it is quite possible that the STGWG's role will change with time. For the short term, however, some things are clear.

To be worthwhile, not only from the perspective of the States and Tribes, but also from DOE's perspective, the STGWG meetings must be highly interactive. They must be designed to stimulate both STGWG input to DOE and discussion of that input. In other words, the STGWG needs to be true to its name: it needs to be a working group. The STGWG had a strong impact on the Five-Year Plan in part because it generally arrived at consensus positions. This is only possible with an opportunity for STGWG members to meet among themselves and discuss their concerns. Thus, effective STGWG meetings will have to allot significant time for STGWG executive sessions and for discussions of STGWG concerns with DOE.

Another key for the future success of the STGWG is for the group to be active in planning each meeting. Because dialogue between the STGWG and DOE is the sine qua non of the group, the STGWG cannot sit passively while DOE sets the group's agenda. Both sides must be involved.

CONCLUSION

Face-to-face communication between DOE and the STGWG resulted in a stronger Five-Year Plan. For the STGWG to continue to contribute to further development and implementation of the Plan, it must again become a working group. The STGWG's value lies in providing a forum for its members to discuss their concerns with one another, and with DOE.