

## YAKIMA TRIBAL PERSPECTIVES ON HIGH LEVEL SELECTION PROCESS

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### ABSTRACT

When Congress went through the arduous process of fashioning a comprehensive plan for resolution of the nation's long-standing nuclear waste problem, it explicitly recognized that past federal efforts in this area had been inadequate. Congress also recognized that the primary reasons for the failure of earlier federal efforts was failure on the part of the federal government to seriously deal with very real technical questions about the geologic adequacy of prospective repository sites, and failure to address the concerns of state, tribal, and local governments in the repository selection and development process.

### INTRODUCTION

#### The Need for Public Confidence

Congress addressed both of these historic failings in federal nuclear waste management efforts when it passed the Nuclear Waste Policy Act of 1982. The question of site suitability was addressed by the requirement that sites for potential repositories be selected on the basis of technically-grounded siting guidelines, and that the primary criteria for the selection of sites must be "detailed geologic considerations". The issue of state and tribal government involvement was addressed by one of the most elaborate participation schemes ever devised by federal statute.

Congress required extensive consultation and cooperation between the federal agencies and the affected tribes and states, and required those agencies to take the concerns and views of the states and tribes into account to the maximum feasible extent. The explicit purpose of these requirements was to promote public confidence in the integrity and competence of the program. Congress wisely acknowledged that it was essential to enable the states and tribes to be involved meaningfully in the implementation process from the beginning, in the hopes that their concerns would be addressed in a meaningful way, thus reducing the likelihood the program would be thwarted by political opposition and desperate litigation on the part of frustrated and ignored state and tribal governments.

We believe the basic process laid out by Congress in 1982, although not without flaws, was fundamentally sound. If followed, that process probably could have succeeded in yielding suitable repositories for nuclear waste--although not on the unrealistic schedule specified in the Act.

#### THE HANFORD RECORD

The Yakima Nation's confidence in DOE's claims of suitability must be considered in content. We cannot consider the Department's actions in the civilian waste program in isolation. DOE and its predecessor agencies have assured us for 43 years that its operations at Hanford have not been environmentally damaging or hazardous. Yet we have been barraged in recent months with a seemingly endless series of frightening

revelations about decades of DOE's reckless environmental and safety practices at Hanford:

- Over 40 years of accidental and intentional releases of large quantities of radioactivity to the earth, the atmosphere, and the waters that are sacred to the Yakimas.
- We have had our worst fears confirmed about DOE's intentions concerning disposition of 149 leaky single-shell tanks of high-level defense wastes--namely, that they want to leave the remains of those tank wastes where they are--a permanent high-level waste repository just a few feet below the surface of the ground, and just a few miles from the Columbia.
- We have learned that the N-reactor at Hanford has numerous disturbing design similarities to the Chernobyl reactor in the USSR; that consultants hired by DOE to review the plant recommended drastic safety improvements.
- We have learned that DOE's enforcement of safety measures at its PUREX plant at Hanford are lax and many environmental vital regulations have been violated regularly.
- We have learned that DOE contractors temporarily removed signs warning of roadside contamination at Hanford when the Governor came through on a tour.

Today, there can be no question but that the Department has utterly failed to inspire confidence in its program.

#### THE CURRENT MODEL OF INVOLVEMENT

The question the Yakima Nation and the DOE have to ask is: short of amending the Act or executing comprehensive and prescriptive C & C agreements, what can be done now to help promote public confidence? In order to answer this question, we have to analyze the current process of consultation used by the DOE as a means of involving the affected parties.

The primary means of involvement by affected parties has been through review and comment. Historically this has been a six part process:

- 1) hold internal planning meeting to define the scope and objectives of the document;
- 2) write the internal draft documents;
- 3) review these internal drafts to produce a "defensible" document, (QA);
- 4) Release this draft for review by the affected parties;
- 5) allow some "reasonable" period for review and comment by affected parties; and
- 6) revise documents to take into account the comments deemed to be both "reasonable" and "in scope".

The affected parties are not satisfied with this process because there are often fundamental disagreements or misunderstandings about the objectives or scope of documents. Consequently, the affected parties are rarely, if ever, satisfied with the time allowed to review and comment. The comments are often not adequately responded to and their disposition is rarely explicitly stated.

We believe that the current review and comment process is largely responsible for the frustrating environment that exists in the technical program. This responsive model of involvement has unnecessarily detached the affected parties from the document being reviewed and the process of producing that document. Given the fact that this is the DOE's program and the NWSA calls for intense involvement by the affected parties, we recognize the fact that there are some bounds on the participation of the tribes and states. However, the current model is far too restrictive in the timing and level of that technical involvement. Creative and innovative approaches need to be considered.

#### AN ALTERNATE APPROACH

Potentially more appropriate model of involvement is currently developing at Hanford outside of the Civilian Waste Program.

In response to the declassification and release of 19,000 pages of information on the historic releases

of containments from the Hanford Nuclear Reservation and supported recommendations of a review panel convened by the Center for Disease Control, the State set up a Historic Document Review Committee to assess the health risks to the region and set the recommendations of the review panel.

In this dose reconstruction project, the objective of all parties is to do a credible job of dose reconstruction associated with past defense materials production activities. As in the repository program, the U.S. DOE is going to pay for the study; they have much of the baseline information and must perform credibly. In this case, the Tribal and State Committee had initially assumed itself responsible for the actual work of the dose reconstruction. After some meetings, the DOE regained control of the work which was to be contracted to Battelle. The committee insisted on substantive and equal involvement in the project. The DOE and the historic documents review committee cooperatively defined a management structure which will give both parties equal access and authority in dealing with the prime contractor.

Preliminary working sessions of the contractors to define the work plan, study objectives, etc., will be open to both sides. In effect, this will be a single, jointly managed project that includes the same parties as the repository program.

#### CONCLUSION

Eventhough there are many important differences between the Hanford dose reconstruction study and the statutorily defined task of siting the Nation's first high level radioactive waste repository, the technical objectives are the same-using science in a controversial project to help make high integrity decisions that will build confidence in the programs.

In order to meet this objective in the repository, program changes should be made in the relationship between the Office of Civilian Radioactive Waste Management and the affected parties. These changes should provide a mechanism for the affected parties to gain some interest in the documents and decisions that are made. It is the position of the Yakima Nation that this could be accomplished through early involvement in the planning and scoping of the work. Informal or formal technical interfacing sessions between our scientists and the Department's would certainly aid in developing the groundwork for future relationships.