

A TRIBAL PERSPECTIVE ON THE U.S. DEPARTMENT OF ENERGY FIVE-YEAR PLAN FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

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ABSTRACT

As participants and independent reviewers of the U.S. Department of Energy (DOE) Five-Year Plan process since its inception in May 1989, our paper presents an assessment of this landmark initiative from the Native American perspective. The discussion covers a wide range of concerns, and provides recommendations to the federal government on the Five-Year Plan. These recommendations concern implementing the Department's recognition of Tribal sovereignty and treaty rights, as such rights pertain to the Five-Year Plan. This paper also acknowledges the DOE commitment to support Tribal education and training as part of the human resource development program required for environmental restoration and waste management.

INTRODUCTION

In May 1989, the Secretary of Energy invited the authors to participate in the review and evaluation of the first draft of the Five-Year Plan (FYP). The comments and recommendations of the State and Tribal Government Working Group (STGWG) were incorporated into the final version of the FYP, which was released to the public in September 1989. The FYP represents a bold initiative by the DOE for two major reasons: 1) it commits the Department to restoring the environment at its sites by the year 2019, and 2) it commits the Department to a new mode of operation, whereby affected governments and the public play an integral role in DOE decision making.

Tribal governments have been recognized as affected parties to the FYP because some DOE facilities are located on Tribal or ceded land. Indian tribes may be affected by the proximity of their reservations to DOE facilities, or because DOE facilities are located on ceded land, or both. Ceded land is the area which a tribe controlled at the time of negotiation of a particular treaty. Tribal governments retain reserved rights on ceded land, including fishing, hunting, and food gathering rights. In this paper, we present an overview of the environmental concerns of Native Americans regarding the FYP, which have their roots in Treaty rights, and the distinct way of life of the American Indian.

BACKGROUND OF TRIBAL ENVIRONMENTAL CONCERN

In the early 1940's as part of the war effort, the government began a secret project to produce nuclear weapons. Inherent to the production of weapons grade nuclear material, considerable radioactive and hazardous waste was produced. Through routine practice, and as a result of accidents, large quantities of this waste were released into the environment. In the late 1970's, routine monitoring revealed the presence of chemicals and radionuclides in the soil and water at and near DOE production sites. By the late 1980's, independent review of DOE activities, which in-

cluded analysis of previously classified documents, disclosed that past DOE practices had resulted in major impacts to the environment. Numerous waste disposal sites were found to be in violation of recently enacted environmental laws and regulations.

As public concern rose over potential threats from DOE facilities, and legislation was amended to bring DOE into compliance with environmental regulations, Indian tribes reiterated their concern about impacts of DOE activities on Treaty rights, and health effects on the Indian way of life. Although treaties were signed over one hundred years ago, they may be considered the first environmental laws agreed to between Nations. Since the treaties guarantee a way of life dependent upon a natural and clean environment, they also guarantee a level of protection for that environment. Indian tribes depend on the environment in a unique way, and therefore require distinct consideration with regard to altering or restoring the environment. Therefore, the Secretary's initiative in creating the FYP, and specifically requesting Tribal participation, is viewed as a great step forward in Tribal-U.S. Government relations.

At the outset of the FYP process, the Department of Energy took a significant step in its official recognition of treaty rights and sovereignty of the affected tribes. This action strengthened the entire FYP initiative, by including as participants affected tribes which possess legitimate rights and interests in cleanup and waste management decisions. These rights may lie outside the bounds of regulatory authority of states and federal agencies which are involved in the FYP. As an example, tribes have rights to wildlife, fish, and food resources on ceded land, called possessory and usage rights, as well as the right to protect Indian cultural resources and practice traditional religions.

The credibility of the FYP process is enhanced by the participation of affected Indian tribes, since the tribes are allowed early access to the decision-making process, and since an additional and independent quality assurance check is provided for Department planning. In order to fully

implement the DOE's recognition of tribal sovereignty and treaty rights, affected tribes must be provided with financial support to match their level of effort in the independent review and monitoring of compliance and cleanup activities. Because of the major financial and institutional resources required to meet the thirty year goal for cleanup and compliance, the affected Tribes favor congressional action which provides long-term support for the FYP process.

PRIORITIZATION OF CLEANUP ACTIVITIES

As part of the FYP, the DOE is developing a methodology for setting the priority of potential activities involved in environmental restoration and waste management. The equity of the budget allocation process for environmental restoration and compliance is of great concern to the affected States and Indian tribes. To allow input from all concerned parties, the DOE has formed an External Review Group (ERG) which represents State, Tribal, and public interest groups, and which is to provide guidance on the criteria used to rank environmental restoration projects. As currently planned, the prioritization system will include criteria for evaluating health risks, environmental impacts, regulatory commitments, economic impacts, and sociological impacts. As has been discussed previously, Native American concerns may not be fully addressed by any of these classes of criteria, because of the unique tribal rights and lifestyles which are affected by DOE actions. Therefore, special considerations must be given to reflect tribal interests in any national prioritization system.

As a party affected by the DOE priority system, the tribes can take part in the process by having their concerns addressed by means of special risk reduction criteria, and in some cases, by being treated as an exception to the formal prioritization procedures. In this manner, the tribes can support the prioritization system as a decision-aiding methodology, in addition to, and in support of, the regulatory compliance process. A formal decision-aiding methodology which allows early input from State and Tribal representatives would provide a useful tool which parties can use to focus debate on a wide range of risk reduction issues, given a fixed level of funding appropriated by Congress. However, even after development and testing of the prioritization system, its implementation will require continued input from States and Tribes to reflect new environmental restoration activities which are not covered by regulatory compliance agreements.

The risk-based budget allocation approach chosen by DOE to set priorities for cleanup activities reconfirms the need to fully identify environmental problems at various DOE sites. Such identification entails site characterization activities, remedial investigation/feasibility studies as required by law, and the subsequent assessment of health risks posed to nearby populations. As an important population

group living and working near DOE sites, Indian people are potentially exposed to risks from sites. Therefore, the level of health risk imposed on such indigenous populations must be understood within the context of the distinct Native American lifestyle.

Information on lifestyles and food consumption pertinent to a specific tribe is essential to any meaningful assessment of the associated health risk. Because of the long history of misuse of this type of information concerning Indian people provided to the government, the active participation of Tribal people in the data gathering process and interpretation must be an integral part of any risk assessment study. Specifically, confidentiality provision must be observed to protect tribal information and data from commercialization and unauthorized usage. In this regard, serious consideration should be given to tribal efforts to conduct independent epidemiological studies and to administer and revise a data base of tribal health records.

TRANSPORTATION OF RADIOACTIVE/ HAZARDOUS WASTE

Shipment of radioactive waste from its generation source to treatment, storage, or disposal facilities is mentioned in the second edition of the FYP. Designation of transportation routes for radioactive and hazardous waste must take into account the concerns of affected tribes, especially with regard to tribal capability to respond to accidents and to control or mitigate post-accident impacts. The failure of waste containers in an accident could have destructive consequences for tribal land and natural resources as a result of the long-lived characteristics of some radionuclides, such as transuranic waste.

Tribal land is distinct from much of the surrounding area, in that it is normally considered non-evacuatable. In other words, if tribal land is made uninhabitable as the result of a severe hazard, there is no alternate Tribal land on which to relocate. As agreements between Nations, treaties guarantee tribal land as permanent homeland and for time immemorial. Therefore, it may be necessary for the Department, after consultation with Indian tribes, to construct alternate transportation routes to meet each party's needs.

In considering waste transportation, consultation with and involvement of affected tribes should be part of DOE's commitment to recognize treaty rights. The Department of Energy should make every effort to provide training and support for tribal emergency response planning. Tribes should be given the opportunity to review and comment on emergency response procedures and protocols, and should be part of the federal and state accident monitoring network. Transportation planning, for route selection and scheduling, should incorporate tribal concerns at the outset to ensure that this component of environmental restoration and compliance works effectively.

RESEARCH AND DEVELOPMENT ACTIVITIES

In planning the cleanup of contaminated sites, the availability of effective technology is a fundamental issue because it can determine the feasibility as well as the cost/benefit ratio of a selected cleanup alternative. It is therefore clear that without the existence of a proven technology for cost effective cleanup at a site, environmental restoration funds may be better spent on public health care or on education. Furthermore, according to the initial scoping of environmental restoration activities for the next five to ten years, as presented in the second draft version of the FYP, there is a projected shortage of qualified labor to achieve short-term cleanup goals. For this reason, the education and training of the future environmental restoration work force should be considered as high priority.

To this end, Native American colleges can provide an important resource to the Department of Energy, with proper federal scholarship support from the DOE Five-Year Plan process. Because government-to-government cooperation between DOE and Indian tribes must extend throughout the thirty-year environmental process, education of future generations of technicians, engineers, and planners is vital. It is in the best interest of Indian tribes to work closely with DOE to establish special training and educational programs for environmental health and engineering sciences, to fulfill the specific needs of the affected tribes and the DOE.

Education programs and resources are vital for meaningful tribal participation in the Five-Year Plan. There will be 30 years of graduating Indian high school students. There is a critical need for Indian Tribal governments to develop the technical capability to analyze nuclear issues in terms of health effects and effects to natural resources.

Indian children must be inspired and encouraged with DOE assistance to learn the non-Indian science and technology to restore the environment and to properly manage waste. Educational programs and support are the pillars to the bridge of protection of the environment with a tribal perspective, and to economic participation through employment and contracting opportunities with the DOE.

TRIBAL CULTURAL VIEW OF ENVIRONMENTAL RESTORATION ACTIVITIES

From a cultural viewpoint, much of the non-Indian activity of the past century and a half on tribal lands is that of a migrant culture, which moves to an area, exploits the land and resources, and moves away. Fortunately, through

passage of environmental laws and through changing values, this transient activity is no longer favored.

Indian tribes view environmental restoration activities from a unique perspective as a result of the Native American relationship to the land. In part, this relationship comes from a view of time in which thousands of years are not an abstract measure of existence, but part of the cultural inheritance. Therefore, distinct and profound tribal concerns about preservation, restoration and protection of the land have their cultural roots in the distant past. In this sense, the tribal rationale for reclamation of contaminated areas, which are considered as permanent homeland may not easily fit into any simple cost/benefit analysis scheme.

The fact is that western technology has created the current pollution problems on the tribal homeland using its natural resources for the benefit of this nation. Therefore, it is also for the benefit of this nation, presently and in the future, that one must commit adequate fiscal resources and develop effective technologies for the cleanup and restoration of tribal homeland and that of the general public.

Man is here only for a limited time, and he borrows the natural resources of water, land and air from his children who carry on his cultural heritage to the end of time. Indian people and non-Indians must have a responsibility to these resources for generations yet unborn. One must hand over the stewardship of his natural resources to the future generations in the same condition, if not as close to the one that existed when his generation was entrusted to be the caretaker. This is the challenge of highest order this nation faces today.

CONCLUSIONS

The previous discussion presents an overview of environmental concerns related to the FYP from a tribal perspective. The U.S. Department of Energy is to be commended for initiating the Five-Year Plan process, and for its official recognition of Treaty rights and tribal sovereignty pertaining to environmental restoration and waste management. Because the federal government has made a significant, long-term commitment, success depends largely on the Department's ability to take into account the important issues raised by all affected parties, and to incorporate them in the implementation of the Five-Year Plan process. The achievement of the stated environmental restoration goals will be an invaluable contribution to the protection and preservation of natural resources, as well as a noble advancement and reinforcement of the government-to-government relationship with Native American tribes, as historically promised in Treaties.