Transportation External Coordination Working Group
Transportation Grant Topic Group
Wednesday, February 16, 2000
Las Vegas, Nevada

Participants:

John Allen, Battelle, TRB; James Baranski, State of NY/CSGNE; Denise Brooks, State of TX/ SSEB; Barbara Byron, State of CA/WGA; Jim Daust, CVSA; Robert Holden, NCAI; Judith Holm, DOE-NTP; Dan King, Oneida Nation; Jim Klaus, DOE-CAO; Corinne Macaluso, DOE-OCRWM; Frank Moussa, State of KS/MWCSG; Tracy Mustin, DOE-EM; Ellen Ott, DOE-GC; Tammy Ottmer, State of CO/WGA; Max Power, State of WA/STGWG; Jim Reed, NCSL; Tim Runyon, State of IL/MWCSG; Ralph Smith, DOE-CAO; Lew Steinhoff, DOE-DP; Elgan Usrey, State of TN/SSEB; Chris Wells, SSEB; Heather Westra, Prairie Island Indian Community; Ed Wilds, State of CT/CSGNE; J.R. Wilkinson, Confederated Tribes of the Umatilla Indian Reservation/STGWG.

Observers: Bob Alcock, DOE-EM; Nancy Bennett, UNM-ATR; Robert Bobo, Shoshone-Bannock Tribes; Lloyd Bokman, State of Ohio; Ed Gonzales, consultant; Craig Halverson, State of Idaho; Kent Higgins, Shosgone-Bannock Tribes; Nam Lee, DOE-NTL; Ki Techumseh, DOE-AL; Diana Yupe, Shoshone-Bannock Tribes.

Research/Support Staff: Judith Bradbury, PNNL; Mike Butler, UETC.

Introduction and Background

Following introductions, Judith Holm provided an overview of the proposed grant concept and of DOE's objectives for such a grant. She emphasized the preliminary nature of discussions: the Department is looking for substantive input from TEC/WG members and other stakeholders, while continuing internal discussions about the feasibility of the concept as well as administrative structure, roles and responsibilities of the various Program Offices, and internal funding sources and amounts. She stated also that DOE's intent is not to take away from jurisdictions that are currently receiving funds but to raise the level of assistance provided to all States and Tribes. The Department's objectives are to:

- Promote equitable distribution of available funds
- Increase overall levels of preparedness for DOE shipments
- Promote efficient administration of available funds
- Provide funding as one component of an overall program (including training development, planning and technical assistance) that will meet DOE program needs, while also meeting the needs of recipients.

Judith Bradbury identified three areas of research that have helped to structure the development of the transportation grant concept:

- Review of the data and key findings of the series of reports on financial assistance to States and Tribes, through the most recent update (1998). These reports show:

→ The amount of funding currently allocated to States and Tribes for hazmat activities by federal agencies that may be used to build State and Tribal planning and emergency response capabilities
→ Tribal ineligibility for sources of federal funding that provide a large proportion of State funding, e.g., Department of Transportation's (DOT) Motor Carrier Safety Assistance Program and the Federal Emergency Management Agency's (FEMA) consolidated State Cooperative Agreements
→ DOE funding has traditionally been provided to States and Tribes that host DOE facilities, rather than to jurisdictions along major transportation corridors
→ As of FY98 (and projected for FY99), federal funding for counter-terrorism measures is beginning to outweigh DOT and DOE budgets for hazmat preparedness.

- Review and discussion with other (non-DOE) federal agency staff concerning grants provided by other federal programs show:
  → A trend toward consolidation of funding components to allow greater State/Tribal flexibility in establishing priorities and addressing needs
  → Greater emphasis on performance
  → Allocation of funding using a formula based on fairness and equity considerations that incorporate population and risk factors.

- Review of stakeholders' comments on DOE-OCRWM's proposed 180(c) program show support for:
  → Dealing directly with Tribes
  → Flexibility to allow recipients to identify their own needs
  → Avoiding a matching funds requirement
  → Keeping administrative costs to a minimum
  → Providing a base level, as well as a variable amount of funding.

Discussion of Issues

Summary: Primary issues discussed were: desired outcomes for the grant; allowable activities; issues of concern to the Tribes; grant components, including a potential Tribal set-aside; and allocation factors, focusing on population and State fees. There was general agreement among group members on desired grant outcomes, allowable activities, and features of current relationships and programs on which a potential grant program should build. Outstanding issues were the process for allocating funds, including use of a formula approach and factors that need to be considered if a formula is used. Tribal concerns and issues were a particular focus of the discussion.

Desired Grant Outcomes: The basic desired outcome on which there was general agreement was summarized as: maximizing public health and safety with limited resources. Other outcomes that were identified were:

- Provision of a base level of funding to build States and Tribal infrastructure (where infrastructure is defined as "people assets" such as enhancing planning, response and inspection capabilities rather than physical assets such as roads and bridges).

[One participant reported that her State (California) had found it important to first define routes so that resources can be focused on the selected routes; another participant from Tennessee, however, noted that in his State, so many routes were used that it is important to ensure an equal amount of preparedness along all routes.]

- Sharing the "load" by relieving individual DOE Programs of carrying the entire planning and assistance process (one participant emphasized that it was DOE's responsibility to reach agreement internally on such issues).
- Providing more flexibility for recipients to use funds to meet their needs.
- Avoiding redundancy and duplication.
- Providing consistency and dependability in funding to support State and Tribal long term planning needs.
- Maintaining a regional, multi-jurisdictional planning capability and organization.
- Establishing a cooperative relationship in public information and outreach.
- Filling in existing gaps in hazardous waste preparedness.

Allowable Activities: A western representative suggested using the procedures and scope of activities established under WIPP as a beginning framework for identifying baseline allowable activities. Activities could be categorized as follows:

- Accident prevention:
  → Inspection and enforcement using CVSA preventative actions including organizational capabilities for administering an inspection program
  → Transportation planning, including TRANSCOM and notification and internal expenses to maintain such activities, and planning to integrate with State and Tribal highway planning
  → Route planning and evaluation
  → Safe parking and bad weather procedures
  → Equipment purchase, maintenance and calibration.
- Emergency preparedness: planning, training, exercises, MOUs, and equipment, and also medical planning, training, exercises, and equipment (the latter were highlighted as being an important component of overall emergency preparedness).
- Other: this category included several, additional items such as escorts, civil disobedience/law enforcement planning and reimbursement costs, costs for document preparation, and regional State and tribal meeting attendance.
- Questions were also raised about other issues:
  → Coverage provided under Price Anderson, specifically, how the Act meets recovery costs and where gaps may exist between the Price Anderson threshold and actual costs. (Judith Holm will follow up on this).
  → The relationship of the proposed grant to the 180(c) funding for training and technical assistance for anticipated commercial shipments and to the WIPP facility. One DOE representative noted that, if carefully designed to abide by legal requirements and honor existing agreements, a consolidated grant should allow the programs to broaden their focus and cover more activities.
  → Whether a consolidated grant would cover preparedness for non-DOE, commercial shipments. (The Civilian Radioactive Waste Program has responded to this question in past

TEC/WG meetings and indicated that this was not possible under the Nuclear Waste Policy Act of 1982 and its Amendments. Funding for non-DOE shipments probably would not fall under the responsibility of DOE, but would be an allowable cost under DOT or FEMA grants).

Issues of Particular Concern to Tribes: Tribal representatives brought up several issues of particular concern, noting that, while some are also of concern to the States—especially to rural areas—many are magnified for the Tribes who frequently are starting from a different level of preparedness:

- Basic issues need to be addressed. The Tribes have very limited infrastructure, both physical and human.
- Funding and resources need to be provided for establishing a baseline and conducting a needs assessment.
- The baseline assessment should include an inventory of cultural resources—places and areas of special importance to a Tribe along a highway right of way, such as burial sites, waterways, and gathering sites. A related issue is that cleanup on Tribal lands has different implications as compared with States: planning, and coordination takes a long time because of the cultural implications.
- Preservation of Tribal sovereignty and an appropriate process for consultation are key. There is need for ongoing consultation between Tribal leaders and DOE Program Managers as a parallel process with the work of the topic group. The Tribes need to hear DOE responses for themselves.
- Establishing relationships and developing coordination with State and local governments is difficult. Where there are no MOUs with local and State neighbors, Tribes have particular problems.
- Information and education is needed not only for Tribal members but also for shippers and carriers who may lack awareness of cultural concerns.
- Additional inspection training is needed before Tribal inspectors can advance to enhanced inspection procedures. (TEC has addressed this in the past, with CVSA offering participation in the training and inspection program in conjunction with the States.)
- The role of the Indian Health Service as a provider of emergency services should be examined and included in planning and/or training activities eligible for payment under the proposed grant.
- Process and trust questions are important. Tribes who were present emphasized that they had good working relationships with their DOE Field Office representatives and did not want to lose these relationships, by moving to a grant administered by HQ.
- Comments submitted by the Santa Clara Pueblo prior to the discussion indicated two primary concerns related to a proposed transportation grant: consultation on upcoming shipments and whether a Tribal decision to participate in the proposed grant process would impact Tribal sovereignty and funding amounts (representatives were assured that DOE intended to deal directly with each Tribe and that the term *consolidated* refers to DOE's consolidation of the Department's various funding streams and not to consolidation of Tribal grants).

A State participant suggested that DOE and the Tribes consider provision of a "balloon payment" to raise Tribes' resources, after which a base grant and formula (impact) approach could also be used for equitable distribution of available funds. As with the States, Tribes would be free to establish their own priorities for funding, within the parameters of the grant.

Grant Components: Discussion of the three grant components (basic, impact, and discretionary grant) focused on the concept of a formula, the Tribal proposed set-aside, and the factors to be considered in developing equitable allocations if a formula is used—population and State fees were particular factors discussed. Views differed on all of these issues.

- There were differing views on the desirability of a formula approach, with a general division between those favoring adaptation of the current WIPP approach of individual negotiation with Tribes, and with States through Regional Groups and those favoring development of uniform, consistent, national-level funding criteria.

→ Some Tribal representatives expressed particular concerns about placing Tribes in the " bureaucratic "box" of a formula grant. For some, the trust relationship between the federal government and an individual Tribes means that, regardless of whether a Tribe has 10 feet or 10,000 miles of impacted land, there is an obligation to protect the integrity of that Tribe. A Tribal lawyer who was present questioned the legality of a formula allocation.

→ In contrast, some State representatives commended the formula approach used by nuclear plants in allocating assistance to neighboring jurisdictions: the approach had provided consistency, as well as circumventing undue political influence on the distribution of funds. Others noted that while a formula cannot meet all needs and all situations, DOE has a limited budget and cannot meet all needs. Moreover, adaptation of the individual negotiation approach used by WIPP may not be feasible for a national-level program of financial assistance.

- Some Tribes expressed concern about the amount identified for a Tribal set-aside and strongly advocated a needs assessment prior to reaching a decision on funding levels. It was noted in response that, as with all numbers, the Tribal estimate were being used as a starting point for discussion and as tools to illustrate the grant components. DOE intends to address Tribal needs and appropriate funding levels in consultation with the Tribes.
- Inclusion of population among factors to be considered in developing the impact portion of the grant indicated a division of views, generally along geographic and demographic lines—large jurisdictions in the Northeast believed that population was a key factor affecting their need for assistance, while rural areas in the west were concerned that distance was more important and that a assigning a high weighting to population would be to their disadvantage. Northeastern States' reported that their concern is based on experience with planning for nuclear power plant evacuation: human safety is the #1 priority and thus concerns are greatest where there is a large population involving possible evacuation and/or closing down an interstate. The increase in people and traffic in urban areas also requires a more complex response and higher training costs for the increased number of fire department personnel. Northeastern members also noted that many people live beyond the proposed ½ mile boundary of each shipping route and that DOE would need to examine also what is located within the ½ mile.
- A final area of disagreement concerned State fees, specifically, whether States who assess fees on shippers of hazardous waste through their jurisdictions should also be eligible to receive a DOE grant.

→ Some State representatives argued that setting fees is an individual State process and should be considered an internal matter. Fees are usually charged for providing services and, in most cases, the fee does not cover the cost of the service. DOE is not the primary target of fees, which are assessed to cover hazmat costs. The theory is that the user of the service should pay.
→ A WIPP representative noted that this was a philosophical issue of disagreement and that, since WIPP payments cover States' upfront costs, it is inequitable to expect DOE and the tax payer to pay twice. Moreover, to date, Tribes have no fee programs in place. In his view, if the goal is to keep shipping routes prepared for safe transportation, it is better to provide funding in an agreement that identifies specific activities to be performed.

Continuing Issues and Action Items

In general, participants agreed on the need to maintain the dialogue between DOE and TEC/WG members on issues that need to be worked through before completion of a white paper for the Senior Executive Transportation Forum. The key question to be answered is whether this is the mechanism to achieve the outcomes that DOE and States and Tribes want. (This question is also being considered internally by DOE.)

The following actions items and issues for further discussion were noted:

- All participants will go back to their various constituencies to discuss the issues raised in discussions to date
- Judith Holm will obtain answers on questions related to the Price Anderson Act and to the issues raised by the Santa Clara Pueblo
- Further discussion will be conducted on issues raised, with a view to reaching some accommodation of concerns
- A numbering system will be introduced for all research and discussions papers related to the grant that are available on the web.