

## **Long-Term Stewardship Project Activities**

The following summarizes the long-term stewardship project activities of the National Governors' Association, the National Association of Attorneys General, the Environmental Council of the States, The Energy Communities Alliance, and the State and Tribal Government Working Group.

### **NGA's Long-Term Stewardship Projects and Activities**

Since 1993, the NGA Center for Best Practices has been working with states hosting weapons production and research facilities to aid them in discussing and negotiating waste and disposal issues among themselves and with DOE. This work led to the successful negotiation in 1995 of approximately forty-eight cleanup agreements between states (or the U.S. Environmental Protection Agency) and DOE. It also provides an opportunity for continuing dialogue on funding, waste treatment, nuclear materials disposition, and waste disposal options. A Task Force composed of state regulators and Governors' policy advisors guides project activities. Recognizing the importance of LTS, the Task Force established a Long-Term Stewardship Committee. The NGA Task Force divides its LTS work into projects, policy positions, and coordination activities.

### **Products**

#### **Federal and State Statutory Issues & Long-Term Stewardship**

Report on Federal & State Statutory Framework for Effective LTS. This report will examine:

- Funding mechanisms
- Federal statutory directive for LTS
- Adequacy of existing mechanisms for institutional controls (drawing on NAAG research)
- Applicability of state institutional control laws to federal agencies (again, drawing on NAAG research)

Implementation Strategy for Report's Recommendation

#### **Informational Products to Support LTS**

- Brief documents for Governors on key issues and best practices, including financing for LTS
- Tracking LTS activities and research, including a scorecard of DOE, NGO, and academic LTS products and activities as well as an annotated bibliography;
- Maintaining LTS website to provide consolidated source of information for states and the public;
- Compiling and summarizing information about successes and failures of institutional controls and why and how the failures could be avoided.

### **Policy Input**

- Tracking DOE's *LTS Strategic Plan* process and developing consolidated state responses at the request of DOE;
- Working with NGA's Natural Resources Committee to amend or create a new NR-8 policy for review at the Winter Meeting in February 2002;
- Maintaining LTS dialogue between Governor's representatives and DOE

### ***Liaison/Coordination***

- Facilitating coordination of LTS dialogue among states and state and local government organizations (NAAG, ECOS, STGWG, ECA, ICMA, etc.) through conference calls, e-mails and, when appropriate, coordinating meeting times and locations.
- Maintaining LTS website, above.

## **NAAG's Long-Term Stewardship Projects and Activities**

### ***Products***

#### **Legal Handbook of Institutional Controls**

NAAG is working on a state-by-state analysis of statutory and common law in each of the states, designed to evaluate whether existing mechanisms could be used to impose effective and enforceable institutional controls. The handbook will include a general discussion of the common law in this area, the state-by-state breakdown– charts and textual material– and probably a discussion of the legal issues surrounding transfer of federal properties.

#### **In-Depth Analysis of State Authorities for Institutional Controls**

In conjunction with ELI, NAAG is working on a detailed review of legal authorities and processes that govern institutional controls at three sites. The ELI analysis will be a detailed investigation of the state laws that affect land-use restrictions at the sites. For instance, the analysis will look at zoning laws, state laws related to building codes, groundwater laws, public health laws, and mining laws that might be used to restrict certain types of uses. NAAG expects to contribute state law research and analysis, descriptions of environmental regulation by the state and general review of other facets of the in-depth analysis.

#### **Review of Barriers to Federal Transfer of Land-Use Rights**

NAAG expects to produce legal research related to the legal and policy issues on this point, but has not decided what format to use for making the research available to the larger community. There may be a published colloquium, a law review style paper, or possibly a conference among the various knowledgeable parties.

### ***Policy Input***

#### **Federal Facility Policy Review**

NAAG's membership routinely develops resolutions reflecting the sense of the group on topical issues. Over the years NAAG has issued various resolutions touching on interpretations of law at federal facilities, policies toward federal facilities and cleanup at federal facilities. NAAG intends to summarize and analyze its federal facilities resolutions to allow the membership to adopt a consolidated and current resolution, if appropriate.

#### **“Top to Bottom” Review Feedback**

NAAG will provide feedback to DOE as the ongoing systemwide review proceeds, including those aspects of it that concern long-term stewardship.

## ***Liaison/Coordination***

### **Ongoing Interaction**

NAAG engages in continuing communication and coordination activities with the Department and other non-governmental organizations, including other state organizations. The activities— meetings, exchange of documents, conference calls, and so forth— include long-term stewardship issues as they arise.

## **ECA's Long Term Stewardship Projects and Activities**

Energy Communities Alliance (ECA) members will conduct several peer meetings to discuss the potential role of local governments in long-term stewardship at Department of Energy (DOE), facilities. ECA held its first meeting in Grand Junction, Colorado and plans to hold at least two additional meetings to scope out the specific roles at specific sites. This study should educate local governments on long term stewardship issues, educate state and federal government officials on the potential role of local governments when selecting remedies, and ensure that local, state and federal government officials communicate on these important issues that impact local communities. ECA also believes that one of these meetings would be a joint state and local government meeting.

### **Products**

#### **Practical Implementation of LTS**

The Environmental Law Institute (ELI) and ECA are beginning a project<sup>1</sup> to analyze the practical implementation of the legal authorities available to the local governments, states, DOE, U.S. Environmental Protection Agency (EPA) and citizens in order to implement long-term stewardship activities at DOE facilities.

Several studies have been conducted on the legal mechanisms that may be available in various states. However, none of the studies have reviewed the practical implementation of the legal mechanisms. This study should be instructive to all parties that are required to implement or are interested in implementing long-term stewardship activities as a way to ensure protection of human health and the environment at sites. ELI and ECA will focus on the following issues:

- Federal Statutes and Regulations
- State Constitutions
- State Statutes and Regulations
- Local Ordinances and Permits
- Local Real Estate Practices
- Zoning Law and Procedures
- Title Insurance
- Title Searches and Reporting Procedures
- DOE, EPA, NRC Guidance

ELI and ECA will review the specific issues, as outlined above, at two specific DOE facilities. The legal tools available to implement LTS at the two DOE facilities will be analyzed and ELI and ECA will interview key real estate professionals and state and local government officials to develop a “how-to” guide for each site. These two case studies and the process utilized to identify the tools available to implement long-term stewardship will be instructive for local, state

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<sup>1</sup> \*This project is a follow-up to ELI and ECA's report entitled the *Role of Local Governments in Long-Term Stewardship at DOE Facilities*. For a copy of the report visit: <http://www.eli.org/store/rr01localDOE.htm#DownloadingInformation>.

and federal governments and citizens and ensure that each party understands the authority, practical implementation, and limits of the legal tools when selecting remedies at sites.

## **ECOS Long Term Stewardship Subcommittee Projects and Activities**

The ECOS Long-Term Stewardship (LTS) Subcommittee has been charged with addressing LTS issues for ECOS across all relevant federal agencies and programs. The Subcommittee is coordinating its internal efforts among relevant ECOS Forums and Committees, and is also coordinating with other state executive business organizations. The ECOS LTS Subcommittee is focusing on the following key priority areas [Each of which is categorized as a policy, project/process, or coordination effort]:

### ***Products***

- Improve Consideration of LTS in the Remediation Process- [Project/process] ECOS is particularly interested in assuring that LTS issues are identified early and considered throughout the remedial planning, design and implementation process. ECOS has proposed that a dialogue be held among interested governmental partners to mutually define how the current processes for considering LTS can be accelerated and improved.
- Promote Development of New LTS and Institutional Control Tools- [Project/process] A number of ECOS members have expressed interest in the development of new tools to apply to LTS and Institutional Control problems. Mechanisms need to be developed to compile and share information about successful new tools already being implemented, and to invest in development of additional innovative approaches.
- Support Efforts of the ITRC to Develop and Deploy Advanced Technology to LTS Processes- [Project] ECOS will promote the work of the ITRC and others to develop and deploy new technologies for application to LTS needs.

### ***Policy Input***

- Sustain and Enhance Funding for LTS- [Policy] ECOS will provide recommendations on short- term LTS budget issues and will work with the Administration and Congress to examine long-term funding issues and options.
- Influence National Goals, Objectives and Policies that Drive LTS and Related Federal Programs- [Policy] ECOS will try to help shape the direction and substance of national LTS and related programs by providing early input to the development of key LTS policies and strategic plans, including selected parts of relevant federal agency Strategic Plans for GPRA.

### ***Liaison/Coordination***

Broaden the ECOS LTS Dialogue to Include Additional Federal Agencies and Programs- [Coordination] EPA, DOE and DOD are already participating in a LTS dialogue with ECOS. In the months ahead participation may be broadened to include relevant agencies within the Departments of Interior, Agriculture, Justice and Transportation, the General Services Administration, Nuclear Regulatory Commission, NASA and the Bureau of Prisons.

Catalyze Efforts to Address LTS Information Management Needs- [Coordination] ECOS will help identify and support the key state entities that should be part of a dialogue w/ the federal agencies to address LTS information management issues.

## **STGWG Long-Term Stewardship Projects and Activities**

STGWG was created in 1989 to provide advice to the Department of Energy regarding a comprehensive national program for the management or cleanup of all DOE defense and research facilities. STGWG has provided tribal and state perspective to the DOE on a wide variety of issues, with particular emphasis on long-term planning and cultural resource concerns. Currently STGWG members represent sixteen states and nine tribes affected by DOE facilities. STGWG's Long-Term Stewardship Committee tracks DOE and other efforts to address long-term stewardship issues and contributes to the dialogue and information associated with these issues on behalf of STGWG and its members.

### ***Products***

As appropriate, the Committee may perform independent research on the topic area and issue a report on the findings. Reports completed in FFY01 include:

- Survey on Classified Waste/Material Stewardship Activities
- Land Transfers in the Department of Energy
- Information Management for Long-Term Stewardship
- Long-Term Cost Estimation in the Department of Energy
- DOE Trust Responsibilities and Treaty Obligations to Tribes
- In February 1999, the Committee published Closure for the Seventh Generation, an evaluation of LTS efforts at the various DOE sites and recommendations for future LTS efforts.

### ***Liaison/Coordination***

Committee members track LTS issues through personal contacts, local involvement, attendance at national meetings and through collaborative efforts with the DOE and other organizations. In addition, information sharing and policy discussions take place at the full STGWG meetings. The Committee has established a working relationship with staff responsible for LTS at DOE HQ, EPA HQ and at specific sites. The Committee members review DOE documents related to LTS and submit comments as a group and individually.

The Committee solicits information from the STGWG members to identify problems, challenges and success stories, and provides a forum for state and tribal members to exchange information on the topic. Committee Co-Chairs or members will also represent STGWG with the following organizations or meetings:

- NGA Federal Facilities Task Force Stewardship Committee
- EMAB Stewardship Committee
- ECOS Stewardship Committee
- Energy Communities Alliance
- Interstate Technology Regulatory Coordination Group
- National Congress of American Indians
- Other groups or meetings, as appropriate

In FY02 the Committee is working with DOE HQ to address the results of our research in Classified Waste/Material Stewardship, Land Transfers, Information Management, and Long-Term Cost Estimation. In addition, the evaluation of DOE Trust Responsibilities and Treaty Obligations to Tribes will be discussed with DOE HQ entities affected by tribal issues. It is anticipated that results of these efforts will result in reports or formal presentations by either STGWWG or the DOE.

### ***Policy Input***

The Committee members review and submit comments on DOE or other agency documents related to stewardship. A decision is made early in the process whether STGWWG will submit comments as a group or whether to share comments within the committee and comment individually and/or as part of other national group efforts. Our tribal participation has added some unique perspective to our comments; however, in many cases we will prefer collaboration with other groups rather than independent action.

Historically, STGWWG has had a major impact on stewardship policy issues at DOE, including participation in the development of the National Study and other documents. Closure for the Seventh Generation, an evaluation of DOE's LTS efforts, provided some of the earliest national LTS policy recommendations to the DOE.