



Department of Energy
Environmental Protection Agency
Washington, DC



JUN 16 1997

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Final Guidance on Improving Communication to Achieve Collaborative Decision-Making at Department of Energy Sites

FROM: Steven A. Herman
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Timothy Fields, Jr.
Acting Assistant Administrator
Office of Solid Waste and Emergency Response
United States Environmental Protection Agency

Alvin L. Alm
Assistant Secretary for Environmental Management
United States Department of Energy

Attached is Final Guidance on Improving Communication to Achieve Collaborative Decision-Making. This document was developed through a joint effort by the Department of Energy (DOE) and the Environmental Protection Agency (EPA) with substantive input from State regulators. On November 26, 1996, the guidance was approved as Interim Final. Since no comments have been received, the guidance is being finalized with no changes.

A variety of factors led to the development of this guidance. First, independent observers highlighted the need for improved communications both within, and between, our respective organizations. Second, given increasing fiscal constraints, we must facilitate greater regulator involvement in budget planning. Lastly, we must jointly identify the necessary work that will be undertaken to achieve the most suitable remedy. This will save money, focus effort on the appropriate actions, and accelerate cleanup.

This guidance describes a communication framework that should improve compliance, accelerate environmental work, and increase efficiencies. Improving communications is critical to achieving the DOE's goal of completing cleanup at most sites within a decade.

The intent of the guidance is threefold:

- Outline a collaborative process to establish site priorities;
- Identify processes that accomplish collaborative program execution; and,
- Encourage the development and use of informal dispute resolution mechanisms that resolve issues quickly and keep the projects moving forward to completion.

Many sites, regions, and States have some of the processes described in the guidance already in place and are realizing the benefits of improved communication. The performance expectations outlined in the guidance are provided to assist each site in self-evaluation of its site specific implementation and help identify improvements that can be made. Sites that have not implemented such processes may use this guidance as a tool to develop their site specific approach.

Inter-agency collaboration does not supplant USEPA or State enforcement authority or negate any existing legal agreements. The Department of Energy remains committed to achieving and maintaining full compliance and to seeking full funding to meet legal agreements.

In order to obtain the full benefit of this guidance, we must be certain that it is fully disseminated and its concepts widely applied. To that end, we are directing addressees to make every effort to distribute the attached guidance to supervisors and Project Managers with responsibility for any DOE environmental management project. To fully implement and achieve collaborative decision-making, site managers, working with the Regional Administrators will seek the involvement of the State regulators. Headquarters EPA and DOE will post the document on our respective internet sites to encourage the widest possible application of its common sense principles.

2 Attachments

Distribution:

United States Environmental Protection Agency
Superfund/RCRA National Policy Managers, Regions I-X
Federal Facility Leadership Council, Regions I-X
Regional Counsels, Regions I-X
Federal Facility Coordinators, Regions I-X

United States Department of Energy
DOE Field Offices
DOE Operations Offices
Assistant Managers for Waste Management
Assistant Managers for Environmental Restoration

**IMPROVING COMMUNICATION
TO ACHIEVE
COLLABORATIVE DECISION-MAKING**

Prepared jointly by:

Environmental Protection Agency

Office of Enforcement and Compliance Assurance
Federal Facilities Enforcement Office

Office of Solid Waste and Emergency Response
Federal Facilities Restoration and Reuse Office

Department of Energy

Office of Environmental Management

EXECUTIVE SUMMARY

The Department of Energy (DOE), the Environmental Protection Agency (EPA), and state regulators share a common goal of protecting human health and the environment. Although each agency has its own individual responsibilities and requirements, each is dependent on the other to achieve the overall objective. A successful working relationship requires effective communication to build trust, improve understanding of issues, set the stage for sound decision-making, and resolve disagreements in a constructive manner. Improving communication and working collaboratively will improve and expedite cleanup and compliance at DOE facilities.

This communication guidance provides a framework to help improve communication and achieve collaborative decision making among DOE, its regulators and its contractors. This in turn, should facilitate communications with the public. The intent of this guidance is threefold: (1) outline a collaborative process to establish site priorities; (2) identify processes that accomplish collaborative program execution; and (3) encourage the development and use of informal dispute resolution mechanisms that resolve issues quickly and keep the projects moving forward to completion.

A key principle identified by DOE's Assistant Secretary for Environmental Management (EM) in the Environmental Management Vision, is to create "a collaborative relationship between DOE and its regulators and stakeholders."

Within a decade, the EM program will complete cleanup at most sites. At a small number of sites, treatment will continue for the few remaining waste streams. This unifying vision will drive budget decisions, sequencing of projects, and actions taken to meet program objectives. ***EM will implement this vision in collaboration with regulators and stakeholders.*** (emphasis added)

Enabling DOE to accomplish this Ten Year Vision will require every participant to explore alternatives that, in the past, might not have been fully considered. Improving and accelerating cleanup at DOE facilities requires creative and innovative thinking by all parties.

A commitment to inter-agency collaboration does not supplant EPA or state enforcement authority or negate any existing legal agreements. Additionally, DOE remains committed to achieve and maintain full compliance and to seek full funding to meet legal agreement milestones and environmental requirements. Because DOE and Tribal Governments are currently discussing jurisdiction at some DOE facilities, this guidance does not specifically address the role of Tribal Governments.

Background

There is a general recognition among DOE and its regulators that communication must be improved. At a July 1995 DOE/EPA meeting in Kansas City, a recommendation was made to develop guidance to improve communication both within their respective organizations and

between the agencies. Outside observers have made similar criticisms, citing the need for improved communication both internal and external to DOE and its regulators. The National Research Council, in a January 1996 report¹, identified in DOE a “lack of organizational coordination” as a major obstacle to accomplishing cleanup.

A report by the Environmental Management Advisory Board (EMAB)², prepared in conjunction with the State and Tribal Government Working Group, stated a concern for communications at the mid-management level. The EMAB report emphasized the importance of communication between DOE, its contractors, and regulators through: “Early and regular communication” that:

- facilitates EPA and state input to DOE budget planning;
- reduces the likelihood that costly compliance, planning, and design work which is unnecessary will be undertaken by DOE and its contractors; and
- increases understanding among the parties that can remove barriers to progress and reduce disputes.

ESTABLISHING SITE ACTIVITY PRIORITIES

Prioritizing activities at the site integrally links program objectives, scope, schedule, and cost. To prioritize activities collaboratively, the regulators must be given early and adequate opportunity to participate. In sequencing site activities to accomplish program goals, it is necessary to consider the budget limits imposed on DOE by Congressional funding decisions. Participation by regulators in the development of site priorities is the most effective and efficient path to address statutory needs and requirements. To implement the EM Vision, DOE must develop collaborative procedures with state and federal regulators. Emphasis on early and substantial inclusion, ongoing dialogue, and adequate feedback in the priority setting process is necessary.

PROGRAM EXECUTION

Solving complex technical problems often requires cross-program inter-agency collaboration. To accomplish cleanup at most sites in ten years, every participant must be afforded an atmosphere where creativity is unleashed and innovative approaches are identified and applied.

The traditional regulatory oversight system tends to place heavy emphasis on inspection, review and comment on deliverables and not as much on planning and collaborating. Inadequate communication often results in DOE and its contractors applying resources inefficiently. Poor communication can cause more resources and time to be used than is needed to formulate sound cleanup and compliance decisions. This must be avoided for DOE to meet its Ten Year Vision.

¹Barriers to Science: Technical Management of the Department of Energy Remediation Program, NRC, 1/96.

²An Assessment of Regulatory and Administrative Streamlining at USDOE Cleanup Sites, 12/95.

Early regulator participation in project scoping provides opportunities for discussion and incorporation of improvements which are necessary to meet each party's objectives. A team approach brings together people with diverse skills and organizational perspectives required to solve the technical and statutory challenges. Empowered teamwork establishes mutual accountability. Sites must develop collaborative procedures such as project teams which jointly meet to resolve differences and provide quick issue resolution and elevation.

The team responsible for day-to-day execution is generally called the Project Team. In establishing the membership of the Project Team, it is necessary for each agency to identify its appropriate representatives. The goal of any Project Team meeting is to promote mutual understanding and determine actions necessary to keep the project moving forward. Minutes of these meetings should record the nature and extent of discussion and decisions reached among the Team members. Issues should be resolved at the lowest level possible. When conflict cannot be resolved by the Project Team, there should be prompt elevation of the disagreement to supervisors of the team members to avoid the loss of forward project momentum.

The inter-agency group responsible for the oversight of project execution is generally called the Supervisory Team. Members of this team should meet regularly with their counterparts. The Project and Supervisory Team members should mutually develop and agree on a charter, empowerment boundaries, and methods for resolving disagreements. The Supervisory Team will monitor progress of project execution, provide advice and management direction, and resolve disagreements elevated for resolution by the Project Team. Both Teams are accountable for project completion.

INFORMAL DISPUTE RESOLUTION

When addressing complex technical and programmatic issues, conflict is unavoidable. Handled constructively, conflict leads to a discussion of alternatives that may result in program improvements. Conflict becomes counterproductive when issues remain unresolved and the working relationship and trust between the parties deteriorate.

In general, DOE, EPA, and State Interagency Agreements (IAGs) allow 30 days for informal dispute resolution before entering into a more prescriptive formal dispute resolution process. This guidance recommends a framework that can be used to resolve most disputes informally. Informal dispute resolution saves time by avoiding the more lengthy formal dispute resolution process. It is important for Project and Supervisory Teams to identify effective informal dispute resolution options that can be used within the 30 day window.

As previously stated, the preferred option of resolving disputes is to find mutually agreeable solutions at the Project Team level. Teams should use constructive conflict resolution tools such as facilitation and mediation. When a disagreement cannot be resolved in the 30 day informal dispute resolution period, formal dispute resolution should be initiated quickly. The goal of either form of dispute resolution is to reach a mutually agreeable conclusion to the disagreement and proceed with project execution.

Where issues in dispute have national implications of precedence, budget consideration, regulatory consistency, or intra-agency execution or communication, the Supervisory Team will contact their appropriate Headquarters' representative. Headquarters DOE and EPA will develop a collaboration process similar to that outlined above for the sites and Regions. Each Headquarters will identify individuals who will serve on the Interagency Headquarters Team. The Interagency Headquarters Team is responsible for working issues of national precedence, policy, and scope in a collaborative framework and providing guidance to the field that aids in the resolution of the dispute.

PERFORMANCE EXPECTATIONS

The following criteria are essential elements to achieving collaborative decision-making.

1. Activity prioritization/budget meetings with regulators are held early and often in the budget formulation and project execution process.
2. Program activity plans demonstrate consideration of regulator's input.
3. Procedures are in place (and used) that provide feedback to the regulators on final activity/budget decisions.
4. When activities and priorities need to be changed, the regulators are involved in the process, and, where milestones must be changed, regulator concurrence/approval is obtained.
5. Project and Supervisory Team meetings are held on a regular basis, are decisional in nature, and are well documented.
6. Project Team members establish quantitative measurements of accomplishment to benchmark progress (e.g. time frame to key milestones, number of disputes, number of enforcement actions, cost efficiencies, innovative contracting strategies, etc.)
7. Supervisory Team meets periodically to review Project Team documentation and progress.
8. Teams demonstrate effective use of informal dispute resolution provisions by resolving most issues at the lowest possible level, resulting in reduced formal disputes.
9. Headquarters DOE and EPA implement a collaborative communication process that satisfactorily assists the field in accomplishing cleanup and compliance objectives.
10. DOE demonstrates commitment to full compliance and to seeking full funding to meet legal agreement milestones and environmental requirements.

ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF ENERGY

IMPROVING COMMUNICATION TO ACHIEVE COLLABORATIVE DECISION-MAKING

INTERAGENCY HEADQUARTERS TEAM
Points of Contact

Environmental Protection Agency

David Levenstein
Office of Enforcement and Compliance Assurance
Federal Facilities Enforcement Office (2261A)
401 M. Street. S.W.
Washington, DC 20460
(202) 564-2591 voice
(202) 501-0644 fax

Marianne Lynch
Office of Solid Waste and Emergency Response
Federal Facilities Restoration and Reuse Office (5101)
401 M. Street S.W.
Washington, DC 20460
(202) 260-5686 voice
(202) 260-5646 fax

Department of Energy

Martha Crosland
Office of Environmental and Regulatory Analysis (EM-75)
Washington D.C. 20585
(202) 586-5793 voice
(202) 586-9732 fax

Todd Jones
Office of Program Initiatives (EM-47)
Cloverleaf Office Building
19901 Germantown Road
Germantown, MD 20874-1290
(301) 903-3297 voice
(301) 903-3479 fax