

REPORT ON PUBLIC PARTICIPATION IN ENVIRONMENTAL RESTORATION PROGRAMS

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ABSTRACT

This paper reports on the current status of public participation in Environmental Restoration programs. It describes: the policy, legality, and practicality of public participation in DOE programs; current EM-wide efforts to coordinate public participation planning, in the interest of making it more efficient and effective; ER/public interactions to date in two ER activities; and some lessons suggested by those interactions.

INTRODUCTION

The United States Department of Energy (DOE) Office of Environmental Restoration and Waste Management (EM) faces a challenging task: managing the waste generated by current DOE activities; cleaning up sites and facilities contaminated by previous DOE activities; and developing technology to allow the work to be done more efficiently and effectively -- or in some cases, to be done at all.

The Office of Environmental Restoration (ER) is responsible for two complex parts of that challenge: remedial action to restore contaminated sites, and decontamination and decommissioning of surplus facilities. The remedial action task involves assessment and cleanup of inactive release or potential release sites. The decontamination and decommissioning task is concerned with the safe caretaking of surplus facilities by either decontaminating or completely removing them. These ER activities are organized into seventeen projects across the United States.

To meet its responsibilities, ER not only must build a strong technical program, including sound management procedures, but also must establish effective, efficient problem-solving partnerships with external parties, particularly regulators. "Effective" partnerships are those in which external parties truly have an impact on DOE decision-making. "Efficient" partnerships are those that make good use of people's time.

The subject of this paper is ER's progress in establishing effective, efficient problem-solving relationships with parties external to DOE. ER has made progress, but as in any large institution, the process of change -- even change that is widely recognized at all organizational levels as desirable -- occurs much more slowly than people want or expect.

POLICY, LEGALITY, AND PRACTICAL NECESSITY

ER must build outside partnerships as a matter of policy, legality, and practical necessity. DOE policy and many environmental laws require that DOE managers interact with the public. And from a purely practical point of view, more effective public involvement produces better, more easily implemented decisions.

Statements by Secretary James Watkins, EM Assistant Secretary Leo Duffy, Deputy Assistant Secretary R. P. Whitfield, and in many basic DOE documents make it clear that openness and active consultation with the public are DOE policy. The first *Five-Year Plan* issued in August 1989 stated:

The goal is to effect a culture change and to demonstrate DOE's commitment to open, candid public communication and compliance with environmental laws and regulations....DOE must and will address environmental problems in an open, forthright manner through effective communication with Indian Tribes, local, State, and Federal agencies, and the general public.

This commitment includes listening to DOE's critics as well as its supporters. It will be a difficult and lengthy process to implement fully such a culture change. DOE will move toward this goal aggressively (1).

Legislation has also evolved to ensure that government decision-making on complex technical/social issues remains open to public inspection and that government officials can be held accountable for those decisions. Laws such as the National Environmental Protection Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act mandate that DOE inform and involve the public before making decisions. The DOE Office of *Environmental Guidance* has recently issued *Environmental Guidance: Public Participation in Environmental Restoration Activities* (2), containing clear, extremely useful explanations of exactly which laws and regulations concerning public participation apply to which situations and offering practical suggestions on how to meet both the letter and the spirit of the legislation. This guide is fully consistent with the new DOE policies of openness and interactive consultation with the public.

Experience has also demonstrated the practical necessity of such policies. Experience in conducting DOE and other government programs, such as the Environmental Protection Agency Superfund program and state low-level waste facility siting efforts, clearly demonstrates that siting and cleanup programs do not move forward without public understanding of and concurrence with their objectives and without public involvement in making the decisions about how to achieve those objectives. This experience suggests that it is, for political reasons, practical to involve the public: public acceptance of DOE decisions depends in large part on public involvement in making those decisions.

Yet there is another way in which public involvement is practical: one of the authors of this paper made the point, in a talk at the *Waste Management 1990 Conference*, that effective public involvement can generate better solutions to technical/social problems (3):

Environmental restoration decisions are practically never, if ever, purely technical or purely political. They are complex, encompassing technical information and *social values*, scientific judgement and political reality. Some aspects of a decision may be primarily technical, such as determining the direction of groundwater flow at a particular point. Other aspects are primarily social, such as assigning relative values to present and future public health or economic needs. Both aspects are included in most decisions about specific programs at specific sites; for example, ER may need to decide between cleaning up a given site immediately, even though available methods are expensive and incomplete, or postponing the cleanup until research, currently underway and apparently promising, has developed more effective, less expensive methods.

The public, including regulators, has viewpoints and information about such issues which ER needs to hear, and the earlier ER can tap into the resources which the public can contribute, the better the decisions will be and the more efficient will be the process by which they are reached.

ER PROGRESS IN EFFECTIVE, EFFICIENT PUBLIC INVOLVEMENT

ER and other EM public participation planners have become increasingly aware that DOE's organizational complexity presents barriers to public participation and to DOE's efficient use of its own resources. Agreeing that people outside DOE should not have to sort out bureaucratic organization or division of responsibility in order to participate in solving the problems that interest or affect them, managers EM-wide have been making a strong effort to coordinate their activities better. This effort has led to a number of changes. Although the planning efforts and the internal changes in EM may not seem very concrete to those outside it, some of the most important changes for the long run may be the least visible.

Public participation planners from each of EM's main programs -- Waste Management (EM-30), ER (EM-40), Technology Development (EM-50), Planning and Resource Management (EM-10), and Oversight and Self Assessment (EM-20) -- began meeting last year as an informal Working Group to develop an EM-wide public participation policy and an EM-wide plan for coordinating public participation.

In response to the pressing need for coordination of EM policy, public participation, and communication efforts, a new headquarters office is being created. The Office of Policy and Program Information, which reports directly to the Assistant Secretary, will be responsible for developing policy and guidance for EM public participation, working with each of the EM Programs and with the Field Offices. Its efforts will build on those initiated by the Working Group.

The Working Group began its process partly to make public participation efforts more efficient by:

- documenting the full range of EM public participation programs, and
- presenting a coordinated, comprehensive view of EM technical and public participation programs.

Documenting the extensive public participation now occurring in the various EM programs should make it easier for the planners to see where their efforts overlap and can be

combined to be more efficient. It also makes it easier to see the points at which excessive or confusing demands are being made on DOE field offices and on members of the public. A consistent, coordinated approach by the various programs within EM will also make it easier for the public to see the big picture on public involvement and to choose the aspects in which they want to be involved.

The Working Group also developed this approach to make public participation more effective by:

- integrating public participation firmly and early into technical programs, and
- encouraging managers to consider DOE/public partnerships as ongoing, supported by a continuing information flow.

DOE's interactions with the public cannot be afterthoughts or appendages to the technical program but rather must be integral components of a single decision-making process. The old model for DOE/public interactions -- the old DAD, decide, announce, defend -- is actually just about the only model you can have if interactions with the public occur as isolated programs, unrelated to the heart of the technical programs, or if they occur too late to have any impact on decisions.

To help integrate EM public participation into EM technical programs, the Working Group has developed and is beginning to use an approach that eventually produces a coordinated calendar of all EM public participation activities planned for the coming calendar year; this calendar is keyed to technical program schedules and milestones. In this approach, a public participation team from each program or office follows a series of steps:

- Prepare a technical task calendar for each EM technical program.
- For each task, consider:
 - Why should or would members of the public want to be involved in this task?
 - Who would like to or should be involved?
 - What information needs to flow between DOE and the public if involvement is to be effective?
 - What form of interaction or information will work best? How will feedback be provided?
 - How can the interaction be evaluated?
- Prepare a calendar of public/EM interactions, keyed to the program tasks and based on the analysis outlined above.
- Review the entire calendar to identify the need for mechanisms for continuing interactions and exchange of information, such as advisory groups and regular newsletters.
- Prepare a calendar coordinating headquarters and field office plans and identifying training and materials headquarters should provide to field offices.

The result is a series of calendars for each program that are then integrated into an EM-wide calendar. To date, the Working Group has produced a draft coordinated calendar. The newly organized Office of Policy and Program Information has requested field office public participation calendars so that EM can complete this effort.

In addition to making certain that public participation is documented, coordinated among programs, and integrated into the technical programs, the Working Group approach seeks to make public participation more effective and efficient by encouraging managers to consider interactions in terms of series and to develop long-term relationships based on continuing communication. EM is learning to anticipate and plan for partnerships over the long haul, and that means establishing and maintaining ongoing relationships with individuals and groups. This process has begun with the following groups:

The State and Tribal Government Working Group (STGWG) meets regularly, participates in the Five-Year Planning Process, and reviews EM programs, including public participation in those programs.

The Stakeholders Forum held its second annual meeting in May 1991 to review the *Five-Year Plan*. The members of this group are drawn from: states; Tribes; trade unions; education associations; environmental, local, and public interest groups; professional and technical societies; and industry.

EM is establishing an EM Federal Advisory Committee, under the procedures described in the Federal Advisory Committee Act. DOE is requesting nominations for membership from governors, STGWG members, environmental interest groups, universities, and other individuals and organizations associated with or affected by DOE cleanup programs. This committee will review the EM Programmatic Environmental Impact Statement process, the Priority System for ER, and other programs as requested by EM or that it requests to review for EM. The Office of Technology Assessment report *Complex Cleanup* (4) recommended the formation of such a committee.

EM has also formed specific groups to work on specific issues. For example, ER established an External Review Group and a Technical Review Group to review the ER priority system (see discussion below). For several programs -- Waste Management's Resource Allocation Support System, ER's priority system, and the Programmatic Environmental Impact Statement for EM -- EM has convened national workshops. At these workshops, EM staff meet with external parties to hear their concerns and suggestions and to discuss ways of resolving issues and concerns. Many of the same parties -- state regulators, for example -- participate in more than one review group and/or workshop. ER is also working to establish or make use of existing local advisory groups, as a way to work with external parties on aspects of ER programs that require a degree of time and commitment that may be too much to ask of most members of the general public.

EM's continuing discussions with these groups have already led to changes. For example, EM made the commitment to a 30-year cleanup goal as a result of STGWG's review of the first *Five-Year Plan*, and EM-10 is revising the format and content of the next *Five-Year Plan* in response to STGWG and Stakeholders Forum comments.

Organizing these loosely connected, continuing interactions and establishing ongoing working relationships with external parties should serve in the long run to make public participation in EM activities more effective. As EM and external parties grow more accustomed to working together

and more knowledgeable about each other's concerns and constraints, their discussion can go more quickly to the heart of the issues.

The Working Group approach also suggests that EM provide support to the field by providing training and information to enable better ongoing communication with the general public at the various installations. EM also provides opportunities for field office public participation teams to meet, exchange information, and discuss experiences.

STATUS OF PUBLIC PARTICIPATION IN TWO ACTIVITIES

Two activities conducted by EM Headquarters, the priority system for environmental restoration and the Programmatic Environmental Impact Statement for EM (PEIS), have had major public involvement components during the past year. A review of each may suggest some lessons for planning future EM/public interactions.

In the Priority System for Environmental Restoration

ER has developed a priority system to help DOE decide which contaminated sites to evaluate and clean first. To involve external parties in the design of the priority system, ER has organized and met with external groups, conducted a national workshop, and issued a notice in the *Federal Register* requesting public review and comment. The resultant public participation is a good example not only of what ER has been doing but also of the difficulties that sometimes seem to hamper public participation efforts.

DOE briefed STGWG about the priority system shortly after ER began to develop the priority system in 1989 and has continued to brief this group. In September 1989, ER formed an External Review Group (ERG), a subset of STGWG augmented with participants from national environmental groups and the United States Environmental Protection Agency. The ERG was formed specifically to work with DOE on the priority system. They met four times between fall 1989 and February 1991; they reviewed preliminary versions of the system and made suggestions and criticisms. Their main impact on the early phases of development was in suggesting ways to deal with "time-critical" problems. They also made specific suggestions about how the system could consider socioeconomic impacts, tribal concerns, and other issues of particular importance to the public.

The relationship between ER and the ERG was not an easy one. Members of the ERG contended that the early phases of the development process were too rapid to allow for meaningful external input and that even later on, their views went unheard (5). There are at least three lessons here:

1. especially at the beginning of such a project, allow plenty of time for external parties to absorb and respond to information;
2. be more prompt and clear in communicating how external input is considered; and
3. learn how to communicate about unresolved issues.

ERG members contended that the priority system development schedule did not allow sufficient time at the beginning for ERG members to digest highly technical information about basic approaches and alternatives and then frame their criticisms and suggestions in time for them to have any impact on the system's basic assumptions and approach. The lesson

here may be to take more time at the beginning of a project to provide ample opportunity for external parties to learn about proposals and to help generate alternatives and define basic approaches.

Second, ER believes it did incorporate significant suggestions and respond to criticisms, even though it did not do everything that members of the ERG would have liked. However, many ERG members did not agree that their views were heard. The lesson here may be for ER to be more prompt and clear in communicating how it has considered external input. In dealing with so complex a product as the priority system, it may be especially important to respond to people in writing and to use graphic illustrations to show how ideas have been incorporated.

The third lesson is harder. The ERG said that even later on in the development of the system, ER took months to decide about or respond in writing to ERG suggestions. One underlying problem here is that the policy issues raised were not entirely within ER's domain to decide or answer, and working out such issues within DOE takes a long time. It may be that DOE will gradually become more open with external parties during the process of deciding policy or legal issues, or it may be that this problem is not resolvable, at least not in the short term. Some programs may have to take some heat while new policies are slowly evolving within DOE. Other closely related programs that follow may find the public participation ground smoother because the policy issues will have been resolved or DOE's and the public's understanding of the significant issues will have been more developed.

ER also formed a Technical Review Group (TRG), consisting of experts in environmental engineering, epidemiology, toxicology, economics, budgeting, policy analysis, and decision analysis, to review the system. The TRG reported their analysis to ER, and current policy changes now under consideration are in part in response to this analysis. ER's interactions with the technical review group were straightforward and productive, perhaps reflecting the extensive experience of DOE and technical experts in working together. Other external parties seemed to respect the opinions of the technical review group and referred to them in comments.

ER has asked the National Academy of Sciences to review the priority system as it is implemented. The Academy has formed a special panel under the supervision of the Board on Radioactive Waste Management to undertake a two-year review.

Field offices held public meetings in March 1991 to describe how the priority system works, to explain how they were using it to rank and evaluate their Activity Data Sheets, and to hear public and regulator opinion about whether that prioritization reflected their concerns. Some field offices also discussed the priority system at their fall 1991 meetings held to discuss Site Specific Plans.

In September 1991, DOE began general public review of the priority system with the publication of a *Federal Register* notice requesting public comment on the priority system. This notice generated 13 letters, some with multiple signatures. In October 1991, ER held a three-day national workshop with external parties to review the system, to help external parties prepare to comment on the priority system and to prepare ER to understand their views.

The October workshop was difficult for ER staff. At times the external parties and ER were at odds not only concerning

specific points about the system and its potential uses but even concerning what should and should not be the discussion topics of the workshop. However, though some of the interactions were difficult, others were cordial and constructive. About half the participants completed and returned evaluations after the workshop; these evaluations ranged from the all-negative, with comments appended saying things like "DOE never listens," to the all-positive, generally from members of the scientific and technical community external to DOE. The most interesting responses, however, were mixed, expressing frustration at some aspects of the interactions but granting that the DOE staff were making an effort to be responsive. One person wrote of how her long-held cynicism about the sincerity of DOE's commitment to a new culture is giving way to excitement at the real changes she sees, citing as evidence both the workshop and resultant changes in public participation at her installation. Difficulties still abound and suspicion lingers, but barriers are falling even if not as definitively as the Berlin Wall.

The lessons on public involvement in the priority system are not all in yet, because the process of interacting with the public in both the design and the use of the system is still evolving. Because of concerns raised in comments, at the workshop, and by the technical review group, ER is now considering significant changes in the way the system is used and in the design of the priority system itself. ER will issue responses to comments once those policy issues have been resolved. ER is also completing provisions for public participation in the priority system. This planning follows the basic approach suggested by the EM Working Group: public involvement in using the priority system is to be keyed to the technical tasks, so that it can be effective; regulators and other external parties will be involved early in the decision-making process of which the priority system is part; and ER/public interactions are to be planned as a continuing series and coordinated with the public participation in other technical programs, so that they can be more efficient.

In the Programmatic Environmental Impact Study (PEIS)

For the PEIS, EM conducted a national workshop, held 23 public scoping meetings, and provided a public comment period. A draft *Implementation Plan* (5) is now available for public review and comment. EM will hold regional interactive workshops this spring to receive comments and suggestions on the draft *Implementation Plan*. To encourage public involvement, *Federal Register* Notices, press releases, and local advertisements have publicized activities.

The public scoping meetings were generally well attended, and EM received many verbal and written comments. Believing that it was important for the information communicated by DOE at the meetings to be consistent, DOE conducted the scoping meetings like formal hearings: DOE officials spoke briefly, and members of the public spoke and/or submitted written comments but were not responded to by DOE officials. This format for one-way communication frustrated both DOE officials and the public. In Washington, D.C., when the meeting temporarily adjourned and DOE officials and the public talked informally, they all reached clearer understanding of the issues and of each other's points of view. Although some people think that the Council on Environmental Quality (CEQ) guidelines restrict scoping meetings to formal hearings, CEQ guidelines actually say that

such hearings are the least effective form of scoping, as DOE's experience with the PEIS scoping confirms.

The process of writing and revising the draft *Implementation Plan* is a good example of a difficult but worthwhile effort. Historically, DOE has not considered the audience for implementation plans to be the public. However, because the PEIS scope as initially defined in the *Federal Register* Notice was extremely general, and because that generality might not have presented people with an adequate opportunity to comment on the scope, DOE decided to solicit public review of the draft *Implementation Plan*. PEIS staff have taken great pains to write the document so that it is accessible and readable.

External parties are certainly interested in further comment on this implementation plan and have requested that DOE schedule more than the five spring meetings planned. The PEIS team appreciates public interest in the meetings and is considering scheduling more meetings.

Their management of the responses to comments was also a little unusual, because of the nature of the comments they received. The draft *Implementation Plan* itself contains responses to the issues determined to be within the scope of the PEIS. However, the comment period generated hundreds of comments on topics outside that scope. Rather than simply not answer them, ER developed and has made available a set of 30 information sheets, ranging from an explanation of DOE's overall mission and responsibilities to an explanation of EM's emergency response training programs.

The lessons about public participation in this PEIS are not in yet either, but this process does illustrate an effort on the part of the PEIS staff to plan public participation according to not just the letter of the law but also the spirit. Technically, the *Federal Register* Notice and the scoping meetings gave people the chance to comment on the scope for the PEIS, but the PEIS staff thought the issue was important and complex enough that DOE needed to give the public an additional opportunity to understand the proposal and to be heard.

CONCLUSION

EM is thoroughly engaged in the "the difficult and lengthy process" of culture change mandated in the first *Five-Year Plan*. EM has:

- initiated efforts to increase coordination of public participation programs across EM and between field offices and headquarters;
- continued actively to seek public involvement in the priority system in spite of setbacks;
- developed innovative public participation for the PEIS, going beyond requirements; and
- worked to develop ongoing partnerships through regular meetings with external groups.

EM is including public participation requirements in all its management documents and providing training for officials to prepare them to be effective and willing partners with the public. The new Office of Policy and Program Information will help EM public participation efforts in headquarters and field offices programs become more consistent and coordinated. EM has many challenging problems to face, and EM is in fact fortunate to have an interested, active public to help DOE reach effective, efficient solutions.

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