

"A REGULATOR'S PERSPECTIVE ON THE FIVE-YEAR PLAN PROCESS" or "CAN YOU REALLY TURN A BATTLESHIP ON A DIME?"

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ABSTRACT

Ohio has a history of active involvement in environmental compliance and remediation at Federal Facilities. Consequently, Ohio wanted to be involved in the Five-Year Plan (FYP) review process. It had concerns about how the plan would deal with: existing state orders; state's role after NPL listing; regulatory compliance vs. budget priorities; waste minimization; timeliness for remediation; mixed waste treatment and disposal; and implementing DOE's "change in culture". While not all issues were adequately addressed, the review process was a good forum for interactions between the members of the State and Tribal Government Work Group (STGWG) and communications between DOE and STGWG. The FYP review process itself had interesting dynamics, from STGWG's uncertainty of its role and fear of being misrepresented to DOE's fear of being too tough or too easy.

DOE's execution of the "change in culture" is much like turning a battleship 180 degrees; no one can do it quickly. There are longstanding difficulties in communication and credibility between DOE Headquarters, the Operations Offices and the Sites. Getting the person in the field who turns the valve to have the "change in culture" is one of DOE's biggest challenges. The inherent difficulties of a radical change in policies and priorities affect the success of the FYP.

INTRODUCTION

Ohio has three major and several lesser Department of Energy (DOE) Facilities that are included in the Five Year Plan (FYP) process. The three major sites are the Fernald Feed Materials Production Center, the Portsmouth Gaseous Diffusion Plant and the Mound Plant. While these sites are not the largest in the nation, they have had a high concentration of activity and contamination very close to or within relatively populated areas.

Like many other states hosting DOE facilities, Ohio pursued environmental compliance at the DOE facilities during the 1980's. Through a series of legal skirmishes and negotiations, Ohio EPA and the Ohio Attorney General's Office secured Consent Decrees in Federal District Courts at both Portsmouth and Fernald. Fernald and Mound are also on the National Priority List (NPL) and Ohio EPA works very closely with U. S. EPA in reviewing the Remedial Investigation/Feasibility Study (RI/FS) procedures for these sites.

Because of Ohio's active involvement with compliance and remediation at DOE facilities, we were interested in the invitation to participate in the FYP review process through the State and Tribal Government Work Group (STGWG). We wanted to be involved because we were concerned how the FYP would address the following issues.

1. Compliance with existing State Agreements/Orders - Ohio had worked hard with DOE to hammer out compliance agreements and remedial investigation schedules. We did not want a new planning process to put those agreements and schedules on the back burner.
2. State's role once a site is on the National Priority List (NPL) - There was concern from some Ohio EPA staff that placement of a DOE facility on the NPL would be

used as a mechanism to reduce state oversight involvement. Ohio wanted to make sure the FYP did not condone that approach.

3. Regulatory compliance vs. budget priorities - DOE has a limited amount of money to accomplish all of the things it is required to do. However, as regulators, we felt that compliance with regulations was not a negotiable budget priority. Certainly, no commercial industry could avoid compliance with regulations simply because it cost too much or the money was needed for production.
4. Timeliness for site remediation - While this was to be a FYP, we felt that, concerning Environmental Restoration, it should be the first five years toward achieving something specific, and not be an indefinitely rolling FYP. What was the FYP heading towards? How can one judge if the first five years are on the critical path if it has not been determined where the path goes or when it ends? It was not even that important that it be 30 years versus 35 or 25 years, but it did need a terminus.
5. Waste Minimization/Source Reduction - Government operations are not historically known for being the most efficient. In many instances the DOE has generated extra wastes because of old facilities and outdated equipment and they have occasionally compounded their waste problems by not segregating hazardous and radioactive wastes. Ohio wanted to see a strong effort towards reducing waste production and establishing more efficient means of handling those that must be generated.
6. Mixed waste treatment and disposal - Ohio recognized that one of the greatest impediments to site remediation at DOE facilities is the lack of treatment and disposal facilities for mixed wastes. We hoped that DOE would be laying out a credible scheme which would lead to the resolution of this impasse.

7. DOE's Change in Culture - DOE is a huge bureaucracy with all the inherent inertia and communication problems that such large organizations have. How did DOE propose to alter its course? How would it translate the change in culture down to the staff at the Sites?

Overall, I believe DOE did try to address all of STGWW's issues, including Ohio's, but sometimes semantics and group dynamics got in the way of effective issue resolution. For example, DOE proposed to establish the following Program Priorities: Priority 1 included activities necessary to prevent near-term adverse impacts to workers, the public or the environment; Priority 2 encompassed meeting terms of existing agreements; Priority 3 included compliance with environmental regulations; and Priority 4 included activities not required by regulations. While both DOE and STGWW all agreed that DOE must prioritize its activities and that actions which protect human health and the environment must be done immediately, there was no way that regulatory agencies could agree with a system that had regulatory compliance as Priority 3. The STGWW regulators also did not feel there was any discretion that could be applied to Priority 2, compliance with existing agreements and orders. As stated before, lack of resources cannot be used as an excuse for non-compliance.

DOE stated that Priorities 1, 2 and 3 would all be met, therefore there would be no problem in accomplishing all that the STGWW regulators wanted. The STGWW regulators then felt that DOE's Priority System was not really a priority system. If all priorities carried the same weight and were all to be met, why call compliance with regulations Priority 3? DOE did not think their priority system was a source of conflict, since everyone agreed human health and safety are more critical than the other priorities, but it was a basic concept which the STGWW regulators felt DOE was missing. Eventually, DOE accommodated the concerns, but it was indicative of the difference between the DOE's perception of logical application of priorities and STGWW's concept of the non-violability of the laws and regulations. DOE felt that it was stupid not to use discretion when resources are limited. The STGWW regulators agreed but felt that there were few regulatory areas where discretion could be exercised.

Though the feeling was not shared by all STGWW regulators, I believe that DOE was really trying to understand our concerns and address them to the best of their ability. Certainly, compared to the first draft, the FYP was a much improved document because of the input from the STGWW.

Besides improving the document and helping to focus the plan's goals, the FYP process itself was also an interesting display of dynamics in two arenas: one between STGWW and DOE, and the other between DOE Headquarters and the Operation Offices and Sites.

The interaction between DOE and STGWW was a departure from past interactions and neither party had a clear understanding of what to expect. The representatives from the STGWW states and tribes were not certain what their role was and what STGWW actually represented. Did they speak for their state? Did STGWW speak with one voice, and did it bind any of the member states or tribes? We eventually realized that STGWW was a good forum for interaction but it did not really represent any entity. It was a group of representatives from different states and tribes who exchanged views and gave DOE comments, but no attempt was made to reach consensus since members had divergent views and experiences with DOE.

Another concern some members had was that STGWW would be "used" by DOE to legitimize something with which the members did not agree. Some felt that DOE would publicize that it had consulted with representatives from the affected states and then put forth a plan which accomplished nothing. While not all members thought the plan went far enough, it also did not misrepresent the involvement of STGWW.

DOE also had problems in the new relationship, first trying hard not to be perceived as being too combative and inflexible, then trying to show that they are not going to be push-overs and do things that they don't think make sense. DOE and STGWW both danced back and forth between their various identities and, while suspicions and insecurities didn't completely disappear, DOE benefitted from the early critique of the FYP and STGWW was able to have an effect on the final product.

The other display of dynamics was (and still is) between DOE Headquarters FYP staff and the Operations Offices and Sites staff. The issues here deal with longstanding difficulties of communication and credibility that exist in any large bureaucracy. Unfortunately, it also represents one of the biggest impediments to the successful implementation of the "change in culture" which Secretary Watkins has proposed.

DOE and its contractors do not always see eye-to-eye on all aspects of operation, including environmental compliance. To complicate matters, DOE staff at the sites who deal with the contractors get their marching orders from the Operations Office, and they also get instructions from DOE Headquarters. These orders do not always compliment each other. I have witnessed the confusion and mistrust that exist between these organizational levels such that if DOE Headquarters proposes something, it is implemented in the field, at best, with a lack of enthusiasm and, at worst, with no understanding of what DOE Headquarters really wanted.

In the most recent preparation of Activity Data Sheets (ADS) for the FYP process, some sites were rushing to

prepare them only to have instructions from the Field Office change several times in the last moments prior to submittal. Supposedly, this was because instructions from DOE Headquarters were never finalized either. The ADS's are the basic building block in the FYP process, and yet there is still confusion at the sites on how to prepare or categorize them. The FYP cannot be an accurate representation of proposed activities if the information on which it is based is prepared in an unorganized, inconsistent manner. The "change in culture" will only succeed if those people who prepare the ADS's, turn the valves, or degrease the parts, understand why it is needed and why it is beneficial.

DOE is a huge bureaucracy with many conflicting forces acting on it. When Secretary Watkins said that DOE was going to "change its culture," I envisioned a huge battleship which was suddenly trying to alter its course 180 degrees. I did not see anything in the FYP which explained how that change in culture would be instilled in the thousands and thousands of contractors who make or break the DOE operations. This major shortcoming, which was com-

mented on by several STGWG members, never was adequately addressed in the FYP. It should be.

Not all of the concerns I listed before or that other STGWG members raised were addressed adequately by the FYP, even after several revisions. As an example, the issue of the lack of treatment and disposal facilities for mixed wastes was not resolved in a credible manner. However, even though DOE and STGWG did not always speak the same language, important gains in communications and involvement with affected parties were made by DOE in the FYP process. So it seems that the battleship is coming about. It hasn't come about 180 degrees, nor is it turning in a smooth arc, but it is coming about. I believe DOE's biggest challenge in this "change of culture" is to get all players on the DOE team, from the top brass to those who prepare the ADS forms, to gain an understanding of why this "change of culture" is needed, why it is beneficial both in the big picture and in individual interactions, and to have a personal desire to effect that change.