

**COLLABORATIVE NEGOTIATIONS A SUCCESSFUL APPROACH FOR NEGOTIATING
COMPLIANCE MILESTONES FOR THE TRANSITION OF THE PLUTONIUM FINISHING PLANT
(PFP), HANFORD NUCLEAR RESERVATION, AND HANFORD, WASHINGTON**

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ABSTRACT

The Hanford Nuclear Reservation is a former U. S. Department of Energy Defense Production Site. The site is currently listed on the National Priorities List of the *Comprehensive Environmental Response Compensation and Liability Act of 1980* (CERCLA) and is undergoing cleanup and environmental restoration.

The PFP is a former Plutonium metal production facility. The operating mission of the PFP ended with a DOE Headquarters shutdown letter in October of 1996. Generally, the receipt of a shutdown letter initiates the start of Transition (as the first step of Decommissioning) of a facility.

The Hanford site is subject to the Hanford Federal Facilities Compliance Act and Consent Order (HFFCCO), an order on consent signed by the DOE, the U. S. Environmental Protection Agency, (EPA) and the Washington Department of Ecology (WDOE). Under the HFFCCO, negotiations for transition milestones begin within six months after the issuance of a shutdown order. In the case of the PFP, the Nuclear Materials disposition and stabilization activities, a DOE responsibility, were necessary as precursor activities to Transition. This situation precipitated a crisis in the negotiations between the agencies, and formal negotiations initiated in 1997 ended in failure. The negotiations reached impasse on several key regulatory and operational issues. The 1997 negotiation was characterized by a strongly positional style. DOE and the regulatory personnel took hard lines early in the negotiations and were unable to move to resolution of key issues after a year and a half. This resulted in unhappy stakeholders, poor publicity and work delays as well as wounded relationships between DOE and the regulatory community.

In the 2000-2001 PFP negotiations, a completely different approach was suggested and eventually initiated: Collaborative Negotiations. The collaborative negotiation style resulted in agreement between the agencies on all key issues within 6 months of initiation. All parties were very pleased with the results and all parties were relieved that protracted negotiations sessions were not needed with the new style of working together collaboratively to serve each other's interests.

The characteristics of collaborative negotiations included building trust, emphasizing equality of team members, problem solving by the entire team, relying on individual communications and self-management skills.

The team found that trust building sessions were key to successfully working through issues. Relationship differences were too often ignored in the past negotiations and were recognized and worked through in the collaborative process.

INTRODUCTION

The Hanford Nuclear Reservation in Eastern Washington was the site of Plutonium production as part of the Manhattan Project to develop United States nuclear weapons capability. As a result of weapons production activities, much of the Hanford site was contaminated with chemical and radiological waste.

In order to facilitate cleanup of the Hanford site, the U. S. Department of Energy (DOE) entered into an agreement on consent with federal and state regulatory agencies. The Agreement became known as the Hanford Federal Facilities Compliance Act and Consent Order (HFFCCO) or Tri-Party Agreement (TPA); an order on consent signed by the DOE, the U. S. Environmental Protection Agency, (EPA) and the Washington Department of Ecology (WDOE). Through the TPA, the parties negotiated milestones representing discrete scopes of work with associated end-dates to facilitate and monitor the clean-up actions on the Hanford site.

Traditionally, negotiations on the Hanford Nuclear Reservation regarding the PFP have been conducted from a positional standpoint. Elaborate strategies have been prepared by members of the regulatory community as well as by members of the DOE and contractor communities. The negotiations generally were adversarial, with each party determined to get their interests served while giving up as little ground to the other party as possible. Secret caucuses led to mistrust between the parties. Each party felt the other was trying to get an agreement that wasn't reasonable. The regulatory agencies felt they were not being heard: that their interests were dismissed by DOE. DOE felt that the members of the regulatory community were being unreasonable in their demands. There were many trust issues between members of opposing agencies. The regulatory community felt the PFP negotiators were hiding behind classification issues and were playing it like a card in a game. The PFP negotiators felt the regulatory members did not understand the complexities of the very real issues at PFP and were asking for too much too soon. Parties often reached impasse and walked away from the negotiations table several times. Finally, in 2000, the parties agreed to begin negotiations again. This time, many members of the negotiations team were open to a new approach to negotiations.

COLLABORATIVE NEGOTIATIONS

The new approach to negotiations was termed collaborative rather than positional. Collaborative negotiations had a win-win goal rather than the win-lose of positional negotiations.

In general, the collaborative negotiations conducted to establish milestones for the decommissioning of PFP had the following characteristics:

- The initial work was on building trust
- There was emphasis on equality of all members of the team
- There was a concentrated effort to close the knowledge gap between the regulators and DOE
- The entire negotiation team solved problems while in session
- There was little reliance on caucuses and secrecy
- DOE allowed contractor representatives to take initiative to deal directly with the regulators
- Negotiations depended on working level employees to solve problems
- Used small groups working on portions of the PFP scope
- There was a logical break-up and portioning of the work
- DOE took the leadership role in establishing boundaries and advising
- There was great reliance on individual communications and self-management skills
- Problem solving initiative rotted naturally on any given day
- There was emphasis on personal interactions and resolution of problems
- The team approach ensured buy-in to final agreement
- Interests and values of the agencies were met
- There was not substantial difference in strategic interests; the difference in interests was more control oriented
- The rationale behind each agreement was fully documented

COLLABORATIVE NEGOTIATIONS PROCESS ELEMENTS

In order to achieve an atmosphere in which the parties to the negotiations were committed to a collaborative style, a person to lead and facilitate the negotiations had to be present and empowered and certain elements of behavior had to be developed within the negotiations team:

Facilitation

From the beginning of the 2000 negotiations, it was apparent to members of both parties that conducting PFP negotiations without facilitation would be fruitless. Parties readily accepted the facilitator proposed and agreed to conduct the negotiations in a collaborative manner. The facilitator worked with both parties on the recognition that they were really one team. He then worked through exercises with the team to improve communications among the team and among the parties, to build trust and to focus on the needs of the parties in terms of interests and values recognizing that it is difficult to declare victory when you don't understand what is most important to you.

Communication

Led by the facilitator, the negotiations team discussed effective ways to communicate with each other. The team acknowledged that many times, individual team members "talked past each other" and didn't really communicate. or the communication was lost.

A key recognition was that team members began to understand that the agencies were not communicating to each other that which was most important to them.

Building trust

One of the reasons identified for lack of trust involved using past experiences with PFP negotiations to predict current behavior of team members. The team spent several days discussing what was preventing open communication and trust and then making personal commitments of trust to each other. It was during these sessions that the high integrity of the team members was most obvious.

Defining Interests and Values

In order for the regulatory community and the DOE community to communicate the issues most important to each, the interests and values of both parties had to be determined. The parties were asked to spend time as separate groups and determine exactly what was important to them.

COMMUNICATION TECHNIQUES

Because communication was such an important element to negotiations, a lot of time was spent discussing the best methods of communicating with each other. The facilitator introduced some practices so that team members would begin to understand more clearly the basis of communication. First, fields of communication were discussed. This concept was developed to cause team members to reflect on how communication flows from more superficial fields to real dialog among communicators. The point was to recognize the field occurring at the time and begin to move past superficial fields of communication into field in which real understanding can take place.

Field One: Politeness (Civility)

- People don't say what they really think
- Different expectations and disagreements aren't apparent
- The underlying emotion is fear
- The first crisis is one of "emptiness":
 - Realize your expectations won't be met
 - You can't make it happen
 - Can't control the outcome you want

Field Two: Breakdown

- The underlying fragmentation becomes apparent
- People start to say what they think
- Intensity and pressure begin to build
- People begin to battle over whose meaning will have more power
- The dominant emotion is anger
- People are more concerned about expressing their viewpoint than questioning it

- Little or no real reflection is accomplished on what is happening
- There is a second crisis: One of suspension
- Members learn to find a way to cool down the exchange
- Movement through this crisis requires self-reflection
- Realization that my point of view is not ME
- This is the most difficult transition: people hold their assumptions as necessary
- Determining that the way through the crisis involves:
 - Suspending positions and assumptions that drive them
 - Being willing to listen to other views
 - Taking a wider view

Field three: Inquiry

- When the energy changes, a different kind of conversation begins
- People stop speaking for others or for the group
- People start speaking for themselves and do less holding back
- Participants know they don't have it all figured out
- People don't feel compelled to agree
- Ideas flow freely, and many perspectives are respected and discussed
- Judgments of one another surface
- The dominant emotion is curiosity
- Sometimes there is profound change
- Then there is a crisis of fragmentation

Field Four: Flow

- This field of communication is the rarest
- There is a collective experience of the flow of communication
- There is an atmosphere large enough to accommodate radically different points of view without requiring any of them to change
- There is a move from reporting our memory to speaking from our hearts
- It is ok to speak thoughts that may feel small or "underdeveloped"
- Synchronicities arise: one person will think something and another will say it
- Personal stories are told that reveal meaning
- It is sometimes hard to describe this experience

Another way of changing our methods of communication centered around discussions on techniques regarding listening, respecting, suspending, and voicing as methods to move quickly through the communication fields to real dialog and could move from civility into flow more easily.

1. Listening (and noticing): We discussed what was involved in listening to another. It was pointed out that our culture is dominated by sight, and that to listen well, individuals must attend to both the words and the silence between the words. To listen is to develop an inner silence. To listen is to realize that most of our reaction to others comes from memory (stored reaction).

During "listening" we most often fail to notice the difference between direct experience and our assessment of it and then we make conclusions, which lead to assumptions, which lead to beliefs.

An exercise that helped the core team to develop respect for listening was performing the following exercise:
The team separated into teams of two persons and given a problem. Each team was expected to:

Define the problem.

Listen to the other person with awareness of your thoughts and feelings.

Report to the speaker what was heard and felt.

Reverse roles.

2. Respecting: The discussion on respecting each other centered around the following thoughts:
Team members were asked to look deeper into the dynamic of communication with another: to look for the “springs that feed the pool of their experience”. The Team was reminded that the practice of respect invites us to see others as legitimate. It requires the ability to perceive accurately a present-moment competence. Respect also implies taking seriously the fact that we are participants, not observers. As a participant, it is no longer possible to simply blame others for what happens. There is a recognition that if you perceive it, it is also in you, and you are bringing it forth whether you realize it or not. Also developed was the concept that loss of respect equals my assessment that what you’re doing should not be happening.
3. Suspending: The discussion on suspending was centered on an internal behavioral change which allows the person to suspend judgment and just listen; it is a way to change direction, step back, stop, see things with new eyes, and avoid snap judgments. Suspending is one of the deepest challenges we face. It takes a willingness to be influenced. There are two types of suspending:
 4. To make available the contents of consciousness to see what is going on. and

To become aware of the processes that generate the thought: to move upstream, to realize that our thoughts have particular origins.Suspension involves observing the thought processes and through this observation, transforming the thought processes so that snap judgments are avoided. For those addicted to problem solving, suspending can be difficult.
5. Voicing:

Asking the question: what needs to be expressed now?
Speaking your voice has to do with revealing what is true for you
Voicing requires courage and confidence that what you think is valid
Our voice has magic in it when we embody our genuine expression
When we speak from our hearts, the words we speak have a ring of truth to them
Sometimes, speaking from the heart requires a willingness to speak with out knowing what you will say
Voicing has a deeply communal communal dimension to speaking

INTERESTS AND VALUES

To begin meaningful negotiations, the question of “what is important to you” must be answered. There were several discussions on interests and values in the team setting. All team members were asked to reflect on what was important to them and what did they want to accomplish through these negotiations because success is not recognizable until you know what you want. Sometimes the input from the team presented as a fear i.e., “I don’t want excuses about money to justify non-compliance”. Presented below are the results of the discussion on interests and values.

Ecology Interests and Values

That all parties set fears aside and act out of integrity and courage.

Stabilize PFP as soon as possible

Do what is necessary to keep PFP workers safe

Actively address issues rather than "let them ride"

Agreement reached should be thorough enough to drive real work, i.e., path forward for ultimate disposition of waste and milestones should reduce risk

Deliver assurance that regulators are willing to be flexible to get risk reduction

Intrinsically motivated, believe in what we are doing and acknowledge that regulations are not a perfect fit in every situation

Want RL/FHI to pay more attention to patterns/trends that involve risk

Want full disclosure during negotiations; relevant information should be revealed openly

Expectation that agreements made will be honored by higher management

Coordinate internal communication to avoid "surprises"

Want to define a joint public involvement process

Don't want budget to prevent sound environmental protection

Want Hanford to acknowledge a knowledge gap regarding technical data at PFP

Don't want to be constrained by existing plans

Want a good approach for dealing with waste characterization issues

Want the negotiated result to be fundable and implementable

Hanford Interests and Values

Protect and manage workers/environment/public from hazards

Fear that there won't be enough money to do what WDOE wants and will need to seek a balance in the interests of the taxpayer and safety

Won't be able to work budget fluctuations with WDOE

Will make commitments in good faith, the money won't come, and WDOE will accuse DOE/FHI of bad faith in negotiations

Great interest in showing negotiations progress resulting in a signed change request

Worried that if PFP changes plans, WDOE will see a lack of planning as the basis for the change

Worried that Ecology/EPA and DOE/FH don't have the same goals for the negotiations:

- RL: get the job done/WDOE: be compliant
- WDOE: Do it this way/RL: there are many way (need flexibility)
- Duration: WDOE: Make it short
- Priorities: RL needs flexibility

Concerned that security issues will be a stumbling block

Concerned with maintaining the viability of the TPA

- That it is a political document
- Legitimacy issue

Concerned that parties will lose focus on PFP while dealing with greater site-wide issues that affect PFP

Concerned about flexibility in working through NEPA/CERCLA issues

Concerned that interfacing with the public is ill defined

Great interest in using lessons learned from B-Plant and PUREX

Want to maintain appropriate contact with HQ

Concerned with unilateral dictates

Want to talk about "non-negotiables"

Want to strengthen relationships with Ecology

Fear that senior managements are disconnected

September 11 terrorist attack has affected security at PFP

Worried that key people will be pulled away from negotiations before the process is completed

Summary and Lessons Learned through the collaborative negotiations process

We learned there are a lot of wounds from previous negotiations, which were brought to the negotiating table. And that trust building sessions were key to working through these issues. There are differences among parties but the differences among the parties in strategic interest are generally overstated. Relationship differences have been to often ignored in the past, and by working on communication and trust, the relationships between the DOE community and the regulatory community greatly improved.

We also learned that collaborative negotiations take less time and are cheaper to conduct. A collaborative style works best when the managers involved let go, i.e., the managers must be facilitative and not controlling and there also has to be a strong trust between the DOE and the contractor negotiators. The contractor generally provides technical details and technical solutions while the DOE generally provided direction and boundaries.

Facilitation helps because the negotiators don't have to pay attention to the process, just content and in cases of impasse, there is a neutral person to assist the team in working out the issue.

CONCLUSIONS AND SUMMARY

When collaborative negotiations were initiated at PFP, most of the initial work was on building trust. There were several exercises the team participated in to improve communication and to build trust within the core team among the parties. An important agreement the core team made was to emphasize the equality of all members of the team. This empowered all team members to fully participate in the negotiations. There was also concentrated effort to close the knowledge gap between the regulators and DOE. There were briefings on technical issues and tours of PFP so that team members shared enough technical knowledge to be effective in writing meaningful milestone language. Also, the entire negotiation team solved problems while in session instead of resorting to separate causes therefore, there was little reliance on caucuses and secrecy.

Also important was the fact that DOE allowed contractor representatives to take initiative to deal directly with the regulators to facilitate communication. We learned that negotiations depended on working level employees to solve problems and that the use of small groups working on portions of the PFP scope was highly effective in the construction of the milestones. Because there was a logical break-up and portioning of the work, the milestones written reflected meaningful clean-up work scope which was achievable.

Certain behaviors were important in the success of the negotiations; for example, the DOE team members took the leadership role in establishing boundaries and advising during the discussions. Also there was great reliance on individual communications and self-management skills. This validated the time spent on developing these skills at the outset. Problem solving initiative rotated naturally on any given day and there was an emphasis on personal interactions and resolution of problems. The team approach ensured buy-in to the final agreement.

A major outcome of the negotiations centered on the fact that the interests and values of the agencies were met. It was interesting to note that there was not substantial difference in strategic interests; the difference in interests was more control oriented.

During the course of the negotiations, as issues arose, and discussion progressed, agreements that resolved the issues were made. The rationale behind each agreement was fully documented.

The critical component in all negotiations revolves around who makes up the negotiations team. The two major factors that contributed to the success of the PFP negotiations are the people who made up the team and their high motivation to ensure that the negotiations were completed successfully. There was excellent leadership from the DOE as well as from the regulatory community, and the negotiations leaders were invested in a successful outcome. There was never a feeling that one side or the other would walk from the table, instead, the team always felt confident that the issue(s) would be resolved.