

American Recovery and Reinvestment Act Challenges and Successes for Environmental Management Intergovernmental and Stakeholder Relations

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ABSTRACT

The American Recovery and Reinvestment Act of 2009 (“ARRA”) created significant managerial and regulatory challenges for applicable federal agencies. At the Department of Energy (“DOE”), within the Office of Environmental Management (“EM”), these challenges were manifested through the unique environmental Cold War cleanup mission. The rapid regulatory pace required by the ARRA emphasized transparency, yet created specific hurdles to the normally open exchange of information. Additionally, the budgetary requirements of the ARRA created a new framework for budgetary considerations for open communication with the stakeholder process. Traditional budgetary deliberations included an open dialogue between stakeholders and EM management. The accelerated requirements of ARRA and the sheer volume of ARRA-related inquiries created the need for more creative approaches to interaction. The result has been improved electronic communication, updated web content, new media use, and frequent teleconferences. These changes demonstrate a new responsiveness between EM officials, intergovernmental entities and stakeholders. This paper explores EM’s implementation of the ARRA program, and its resulting communications with intergovernmental entities and stakeholders.

INTRODUCTION

The American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act of 2009 (“ARRA”) legislation passed both the House and Senate early in 2009, and was signed by President Barack Obama on February 17, 2009 (Phillips, 2009). The stated purpose of the legislation was for “job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization” (ARRA, 2009).

Beyond job creation, President Obama highlighted several other provisions that made this legislation unique. One of these provisions was the speed in implementation. Most provisions of the law were expected to be enacted and appropriated by Fiscal Year 2015. This provision required that projects completed under ARRA not be subject to extensive environmental regulatory review, such as the traditional NEPA processes.

Another component is accountability. This was accomplished through the “goal of foster[ing] unprecedented levels of accountability and transparency in government spending” and “requiring recipients of Recovery funds to report quarterly on the amount of monies spent, the status of the project, the number of jobs created and/or saved, and other details, all of which are posted on Recovery.gov so that the public can track where the total \$787 billion Recovery funds are going and how they are being spent” (Recovery.gov, 2009).

Lastly, the bill highlighted a new level of transparency for both recipients and government agencies. Visits with registered lobbyists inquiring about specific provisions of the ARRA were required to be reported within 72 hours under guidance from the White House and the Office of Management and Budget.

ARRA and the Department of Energy

The Department of Energy was one of several federal agencies to receive several billion dollars in funding under this legislation. DOE received a total of \$36.7 billion. The breakdown of funding was as follows: \$16.8 B through the Office of Energy Efficiency and Renewable Energy (EERE), \$4.5 B through the Office of Electricity Delivery & Energy Reliability (OE), \$4.0 B through the Loan Guarantee Program Office (LGPO), \$3.4 B through the Office of Fossil Energy (FE), \$1.6 B through the Office of Science (SC), \$400 M through the Advanced Research Projects Agency - Energy (ARPA-E), and \$6 B through EM.

ARRA and the Office of Environmental Management

For the Office of Environmental Management (“EM”), within the Department of Energy, the ARRA legislation contained \$6 billion in funding to accelerate existing mission items. Since 1989, EM has been tasked with cleaning up the “Cold War generated large amounts of radioactive wastes, spent nuclear fuel (SNF), excess plutonium and uranium, thousands of contaminated facilities, and contaminated soil and groundwater” (Anderson, 2009). The EM mission covers several states, but ARRA projects selected covered eight states and eleven distinct sites.

Before passage of ARRA, EM had suggested several projects to Congress that would fit into the scope of the ARRA. This scope included several different factors. First, it included a focus on shovel-ready projects that quickly achieve job creation and retention. Projects that accelerated the footprint reduction of EM’s existing lands and buildings were also emphasized. Projects with validated cost and schedule baselines already in place with existing contracts were also included. Projects were selected based on pre-existing project management structure in place, with a specific focus on the ability to track and measure performance. Additionally, individual recipient site offices were required to submit a completed checklist, ensuring readiness and compliance with measures to prevent waste, fraud, and abuse. Lastly, many of the projects were classified as “high-risk facilities” and would lead to accelerated deactivation, remediating potential environmental, safety, and health risks. (PSRP, 2009)

Several EM projects were also applicable to ARRA based on their contractual status. EM proposed projects with a preexisting acquisition structure in place, meaning flexible contractual vehicles to allow for the quick expansion of workforce deployment. EM would be able to avoid a lengthy competitive bidding process, allowing for funds to be spent quickly, with a goal to complete all ARRA funded projects by the end of 2011 (Kindy, 2009, p. 2).

Additionally, regulatory requirements for ARRA projects were already agreed to, and in place. For many of the projects in place for environmental cleanup, EM has negotiated individual compliance milestones with respective state and federal regulators. According to EM’s Compliance Agreements website, these agreements “assist in promoting greater cooperation, coordination, and consistency with other EM offices, Departmental organizations, and State agencies” (2009). Several projects chosen for ARRA funding were part of preexisting compliance milestones, and would be scheduled for acceleration under ARRA funding. These projects had already been analyzed under proper CERCLA, NEPA, and RCRA environmental requirements, and would not be slowed down by such analysis.

The last characteristic of EM’s ARRA projects concerned readily deployable technology. In order to achieve the requirements of significant accomplishments by FY 2001, projects with proven technologies, and therefore on-the shelf plans and projects, were selected. These types of

projects mainly included the following: soil and water remediation, radioactive waste disposition, facility demolition and decommissioning, site closure, EM facility closure, and footprint reduction both at a site and DOE complex-wide. (PSRP, 2009)

RESPONSIVENESS

EM's History with Stakeholders

After the formation of the EM program in 1989, it became obvious that federal and state regulators, tribal nations, local government officials, and other interested stakeholders would have a heavy participatory role in the cleanup process. Several formalized actions followed. First, EM entered into cooperative agreements and grants with the following, in order to facilitate formalized involvement with the EM cleanup process: The National Governors Association Federal Facilities Task Force, the National Association of Attorneys General, the State and Tribal Government Working Group, the Environmental Council of the States, the Energy Communities Alliance, the National Conference of State Legislatures, and individual agreements with the Seneca Nation, Jemez Pueblo, Pueblo de San Ildefonso, Pueblo of Cochiti, Santa Clara Pueblo, the Confederated Tribes of the Umatilla Reservation, the Nez Perce Tribe, the Yakama Nation, and the Shoshone-Bannock tribe.

With that precept in mind, EM follows two applicable Departmental Orders. Beyond the scope of EM, DOE has existing policies that further elaborate the importance of interaction with interested parties. The first is DOE Order 144.1, Department of Energy American Indian Tribal Government Interactions and Policy. This Order lays out several other documents that pertain to DOE's interactions with federally recognized Indian tribes to ensure that federal obligations of government-to-government consultation are honored. The second applicable order is Order 141.2, Public Participation and Community Relations. This order lays out several goals that have become incorporated into EM practices:

- “1. DOE will actively seek to identify stakeholders, consider public input, and incorporate or otherwise respond to the views of its stakeholders in making its decisions.
2. The public will be informed in a timely manner and empowered to participate at appropriate stages in DOE's decision-making processes. Such processes will be open, understandable, and consistently followed. Managers will define clear access points for public input from the earliest stages of a decision process and will provide adequate time for stakeholders to participate.
3. Credible, effective public participation processes, including active community outreach, will be consistently incorporated into DOE program operations, planning activities, and decision-making processes, at Headquarters and in the field. Employees within the DOE complex will share responsibility for promoting and improving public participation and community relations.
4. DOE will conduct periodic reviews of its public participation and community relations efforts.”

One of the cooperative agreement entities, the Energy Communities Alliance, represents the interests of local governments and community reuse organizations located in proximity to the

DOE weapons complex sites. In their publication, *The Politics of Cleanup*, they note that the cleanup process requires a high level of openness and collaboration in order to achieve success. (Kirshenber, et al, p. 45, 2007). Several of the other groups have echoed similar sentiments, and this basis forms the mode of communication between EM and its intergovernmental entities and other stakeholders.

Stakeholder Inputs to EM ARRA Processes

While many DOE stakeholders found the ARRA process to be different than the normal processes, there were still opportunities for participation in ARRA decision-making. During the early months of ARRA passage, local government officials raised concerns that small businesses were not being given equal opportunity to apply for ARRA contracting activities. They raised concerns that the larger EM contract recipients would outsource jobs to out-of-state recipients. In response to these concerns, DOE presented a training session for small businesses at the Savannah River Site (“SRS”) on September 2, 2009. (DOE SRS release, 2009). Additional opportunities were also hosted in November of 2009 to allow for additional participation by DOE small businesses in the areas surrounding SRS.

EM officials stressed the importance of seeking out small business opportunities when spending ARRA funds. As of the end of August, the Y-12 site in Tennessee had received \$13.2 million, of which 94.1 percent went to small businesses (Munger, November 9, 2009, p. 1). Complex-wide, EM reported that they had exceeded their ARRA small business goals for contracting and subcontracting. Using the same percentage goals for the FY 09 base funding, ARRA goals for prime contracting were set at 4.8%, or \$288 million. As of September, EM reported that \$352 million of ARRA funding had gone to small business entities (Anderson, September 2009, p.7).

To further involve outside input, EM began hosting almost monthly conference calls with all of EM’s major stakeholders. These calls serve as an important way to reach all of the stakeholders and provide status updates on the ARRA progress, answer any questions raised by concerned audiences, and help to identify problem areas occurring between EM Headquarters and individual site offices. Both EM and the stakeholders found these calls to be profitable, and they are scheduled to continue indefinitely. EM leadership noted the importance of ongoing dialogue with stakeholders and regulators as part of their original proposal for ARRA planning (Anderson, 2009). Additionally, several local government officials and staff received in-depth briefings on ARRA progress from site staff at various sites. (Doman, 2009, p.1).

The News Flash! Newsletter also served another important purpose in interactions with EM’s stakeholders. It increased transparency by making ARRA news more readily available including various site-by-site profiles of ARRA projects. For example, on October 2, 2009, EM released a newsletter detailing the specific project at the SLAC National Accelerator Laboratory in Menlo Park, California. This newsletter, like many others, provided in-depth information in a condensed manner about the specific ARRA project details, job creation, and other information of interest to EM’s stakeholders. Before ARRA, EM was not creating materials of this frequency to be made available to stakeholders.

The acceleration of waste removal from ARRA sites created an unanticipated outcome for the stakeholders of the state of Tennessee. Several commercial waste-treatment facilities became slated to receive additional waste. Some waste, originally slated for a 2053 treatment date, originated from sources in other states as a result of ARRA acceleration activities. Some of

the waste will ship to Oak Ridge, and then ultimately be disposed in either Utah or Nevada (Munger, November 13, 2009, p.3).

However, some waste was planned to remain in Tennessee. For example, activities of the Separations Process Research Unit (SPRU) in upstate New York were scheduled under ARRA, with waste streams intended for Tennessee. However, ARRA officials were concerned that Tennessee stakeholders had not been notified sufficiently, and in response, conducted a conference call to inform them of these new ARRA developments. Most stakeholders from Tennessee opposed the transfer of waste from SPRU. After this input, EM leadership made the decision to transfer the SPRU waste to a facility in either Utah or Nevada (Nartker, November 2009, p. 4). This decision is a concrete example of a new level of discourse between EM and its stakeholders, resulting from the new requirements of ARRA.

TRANSPARENCY

With transparency being a hallmark of the ARRA legislation, EM faced a complicated set of projects spanning the nation, new accounting requirements, and a highly interested set of intergovernmental and stakeholder entities. In the early stages of the proposal to Congress, EM officials noted that the ARRA funding could create several barriers to effective implementation. One of these concerns identified the need for EM to have “effective interaction with stakeholders and regulators as Recovery Work progresses.” (PSRP, 2009). There were several contributing factors that led to this conclusion.

ARRA Budgetary Transactions

ARRA created several very difficult tasks. One challenge resulted from the requirements of quickly deploying funds, while ensuring their use was in compliance with transparency and budgetary requirements. In order to institute proper protocols for the increased scrutiny to budgetary transactions under ARRA, EM instituted several controls. One area of controls was a rigorous project review process including several onsite reviews by EM Headquarters experts. These reviews include the following: external independent reviews by the DOE Office of Engineering and Construction Management, internal project reviews by EM subject matter experts, Headquarters Program reviews, and Recovery Act Readiness Evaluations. All review processes were instituted to ensure “monitoring of project performance, early identification of issues and for capturing lessons learned” (Newsflash!, August 2009).

DOE also required budget and accounting codes to properly segregate between base and ARRA programs. Additionally, EM created a budgetary framework for the allocation of ARRA funds. To ensure adequate controls, only 80 percent of Recovery Act funds were allocated for obligation against contracts. The remaining 20 percent was to be held back to ensure adequate performance (Anderson, 2009). If performance was not adequate, the remaining funds would shift to other site projects, then other state projects, and then out of the state. (Nartker, August 2009, p. 3)

When this proposal was explained to EM’s regulators and stakeholders, their response was somewhat lukewarm. While all groups welcomed additional oversight to ensure proper stewardship of funds, recipients of site funding were concerned that funding and jobs would disappear, leaving behind further economic downturn and continued environmental contamination. Additionally, given some of EM’s earlier encounters with project delays and other budget overages, government officials, environmental watchdogs, and stakeholders were

concerned that EM projects were not necessarily good investments for ARRA projects. Previous attempts at acceleration of EM projects had resulted in unanticipated delays and safety concerns (Kindy, 2009, p. 2). However, after several months of analysis, EM officials reported to the Weapons Complex Monitor that the spend rates associated with the initial spending of ARRA funds had not yet resulted in a major change in spend plans to sites and states that had initially received funding (Nartker, November 2009, p. 3).

For sites who did not receive initial funding, they petitioned EM to change some of the budgetary considerations in order to include projects that they deemed worthy. For example, it was reported that 5 non-EM DOE offices and national laboratories petitioned EM for inclusion in the project list (Nartker, August 2009, p. 2). Additionally, several stakeholders from the state of California petitioned EM to include the SLAC, and other small locations to be included in the ARRA cleanup projects. In response to these requests, EM did make some changes to the budgets, and SLAC was awarded ARRA funds later in 2009.

Local government officials in the Northern New Mexico region expressed a different concern. They were concerned that funds promised to the Los Alamos National Laboratory were held up when EM expressed concern about LANL's ability to remain in compliance with the existing Compliance Order between DOE and the state of New Mexico. Officials were concerned that delays in funding would result in the funding being funneled out of the state. After hearing the concerns of the local officials and receiving assurances from LANL, EM released the ARRA funds to LANL, and their decontamination and decommissioning work began in summer of 2009 (LANL, 2009).

EM worked aggressively during the first months following the ARRA passage, and by September of 2009, they reported that more than 99% of ARRA funding had been allocated to DOE sites through existing contractual vehicles. During that time frame, EM reported in Making Progress, a monthly update to stakeholders, that the jobs impact of ARRA has been more than 9,000 jobs. While these figures are still preliminary, the result of balancing stakeholder concern and ARRA requirements seemed to be working successfully. (2009)

Impact of Lobbying Restrictions

Another hallmark of the ARRA legislation was its requirements to closely monitor the interactions of registered lobbyists. For the Office of EM, this created additional challenges and hurdles.

One problem was the perceived perception that lobbyists and special interests were involved with the ARRA development process while others were not. The Washington Post reported that EM's existing contractors had contacted Departmental officials about potential projects to be included in a possible Obama stimulus package (Kindy, 2009, p. 1).

Additionally, ARRA provisions required that federal agencies report all meetings with registered lobbyists who had meetings to discuss specific ARRA projects. All meetings must be reported on the www.recovery.gov webpage within three business days of their occurrence. Presidential guidance entitled Ensuring Responsible Spending of Recovery Act Funds with information about lobbying was released in a memorandum from the Office of Management and Budget in March (2009). DOE's reporting, including EM interactions, was reported on the DOE Recovery webpage.

For one EM's stakeholder group, this guidance created unanticipated difficulties. One staff person for one of the EM intergovernmental organizations had registered as a lobbyist as part of a former employment situation, and therefore, any meeting conducted on behalf of their

stakeholders would have to be reported to OMB. This additional step compromised the normal ease of access experienced by EM stakeholders and envisioned by DOE Order 141.2. The ultimate result of this reporting mechanism was a decreased number of meetings with the lobbyist in attendance, potentially decreasing their ability to participate as a stakeholder in the ARRA discussion process.

Job Creation/Retention Figures

The job creation/retention figures associated with ARRA are of high interest to the OMB and other entities, and have created some unanticipated transparency issues within EM. Interested stakeholders were curious to see the ARRA impact to their individual states and EM site locations. During the initial months after ARRA passage, there was government-wide confusion about the reporting metrics in place at www.recovery.gov, especially in the area of tracking the actual impact of job creation and retention. In late October, the AP did a government-wide investigation of the reporting mechanisms of job retention and creation. According to their research, jobs were to be calculated on a full-time, 40-hour per week positions (Blackledge and Apuzzo, 2009). The AP reported several errors in reporting, resulting in a fluctuation of as many as 5,000 jobs.

EM officials reported two different types of jobs categories to www.recovery.gov: jobs saved and jobs created. "Jobs saved" indicates jobs that would have normally been layoffs, had not the ARRA funds stimulated further performance at EM sites. "Jobs created" pertains to the ARRA scope of work that had not been anticipated as taking place during the EM base budget process. During September of 2009, EM also created a third classification which attempted to measure the impact to a local economy from more indirect sources, such as supplies provided by vendors, increases in profits to local businesses in proximity to DOE sites, etc.

With these various classifications, several DOE stakeholders expressed concern about what the actual figures were. In response, EM created The News Flash! Newsletter to report on various job-related information of interest to stakeholders. Typical information included the jobs saved and created, state-specific job information, job fairs hosted, number of applicants, and overall employees at each location (Newsflash!, September 2009).

Additionally, in later months, EM started to rely on new guidance issues from OMB to further clarify how to uniformly report job statistics. All agencies are to report ARRA hours of employment on a 40-hour per week calculation. After that calculation, the numbers are tabulated on a quarterly basis. The new guidelines also allowed for a calculation process for jobs based on a total amount of hours. The final calculation of that type of figure would create a percentage of work based on that of a normal full-time 40-hour schedule. (OMB, December 2009).

These OMB changes led to changes to earlier reported figures. For example, in January, DOE announced a change in job numbers at the Hanford site from nearly 2,500 to 1,423. This figure was reported as units of 40-week work units as opposed to the actual number of hired personnel (Tri-City Herald, 2010). Other changes in job counts are expected as the new guidance is integrated into other individual site calculations.

CONCLUSIONS/LESSONS LEARNED

The overall long-term impact of the stimulus legislation will not be realized for several years to come. For the office of EM, their portion of the ARRA funding, while small in comparison with the government-wide effort, represented a significant impact to the life cycle costs of the overall program. Even with less than a year of analysis in existence, several

conclusions can be drawn. First, the interest in the jobs advertised under ARRA indicates that the EM program is a strong example of the original intent of the economic stimulus posited by the Congress and the Obama Administration. Secondly, the ARRA activities have created new opportunities with stakeholders. Increased communications has yielded more real-time contributions to project plans, and better results. The quick turnaround associated with ARRA has created an urgency, but at the same time, a new energy to the EM program. Stakeholders who had not been as engaged in EM processes are now back contributing in a more tangible manner.

For EM, the ARRA project execution could represent a meaningful way to integrate improved communications with its regulators, intergovernmental groups, and other stakeholders. Deliberate communications have resulted in additional transparency, more opportunities to interact with EM leadership, and a quicker resolution to problems. Several of these steps could be easily integrated into the base program activities. With the ease of Internet postings and the success of electronic newsletters, increased communications is achievable for the base program, and does not have to be an exception resulting from the increased reporting requirements of ARRA.

Stakeholder interest in the ARRA implementation provides a unique opportunity for EM leadership to take advantage of the expertise of intergovernmental entities with close ties to the work being done at various sites. Using this newly engaged group of stakeholders could be a valuable resource to EM. As EM starts its strategic planning for the future, both in the short term post-ARRA funding cycles, and in the larger scope of out year and life cycle planning of the Cold War cleanup, stakeholders can continue to provide an external perspective that sometimes gets lost in the shuffle of the bureaucratic framework.

Local communities who have benefitted from economic stimulus are interested in maintaining the employment of their workforces, and should use ARRA as a starting point to ensure that the economic stimulus realized in this legislation is harnessed both to provide local economic stability, and to create a new generation of nuclear workers who can pursue successful careers, all while achieving the universally agreed upon goal of accelerated cleanup of the nation's most contaminated waste areas.

ARRA has provided an important financial instrument to accelerate the footprint reduction of EM's real estate. Stakeholders have the opportunity to harness this acceleration to also discuss future uses of this newly cleaned up property. EM has discussed the possibility of turning over excess property to local economies for pursuit of other energy projects. This so-called Energy Parks Initiative is another opportunity to stretch the successes of ARRA into other arenas. But, the success of this initiative is not possible without harnessing the support of stakeholders. The successes of ARRA stakeholder interactions are a logical starting point.

Other likely successes are possible with a little creativity and willingness to accept an external viewpoint. Both EM and stakeholders will benefit from striving to make this relationship as productive as possible.

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