

**BRIDGING THE REGULATORY GAP
SEVEN STEPS TO A BETTER RELATIONSHIP
WITH YOUR REGULATOR**

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ABSTRACT

The decommissioning of nuclear facilities presents many challenges to those tasked with site remediation and waste management. One such challenge is ensuring that appropriate regulatory permissions are in place as the decommissioning programme moves forward. Failure to obtain regulatory permissions in good time can result in lengthy delays to the programme and increased costs. Non-compliance with regulatory permissions can bring further delays and divert resources from core decommissioning activities.

Good relationships between regulators and operators is a mechanism for managing and mitigating the risks associated with regulatory activities. There are many potential stressors to the development of a healthy and collaborative relationship between engaged parties. Perception can often be very different from reality

A number of nuclear sites and their associated operators have attempted to develop mechanisms to manage their relationships with regulators. Some of these have been welcomed by the regulatory community and enjoyed success. Others have been met with discomfort by regulators and resulted in a degradation of the regulator-operator relationship.

All relationships require time and effort from the engaged parties. There is much that can be done to further understanding between those who regulate and those who are regulated. Improved relationships can bring significant benefits to all parties without necessarily compromising the position of any party.

The purpose of this paper is to discuss a number of areas which typically put the relationship between those who grant permits and those who are required to comply with them at risk. The paper draws on the experience of the author who has worked in both the operational and regulatory field

INTRODUCTION

Whatever individuals' personal views and experiences of regulators are most people can usually agree that failing to manage an organisation's relationship with its Regulators can lead to time-consuming and costly delays to projects and programmes. This can come in a number of forms that vary from failure to secure permits at the required time in programmes to delays and cost generated as a result of remedial action from non-compliance.

A major challenge for decommissioning businesses in the UK is that the regulatory regime under which they operate was developed for facilities operating ostensibly in a steady state. As such, the flexibility required for one-off decommissioning activity is absent.

All of us who have worked in regulated industries and for the Regulators themselves have experienced challenges and frustration on regulatory matters. This is to be expected as the stakes are often high for all parties. Money, reputation, lives and the environment are at stake. Sometimes things run smoothly and everyone walks away happy. Sometimes they don't, patience runs short, tempers flare and relationships are damaged.

Managing any relationship is a challenge. Successful management must be all about successful relationships. Damaging relationships damages business. A good relationship with an organisation's Regulators must be good for business.

This paper examines some of the key areas around managing successful relationships with Regulators. Most of this has come from the experience of being both regulator and regulated or as one colleague described it 'the oppressor and the oppressed'! The main focus of the seven steps is to encourage a progressive pathway to better regulatory relationships. They could just as easily apply to the regulator as to the regulated.

Step 1 – Knowledge of the Regulatory Framework

Regulatory regimes have developed to Modern regulatory regimes are generally complex. In the UK, as elsewhere, legislation has evolved over many years into what we now see on the statute books. Major events have often resulted in either new or significant changes to legislation. However, it mustn't be forgotten that legislation is frequently amended in minor ways. This usually happens when new legislation impacts on existing legislation.

In addition to primary legislation International Treaties, Government Policy and Devolved Administrations influence the manner in which both Regulators and businesses conduct their affairs.

Regulators and others may produce guidance and codes of practice to support the legislation. The purpose of this is often to interpret legislation and to assist businesses in meeting their obligations. Most Regulators expect businesses to comply with these.

There is a general expectation that businesses will have an understanding of the potential impact of their activities on the health and safety of their workforce and on the wider environment. Keeping up to date with legislation can be a major challenge. Regulators generally employ experts in their chosen fields and have access to a range of specialists to support them. It is not unreasonable for Regulators to expect those whom they regulate to have a good working knowledge of the legislative and regulatory framework. Clearly the expected degree of knowledge will be dependant on a variety of factors such as the size of the undertaking, the impact of the regulations on the business and the number of employees. Regulated businesses should identify the regulatory regimes under which they fall, determine the level of understanding within the business and prioritise their needs for further knowledge and understanding. At the very least businesses should be able to demonstrate for all key regulatory regimes that they have:

- Access to copies of the most up-to-date version of the legislation
- Access to copies of any relevant guidance and codes of practice
- An understanding of the impact of the regulations on their business
- Access to expert support to assist them when needed.

Most of the information is readily available as publications or on the relevant Regulator's website.

Step 2 – Understanding the Drivers and Motivations of the Regulators

Regulators, just like the businesses that they regulate, are subject to pressures that influence the way that they operate. These pressures may come from a variety of sources such as public concern, politics, other regulators, budget constraints and staffing levels. These pressures will impact on the drivers and motivation of the Regulator. In addition, individual staff members will have their own views and preferences on how they believe that businesses should be regulated.

Understanding these drivers and motivations is an important step in developing the relationship with regulators. This can be best achieved by keeping up to date with the Regulator and also those factors that are known to be actively influencing their work.

There have been a number of instances where regulators developed relationships with businesses that have brought their ability to act impartially into question. This is often referred to as 'Regulatory Capture'. The challenge of demonstrating their impartiality to their sponsors and the wider community is significant and is particularly difficult in small and remote communities.

Step 3 – Making Appropriate Applications

The granting of regulatory permits is a fundamental business process because they are the means by which risk to that business is reduced. It is popular to consider permits as constraints to the business but I prefer the view expressed by a colleague who argued that permits are business assets. Without permits businesses are unable to undertake activities that lead to the generation of profit. It was, he suggested, the law that applied the constraint but the permit that created the opportunity:

Radioactive Substances Act 1993 (as amended)

S13 (1)no person shall, except in accordance with an authorisation granted in that behalf under this subsection, dispose of any radioactive waste on or from any premises which are used for the purpose of an undertaking.....

Preparation of applications and their processing by Regulators can be a time consuming and costly process. All of the factors that influence the manner in which a Regulator function will have an impact on the consideration of applications for regulatory permits. It's important, therefore, not to be over ambitious with the application. Most regulators now expect applications to be underpinned in a transparent manner. Be reasonable - apply for what you need and not what you want. When faced with the uncertainties implicit in any decommissioning project this can be a challenge.

It is inevitable during the determination process that Regulators will seek clarification on certain points and request further information. The process will be helped by prompt and candid responses. During my time as a regulator I experienced an unusual incidence where a business responded to a public consultation on their application with an objection to the permit proposed

by the Regulator. It is inevitable that tactics such as this cause significant delays and create considerable frustration.

Step 4 – Compliance with Regulatory Permits

Compliance is the area where there is usually the most contact between Regulators and the businesses they regulate. Consequently this is where the greatest opportunity to make or break relationships exists.

Regulators expect businesses to comply with permits. Many permitting regimes now require businesses to develop and implement arrangements to demonstrate compliance with the limitations and conditions contained within the permits. Regulators expect business to comply with these arrangements as well.

In instances where businesses fail to comply with permits Regulators have the option of taking regulatory action to ensure businesses take the necessary action to bring themselves back into compliance. Serious and persistent failure to comply may result in prosecution. Contrary to some popular views Regulators do not like to take regulatory action. Neither is regulatory action in the interest of businesses. Action of this nature absorbs considerable amounts of resources on both sides of the regulatory fence.

On the whole Regulators are reasonable people but they have their limits. Take the example of an inspector who visits a site who has made significant efforts to comply with a new permit. The inspector identifies a non-compliance with another permit but is satisfied that the site has made a genuine oversight and is not wilfully disregarding their obligations. The inspector gives the site three months to comply, warning that regulatory action will follow if the required actions have not been completed by the agreed date. The date passes and the inspector has received nothing from the site. The site claims to be surprised and disappointed when they receive a regulatory notice.

A note of caution on the use of external support. The concept of the 'intelligent customer' has become well established in the UK regulatory sector. Regulators expect businesses to retain the responsibility for compliance. I once visited a site which had recently been visited by contractors engaged for the purposes of assisting with compliance. The site had been given a clean bill of health. I identified that they were unable to demonstrate compliance with over 80% of the conditions in their authorisation. The next time I visited a site using the same contractor I noted that the contractor's review had been more thorough.

Commitment to and demonstration of compliance with permits is likely to be the overriding factor in any relationship between business and Regulator. The message is simple. Businesses should expend effort to understand and comply with permits.

Step 5 – Transparency in Regulatory Matters

The UK's nuclear industry was born from the nuclear defence programme. During the Cold War the industry was shrouded in a veil of secrecy which did little to engender a spirit of trust with the general public. Confidence was further damaged as a result of nuclear incidents such as the Windscale Piles fire in the 1950s. Recently counter-terrorism legislation has limited the efforts of decommissioning businesses to make information available to wider groups.

National security is clearly very important. However, unnecessarily concealing information from Regulators and other stakeholders does little to engender a spirit of confidence and trust. In addition, many regulatory regimes provide for access by the public to information generated by regulatory activities. Decommissioning businesses should ensure that their arrangements for managing information security focuses on keeping as much information in the public domain as possible rather than on concealing it.

Step 6 - Communication

It is clear from the preceding steps that effective communication forms a vital role in the development and maintenance of a productive working relationship between businesses and Regulators. The challenge of establishing productive lines of communication should not be underestimated. Managing and maintaining them takes time and effort.

Many companies have developed arrangements to manage lines of communication with Regulators. These vary from in complexity from designated points of contact through to structured management systems designed to process and record exchanges and commitments.

The emphasis here is on 'productive' lines of communication. The skill is in knowing what to communicate and when. Having meetings or preparing reports when there is nothing to impart wastes time and frustrates. Waiting until a scheduled meeting or the end of a reporting cycle to convey an important message can be equally harmful. Both parties have a part to play in ensuring that aspirations and expectations are clearly communicated.

An example I give is that of a friend of mine and his wife who had planned some time off together. My friend's wife had complained that she was never involved in the decision making process and always ended up going where he wanted. When afforded the opportunity to express a preference she suggested that he should have known where she wanted to go. I have been involved in cyclical arguments such as this as both business and Regulator. This is where the requirement to be reasonable comes on both sides of the regulatory divide.

Step 7 – Cultural Aspects

A strong culture of understanding and complying with regulatory requirements is arguably the most powerful tool in bridging the gap between businesses and their regulators. This should be both the goal and the prize for efforts engage in promoting a strong relationship with Regulators. A positive culture that pervades an organisation instils confidence in all that come in to contact with the business.

It takes time to change the culture of an organisation. There are many established works that have been published on this subject. Some have been proved to work and others have been less than successful. Ultimately it takes commitment and strong leadership precipitate any form of organisational change.

CONCLUSION

Strong and productive relationships between decommissioning business and their Regulators are important facets in the management of complex nuclear decommissioning projects. This is

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particularly relevant where regulatory regimes have not been developed with decommissioning in mind.

A relationship develops over time and is the result of effort and commitment on both sides. Decommissioning businesses can improve their relationships with Regulators and promote mutual understanding and trust by following the steps identified in this paper. Businesses that succeed will enjoy fewer delays and improved performance.