



Subject: Notes from Meeting on April 20

Date: Fri, 27 Apr 2001 09:55:24 -0600

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Folks --

Attached are my notes from last Friday's meeting between representatives of DOE/CBFO, WTS, and NMED. These notes are simply typed-up versions of the handwritten vugraphs I created during the meeting, and in no way are intended to be official proceedings of the discussions.

Let me know if you have difficulty opening the file. I hope these notes are useful.

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WIPP Regulator/Permittees Meeting

April 20, 2001

Meeting Notes

Desired Outcomes:

- Establish rules of engagement for the relationship between DOE and NMED
- Outline a path forward for all work now on the table
- Establish a stable set of regulatory rules of engagement (Class 1s, Class 2s, etc.)
- Develop a regulator/permittee relationship where we feel comfortable speaking to one another and feel comfortable seeking advice from one another

DOE/CBFO Roles and Responsibilities:

- Manage the WIPP facility in a compliant manner
- Behave appropriately as a federal “guest” in the State of New Mexico
- Honor and continue to shape the “contract” between the federal government and the citizens of New Mexico

NMED Roles and Responsibilities:

- Protect environmental public health and safety in New Mexico
- Serve as the regulator
 - Administer licenses and permits
 - Provide regulatory services to permittees

***** Make the regulatory process work for all involved *****

- Engage and inform the public (even outside the formal permitting and permit modification process)

On-Going Interactive Mechanisms:

- Senior Management Council
 - NMED
 - Peter M.
 - Paul R.
 - Chief Counsel
 - DOE/CBFO & WTS
 - Ines T.
 - Kerry W.
 - John L.
 - Tom B.
- Mid-Management Council/High Performing Team
 - NMED
 - Steve Z.
 - James B.

- [Susan M.]
- et al
- DOE/CBFO & WTS
 - Mark T.
 - Jody P.
 - Bob K.
 - Clayton G.
 - Cynthia Z.
 - [Stuart H.]
 - et al

Recommendations for Improving “Strawman” Permit Modification Approach:

- Craft a statement of the issue
- Develop background information
- Work together to dispel concerns and to answer questions about the nature of the problem and about assertions or assumptions made
- Watch the use of unmodified declarative language: i.e., stick to the facts and avoid premature conclusions
- Strive for jointly made conclusions
- Don't require 100% overlap between DOE and NMED goals on any given issue
- Re-order the sequence of steps presented in the “strawman” approach to the order below:
 - Frame the issue (preliminarily, at least)
 - Identify High Performing Team members
 - List the applicable requirements
 - Lay out the critical path
 - Commission data collection
 - Analyze the data collected
 - Propose solutions
 - Iterate the steps above, as needed
- Ways to address real or anticipated stakeholder concerns
 - Avoid perceptions (and certainly the reality) of too cozy a relationship between NMED and the permittees [High Performing Team members should always keep in mind the institutions they represent]
 - Actively engage and inform the public in general
 - Seek to build trust between the permittees, the stakeholders, and the NMED
 - Support decisions with sound regulatory interpretation and with solid data
 - Avoid the mindset that starts with, “How will we defend . . .”
 - Don't surprise stakeholders; consult and engage them early and regularly [perhaps using a process like “Systematic Development of Informed Consent”]
 - Strike a balance between avoidance of surprise and maintenance of flexibility in operations and waste disposal system development
- Propose success metrics associated with the treatment of any given issue

DOE and WTS Could Use Some Things from NMED:

- A better sense of typical trigger points for the influence of public comment over classification of mods
- Clear specification of what kinds of mods fall into Class 1, Class 2, and Class 3 buckets
 - NMED Response
 - Use of the “Other” category by the permittee is problematic; be careful here
 - Class 1 – non-substantive wording changes
 - Class 2 – consult the appendix; High Performing Team will have to wrestle with this; determination may be modified following public comment
 - Class 3 – complex modification coupled with significant public comment
 - [Rarely, the record can be re-opened and downward classification of a mod can be considered by NMED, an action that can be triggered by the absence of public comment]
 - What does “approvable” mean in the mod submittal and review process?
 - NMED Response
 - An “approvable” mod is one originally submitted with no technical flaws
 - An “approvable” mod can also be one for which technical flaws are identified and addressed during the public comment period, either by the public or by the permittees

NMED Could Use Some Things from DOE and WTS:

- The permittees could be more proactive in improving permit mods before and during the public comment period
 - Poll stakeholders, even those who may not attend public meetings or who may not submit written comments on their own initiative (“Beat the Bushes”)
 - Use the public comment period to respond to what you’ve found in your public polling or have heard at a public meeting by submitting proposed changes to your own mod
- [Keep in mind that NMED cannot suggest corrective language itself to a pending mod]

Frustrations and Possible Solution:

- DOE is frustrated by the risk involved in needing to achieve “approvability” of Class 2 mods at the outset or through the regulatory equivalent of a game of “Where’s Waldo”
- DOE also worries that the possibility that mods must be repeatedly restarted will result in wasteful spending of taxpayer dollars and will amount to managerial brinkmanship
- NMED believes invoking a High Performing Team prior to submitting a formal mod will maximize the chances for avoiding start and restart pitfalls, as will pre-submittal “beating of the bushes”

Follow-Up:

- James Bearzi will work with a DOE counterpart to set up the High-Performing Team process
- Ines will name a DOE counterpart to James by Monday, April 23