COMMENTS ON ROCKY FLATS IAG ISSUES

Category I - Statues, Regulations and Policies

I-1) Exposure scenarios and reasonable maximum exposures (RME) need definition. Distinguish differences between RCRA and CERCLA with respect to risk assessments. Define Land Use requirements and their impacts.

Responses:

With respect the Industrial Area OU's and, specifically 10 and 12, the exposure scenarios and reasonable maximum exposures issues should be addressed to the EG&G risk gurus. However, with regard to Land use and their impacts, it should be noted that the agencies have continually demanded that DOE assume a residential use scenario for the industrial area, when considering the BRA. This applies to all the Industrial Area OU's. The impacts of this type of use scenario are clear. Developing a risk scenario based on the assumption that, one day homes will be constructed on the plant facilities cite that was once called rocky flats is ridiculous. Spending the money to develop a residential use scenario does not make sense.

I think the State will fight any discussion of future land use because they believe that it limits their ability to drive clean-up standards. This was the topic of several lawsuits over activities at the Rocky Mountain Arsenal (RMA). EPA may be more willing to discuss this issue—they sided with Department of Justice and the US ARMY/Shell at RMA although some members of the federal facilities branch thought it was a bad precedent to set.

The exposure scenario would definitely have an impact on the ultimate levels of clean up required, with the On-site resident scenario, living on top of the Original Landfill, (a scenario we are looking at) ridiculous.

DOE needs to take a stand on land use. Until future land use is defined by deed restrictions or the lack thereof, this issue will be debated ad nauseam.

Application of exposure scenarios needs to be focused on areas based EPA guidance or where other sites have been similar to regulatory issues. DOE needs to firm up a position for land use and provide the administrative means to support that position.

Exposure scenarios and RMEs definitely need definition in order for us to know how clean is clean. We don't know exactly how agencies want risk assessment presented because the agencies don't know how they want it presented. Much time is spent discussing this issue with the agencies.
CDH/EPA stand - The agencies are trying to show the public that they are being very strict (for lack of a better word) with RFP, and would like to make exposure scenarios, RMEs and risk assessments as stringent as possible with little regard to what the taxpayer really gets for his/her money. CDH and EPA think that residential scenario is the way to go, and probably, in CDHs case, it's got a lot to do with loss of control of Rocky Mountain Arsenal via the Wildlife Refuge Scenario.

These issues are still not resolved and are impacting OU 2 work. CDH/EPA are too conservative, especially when demanding that alluvium/bedrock units incapable of producing enough water to support a household need to run an groundwater ingestion scenario. If there's not enough water to complete a well, this is foolish.

Future land use needs to be defined. Is a residential scenario for the 903 Pad reasonable? Restricting residential land use to likely areas will significantly simplify the risk assessments.

ADMIN RECORD

A-OU12-000067

I-2) Clarify and distinguish between risk management and risk assessment.

Responses:

Essential for program planning, however, risk management is not recognized by the agencies in that they have control through the risk assessment guidance.

Risk management issues such as future land use and demographics should be clearly identified and separated from risk assessment so that risk management issues are not debated during the assessment process. Risk management begins after assessment ends. DOE should vigorously pursue resolution of risk management issues independent of the current assessments.

Risk management	Managing existing operations in manner to minimize risks of contamination and avoid accidental release to workers, the public and the environment.
Risk Assessment	Looking at existing conditions of a contaminated area and evaluating the risk to workers or the public. Should be allowed to evaluate areas based on institutional controls and land use restrictions.

Risk Management is the decision making process necessary to conduct Remedial Action at RFP. These decisions may or may not be made with the use of Risk Assessment. Risk Assessment is the actual quantification of data into a meaningful number for decision making by Managers. EPA and CDH feel they <u>must</u> have the risk assessment numbers in front of them to make responsible decisions. This will be true through all phases of the RI/FS and RA work.

Certain risks can be managed such as the low level rads downwind of the 903 Pad. The risk associated with this area should be assessed but then managed, not remediated. No technology currently exists outside of paving unreasonably large areas. The same goes for the East Spray Fields.

I-3) IAG needs to account for Federal Facility Compliance Act (FFCA) and Community Environmental Restoration Facilities Act (CERFA) and their affect on stipulated penalties.

Responses:

These acts give the regulators more power to enforce environmental compliance at federal facilities. I think that the State, particularly the AG's office, may see this as an opportunity to collect fines and stipulated penalties. Although the fines collected would go to the General Fund and be distributed by the legislature as they see fit, the legislature has seen fit to increase budgets of those agencies bringing in more money in the past. It will be important to determine whether the state sees dollar signs while negotiating changes. See attached comments from Ken Korkia in the latest issue of the Monitor from the Colorado Council on Rocky Flats.

I-4) Review need of NEPA in DOE's implementation of the IAG.

Responses:

DOE's reliance on NEPA has always been a thorn in the side of the regulatory agencies. Neither EPA nor the State feels that NEPA documentation is necessary—in fact they regard DOE's adherence to NEPA provisions as a delaying action. It does eat up a portion of the budget, and provides little value added. Recently, I had to supply more detailed information to DOE's NEPA group that was extraneous to the question at hand. EG&G's NEPA group agreed with me and cited several more examples where DOE NEPA asked for more irrelevant information on other projects before providing clearances and permits.

The only NEPA exposure for Ou 10 and 12 has been the application for and approval of a categorical exclusion for performing RI/FS work for these areas.

This needs to be done at the Directors' level or above to give Project Managers a consistent interpretation of the NEPA/IAG requirement.

Any federally funded program that may significantly affect the quality of the human environment. NEPA itself is procedural rather than substantive, that is, it is a procedural law requiring that DOE follow a process for considering environmental impacts and is NOT created to enforce any judicial substantive rights like RCRA or CERCLA. NEPA does not require DOE to make any decisions. NEPA only requires that the environment be considered through a procedural process. Therefore, DOE should establish the equivalency of CERCLA or RCRA documentation meeting the NEPA process rather than create additional NEPA documents. In other words, the IM/IRA decision documents or FS reports should be adequate to fulfil the intent of NEPA without the development of EAs or EISs.

Environmental investigation and restoration activities are similar enough in scope i.e. drill boreholes, sampling etc., that one CX for the entire plant should be performed to cover several years of ER work at once. NEPA should be realigned to support the D&D and Transition effort if applicable. If EPA and CDH don't want NEPA in the regulations then DOE should not be self-regulating itself without good cause.

NEPA does not help.

I-5) Account for OMB's statement that it is acceptable for DOE to provide reimbursable FTE for EPA non-oversight activities (refer to IAG Part 30).

Responses:

IAG Part 30 states FTE needs for FY 91 & 92 only. I believe OMB is stating that they do not approve of funding positions that are in the oversight role, but DOE could end around the issue by funding other positions allowing EPA to save their money to fund the oversight positions. EPA and CDH staffing at present does not appear to be sufficient to turn around documents that are submitted for review. EPA and CDH's staffing plans should be discussed and those limitations recognized and rectified.

If EPA wants a full time FTE for oversight and compliance, they should pay for that person. Having DOE pay for it seems like it's a situation of the "Fox guarding the hen house". If DOE doesn't fund the EPA staff, would there be little or no compliance oversight performed?

This section either opens the door for conflict of interest or provides job security for certain individuals at the EPA. The possibility for EPA to make unrealistic demands in order to prolong work and funding exists via section 30. So the response is that this section should be worded differently and another type of arrangement should be made for EPA reimbursement.
EPA's stand will probably be to leave it in. They feel that they are holding all the cards and DOE must do what they say. This is a very advantageous section for EPA and they won't let go of it lightly.

CDH would probably like to have a section in the IAG just like this for themselves.

Category II - Roles and Responsibilities

II-1) Definition of parties to the IAG.

Responses:

If EG&G has specific performance criteria in the agreement then they should be signatory. If the performance is incumbent upon DOE and its contractors, then there is no reason to sign. It is my opinion that things are cleaner if we report to DOE only—then we can respond to the customer. As a signatory, our needs might conflict with the customer which would lead to problems and possible conflicts of interest.

For re-negotiation purposes, parties to the IAG should include specific reference to all parties and or agencies that may be involved - document review, for instance. These parties and associated review times should be considered if IAG milestone schedules are to be more realistic than they are now.

I thought the definition of the parties to the IAG was clearly spelled out in that agreement, the Lead regulatory agency for the OUs listed in Table 3. The definition of the agreement between DOE and EG&G is not in the IAG.

Parties of the IAG need concise definitions and also roles and responsibilities. What does need to be defined is the extent to which all involved parties are accountable for their part of the investigative and clean up effort. Implementation of field activities and investigative work need be established as the higher goal presiding over other areas e.g. administriva.

I'm not sure how it should be crafted, but an issue worth addressing here is how do we get the agencies to play more of an active role here. i.e. less enforcement, and more participation. As the agreement is now written, the agencies simply play the role of enforcers and don't have much responsibility in the clean up. We need to reconstruct the IAG so that the agencies are also subject to the consequences of there decisions.

Seems that even though these groups did not sign the IAG, the actual players demonstrating some influence in the process are: DOE/HQ, DOE/RFO, EG&G and their subcontractors (ICF-KR), EPA, CDH, NRDA, and the TRG.

II-2) Role of DOE contractors and their accountability for cleanup.

Responses:

From an enforcement perspective, the company that is contracted to operate a particular facility is responsible for clean-up of any occurrences while that company operates that facility. Therefore, are previous operators of RFP liable or is DOE still the ultimate PRP for Rocky Flats? In other industries - mining in particular - the company that currently owns or leases a property or facility, is responsible for clean-up of any type of contamination, whether it occurred 1 day ago or 100 years ago.

Accountability for clean up only goes as far as the authority to make the decisions. Since EG&G follows DOE guidance rather than taking a position as a private company accountability should be limited to compliance with DOE guidance whether wrong or right.

There should already be enough regulations & orders from DOE that address the DOE/contractor relationship.

This is really a legal issue. While I would like to believe that DOE should insulate EG&G, the reality is that EG&G is always exposed to liability under CERCLA. Since this is the case, it may be desirable to request a lessor role from DOE and put EG&G into a decision making role in the clean up. DOE should remain responsible for plant operations.

DOE contractor should provide recommendations to DOE as to how the ER program is guided and then implement DOE's decision. DOE should accept all responsibility in the actual day-to-day decision making or completely get out of the way. Furthermore, DOE should provide more backbone in disagreeing with the Agencies on important issues. The Agencies are not always correct. The accountability and profit for the cleanup is the responsibility of the decision maker, either DOE or its contractor, if that is who is performing the cleanup. EPA wants DOE out of the picture and to directly manage a cleanup contractor such as EG&G. EPA would recommend the amount of the contractor's performance award to DOE based on their evaluation of the contractor.

DOE contractors accountability should be limited to the areas for which they were responsible. Limited liability should be provided to a contractor for contamination of a site when the contractor was putting forward a best effort to clean it up; negligence notwithstanding.

II-3) State RCRA Hazardous Waste Permit holds both DOE and EG&G accountable. This is inconsistent with the IAG because EG&G is not a party.

Responses:

This not necessarily inconsistent, because EG&G (may) fall(s) within the legal definition of operator—I'm not that familiar with the permit, but I don't believe that it requires EG&G to perform outside our role as a contractor to DOE. In any event the new IAG must recognize the federal budget cycle and provide for the limitations that system imposes.

IAG work should not be included in the RCRA Hazardous waste permit, as the IAG assessment and remediation work is independent of RCRA waste storage issues and regulations.

This is an issue that should be addressed at the AGM level and above.

Key players from all the involved parties need to collaborate together with the focus of the effort being clean up and closure of the contaminated areas at RFP. Time needs to be invested with the next IAG so that inconsistencies are kept to a minimum or a flexible IAG needs to be developed that allows for corrections/changes to the IAG based on accommodating changes that will happen as a project moves forward.

I don't think this is inconsistent. The permit (I believe) is independent of the IAG.

Under all Environmental laws, CDH or EPA can go after EG&G as liable for the cleanup, regardless of who signed the IAG. Most Environmental lawyers say that the case law clearly shows that government agencies are more than willing to push liability onto GOCOs such as EG&G. EPA wants to hold the contractor liable for the cleanup; its not like building nuclear triggers.

This is legitimate. The agencies will agree, because the RCRA permit is a separate entity from environmental cleanup. RCRA is established to provide for safe handling of hazardous materials by the generator, which in this case is EG&G and DOE. RCRA attempts to make those handling waste do it properly, and in this light, EG&G is also responsible.

II-4) Formalize change control documentation.

Responses:

Change control belongs to all parties. Acceptance should be documented by signed receipt. This should apply to all changes to work plans, reports and other major documents.

Formal and timely change control for SOPs and Work Plans is critical to ensure that work is acceptable. There are currently No provisions in the IAG holding CDH/EPA responsible for turnaround or DCN sign offs.

Formalization of change control documentation is a key issue, and may become a real problem later. The agencies seem to want to approve all changes to SOPs for environmental field work, but they know that they don't have the resources to do so. They are biding their time on this issue and will use it against DOE if they need to negotiate other items. The problem is that the guidance says that all changes to SOPs should go through the agencies, but to do so would take up quite a bit of time and money would be wasted holding up drilling crews for example, as well as possible missing milestones.

II-5) Possible to utilize CERCLA § 106 Unilateral Administrative Order (UAO) issued to DOE's contractor (as an alternative to contractor signing the IAG).

Responses:

This approach by the agencies neglects to get to the root of the problem which is generally budgetary or schedule driven—its hard to get what they want done in the time frame specified especially if there are insufficient funds.

Makes sense; it is DOE's wastes.

II-6) Clarify language on CDH vs. EPA lead on OU's (Chapter 4); RCRA and CERCLA always apply regardless of who is lead agency.

Responses:

The State has primacy for RCRA enforcement. However, it should be clarified as to which agency will be the lead and be responsible for making all decisions and rulings for that particular OU.

For OU 7, CDH is clearly the lead and EPA has recognized this in the past.

The regulatory split already seems to make sense for certain OUs. Why double requirements under two different regulations if it doesn't need to be done. The structure of the system now appears to reflect this.

The lead agency does not matter under CERCLA and RCRA. Both Agencies want control of the cleanup.

II-7) Localize dispute resolution.

Responses:

This may not be all that good because it may allow EPA Region 8 to push an agenda which is different from nationally stated goals and objectives (e.g. deficient reduction, common sense approach to superfund, etc. (We might get more sympathy in Washington than here.)

DOE/HQ does need to delegate more authority to DOE/RFO for decisions like this. HQ should be kept aware of issues but should delegate the decisions to RFO

I don't know all of what is required under dispute resolution. But it may be to our advantage to elevate dispute to outside region 8 because this region has the reputation for being one of the most difficult to work with. Region 8 has come out against some of the regulations which the EPA has nationally endorsed and which we would like to pursue to accelerate some of our remedial actions.

Localized dispute resolution is an excellent idea to expedite programmatic blockades. However, EPA's tendency to be ultra conservative on issues needs some type of mechanism to moderate opinions.

II-8) Review time for documents—if any party in the review chain misses a deadline, the schedule is affected but the IAG does not acknowledge.

Responses:

This has always been regarded as our problem, however in many other instances the Colorado State Legislature has provided that if CDH (and many other state agencies) fails to act within the proscribed timeframe, a permit application is deemed acceptable and the permit is issued. The same logic should apply to comments.

Including all review times and possible delays should definitely be incorporated into a re-negotiated IAG. During development of the OU12 final RFI/RI workplan, EG&G turnaround time for the final was 1 week. This shortened time frame was the result of delays in receiving comments from the State.
No schedule can be properly controlled unless all parties involved are held accountable to uphold their responsibilities. This is especially true for document review since this is regularly impacting schedule and frequently becomes critical path. EPA/CDH need to be held accountable for timely turnaround.

This should be a part of the IAG. This goes back to including the agencies as responsible parties to the IAG (the mission).

Actual review times should be scheduled into the IAG. If one of the reviewers slips the schedule, then all downstream milestones should slip by the same amount. One problem to consider is what agency or group will be the "Score Keeper" on schedule slippage. EPA and CDH are reluctant to sign up to this because they are under staffed and swamped with documents from RFP. In addition, internal Agency indecision on technical issues tends to put EPA and CDH into a tough spot.

DOE's response should be to aggressively attempt to get this changed. The IAG needs to recognize that if EPA and CDH are slow to turnaround comments, then milestones will have to be pushed out. The advantage is 100% agencies and is illogical. The agencies can respond late and DOE still must meet its deadline.

Milestones should be based on the a certain date if comments received on or before deadline. and a flexible schedule of x days from the receipt of the latest comments for documents where comments were received after the deadline.

II-9) Natural Resources Trustees—Clarify Role.

Responses:

The role of Natural Resource Trustees is outlined specifically in National Contingency Plan. What needs to be clarified is how active a role are the trustees taking here and what are their concerns and responsibilities. The MOU that was drafted last August should be resurrected, negotiated, approved and implemented.

To date, for OU5 the only involvement the Natural Resource Trustees have had has been to receive copy of the final TM that have been generated for OU5. Their role seems to be final document repository.

NRDA is a CERCLA issue. DOE probably has no recourse with clarifying their role other than to provide documentation to the NRDA.

The NRDA's role is outlined in the National Contingency Plan (NCP). However, they should exert their needs for the cleanup to EPA and CDH by suggestion only. Because they are a stakeholder, they must be a signer of the revised IAG. They have a lot of power to levy fines and penalties for resource damages due to RFP. Many of the tasks the cleanup is performing will be used by the NRDA for their assessment.

Insert language stating that if the NRDA have not submitted any comments by the time Agency comments are received, they will have no input nor receive a final document. If the above is not acceptable, how about requiring a letter stating no comments from the trustees by the deadline?

Category III - Clarification of Language in IAG

III-1) The IAG is not consistent with regard to work/schedules for different OU's.

Responses:

We now know more about how long tasks take, how long certain activities last. This knowledge should be used to develop realistic schedules. I'd like to see the SAFER approach recognized and included in schedule and budget considerations.

The principle comment to make here is that, RCRA/CERCLA environmental clean-up activities should not be schedule-driven, but performed under a sound technical framework of risk basis and level of contamination present. Doing work to, in some instances, just meet a milestone does not represent a prudent approach to environmental investigations. It makes sense, from a project management perspective, to have schedules. However, those milestones should be realistic in terms of the scope and difficulty of performing work at RFP.

The process and schedules should be consistent for generic activities (e.g. : procurement, review times, TM development, etc.) but certainly the work (assuming this word is referring to RI field work) must be unique to each Operable Unit and IHSS based on the history of and suspected contamination in the IHSS.

This is true, consistency between like OU's or similar tasks between OUs is desirable, but every OU has unique attributes that have to be addressed individually.

Many IAG items such as tech memo review are not accounted for in the IAG schedule and impact the ability to meet milestones. The IAG should be designed as a baseline procedural guideline with OU specific substantive agreements to follow. Current guidelines on presumptive remedies, CAMUs, SACM and other now AND in the future (i. e. RCRA subpart S) affect the way business is conducted and should be taken into account at the time an OU reaches the applicable points in the schedule. This is not the current way of doing business and it is clearly not efficient or cost effective.

Flexibility based on technical issues is necessary for the success of work and development of schedules. Currently too much emphasis is related to the "do or die" scheduling mentality we currently work in. This mind set is primarily based on production related issues where the scope can be well defined and implemented. Environmental investigations and cleanups need to be driven by the fact that as information is collected things will change. For example implementation of a field program may initially consider sampling for a comprehensive list of analytes only to find out when the results come back that a smaller list will suffice. In order to effectively evaluate environmental problems, administriva needs to be flexible to accommodate change. If we knew where the contamination was and how many boreholes were needed to define it, then why not go directly to a remedial action. Additionally, if EPA and CDH are more concerned with counting the number of boreholes as presented in the work plans (as they did in OU 1) then they should also be held accountable to back up their requests with sound technical justification.

Scheduling for the next 22 years is OK, but should not be given the same credibility as work planned for the next 2 years. A fundamental reversal of thought at RFP must occur in order for environmental projects to move forward. First, environmental projects need to be the focal point of support organizations and support organizations need to recognize that without the environmental project they would not exist. Second, the concept of "closure" needs to be inherent to all projects. The goal is not to study contaminated sites at RFP it is to close them down.

The schedules in the IAG have been used by both sides in two different arguments. The IAG has been used as a rigidly and a loosely interpreted document for the purpose at that moment. A generic RCRA and a generic CERCLA OU schedule should be negotiated and agreed upon. Then each year, each OU should be statused (at Fiscal year) and the next years schedule agreed upon. EPA and CDH would like this approach because it gives flexibility with the Public and DOE.

III-2) Relationship among: RCRA closure, Corrective action, CERCLA

Responses:

We need to resolve differences in the RCRA/CERCLA processes with regards to the budgeting cycle.

A corrective action is RCRA.

These terms require clarification, however they should not overlap to much as they are applicable to different sites on RFP.

III-3) Distinguish between risk management and risk assessment.

Responses:

These should be clearly defined as to what is meant and when risk management is acceptable. Many risks at RFP should be appropriately managed, not remediated. Part of risk management is through land use determinations.

III-4) Budget issues (as discussed in QAT memo of April 22, 1993)

Responses:

The best application of the money available needs to be applied. There will probably never be the best funding to fully implement all of the RFI/RI. EPA and CDH understand this and should allow flexibility for accommodating the changes. DOE needs to be more proactive in notifying EPA and CDH when shortfalls exists and have the agencies participate in efforts to reallocate funds.

Change control must be revamped. If DOE is to be involved in decisions, then they must be held accountable. In addition, the control of EPA and CDH decisions mandates that the Agencies also be included in rigorous Change Control policies. EPA and CDH do not want to be responsible for strict Change Control procedures because it pins them down on defining the scope of cleanup and remediation. EPA and CDH want to be able to expand and contract scope without being fiscally accountable to the Public; they do not care about costs!

III-5) Expand language on ARARs; early definition may facilitate creative remedies.

Responses:

Get the State and EPA to state their goals in applying ARARs. There is not clear direction on how they will ultimately review our Benchmark Tables.

PRGs should be established based on risk as ARARs prior to implementation of field activities. Field activities should be designed to confirm the absence or presence of COCs at PRG levels as a basis for further action. ARARS that force remediation in excess of levels beneath a risk threshold are a waste of tax dollars and not consistent with the intent of RCRA or CERCLA.

More likely that application of ARARS will hinder efforts for clean ups and cost the taxpayers a lot of money.

EG&G has developed ARARs but the Agencies have been reluctant or unwilling to approve them, thus they are still called Benchmark tables. DOE should finalize ARAR negotiations. Even if it means stopping all ER work. EPA and CDH want the flexibility to change ARARs during all phases of investigation and cleanup.

Early definition of ARARs might also facilitate better and more environmentally sound remedies as well.

III-6) Risk Assessment/baseline Human Health Risk Assessment (HHRA) section needs expanded language to ensure consistency between OUs.

Responses:

From an OU manager's perspective.. needs to be consistent!

Regarding BRA and HHRA's for the Industrial Area, it is very difficult to take an area as large and complex as the Industrial Area OU's and apply a consistent approach to conducting the BRA or HHRA, based on spatial and areal differences in contaminant volume and type. While grouping OU's and IHSS's for BRA/HHRA may make for a neat little package for the agencies to digest, it does not result in sound technical or scientific method for conducting environmental projects.

The consistency between OU HHRA is currently in the evolutionary stages (see Dennis Smith, Rick Roberts, et. al.)

The HHRA section clearly needs substantial revision so that definitions such as "at the source" are clear for all parties. It should be recognized that the evolution of the HHRA process has clearly and significantly shifted beyond original IAG schedule assumptions.

Careful consideration needs to be applied this area where the HHRA may have to be different for each OU. The HHRA's need to be based on scientifically and defensible reasons, not on the regulatory need to see a consistent approach. Consistency is fine for McDonaldland Happy Meals not for complex environmental investigations and remedial actions.

Need better and more realistic definition, and the agencies agree, but will probably define this need as a way to enforce highly detailed, cost inefficient studies.

III-7) Consider re-grouping/re-packaging of industrial area OUs.

Responses:

In terms of the IAG, regrouping the Industrial Area OU's is a good idea. Although the scope will remain intact for performing the RFI/RI fieldwork, regrouping the OU's for schedule relief would be extremely helpful, as the next milestones for OU's 10 and 12 will not be met. Internally, this effort would allow the Industrial Area OU's to be funded under on ADS/workpackage which would streamline the project management tasks.

IntegOUs should be re-packaged to be consistent with D&D and transition. A clear policy should be negotiated now.

Good thing this is being considered since it is already being done. Further re-grouping could be helpful from the work package and funding standpoint and allow a more efficient spending of money because the reporting requirements etc could be significantly reduced from six separate OUs to one OU.

As we discussed this is on of the key issues for the strategic planning group. It is recommended that OUs be regrouped (reconstructed) along IHSS categories in terms of No further action, early action, etc. This will include all OUs not just the industrial OUs.

The Industrial OUs are already being regrouped into the Integrated OU. EPA and CDH appear to be receptive of this idea. However, they really want jurisdiction of D&D and may use this regrouping as a leverage point.

III-8) Findings of Fact section - update to reflect changes in mission.

Responses:

This in my opinion is the single most compelling reason to renegotiate the IAG. The change in mission provides the opening for this renegotiation.

III-9) Consider re-evaluating the magnitude of stipulated penalties.

Responses:

How about incentives rather than penalties. Giving money from one federal organization to another does absolutely nothing and the contamination is still in the ground.

I'm sure that we would not be able to negotiate a agreement without penalties. However, with funding being such a big issue the reality is that the agencies may not be able to enforce the penalties because it takes funding away from cleanup. They are caught with a hammer that they can't effectively use. We should keep this in mind because it would seem that they would be more willing to negotiate resolutions to individual issues rather than enforcing penalties. Of course they will always threaten us.

The value of fines and penalties is currently the same as RCRA and CERCLA. EPA and CDH must have some way to motivate DOE.

Category IV - Schedule & Budget

IV-1) Revisit assumptions within IAG which formed basis of agreement.

Responses:

The penalties are not the concern, the IAG needs to have some flexibility built into it, the original framers of the document could not anticipate the scope of the work at the time the document was issued because of the extensive amount of unknown factors that are involved.

Most assumptions are no longer valid (e.g. HHRA and tech memo review). Assumptions will continue to evolve, hence the need for a procedural baseline with decision points to establish deliverables and milestones that allows optimization of historical efforts and evolving guidance.

Assumptions also need to be flexible and revisited on a regular basis.

I think that these all will be revisited. A renegotiated IAG should not simply revise the current schedule and milestones, but should be fundamentally reconstructed to address new assumptions, plant mission, lessons learned, realistic land use, and realistic clean up objectives.

The assumptions in the IAG should change based on knew data, actual task durations, etc. This should be done using what we have learned so far. This is especially important for revising schedules. EPA and CDH could also then expect a project to go as planned with more realistic assumptions. These assumptions could be updated on a yearly basis since the process is dynamic.

IV-2) Revisit schedule definition and milestones.

Responses:

Some of the basic assumptions may have changed since 1991.

The schedules must reflect funding levels for each FY. By committing to predetermined schedules, DOE sets themselves up to fail every time. If the funding matches the scope then all parties involved can expect more realistic schedules and milestone compliance. This also reduces the potential for the occurrence of Dispute Resolution. EPA and CDH still have control by approving or disapproving the FY schedule for the cleanup.

Perhaps only two years should have firm schedules. Any years past that should be renegotiated as the time gets closer.

IV-3) Revisit schedule logic for consistency with text of IAG. Example: CM/FS can't be started as closely on the heels of RI.

Responses:

The milestone definitely need to be revisited, although the OU5 EPA and CDH want to visit them on a case by case basis (OU by OU).
Also consider RCRA lead Phase II definitions with respect to IM/IRA implementation.

A generic logic/schedule could be drawn up and applied to each of the OUs. Also, this schedule should have areas where site specific information could be added and negotiated as part of a regular IAG re-evaluation.

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Again, a generic RCRA and CERCLA schedule, including all logic, should be negotiated and agreed upon by all parties. This schedule can be updated on an annual basis to allow for schedule and funding discrepancies. EPA and CDH may want more accountability by DOE to the Public.

There are a number of items that can now be seen as logic flaws, including the timing of Phase II studies (after final regulatory approval of Phase I), and milestone deliveries of FS studies.

IV-4) Expand language on ARARs; early definition may facilitate creative remedies.

Responses:

If the ARARs are finalized, scheduling problems go away.

IV-5) Review times on documents - if any party in the review chain misses the deadline, the schedule is affected but IAG does not acknowledge.

Responses:

Review times have been an ongoing problem. These apply to IAG milestone documents and also to the supporting documents such as technical memorandum. Either add teeth to review times, or allow schedule slippage depending on increased review times.

IV-6) Consider re-grouping/re-packaging of industrial area OUs.

Responses:

The integration program is a step in this direction in-so-far as non-intrusive field work is concerned, but why not consolidate the intrusive work under the same MTS contract to reduce the procurement effort. The industrial area OU's do not necessarily need to be reduced to one OU but fewer than six could have added benefit in terms of budget and schedule.

IV-7) Allow creativity in expediting cleanup (timing and budget relationship).

Responses:

Creativity is already allowed although not encouraged by DOE or EG&G management to the extent it should be. The regulators have been receptive to OU 7 &11 proposals.

This is an interesting issue. I'm not sure that the present agreement precludes early actions, but the new agreement should be constructed to encourage these actions. The agencies may feel that early actions are not as rigorous and that they would be relinquishing some control. This goes back to making them responsible participants in the process.

EG&G can expedite the cleanup by appropriating dollars to immediate cleanup prior to completing the RI/FS. EPA and CDH must allow for schedule extensions on the RI/FS reports as trade-off to expedite cleanup of the worst contamination. EPA's SACM guidance essentially tries to accomplish expedited cleanup. The sooner remediation, the better.

Category V - New Additions to IAG

V-1) IAG needs to account for Federal Facility Compliance Act (FFCA) and Community Environmental Restoration Facilities Act (CERFA) and their effect on stipulated penalties.

Responses:

No responses.

V-2) Allow creativity in expediting cleanup (timing and budget relationship).

Responses:

This could be done a lot more effectively with a flexible IAG and less paperwork to initiate changes.

At any time an expedited cleanup is necessary, the RI/FS schedule should be put on hold without fines and penalties, dollars diverted from the RI/FS to the cleanup action and then the RI/FS resumed when time and dollars allow. The administrative control of this type of cleanup should be short and sweet. A brief approval process.

V-3) Allow a lesser degree of data collection before cleanup can begin.

Responses:

This point would follow the Limited Field Investigation approach that has been implemented at other DOE facilities. This would be especially effective for the Industrial Area, as many of the IHSS's are small and likely do not warrant a full RI/RFI investigation to effectively characterize the contaminants.

This would be dependent on the individual IHSS, if additional data collect can downgrade the level of ultimate clean up maybe more is better sometimes.

Data collection should support corrective actions. Emphasis should be shifted to action rather than process. This can be accomplished through integrating accelerated clean up guidance into the IAG framework by re-working the IAG to be a decision point/process flow that allows incorporation of new guidance agreed upon intervals.

This is necessary to allow for early remedial and interim actions. This issue can be linked to repackaging OUs, and expediting cleanup.

In any IHSS where an expedited cleanup is necessary, it should be performed without significant data collection. The use of Level 2 or 3 data would also help speed up these situations because local labs could facilitate the process; saving time and money. EPA and CDH will likely want all data prior to cleanup.

V-4) Transition from Defense Programs to Environmental Restoration is not addressed at all in IAG.

Responses:

I don't feel the IAG should address the Transition from Defense Programs to ER programs. However, this is one way in which the ER Division can acquire part of the D&D work that lies ahead. I don't believe that EPA and CDH care about the transition, they want D&D.

V-5) IAG should not preclude parcelization of land (early release from NPL and RCRA - See CERFA).

Responses:

Third comment is applicable here as well. New guidance for CAMUs allows some flexibility with respect to this issue.

I don't think parcelization of land will gain anything for DOE. The land will not be usable until after D&D and site remediation. EPA and CDH probably would like the site to stay on the NPL until such time the entire plant can be delisted.

V-6) Site Specific Advisory Board (SSAB) - Define how IAG relates to SSAB (See Keystone Report).

Responses:

No responses.

V-7) Planning and decisions regarding D & D/transition/deactivation are currently being made without IAG recognition.

Responses:

Recognition on the part of EG&G RPM has been given to the idea that certain RI/RA work for OU 14 should be integrated with D & D activities to reduce the risk of recontaminating IHSS's which have been assessed and/or remediated. The majority of OU 14 IHSS's are paved areas comprising parking lots, pads outside of buildings and roadways. One IHSS (164.2) has suspected contamination under the building. These areas may be potentially high traffic/use areas when D & D goes into action.

This is probably a good thing as the EPA and CDH are certainly not any more qualified at D & D that DOE is. EPA and CDH want desperately to control the D & D portion of work at RFP. However, DOE loses a lot of its say in the process.

V-8) Natural Resource Trustees - Clarify Role.

Responses:

No Responses.

V-9) Consider including deactivation/transition/D & D in the IAG.

Responses:

NO.

This is a big issue with the regulators. As you know, they have said that they would like to include D & D and Transition in the IAG. Obviously this is a very sensitive issue. We don't want the agencies to get control of these actions, but we should begin to look for ways to get these issue under ER control because it may be that some of the ER funding will be shunted over to transition.

EPA and CDH want desperately to control the D & D portion of work at RFP. They would be very receptive to the idea of including D&D in the IAG. The ER group may want to get into this work easily by negotiating just such an inclusion of deactivation, transition, and D & D into the IAG.