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INTEROFFICE CORRESPONDENCE

DATE February 14, 1994

TO H. P. Mann, General Manager, Bldg 111, X4361

FROM P. W. Swenson, Program Integration, T130D, X7211

SUBJECT STATUS OF INTERAGENCY AGREEMENT (IAG) REEVALUATION AND MEETING MINUTES FOR FEBRUARY 10, 1994 - PWS-026-94

Attached are the minutes of the subject meeting that was held with representatives from the Environmental Protection Agency (EPA), Region VIII, the Colorado Department of Health (CDH), the Citizens Advisory Board, and the Department of Energy (DOE). The subject of the meeting was to review comments made by the public on the draft negotiating principles and to incorporate any needed changes. The comments resulted in minor revisions to three principles. The vast majority of public comments, while helpful, were generally blanketed by the existing principles. DOE will prepare a response to each of the public comments. A copy of the principles, marked up to reflect the public comments, and a summary of the public comments are also attached.

It is planned to begin the initial discussions on the issues the week of February 28, 1994. Since the public involvement plan has not yet been finalized, the parties noted that these discussions should not be construed as hard-core negotiations absent effective public involvement. On February 21, Dave Brockman will circulate a list of the topics that should be ready for discussion. It is likely that one of the first discussion points will be how to meaningfully involve EPA and CDH in the budgeting process.

We have also completed a scrub of the existing IAG and the Statement of Work, and have identified those sections where we feel the existing language needs revision. These comments have been provided to Dave Brockman. By way of summary, the major issues of contention appear to revolve around the following issues:

- A workable change control process that will be applied to all proposed scope and schedule change,
- A workable dispute resolution process that will move issues smoothly to resolution,
- Constrained review times for documents, and

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- Understanding the regulators requirements and expectations for information

If you have any questions or comments, please contact me on extension 7211

ahb

Attachment
As Stated

cc
W S. Busby
R D Copp
T DeMass
R E Fiehweg
M J Freehling
E M Lee
L S. Morissette
T A Smith
D A. Ward

Summary of February 10, 1994 Meeting
on the Interagency Agreement Renegotiation

The meeting was held between 8 00 a m and 11 30 a m at the EPA Conference Center

Attendees were

EPA

Lou Johnson
Peter Ornstein

CDH

Gary Baughman
Joe Schieffelin

DOE

Ray Greenburg
Dave Brockman
Rich Schassburger

EG&G

Pete Swenson
Eric Johnson

CAB

Ginger Swartz

The purpose of the meeting was to review the draft "Consolidated Interagency Agreement (IA) Review Principles" dated January 18, 1994, from the public comment meeting and incorporate changes from those comments

It was agreed by all parties that changes would be made in the following principles

Principle 1 - It was agreed to eliminate the word "current" in the first line

Principle 15 - It was agreed to emphasize the word "goal" by underlining Also, it was decided to add a sentence to this principle that would read "However, it will allow adequate time for public involvement, and all three agencies are committed to taking enough time to negotiate an effective IA "

Principle 17 - It was agreed to modify this principle by adding the phrase ", or current contractors" after the word DOE

Principle 19 - A typo was noted The last sentence refers to the current agreement (the IAG) and the last phrase should read "pursuant to the IAG "

All principles - it was noted that some principles refer to the IA as the name for the agreement that is intended to be negotiated and other principles refer to "revised agreement" It was decided that the term "IA" would be used throughout the principles to note the agreement that is being negotiated

Principle 22 - The issue of full funding requests was discussed CDH feels that DOE should ensure that full funding is contained in the budget that is submitted to congress EPA feels that full funding should be contained in the budget that is presented by DOE to OMB This issue will be discussed with DOE headquarters DOE requested that the resolution to this issue be pursued off-line from the negotiations

Actions

- 1 DOE will collect any additional public comments received and will distribute them to the parties It was agreed that resolution of these comments could be pursued by telephone
- 2 DOE agreed to send out, on Monday, a list of the topics that the parties could start discussing Once the parties agree to this list, a schedule for discussions would be prepared and discussions might be able to start as early as the week of February 21, 1994

DRAFT

CONSOLIDATED INTERAGENCY AGREEMENT (IA) REVIEW PRINCIPLES

- 1 Negotiations will work toward an IA that considers the ^ecurrent mission of Rocky Flats, which is "Manage waste and materials, clean up and convert the Rocky Flats site to beneficial use in a manner that is safe, environmentally and socially responsible, physically secure, and cost-effective"
- 2 Within the scope of the agreement, control of higher risks will be given priority, emphasizing and ensuring public and worker health and safety, and environmental protection
- 3 The IA will remain essentially a remediation document. However, any issues that have the potential to impede the cleanup of the plant will be subject to negotiations
- 4 A revised agreement must define and reflect a firm commitment by DOE to implement the agreement, a firm fiscal commitment, direct and meaningful EPA/CDH involvement in the budget development process, and specified management improvements. Any revised or new schedule must be coordinated with firm DOE fiscal commitments
- 5 The three principals (EPA Regional Administrator, Director for the Office of Environment at Colorado Department of Health and RF Manager) enter IA negotiations with the same level of authority that binds their respective agencies
- 6 The public will be involved in identifying areas within the present agreement in need of improvement and in setting goals for a revised cleanup approach at Rocky Flats. Increased stakeholder involvement in the work scope development, prioritization, schedule and budget process is required to develop an understanding of the public's desires. The Citizens Advisory Board should be utilized to coordinate stakeholder involvement, such as creation of a focus group encompassing all interested community groups
- 7 Planning assumptions must be agreed upon by all parties. Comprehensive work scope, schedule, and cost estimates will be the basis for schedule discussions and milestone establishment in the IA. Regulators will be meaningfully involved in the development of the scope, schedules, and costs associated with IA implementation
- 8 The agreement should allow flexibility to accomplish efficient cleanup at Rocky Flats. It must remain an effective enforcement vehicle. Negotiations should accommodate flexibility while retaining some milestone schedule framework
- 9 The issues identified by the Quality Action Team (QAT) must have action plans and schedules for resolution prior to negotiations. All parties recognize that early efforts on these issues will facilitate effective and efficient negotiations

- 10 The agreement should allow the opportunity for involvement by CDH & EPA in formal controls including formal baseline change control processes
- 11 Recognizing that future site use and cleanup are closely intertwined risk assessment and risk management will be appropriately considered during negotiations
- 12 A revised agreement should define an improved and accelerated cleanup program at Rocky Flats. New streamlined processes should be used wherever possible
- 13 The Rocky Flats Plant is an NPL site subject to CERCLA and RCRA, and therefore it is recognized that the scope of the agreement will increase. The degree and extent of how the RCRA/CERCLA processes are applied to specific buildings, structures, materials and equipment will be subject to negotiations
- 14 Prior to negotiation of revised schedules and milestones, procedures and regulations applicable to the activities covered by the agreement will be reviewed by DOE with the ultimate goal of achieving consensus among the parties regarding the elimination of those that add no value or unnecessarily delay the clean-up process. This review process will be conducted with participation of regulatory agencies and stakeholders
- 15 The goal for the IA negotiations is not to exceed 4 months. However, it will allow adequate time for public involvement, and all three agencies are committed to taking enough time to negotiate an effective IA.
- 16 Waste storage issues, including a schedule for expansion of permitted interim waste storage, must be resolved prior to negotiating revised schedules and milestones
or current contractors
- 17 EG&G must be held accountable to all parties for implementing the revised agreement
- 18 Long-term storage of off-site wastes will not be allowed at the Rocky Flats Plant, except as specifically approved by CDH/EPA through orders, permits or agreements, such as those pursuant to FFC Act requirements. The use of limited quantities of wastes from other sites for technology development will be subject to CDH/EPA approval
- 19 The existing IAG will remain in effect, including all procedural and penalty components, until specifically superseded by a revised and executed final IA. During the negotiation period, EPA/CDH may continue to assess stipulated penalties within terms of the present agreement, and DOE may dispute such assessment, pursuant to the IAG.
- 20 DOE must continue to conduct necessary inspections of all radioactive, hazardous, and mixed wastes stored at Rocky Flats Plant to assure safety and proper management. Any issues regarding the proper management of mixed residues will be addressed in accordance with the appropriate provisions of the Residue Agreements

- 21 D&D, transition, economic development and waste management all potentially impact successful implementation of the IA. A common understanding of the concepts and impacts must be established at the beginning of negotiations.
- 22 Interim relief for DOE on milestone schedules and other compliance issues related to the IA must be accompanied by DOE schedule commitments on short and long-term issues, such as full compliance with RCRA/CHWA, cleanup, removal of stored waste from RFP, decommissioning completion, etc. DOE must affirm the Administration's commitment to requesting full funding for the IA requirements after the interim relief period (2-3 years) *

*** NOTE. DOE Rocky Flats Office must discuss this principle with DOE headquarters before agreement can be attained.**

Rough transcript breakdown of comments

Principle 1.

Joe Temple: Cleanup Commission

Special nuclear material should be specifically identified as waste at the plant. The disposition, storage, consolidation, treatment and transportation should be dealt with in the IA as it is a risk at the plant. This should be identified in the IA. I know the IA deals with cleanup but all materials at the plant should be identified and dealt with.

Paula Elofson-Gardine: Environmental Information Network

Concern that emphasis is on current mission. Do not lose sight of ongoing and current, future operations that may affect cleanup or produce contaminants. Human error must be addressed.

CANDID

Identification of all materials at the plant as waste is apparently desired by many as a method of putting everything under waste management laws and requirements. This should be carefully considered as some items, e.g., the pure, highly enriched uranium nitrate formerly used in Building 886, the Criticality Mass Laboratory, has been defined as a product and can be transferred to Y-12 Oak Ridge, TN for future use. Special Nuclear Material (SNM) should only be designated as waste if it will enable Rocky Flats to deal with it more effectively. Adding more regulatory, administrative, policy, procedures, etc. to the process will cause only additional paralysis.

Principle 2:

Joe Temple: Cleanup Commission

Special nuclear material should be specifically identified as waste at the plant. The disposition, storage, consolidation, treatment and transportation should be dealt with in the IA as it is a risk at the plant. This should be identified in the IA. I know the IA deals with cleanup but all materials at the plant should be identified and dealt with.

Paula Elofson-Gardine: Environmental Information Network

A prioritization schedule with the principles outlined in the document should be created. Sectors of the public are concerned with cause vs risk in terms of prioritizations. This risk prioritization schedule should be written out in ways that are understandable to the public.

Principle 3:

Joe Temple: Cleanup Commission

What does the word "negotiations" mean? Does this mean that you will modify or leave alone the conflict resolution. We recommend utilization of binding arbitration.

Paula Elofson-Gardine: Environmental Information Network

The conversion plan and additional work to be brought on plant site should be included in the IA.

Rough transcript breakdown of comments

Principle 4:

Paula Elofson-Gardine: Environmental Information Network

Define commitments and new schedules regarding fiscal commitments Will past fines be compromised by nice guy posturing?

CANDID

We agree that there should be a firm commitment on abiding by the finalized IA Still, the document must be flexible and capable of negotiations to include changes in status, laws, etc

Principle 5:

Susan Hurst: Environmental Information Network

Would like to see the local DOE have equal power of negotiations as HQ

Principle 6:

Joe Temple: Cleanup Commission

Community should be involved in all phases of the negotiations Call the Community Relations Plan the Public Involvement Plan as this is more inclusive

Paula Elofson-Gardine: Environmental Information Network

Using CAB to coordinate stakeholder involvement. I object as CAB does not represent all public Other groups should be involved Pull names from the community fax as they are knowledgeable so that they can identify issues and work groups

CANDID

The public should, of course, be involved Unfortunately, in spite of the endless announcements of meetings, comment periods, etc , only a handful of the "public" ever shows up or comments Less than twenty citizens have been "faithful" in their involvement, and most of them enjoy posturing and generating heat rather than light.

With respect to having the Citizen's Advisory Board (CAB) creating a focus group to encompass all interested community groups, we can only say that there will be a meaningful opportunity for such involvement on the part of any citizen who wants to actually help rather than pontificate and posture This can be done within the existing CAB structure, without starting yet another group

Parenthetically, we remember the great TV extravaganza on Rocky Flats put on by Channel 9 several years ago There were approximately 150 people at the media event, i e , roughly 0.01% of the population in the Denver area. This is the level of concern of the public, with the exception of the social vandals mentioned above As heretucal as it may seem, we think it is time to start considering what is best for the real public, not a handful of malcontents who will never be satisfied

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Rough transcript breakdown of comments

Principle 7.

Paula Elofson-Gardine: Environmental Information Network

The issue of cost estimates and schedule discretions, I hope that this agreement will iron out overlapping areas and cost overruns

Principle 8:

Joe Temple: Cleanup Commission

Next IA must be flexible rather than end all be all document. Look at on a 3-5 year time frame rather than 10-20 years. You can't even do 5-year plan effectively. Develop floating 3-5 year program and correspond to budgeting work package program. Constant re-negotiation

Paula Elofson-Gardine: Environmental Information Network

The IA should be a living document and amended as needed

Tom Marshall: Rocky Mountain Peace Center

Flexibility. Are you looking in terms of milestones and not cleanup?

CANDID

The document should be flexible, as noted in #4 above, to allow for modifications. One of the criticisms of the Superfund approach is that it doesn't allow for timely changes. It is reasonable to have five-year plans, but it should be understood that such a document should be a "living" document, defining milestones vice millstones

Principle 11:

Joe Temple: Cleanup Commission

Have you come together on how to do a risk assessment? This is what held them up before. Spare us the multitudes of reviews.

Paula Elofson-Gardine: Environmental Information Network

Risk assessment and risk management are "sticky wicket" areas ever since the first hearings. There is a lot of concern of misuse of risk assessment. EPA must see the need for research on the multiplicative synergistic effect of all contaminants, not just individual effects. This concern needs to be seen as a cost plus item

Susan Hurst: Environmental Information Network

This risk assessment/risk management item. The synergistic effect really demands to be looked at complex-wide

CANDID

The problem with risk assessment and risk management is that both tend to become the end products, rather than tools to be used in reaching a substantive goal, e.g., remediation. Studying problems rather than resolving them gives the comfort of feeling something is being done while avoiding the actual risk of making a decision. We trust we can reach a balance

Rough transcript breakdown of comments

Principle 14:

Joe Temple: Cleanup Commission

Fix internal regulations that cost production to the mission I have seen the terms "color of money" or "fenced budgets" I understand that money comes into your budget from five different ways designated to be spent on that specific program and not to be transferred to another program Funds should be more flexible in terms of being move from one pot to the other and the decision should be able to be made at the local level

Principle 15:

Joe Temple: Cleanup Commission

Take the time to negotiate the agreement that you need to get the job done right Take time to renegotiate this IAG -- you've set a goal of four months and I don't think that it's enough time for you to explore all the issues out there I think it would be better for the parties to take the time needed to negotiate a working document.

Susan Hurst: Environmental Information Network

Do not use too aggressive of a schedule Do it right

Tom Marshall: Rocky Mountain Peace Center

How do you determine that it will be 4 months or 6 months? We would like to hear ideas on how you will do this in 4 months When does 4 months begin? Public involvement should be direct and meaningful manner same as EPA and CDH Question whether 4 months will allow this Hope this will be extended

Deanne Butterfield: Rocky Flats Local Impacts Initiative

If dealing with milestones only, then 4 months should be o k But, you should look at cleanup of Rocky Flats, D&D, and buildings as buildings are source of contamination Maybe OU's should be reprioritized We are interested in other issues such as buildings, no funding, no plans Don't do in 4 months

CANDID

Even allowing for the "living" document concept, a time frame of four months seems to be too short, unless the IA is nearing completion already

Paula Elofson-Gardine: Environmental Information Network

Hope that if it takes longer than 4 months, then that time will be taken

Rough transcript breakdown of comments

Principle 17:

Joe Temple: Cleanup Commission

We recommend that EG&G or any other contractor should have their CPAF based on meeting the milestones negotiated in the IA. Instead of penalties coming from cleanup money, it should be taken from money set aside for award fees. I think that would be a good incentive for contractors to meet milestones.

Paula Elofson-Gardine: Environmental Information Network

This comment should read "EG&G, or current contractor", because I've seen many come and go.

Principle 18:

Joe Temple: Cleanup Commission

I know that there is a possibility that waste may be brought in offsite. If waste is brought on, use zero-sum approach. For what you bring on, take same amount out.

Paula Elofson-Gardine: Environmental Information Network

Long-term storage sends a red flag. Current proposal for drum making seems to keep feeding the waste issue. We are concerned and do not want Rocky Flats to become the new waste king.

- Afraid economic development is the driver of the IA.

Tom Marshall: Rocky Mountain Peace Center

What kinds of waste, how much, what kind of technology development? People of state should not have more waste imposed on them. CDH should state clearly and more strongly that no more waste is to come in. Not to import.

CANDID

We believe long-term storage of waste at Rocky Flats is inevitable, even if only Rocky Flats waste is being stored here. We believe that the facility could become, by necessity if not choice, a laboratory for research and development on waste treatment, decontamination and decommissioning, environmental remediation, etc. We would think others would feel the same, except for those individuals who want nothing to be left at Rocky Flats a year from now but a historical marker to mark their success in shutting the plant down.

Principle 19:

Susan Hurst: Environmental Information Network

Will the penalties be paid?

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Rough transcript breakdown of comments

Principle 21:

Joe Temple: Cleanup Commission

Supporting the cleanup mission should be the #1 priority. Any economic development projects should not impede or make the cleanup situation worse. I recognize the need for economic development but at the same time I ask that it be carefully scrutinized.

Tom Marshall: Rocky Mountain Peace Center

Will you have an understanding of the concepts of D&D, transition, ED, and waste by that time?

CANDID

The concern about economic development interfering with remediation is unfounded, in our opinion. One could argue as well that bringing commercial ventures on plant site will provide additional impetus for plant clean-up. Most of the areas under consideration can be decontaminated from uranium and beryllium to an acceptable level. The concerns voiced about berylliosis make sense only if the progress made in working beryllium (safety equipment, ventilation, procedures, training, etc.) are ignored. To our knowledge, no one is proposing use of plutonium-contaminated facilities at present.

It seems to us that decontamination and re-use of metals rather than adding to the amount of waste to be buried somewhere is the most responsible thing to do. If it provides jobs at the Flats, so much the better. The purpose for the Resource Conservation and Recovery Act (RCRA) does require, after all, resource conservation and recovery. Again, this appears to be common sense to us, even if not to the historical marker crowd.

Susan Hurst: Environmental Information Network

Economic development is still moving forward but there are still a lot of hot areas that have not been addressed. Afraid this is driving the agreement.

General

Jim Stone:

They should each do what they do best.

EPA - Technical

CDH - Oversight, Police,

DOE - Get the job done