

NORTHERN NEW MEXICO CITIZENS' ADVISORY BOARD (NNMCAB)
Recommendation to the Department of Energy
Waste Management Committee
Environmental Monitoring, Remediation and Surveillance Committee

No. 2008-02

**Recommendation to DOE for Organization and Training for LANL to Enhance the
Regulatory Interface**

Background

The NNMCAB has observed the process the Los Alamos National Laboratory (LANL) currently uses to communicate with the New Mexico Environment Department (NMED) who is the regulator for enforcing the requirements of the Consent Order. It appears that the individual project managers are responsible to prepare and review documentation for submittal, receive and process comments, provide input to questions, process scope change requests and understand NMED's formal and informal schedules and milestones. This process appears to lack a centralized organization within the Environmental Restoration Directorate, which monitors these regulatory changes in a consistent, integrated and controlled way.

Although both the regulator and the U.S. Department of Energy (DOE) (through LANL management) have the same ultimate goal, which is to restore the environment, there are options and associated risks to accomplish this goal. Options are necessary because the clean up process is often complicated and there is not one perfect way to achieve an acceptable end state. Evaluating and arriving at an option that is acceptable for the protection of the general public is a process that requires continued interface between DOE (through LANL management) and NMED. The best solution evolves when both parties work together to develop consistent and integrated compromise solutions that overall best support the principles and standards of the Consent Order.

The Consent Order is very prescriptive, but as in most regulatory documents, it does not specify every detail required for a work plan, nor is it always based on the most current data and models. For example, in 2006, NMED had considered that a certain number of monitoring wells were required to be drilled for characterizing a trenched area in MDA-B. As work progressed, there appeared to be a strong basis for not drilling every one of the wells in accordance with the Consent Order. It would have been appropriate for LANL to approach NMED with a change to the work plan based on the latest data, and a centralized regulatory organization would have the specialized knowledge on how best to do this.

Another example where special skills in regulatory document preparation might help is in providing controlled and consistent responses to NMED requests for additional

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information pursuant to the initial submittal of work plans by LANL. Approaches to option evaluations would benefit from integrated and consistent presentations while ensuring that NMED also retains this perspective.

Another example where a strong central regulatory function can help is in rapid identification of scope changes to the Consent Order by NMED. These might be either in the form of requests for more information, requests to respond to new issues outside the Consent Order (Chromium III), or just because of being critical comments, which may be buried in NMED acceptance documents. These issues all need scrutiny by trained personnel to identify and respond appropriately to control scope growth.

In fact, one of the NNMCAB members recalls participating in a similar regulatory group at LANL in the 2005 time frame. This group appeared to have the responsibility to centralize the regulatory interface for most environmental issues, but the work under the Consent Order was deliberately excluded.

Many industries acknowledge the value of a specialized organization to interface directly with regulators in an integrated manner. As an example of this interface, the commercial nuclear industry has been successful in developing and applying the effective communication techniques that facilitate working with their regulator to achieve regulatory goals. The Nuclear Regulatory Commission (NRC) reviews the acceptability of the specific designs or processes each plant owner uses to meet the regulations. Through the work of the regulatory groups, processes have been developed to introduce the concept of risk related factors to NRC, and these groups have established that there should be alternate approaches to achieve equivalent safety goals. Environmental work has much less prescriptive regulations than NRC, but there are options to requirements for environmental regulation, such as in the Consent Order, which frequently make sense. Commercial plant owners have learned certain techniques and approaches to present their positions to the NRC in a way that promotes success. LANL can also consider applying these successful techniques to develop the skillfully worded documentation and presentation for the NMED.

In particular, the commercial nuclear sector has done two things to make interfacing with NRC more effective. First, every plant has a Regulatory Affairs Department (or Licensing Department) staffed by engineers and others who are experienced in interpreting and preparing licensing documentation. These same people are responsible for understanding the regulatory process and the importance of fitting correct licensing language into submittals to meet schedules and milestones. Second, the regulatory staff is specifically trained on the techniques and approaches, including document preparation, to successfully communicate with the regulators, both staff and management, both written and oral.

An application of this regulatory specialty group (Licensing Group) concept is in use at another DOE facility, the Yucca Mountain Project (YMP) to store used nuclear fuel and other high level wastes. This concept is especially useful when several different

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regulators are involved, such as the EPA and the Department of Transportation; both of whom may well become part of LANL's remediation solutions. The expertise involved in establishing a licensing specific schedule and a comprehensive compliance strategy is typically shared between this Licensing Group and technical project management. This group has been instrumental in YMP meeting its commitment to submit its license application to NRC on schedule in early June 2008.

Comment

The NNMCAB does not make recommendations on the specific organizational structures or staffing for LANL. LANL management has this responsibility. The purpose for this recommendation is to explain how an integrated regulatory function can help achieve our common environmental restoration goals and schedules.

Recommendation

1. The NNMCAB recommends that DOE support and encourage LANL Environmental Restoration Division management to evaluate the merits in establishing a Regulatory Affairs Function whose mission includes:
 - a. Ensure an independent but supportive relationship exists with NMED and other regulatory agencies;
 - b. Ensure that a clear formal line of communication exists with NMED for any commitments or scope changes and that these are documented and if accepted at the appropriate management levels, are evaluated for resource impacts;
 - c. Ensure that documentation to be submitted to NMED, including letters, is reviewed for appropriate regulatory compliance and clarity;
 - d. Coordinate licensing related milestones and submittals within LANL environmental projects and create the open interfaces with NMED to achieve a high success rate of document acceptance;
 - e. Be responsible for licensing milestone schedules which coordinate with project management schedules;
 - f. Work with other technical LANL staff to ensure understanding and compliance with Consent Order requirements.

2. The NNMCAB recommends that DOE encourage LANL management to evaluate the benefits of formal training for the Regulatory function personnel in effective communications and interfaces with regulators (especially NMED). Regulatory specialists could then perform limited in-house training of the technical project staff. Examples of this training can be found from consultants who work with both DOE and the commercial nuclear industry or from the Nuclear Energy Institute (NEI).

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Intent

The intent of this recommendation is to support an evaluation of what may be considered a Best Management Practice by LANL management. It appears to NNMCAB that an evaluation of the value of an integrated Regulatory function in helping comply with the requirements of the Consent Order can be worthwhile.

Effect

Implementation of this recommendation would result in the LANL Environmental Restoration Organization having a regulatory function consistent with other regulated industries. The outcome should help improve the Consent Order deliverables and help minimize the potential for rejected documentation and missed milestones. It will also standardize and formalize communication with NMED.