

Chapter 6

Stakeholder, Regulator,
and Tribal Nation
Involvement

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In developing and implementing the draft cleanup strategy, the Environmental Management program (EM) places high priority on soliciting the views of all interested parties and incorporating revisions in response to those views into the strategy as its development proceeds. Responding to the variety of concerns expressed by various stakeholder groups, regulators, and Tribal Nations continues to be a challenge. The EM program encompasses extremely diverse geographic locations and environmental conditions, as well as physical plants, and work scopes that differ vastly. Just as diverse are the many groups of the “public” who the program serves. Tribal Nations, state and local governments, regulatory agencies, citizen groups, the business community, academic institutions, and individuals all have a stake in the EM program. In soliciting their views, the EM program hopes to develop a strategy that fairly balances diverse and sometimes conflicting perspectives.

6.1 Overview

The June 1997 National and Site versions of *Accelerating Cleanup: Focus on 2006 Discussion Draft* addressed as many concerns of stakeholder and Tribal Nations as possible and identified issues yet to be resolved. The *Discussion Drafts* became the basis for continuing dialogue with stakeholders, regulators, and Tribal Nations about EM’s draft cleanup strategy. When the EM program distributed the *National* and *Site Discussion Drafts* to interested parties, EM solicited comments on all elements of the draft strategy, including specific goals and strategies for accelerating cleanup and ideas on how those strategies should be implemented.

As with the *Discussion Draft*, *Paths to Closure* consists of both national and site-specific versions based upon supporting budgetary and program data and continued public involvement. To ensure that their views were fully and accurately represented, stakeholders, regulators, and Tribal Nations were afforded opportunities for substantial involvement in the development of *Paths to Closure*, from release of the *Discussion Draft* in June 1997 until release of this report. In developing the draft cleanup strategy, EM is employing a two-phase, iterative public participation process, and stakeholders and Tribal Nations will be involved throughout the process.

Addressing Stakeholder, Regulator, and Tribal Nation Comments

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Paths to Closure contains significant changes and additions made as a result of comments and suggestions made by stakeholders and Tribal Nations on the *Discussion Draft*. For example, *Paths to Closure* includes waste and material disposition maps that summarize the management plans for nuclear materials and wastes from their current status through their ultimate disposition. *Paths to Closure* also includes technically sound baselines that are directly linked to the disposition maps, identification of critical closure path projects and activities, programmatic risks associated with projects and activities, and technology development needs linked directly to individual projects.

During the *Discussion Draft* comment period, EM received more than 170 letters offering comments on a broad range of subjects and from a wide variety

of stakeholder, regulator, and Tribal Nation groups. Although some of the comments were supportive of the goals and strategies outlined in the national *Discussion Draft*, most comments challenged EM to improve its approach, clarify its assumptions, and further delineate processes related to development and implementation of the draft cleanup strategy. In December 1997, EM issued a document entitled *Preliminary Responses to Comments on the Accelerating Cleanup: Focus on 2006 National Discussion Draft*. This document was designed to convey how EM planned to respond to comments of concern submitted by stakeholders, regulators, and Tribal Nations during the National *Discussion Draft* comment period, which ended on September 9, 1997. In keeping with EM's commitment to respond to concerns expressed in the letters, many of those comments have been addressed in this document. In addition, each site has worked closely with stakeholders, regulators and Tribal Nations in the formulation of their own site draft strategies. Appendix F contains complete references to the comment response document and other documents mentioned in this report.

The following subsections in this chapter address concerns of stakeholders and Tribal Nations relevant to the draft cleanup strategy but not yet discussed in *Paths to Closure* (see box). In response to significant concern on the part of stakeholders

and Tribal Nations, EM developed a specific project with a corresponding Project Baseline Summary (PBS) (under the National Program) for the Radioactive Source Recovery Program to provide it the visibility that had been lacking under earlier approaches.

6.2 Data Quality

Many organizations expressed concerns over the lack of consistency within and among various EM planning documents, including the *Discussion Draft*. The EM program recognizes the need for consistent, high quality data to facilitate program management and improve the planning process. The Integrated Planning, Accountability, and Budgeting System (IPABS) will facilitate better data management and will improve the consistency and quality of program data. To date, the successive submission of PBSs has resulted in better data. In part, this improvement can be attributed to better correlation of data in PBSs to site planning data including site baselines.

In the areas of waste and nuclear materials, the data collection systems have been modified, and disposition maps have been developed to depict site cleanup activities. These improvements assisted integration of site strategies for expected inter-site transfers of wastes and materials as well as receipts from other generator programs over the life-cycle of the EM program. While great strides have been made in developing disposition maps and improving data for inter-site transfers, more refinement is needed to achieve high quality maps and data for the *Paths to Closure* to be released in early summer. Currently, disposition maps show a 76 percent “qualitative” connection, meaning that shipper and receivers show the same inter-site transfers. However, there is only a 33 percent “quantitative” connection, meaning that fewer shippers and receivers both show the same volume. These statistics exclude disposition maps for EM’s nuclear materials which are in an early stage of development. EM is working to bring the underlying data, which provide very detailed annual quantities, into alignment with the disposition maps. The goal is to achieve as close to 100 percent connection as possible on the maps and underlying data for *Paths to Closure* to be released early this summer.

EM is also taking steps to fully allocate waste and material disposition data to projects. Currently, data are collected at the site level with linkages to the projects. Data collection systems will be modified to allocate quantity information directly at the project level. The goal is to have quantity data collected in PBSs to support the FY 2000 budget formulation and *Paths to Closure* to be released early this summer.

6.3 End States and Long-Term Stewardship

At many sites, cleanup consists of stabilizing and containing radioactive and hazardous waste and contamination on site, followed by some form of restrictions on the use of the site to prevent exposure to residual contamination. This practice was adopted because it is often technically or economically infeasible to return sites to unrestricted use. The Department of Energy (DOE) is currently

analyzing sites' projected end states and identifying necessary post-cleanup activities to better define the stewardship activities that would be required.

As described earlier in this report, the end state of a site is defined as that point at which all environmental restoration, waste management, or activities related to the stabilization of nuclear materials and facilities at that site have been completed. Ultimately, end states will be determined by regulators, based on discussions with DOE, Tribal Nations, elected officials, and stakeholders, through the assignment of cleanup levels and categories of assumed land use (i.e., agricultural, residential, industrial, recreational, open space, or restricted access).

Each site's *Paths to Closure* defines the end state assumed for the site with respect to EM activities. The assumption is consistent with existing agreements and applicable regulations. Work scope, cost estimates, and schedules for the site have been developed in light of the assumed end state. Current assumptions about end state do not rule out future decisions to clean up a site to a different end state than that envisioned under the original assumptions. In fact, each site's draft cleanup strategy explicitly states that the end state used for planning purposes in *Paths to Closure* may not represent the ultimate end state for the site. Improved end states may be possible at some time in the future with the development of new technologies, more economical cleanup approaches, or the availability of additional resources.

The EM program recognizes that for most sites, DOE's responsibility will not end once the agreed-upon end state has been achieved. Stating that sites are "complete" does not imply that the responsibilities of the EM program have ended. The EM program has a responsibility to the health and safety of the public. Therefore, the EM program will not be able to "walk away" from sites merely because they are considered complete. Rather, EM will be required to maintain surveillance and monitoring at most sites to ensure that human health and the environment are protected. For the draft cleanup strategy, those responsible for cleanup at sites provided assumptions, planned end states, and individual estimates for the cost of long-term care. Using those data, the EM program will be able to plan better in the future.

The need for long-term stewardship is recognized not only within the EM program, but also increasingly among parties outside the program. The Environmental Management Advisory Board (EMAB) emphasized the importance of understanding not only which cleanup projects will be accelerated in the next eight years, but also what the end states of sites will be after cleanup has been completed. In an April 1997 letter to Assistant Secretary for Environmental Management Al Alm, the EMAB Ten-Year Plan and Strategic Integration committees stressed that the EM program must better incorporate long-range planning into its decisions. The committees wrote that they ". . . encourage EM to improve the consideration and discussion of long-term stewardship."¹ In addition, the EMAB recently established a Subcommittee on Long-Term Stewardship to focus on issues associated with end states of sites and long-term stewardship responsibilities related to those end states.

¹ Environmental Management Advisory Board Ten-Year Plan and Strategic Integration Committees' letter to Assistant Secretary Alvin Alm, April 30, 1997.

To begin addressing these and other issues, DOE and EM are now preparing a companion to *Paths to Closure* that focuses on activities that will be required at DOE's sites as result of these end states. This report, *Moving from Cleanup to Stewardship*, will be released shortly after *Paths to Closure*.

Stakeholders, regulators, and Tribal Nations are interested in site end states because end states (and resulting requirements for long-term care) affect future uses, including a community's ability to revitalize economic development zones. Many Tribal Nations have expressed the desire to restore the land to its original condition. To facilitate the achievement of preferred future site uses, many stakeholders, regulators, and Tribal Nations have been deeply involved in the development of both site end states and the site versions of *Paths to Closure*. For example, the Miamisburg Environmental Management Project in Ohio has been working under an agreement with stakeholders and regulators to transfer the site to the Miamisburg Mound Community Improvement Corporation (MMCIC) for industrial reuse. By working with the site throughout the development of the draft cleanup strategy, the MMCIC has had a vehicle to express concerns or specify requirements for the site end state that might affect the anticipated future use.

6.4 Groundwater Contamination

The Environmental Management program received 26 comments on the National *Discussion Draft* related to groundwater contamination. These comments generally fall into two categories: (1) the definition of "complete" does not adequately address groundwater contamination, and (2) funding assumptions and life-cycle cost estimates may not be appropriate for groundwater remediation activities.

EM is addressing the definition of complete with respect to groundwater contamination in several aspects of the draft cleanup strategy. As many stakeholders noted, a definition for complete is required to establish a basis for the application of project management tools and provide opportunities to assess overall program progress. Although the definition in *Paths to Closure* is the same as that used in the National *Discussion Draft*, several new requirements of the draft cleanup strategy will also address this concern. First, sites are working to provide a clearer definition of the projected end state for groundwater cleanup, as well as the underlying assumptions being used for project baselines. The sites are also working to include long-term active remediation assumptions, restrictions, and descriptions for the groundwater portions of relevant projects, and their associated costs consistent with *Paths to Closure*. Finally, as in other areas of the draft cleanup strategy, EM is clearly stating its intent to comply fully with all applicable regulations and agreements.

Paths to Closure also has a number of improvements over the National *Discussion Draft* with respect to groundwater funding assumptions and life-cycle cost estimates. In addition to the more clearly defined assumptions discussed previously, *Paths to Closure* highlights the "programmatic risk" associated with all

aspects of sites' critical closure paths. Thus, *Paths to Closure* will identify where critical activities such as groundwater remediation have remaining uncertainties that may lead to budget and/or schedule uncertainty. Long-term funding requirements are more clearly identified based on the current assumptions and the "programmatic risk" associated with those assumptions. Annual updates to *Paths to Closure* will identify changes to the assumptions resulting from ongoing efforts and any required revisions in the funding requirements.

6.5 Public Participation

Public participation is a key component of the draft cleanup strategy. During the comment period on the National *Discussion Draft*, the EM program received numerous comments on public participation. The majority of comments focused on four issues of concern: (1) stakeholder input should be focused on the national level, as well as on specific sites; (2) the timing and duration of comment periods do not encourage effective participation by stakeholders; (3) the planning process should be more open and the approach to providing information to stakeholders, regulators, and Tribal Nations should be more honest; and (4) classifications of stakeholders used in the National *Discussion Draft* should be more specific.

The EM program agrees that intersite dialogue that focuses on national issues is an essential component of the process of ascertaining the views of the public and incorporating appropriate response to those views into ongoing activities. Accordingly, the EM program anticipates that multisite and regional workshops—such as the recent joint session of the Hanford Advisory Board (HAB) and the Idaho National Engineering and Environmental Laboratory Citizens Advisory Board (CAB), the National Dialogue Pilot Field Workshops, plus the League of Women Voters Regional Workshops—will assume an increasingly important role as forums for public involvement. EM plans to continue regular contacts with key stakeholder groups, such as the State and Tribal Governments Working Group, the National Governors' Association, and site-specific advisory boards.

The EM program recognizes that, to achieve an effective, ongoing dialogue with stakeholders, regulators, and Tribal Nations that supports sustainable and implementable decisions, the legally-mandated requirements for public involvement must be augmented by other opportunities for the public to express its views. To accomplish that goal, the Office of Environmental Management is committed to a robust program of public involvement that is characterized by:

- Meeting or exceeding all legal requirements for public input;
- Providing support and encouragement for other avenues of public dialogue on the EM program through Site-Specific Advisory Boards, community-based committees that focus on specific areas, and other forums that may be requested by the public;

- Furnishing regular opportunities at sites for the public to interact directly with EM managers to discuss updates of *Paths to Closure*, the establishment of cleanup priorities at the site, preparation of budgets, and other areas of interest to community members; and
- Distributing newsletters, disseminating information through the Internet, and providing opportunities for interactive dialogue for those members of the public who are less likely to participate in public meetings or hearings.

The EM program includes states, state regulatory agencies, the U.S. Environmental Protection Agency, city and county governments, site-specific advisory boards, other national and community-based citizen groups, and private citizens in its definition of “stakeholders.” EM also fully recognizes that Tribal Nations require additional and separate consideration as parties interested in EM’s work. The federal government has a unique legal relationship with the American Indian Tribal Governments, as set forth in the U.S. Constitution, treaties, statutes, and court decisions. DOE is committed to maintaining a government-to-government relationship with Tribal Nations to ensure that Tribal rights and concerns are considered in decision-making processes. The draft cleanup strategy will continue to address the concerns of both stakeholders, regulators, and Tribal Nations.

6.6 Other Concerns of Stakeholders and Tribal Nations

The EM program received numerous comments on the National *Discussion Draft* that could not be easily categorized into subject areas. Those comments generally focus on two issues of concern: (1) the need to improve the clarity and organization of *Paths to Closure* and better integrate it with other DOE plans and documents and (2) the manner in which *Paths to Closure* will be used and the manner in which it will be kept current.

The EM program agrees that clarity, organization, and cohesiveness in the document are essential to communicating its content. The program considered these comments in developing *Paths to Closure* and believes that the incorporation of these comments into the document has significantly improved its usefulness.

From the inception of the draft cleanup strategy, the EM program has regarded *Paths to Closure* not as a budget or a decision-making document, but as a strategy document that will be used to inform budget formulation. *Paths to Closure* will be updated annually on the basis of supporting data submitted by Operations/Field Offices. *Paths to Closure* is a “snapshot in time.” The EM program assumes that the draft cleanup strategy assumptions will be continually refined and modified. These changes will be reflected in subsequent updates of *Paths to Closure* and other planning documents.

6.7 The Public Comment Process

The Environmental Management program encourages stakeholders, regulators, and Tribal Nations to participate actively in the ongoing development of *Paths to Closure*. DOE is committed to ensuring that the viewpoints of concerned groups and individual citizens are fully and accurately represented. In support of that objective, DOE Operations/Field Offices have been providing opportunities for public involvement in the draft cleanup strategy, including the development of PBSs and the formulation of each site's FY 2000 Integrated Priority List (IPL), which identifies the priorities at each site.

A 60-day public comment period will follow immediately upon the release of this draft of *Paths to Closure* and analogous site documents. Throughout the comment period, site personnel will hold public meetings, interactive workshops, and/or briefings to help stakeholders, regulators, and Tribal Nations examine *Paths to Closure* and to elicit comments from the public. Comments received on *Paths to Closure* will be used to develop the subsequent *Accelerating Cleanup: Paths to Closure* that will be released to stakeholders, regulators, and Tribal Nations early this summer.

The comment process is designed to give stakeholders, regulators, and Tribal Nations the opportunity to participate meaningfully in the process. The opportunity to comment on *Paths to Closure* will provide stakeholders, regulators, and Tribal Nations the means to influence EM's long-term priorities and objectives. As stakeholders, regulators, and Tribal Nations engage in helping to develop EM's long-term priorities and objectives, they help to shape the entire Environmental Management program.

Appendix G provides detailed information about how to submit comments on *Paths to Closure*. As the appendix explains, comments about issues of general concern should be submitted to EM Headquarters. Comments about specific sites

Due Date for Comments

Paths to Closure: May 1, 1998

Appendix G provides more information about the public comment process.

should be directed to the appropriate site. If there is uncertainty about where comments should be sent, such comments should be submitted to EM Headquarters.

In addition to incorporating stakeholder, regulator, and Tribal Nation comments, the Environmental Management program will take three steps to improve *Paths to Closure*. First, EM will improve the quality of data in and degree of consistency among site material and waste disposition maps. Second, EM will refine *Paths to Closure* to reflect FY 1998 appropriations and the President's FY 1999 budget. Finally, EM plans to perform sensitivity analyses to investigate the potential effects of various enhanced performance scenarios on life-cycle cost estimates and completion schedules in site baselines.