

Opinions or statements relevant to the Sounding Board

From Board discussion on Thursday, June 5, 2008

Jeff Luke, Non-Union, Non-Management Employees (Hanford Work Force)

Jeff requested that Susan Leckband provide the U.S. Department of Energy's (DOE) edited version of the Hanford Advisory Board (Board) Charter and Operating Ground Rules (Charter) to see what was eliminated and how it was changed into a Memorandum of Understanding (MOU) and Operating Ground Rules (OGR).

Shelley Cimon, Public-at-Large

Shelley said she did not see anything in the MOU or OGR that fundamentally changes Board operations. She said she is tired and frustrated with the entire charter change process and thought the Board should move forward.

Gerry Pollet, Heart of America Northwest (Regional Environmental/Citizen)

Gerry said DOE never provided an explanation of how the Board's proposal (February 2007) was not Federal Advisory Committee Act (FACA) compliant. He said that is unacceptable, and that nothing beyond the Board's February 2007 proposal is necessary for FACA compliance.

Gerry said the Board was created through an agreement between the Washington State Department of Ecology (Ecology), the U.S. Environmental Protection Agency (EPA), the U.S. Department of Energy (DOE) and a number of representatives of citizen groups, local governments and more. Gerry said the word "charter" came from a contractual document (Agreement) negotiated, enforceable and signed by Ecology, EPA and DOE. With that Agreement, DOE committed to chartering Boards at the identified waste sites. Gerry said anything short of such a charter could be eliminated at any time. He likened the Board's Charter to a constitution protecting minority rights, and cited the Federal Facilities Restoration Agreements (Agreement) advisory committee formal report signed by USDOE which committed to charters of boards enforceable under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Gerry said the Agreement states that Site Specific Advisory Boards (SSABs) are independent public bodies established to advise regulated and regulating agencies with respect to key cleanup decisions, and a charter is required at each site to advise the agencies. He also noted the Agreement states it does not believe it is necessary or prudent to federally charter boards.

Gerry said the citizen groups in the region had to agree not to seek or accept technical grant monies from EPA as part of the formal agreement chartering the HAB, because of their involvement with the Board; Gerry thought this would now have to change. He also stated that the Board's Charter is part of the Community Relations Plan, which is an appendix to the Tri-Party Agreement (TPA) and enforceable by the TPA.

Gerry reviewed some of the changes reflected in the proposed MOU. He said there is nothing in FACA prohibiting the Board from advising other agencies (i.e. Ecology and EPA). He noted the Board is required to maintain compliance with the Washington State Public Meeting Act, but such description was removed from Section I in the proposed OGR. Gerry believed this is a serious setback and violates the OPMA if the board advises Ecology. Additionally, Gerry reviewed the following changes contained in the proposed MOU:

- Section II.B.c (membership) – Gerry said changing the language to read that Board membership "may include, but is not limited to the interested stakeholders listed below" is a significant change. He said it means membership is no longer mandated,

and DOE can restrict certain interests or seats. Gerry said it violates prior agreements that created the Board.

- Section II.B.d (vacancy) – This section states interest groups shall submit no more than three names, rather than just submitting one. Gerry said it violates the agreement that regulators screen members, rather than DOE.
- Section III.C.a – Gerry said this section violates treaty rights.
- Section II.F (agendas) – Gerry said the changes made to this section mean the Board cannot control its own agenda.
- Section III– Gerry said nothing in FACA prohibits a charter.
- Section III.C (funding) – Gerry said that, under the current Charter, any citizen could sue under the TPA if DOE chose to eliminate Board funding. Now, the MOU states that the agreement is not a fiscal or a funds obligation document. Gerry said the funding requirement is lost, which is solely a DOE policy choice.
- Section III.D (enforceability) – The proposed MOU states “this Agreement is strictly for internal management purposes for each of the Parties. It is not legally enforceable...” Gerry said the proposed MOU is very different than a contract (i.e. the Charter), and could essentially be torn up.

Gerry concluded that nothing in FACA mandated the elimination of the Board’s Charter or the creation of an MOU or OGR. He suggested that the Board request that DOE explain how the Board’s suggested Charter changes submitted in February 2007 were not acceptable. He suggested the Board not act on the proposed MOU and OGR until DOE responds.

Gerry urged rejection and said DOE had not met its obligation to explain why the Charter needs to be changed, and the proposed changes are not required to meet FACA. He said the proposal violates a set of written and enforceable agreements with the State, EPA and DOE and citizen groups and local governments to create the board. Gerry said the Board cannot abrogate those agreements, which were made prior to the Board being created. Gerry thought the proposed changes make the Board’s funding subject to the “whim” of DOE and no longer an enforceable obligation, unless citizen groups take action over the abrogation of their rights as signatories or third party beneficiaries to the Charter and current TPA appendix.

Bob Parks, City of Kennewick (Local Government)

Bob noted that if the Board does need to meet the Washington State Public Meeting Act, it will take an effort to be compliant. He observed the agencies frequently violate the Act, such as when they respond via email to the majority of the Board.

Al Boldt, Government Accountability Project (Hanford Workforce)

Al supported Gerry’s comments and did not support changing the Charter if it works well today. He said DOE should respond to the Board’s February 2007 Charter proposal before the Board takes this any further action. He said if there is an MOU, it should reference the previous Charter and be more consistent with that Charter. Al proposed striking Section III.C, D and F.

Ken Niles, Oregon Department of Energy (State of Oregon)

Ken said he was frustrated with the DOE’s lack of response to the Board’s proposed Charter changes. He said there is wording he would like to change in the proposed MOU and OGR. However, he said if DOE had wanted to make the Board ineffective, it could have done that by cutting or eliminating its budget. Ken said putting aside his frustration with the process and some of the changes, he doubted that adopting the MOU and OGR would really impact the Board and its operations. Ken said the regulators seem to believe it will not change the Board’s operations and he generally agreed.

*Todd Martin, Citizens for a Clean Eastern Washington
(Regional Environmental/Citizen)*

Todd noted the current Charter requires selection of an independent fiscal agent to manage the budget, something that has never happened. The Charter also requires implementation of a rotational membership schedule, which the Board has never done. Todd suspected that the motives for the Charter changes were questionable, and thought DOE wanted to institute term limits because of a desire to ultimately remove some people on the Board. Todd said the Board's February 2007 effort to respond reasonably to DOE's request to make the Charter FACA compliant reflected positively on the Board. He agreed that some of the changes proposed in the MOU and OGR are unnecessary, but did not think they will change Board operations. Todd said the Board's culture and "way of doing business" is solid, and suspected the original reasons prompting the changes were gone and the Board has ended up with a workable agreement.

Maynard Plahuta, Benton County (Local Government)

Maynard agreed with Todd and Shelley. He was not concerned about whether or not the MOU could be torn up; DOE could abolish the entire SSAB if so desired. He did not think DOE would abolish the Board because the consequences would be too great.

Doug Mercer, University of Washington (University)

Doug said he wants the Board to persevere in its capacity to provide independent advice. He said this would happen because of the Board's political status, knowledge, expertise and political visibility. He would be disappointed if there is a statutory or legal basis the Board can use to maintain itself that would be obviated by the MOU. Such legality would be powerful, but assuming the regulators are correct and that basis does not exist, Doug thought the Board would not lose any legal status with the proposed MOU and OGR. However, he wanted to ensure the Board could be assured it was not giving up any legal protection.

Harold Heacock, TRIDEC (Local Business)

Harold said the Board has to be FACA compliant and the regulators and DOE feel that the proposed MOU meets that requirement. He noted the TPA provides a basis for the Board. Harold did not see any reason to not agree to the proposed MOU and OGR.

Keith Smith, Public-at-Large

Keith said he was frustrated when first reading the proposed MOU and was troubled over which position to take. However, after listening to the Board discussion, Keith thought it really came down to relationships. Keith said relationships make the Board effective and the Board needs to get back to its business. He appreciated Gerry's comments because it helped him better formulate his own opinion. Keith said despite disliking the changes in general, he felt the Board should accept them and move forward.

Ken Gasper, Benton County (Local Government)

Ken said the Board's success is partially based on positive working relationships rather than adversarial positions. He did not see the proposed MOU and OGR as impediments to the Board's work and he proposed accepting the MOU and OGR and moving on.

Pam Larsen, City of Richland (Local Government)

Pam compared the Board to other SSABs and observed that in contrast to other boards, the HAB's institutional knowledge makes it extraordinary. She said DOE appreciates the Board because of its ability to offer good advice. Pam said the Board's composition is worth protecting. She felt the Charter work has been exhausting and asked Board members to

think about who they trust; she said if Todd and the regulators can live with the changes, she could, too. Pam also asked the Board to keep in mind the regulators' commitment to the HAB. Pam said it is time to move forward; if the situation gets rocky, the Board has the wherewithal to fix it.

Charlie Weems, Physicians for Social Responsibility (Regional Environmental/Citizen)

Charlie was frustrated with the changes and agreed with Todd, suspecting the changes grew out of DOE's problem with some Board members. But given that the Board actually does not have much control currently, and the proposed MOU and OGR do not seem to change that, Charlie said he saw no reason to object to the proposed changes.

Julie Jones, City of West Richland (Local Government)

Julie said she respected Board members' institutional knowledge, and advocated trusting that knowledge and opinions. She said the Board is powerful as a group regardless of changes; she agreed that the Board should move forward and accept the proposed changes.

Bob Suyama, Public-at-Large

Bob thought DOE and the regulators would lose a lot if the Board were to dissolve. He said the only constant in the world is change, and thought the Board should accept the changes and move forward.

Sounding Board

From Board discussion on Friday, June 6, 2008

Laura Mueller, Non-Union, Non-Management Employees (Hanford Workforce)

Laura said she does not discount anything about the good relationship the Board has with DOE and how the Board conducts business. She said she wanted to ensure the public is empowered now and into the future. Laura also said she felt the Board was blindly accepting the proposed MOU and OGR without DOE explaining why they chose this path in the first place. She would feel more comfortable with assurance from DOE in writing that the Board would be able to continue to do business as usual.

Steve Hudson, Hanford Watch (Regional Environmental/Citizen)

Steve said he was originally persuaded that accepting the proposed MOU would compromise the Board. However, as the discussion proceeded, he said he was persuaded that if the Board failed to accept the proposed MOU it would fail to meet its responsibility to the people. He thought prolonging the debate did not serve anyone; he said he supports accepting the MOU and OGR and the consequences of such a decision.

Doug Mercer, University of Washington (University)

Doug said in the absence of assurance that there is a statutory legal basis upon which the Board can maintain its independence, he did not see it was worth fighting the proposed MOU and OGR. In addition, Doug said he did not see willingness on the Board to fight that fight, so he supports accepting the changes.

Debra McBaugh, Washington State Department of Health (Ex-Officio)

Debra said she is an ex-officio member. She said the Board is worthwhile and she appreciates its work. Debra was not under the impression that anything would change if the Board accepts the proposed MOU and OGR. She said continuing the Board and its work is the most important thing.

Gerry Pollet, Heart of America Northwest (Regional Environmental/Citizen)

Gerry said he was dismayed at the lack of preparation for the Charter discussion and how the Charter issue was handled from the beginning. He wondered why the Board was rushing to a decision and why members were not given materials up front. He thought it was ironic that people were advocating accepting the proposed MOU and OGR because DOE could dissolve the Board if they do not accept them, but were also saying how DOE could never dissolve the Board and that the Board should trust DOE and the regulators. Gerry said DOE is required to respond to Board advice, and it never responded to the Charter advice put

forth in February 2007¹. Gerry said wording changes in the MOU are critical, such as when changing "DOE is required" to "the Board requests." Gerry said everything has become discretionary and the Board will slowly be cut to pieces. Gerry said DOE owes the Board an explanation of why it changed the Charter to an MOU and how it is necessary to do so under FACA. Gerry proposed waiting on taking action until DOE responds to the Board's February 2007 advice.

*Charlie Weems, Physicians for Social Responsibility
(Local and Regional Public Health)*
Charlie agreed with Gerry.

Mike Keizer, Central Washington Building Trades (Hanford Workforce)
Mike said he was willing to accept the proposed MOU.

Ken Niles, Oregon Department of Energy (State of Oregon)
Ken said he was not thrilled with the process and does not like some of the changes. However, he did not think it would impact how the Board operates: if there is intent in the future to change how the Board operates, the Board has the political muscle and wherewithal to deal with it. He said he could accept the MOU.

Harold Heacock, TRIDEC (Local Business)
Harold said the Board has to be compliant with federal requirements; the MOU accomplishes that and provides for the independence of the Board. He thought the Board should accept it and move on with its business.

Steve White, Columbia Riverkeeper (Regional Environmental/Citizen)
Steve said there is a long history of mistrust with DOE. He said he trusts Todd and his perception of the situation. He also said he believes that no decision is worse than a bad decision.

Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation (Ex-Officio)
Armand said from experience, MOUs have legal loopholes and in some instances are not legally binding. He said one of the better things about any board or committee is how a group of people can reach consensus. He said he does not like change – why change something that works and represents everyone? Armand said when a board or committee speaks with one voice the function of that group will always be the same.

Julie Jones, City of West Richland (Local Government)
Julie said from her short time on the Board, she has been impressed by DOE's commitment and felt that the local offices have worked hard on the Charter issue. She was happy to see that Ecology and EPA do not see problems with the proposed MOU and OGR. She said Todd's presentation was convincing and she is ready to move forward with the MOU.

¹ Note: The Board has not taken formal action on the referenced Charter changes either by advice or by letter. In February 2007, the Board agreed on proposed Charter changes as reflected in the adopted meeting summary excerpted here: "*The Board agreed on a charter proposal for the local DOE representatives to present to DOE-HQ. Final agreement on changes is contingent on changes to the SSAB national charter.*" The referenced changes were provided to the local DOE representatives following the meeting by Todd Martin, Chair.

Keith Smith, Public-at-Large

Keith said he has never been comfortable with an arrangement without a signature or document enforceable by law. On the other hand, he said, sometimes a name on paper is worthless. He said it is about relationships and a certain measure of trust. He said he heard Gerry's arguments, but a paper is still just a piece of paper and he did not think changing the Charter would make much of a difference. Keith said he supported the proposed MOU and OGR.

Rick Jansons, Benton-Franklin Council of Governments (Local Government)

Rick said the issue is about trust and power. He said he trusts the current DOE representatives, and in this case, DOE does not seem to have all the power. Rick said the power of the Board is in the people and in its democracy. He thought DOE would be ill-advised to mess with the Board and its seats. Rick said he supported the changes.

Emmett Moore, Washington State University (University)

Emmett said whether he likes it or not, the Board is a creature of DOE that can be ended by DOE. He said FACA calls for a charter for an organization to exist, and DOE proposes an MOU replace the charter. Emmett said the Board would technically not exist under FACA if its charter disappears.

Wayne Lei, Oregon Hanford Cleanup Board (State of Oregon)

Wayne said he prefers a charter.

Dick Smith, City of Kennewick (Local Government)

Dick said he has mixed feelings about the proposed MOU. He said he would like to see DOE's response to the Board's original proposal to determine what they thought was inappropriate and why. However, Dick said, he was not sure the Board has much of a choice. He asked if the Board needed to decide on this today – is there a time requirement? He said if it were possible to get a response from DOE about the Board's Charter change proposal, he would propose delaying the decision. He was not confident it would make a difference, though.

Susan Kreid, League of Women Voters (Regional Environmental/Citizen)

Susan said she read the current Charter, FACA and DOE websites, and began to appreciate the difference between the Board and other SSAB chartered boards. She said she realized how significant it is that 1) the Board is composed of organizations, not individuals, and 2) the Board advises DOE, EPA and Ecology. She said the proposed MOU and OGR preserve those two very important things. She did not think the MOU was perfect, but it allows the Board to continue its work.

Margery Swint, Benton-Franklin Public Health (Local and Regional Public Health)

Margery said she has been on the Board for at least 11 years and has never felt threatened or pressured by the agencies. She thought the Board should accept the proposed MOU and OGR.

Bob Suyama, Public-at-Large

Bob said the only constant in life is change. He thanked Gerry for providing information and while Bob did not like some of the wording in the MOU, he said the Board should agree to it and move forward.

Maynard Plahuta, Benton County (Local Government)

Maynard thought everyone agreed they would rather keep their current Charter. However, he did not think the Board is jeopardizing itself by moving forward with the proposed MOU.

Maynard thought it would be virtually impossible for DOE to eliminate the Board because its political power is too strong. He supported accepting the MOU.

Bob Parazin, Public-at-Large

Bob said he was surprised by the diverse discussion. Bob felt DOE could easily eliminate the Board. He used a boat analogy: both the sail and motor power a boat. The motor is the legality, which one could do without if it was eliminated because the boat also has the "sail" of political will and trust. The boat could encounter trouble, however, if the sail is not positioned correctly; too much sail and the boat will capsize, too little wind and no progress is made at all. Bob thought DOE put the time into the changes for their own interest, not the interest of the Board or public. He also thought they are faced with powering the boat with only a sail and having to set it so it picks up the political and popular wind without capsizing. Bob said that without a "motor," he is not in favor of the MOU.

Norma Jean Germond, Public-at-Large

Norma Jean thanked everyone who worked on the Charter issue. She thought the Board could be dissolved, but there would be trouble along the way because of its history and symbiotic relationship with DOE and the agencies. She said in the long run, the Board has been valuable to DOE because the seats represent different interests that can influence Congress and therefore affect DOE's funding and work. She did not particularly like the MOU, but did not think there was much of a choice. Norma Jean thought the Board would be a force to reckon with if DOE tried to eliminate it.

Pam Larsen, City of Richland (Local Government)

Pam said the Board should accept the proposed MOU and OGR now. She said the Board received DOE's response to their original proposed changes in the form of this MOU. She thought they were close to consensus. She noted her predecessor was opposed to committees when the Board was chartered and so did not agree to the Board's chartering, but it turns out committees are invaluable to the Board. Pam thought it was fine to proceed even though people may have differences of opinion. She thought the Board should vote, move forward and live comfortably without consensus.

Todd Martin, Citizens for a Clean Eastern Washington (Regional Environmental/Citizen)

Todd said he had serious reservations about the process and was not completely happy about it. He said he is fully supportive of the entire MOU and originally wanted it to go forward without any changes. He said he was surprised at DOE's unwillingness to respond to the Board's February 2007 proposed changes. He referred to two changes that he would like DOE to agree to make to the MOU and OGR: 1) He asked DOE to revise the statement that the Board could not hold a meeting without the deputy-designated federal official (DDFO) in the room. He thought that should be changed and also suggested 2) deleting the section referring to Board voting procedures on changing the OGR. Todd said with those two changes, he would fully support the MOU and OGR.

Gene Van Liew, Richland Rod and Gun Club (Regional Environmental/Citizen)

Gene said he was confident the MOU would work fine and it is time to trust and move forward.

Susan Leckband, Non-Union, Non-Management Employees (Hanford Workforce)

Susan said she would like to come to resolution on the Charter. She said it is a distraction and the Board should move forward. She said the Board could 1) accept it as is, 2) accept it with Todd's changes, or 3) reject it. Susan said she would do what the Board believes is the right thing to do. She thought the Board has the power it has always had, and a piece of paper will not change it.

