Resolution Process Plan

Thomas L. Jacobson
URP 5122
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MEMORANDUM

DATE: April 26, 2001

TO: DEP Partnering Team Members

FROM: FSU Partnering Team Members

SUBJECT: Dispute Resolution Procedure

Attached please find a proposed procedure for expanding the capabilities of our current Partnering Team Agreement. This procedure is designed to allow either party to increase the level of attention to a given issue, to help the teams work to agreement. The procedure is designed to have initiating actions from either group, work with almost any situation and provide a means for coming to agreement prior to the requirement for legal actions.

Please review the proposed procedure. When you have completed your review please contact Tom Jacobson with questions or comments. We will then work to integrate any necessary modifications to ensure that the procedure is a dynamic instrument that will increase the capabilities of the Partnering Teams in their pursuit of environmental excellence. Upon completion we will announce this in a ceremony similar to the one for the signing of the original agreement.
Overview

Interactions between Florida State University (FSU) and Florida Department of Environmental Protection (DEP) are no different than any other group that interfaces with DEP. One cycle involves the process of permitting a facility or operation. The other follows when there are inspections required. Both operations have legally mandated timelines that provide constraints to the processes. The purpose of this resolution procedure is to provide an avenue for moving from informal meetings to a more formal track, without entering into litigation. The success of this process will be based on both parties still possessing the desire to be partners striving for environmental excellence.

The normal processes that are utilized between FSU and DEP are essentially the inspection process and the permitting process. Both of these processes are formal with the requirements specified in various laws and statutes. The inspection process is summarized in the following schematic.

As can be seen the process is initiated with the applicable inspection and then follows a very linear pattern. The process is controlled by regulations that include a requirement of the issuance of a Notice of Violation (NOV) within 180 days of the inspection if necessary.

The other process is that of permitting. Permitting issues are once again a relatively straightforward process with limitations based on the type of permit. The next schematic shows the basic permitting process.
This process is typically not the issue but it does set up the return to the inspection cycle. In many of the permitted operations there are required inspections on some sort of periodicity, which has the potential of kicking back into the potential dispute role.

Partnering

Even though the partnering process was initiated in response to a trend identified during inspections, it is an informal process. The partnering process is an informal mechanism that has been instituted for situations that have not triggered the legal clocks. The partnering process allows the members to identify issues and work to mutually agreeable solutions in a non-adversarial environment.

One of the key pieces of the partnering process is a matrix document. The matrix is a data base document that covers both organizations. It, the matrix, is a hierarchical listing of contacts arranged to correspond to DEP’s structure, which is based on the regulatory structure. The matrix identifies contacts and also delineates the equivalent chains of command within each organization. An integral part of the matrix is a time requirement. As a issue is identified, the appropriate individuals within each organization come into contact to try and resolve that issue. If the initiating parties cannot come to resolution the issue is elevated to the next level on the matrix. Each level is allowed a pre-designated time interval to resolve the issue or it has to be passed to the next level. The original intent was to have issues move within three days to the next level of the matrix. Occasionally there may be a situation where resolution cannot be achieved or an issue is stopped. In these cases a more rigid form of interaction is required.

Resolution Plan

The first step is to recognize that an impasse has been reached. This step will allow the groups to be put on notice that something has to be done or regulatory action may follow. In this process there are two general mechanisms that can be used to help achieve resolution of a given situation. The first will be the ability to use the partnering process in more situations to try and reach agreement prior to statutory deadlines and the other will be a mediation procedure, again prior to statutory deadlines.
Based on the current partnering concept this proposal is to encourage the use of a similar process in more applications. In inspection situations that involve issues that may not be resolved effectively in a timely manner it is suggested that the partnering process be used to work through the issues identified. In order for this to work it is critical that timeliness be enforced. All levels of the matrix must follow the required timelines. If each level follows the required three-day limit the issue can pass through the matrix in a matter of several weeks, and not force the issue into legal action based on the 180-day statutory limit. An individual from the requesting organization will be designated as the contact person and they will ensure that the issue is being carried to appropriate level and ensure that the issue is resolved or elevated at each level of the matrix, based on the time constraints. This use of the partnering concept can be used following the inspection and after the issuance of a warning letter if necessary, as indicated in the following charts.

Again the key to success with this use of the informal partnering process is that each party must follow the required timelines. If this mechanism fails the use of mediation will be the next step, as long as the legal clock is not going to be exceeded. The success of this application will be based on agreement from both parties to follow the fundamental structure. A key piece of this portion and the proposed mediation process is that there are no violations of legal time requirements; the laws must still be followed.
Mediation

Mediation is a tool that can be used when there is an impasse situation. Mediation provides a more formal method of interaction and allows both parties to work towards a solution to the problem without full legal action. For situations that are at an impasse the option of mediation can provide a valuable resource.

In order to incorporate a mediation process into the operation it is necessary to identify the points at which some form of dispute resolution can be added while still meeting all of the legal requirements. Mediation should be the next step if the matrix cannot achieve a solution. Utilizing this process will ensure that both parties will have ample opportunity to come to an agreement without the use of an outside party. Also, statutory time limits must be adhered too and as long as the time per matrix level is followed the time will be adequate to work towards a mediated solution.

To ensure the success of the mediation process an agreement between the partners will be created and approved. The agreement will include the following issues:

• Mediator selection, this can consist of a selection of individuals or organizations that can be utilized for the process.
• Tentative identification of participants. This will be a listing of the major players that will be common to any session and some of the potential participants for various technical areas.
• Identification of responsibilities for site selection and payment if necessary.
• Agreement to follow the mediated settlement.

With the prior approval of these issues if a need for the mediation process were to occur, it would be expedited. Also, signing of this agreement could be identified to the media to show that DEP and FSU are continuing to work as a team. With the current atmosphere in state government, this agreement supports many of the legislative concepts for working to optimize the operation of the government. Also at this point the basic process would be established. The basic process will be as follows:

• Formal initiation will occur when the matrix is exhausted. The individual that is monitoring the progress on the matrix will notify both parties that mediation will be
initiated. The notification will be by official letter. By using this point to initiate the mediation process, it demonstrates that the highest levels in both organizations have reviewed the issue and have not come to agreement on resolution. By introducing mediation at this point there is the possibility of settling the issue prior to legal initiatives.

- Initiation will be via letter and will identify the issue that is triggering the mediation.
- Timelines will be identified in the letter.
- Responses will be required within 10 days.

- Response letters will follow the basic guidelines as identified here.
  - The response letter will include any additional information associated with the event that triggered the mediation process.
  - Receipt of the response letter will be required within 15 days from receipt of the initiating letter.

- An agreement to mediate will follow the response letters. This agreement will include the specifics for the issue at hand. This agreement would contain the details for the mediation in accordance with the mediation agreement that was initially constructed.

- At this point the mediation will be scheduled to occur.
  - Mediation will be scheduled to commence 15 days after the receipt of the response letters.
  - Mediation must be complete within 30 days of initiation.

- A news release will be scheduled following the mediation to present the issue and the results of the mediation.
The FSU/DEP Partnering Agreement has been a successful tool for both parties. It is being expanded to include more universities within the state at this time, showing the versatility of the process. Even though there have been to date, no issues that have not been resolved through this process, there may come a time when there will. It is to that potential problem that this proposal has been addressed. The use of the partnering process during the post inspection process is a logical extension of it. The use of mediation prior to litigation is also a logical process. The use of mediation in this manner allows both parties to work towards an agreement without compromising any of the legal requirements. The mutual resolution of identified problems between the two organizations falls clearly in line with the intent of the Partnering Goals:

- Commitment by each organization to cooperate so each organization can meet its mission
- Establish open communication channels between FSU and DEP
- Develop a reputation for environmental excellence

*Florida State University and the Florida Department of Environmental Protection will work together as partners in a spirit of integrity, cooperation, and open communication in order to protect public health and improve the environment. The partnering process seeks to enhance FSU’s education, research and community service mission while supporting DEP’s regulatory activities.*