

Situation Assessment

Opportunities for Engaging the Public and Stakeholders
Regarding the Revision of the PAGs Manual

November 2010

Prepared for the use of:

U.S. Environmental Protection Agency
Office of Air and Radiation
Office of Radiation and Indoor Air

Under contract with:

Systems Research and Applications Corporation
SRA EPA Contract EP-W-09-011
Prime Task Order #084
Project Number 15207.084.001.000.000
IDIQ Subcontractor Number RQ0000758
Task Order Number S935000077

Prepared by:

Martha C. Bean / Collaborative Focus
Jeff Bean / Beyond the Courthouse Mediation

Summary

This report to the Environmental Protection Agency (EPA), Office of Air and Radiation (OAR), Office of Radiation and Indoor Air (ORIA) is an independent assessment of opportunities for providing public and stakeholder engagement during the upcoming revision of the Protective Action Guides (PAGs) Manual. This report also provides themes from a limited number of interviews with EPA staff and interested parties. Based on these interviews, background research and reading, and the experience of the authors, our recommendations are listed here.

RECOMMENDATIONS

Recommendation 1: A general collaborative process or general feed-back process is not warranted prior to the publication of a revised PAGs Manual in the Federal Register.

Recommendation 2: ORIA may wish to enhance their effort to foster federal concurrence so it is very robust, and so any remaining issues are fully illuminated and understood as a decision is made on the new PAGs manual.

Recommendation 3: ORIA should prepare for the possibility that comments received during the Federal Register public comment will warrant considering an extension of the public comment period.

Recommendation 4: ORIA should continue and refine the current plan for outreach.

BACKGROUND

This section provides background information regarding the EPA's *Manual of Protective Action Guides and Protective Actions for Nuclear Incidents* (PAGs Manual), the history of recent proposals to revise it, and the revision to the PAGs Manual currently contemplated by ORIA.

ABOUT THE PAGs MANUAL EPA is charged with providing guidance regarding responses to nuclear incidents. The PAGs Manual includes EPA's recommendations regarding protective actions, Protective Action Guides and guidance on implementing them.

A Protective Action Guide is the projected dose to a defined reference individual from an unplanned release of radiocative material at which protective action is recommended to reduce or avoid that dose.

The PAGs Manual is intended for use by emergency management and public health officials at the federal, state, tribal, and local levels as they develop emergency response plans and make decisions in responding to a radiological emergency.

The PAGs Manual addresses three phases of a response to a nuclear incident: early/emergency; intermediate, late/recovery. 1992 PAGs Manual did not contain PAGs or recommendations regarding the third phase, late/recovery. The 1992 PAGs Manual did not contain guidance regarding drinking water.

CHRONOLOGY The PAG's Manual was last updated in 1992 (often referred to as "EPA 400"). Following the events of 9/11 and the findings from readiness exercises conducted afterward, the need to update the PAGs Manual became clear. EPA led a multi-agency effort to develop a new version of the PAGs Manual.

Also resulting from the multi-agency effort was the development of guidance from Federal Emergency Management Agency (FEMA) Department of Homeland Security (DHS) of PAGs applicable to terrorist events (*Planning Guidance for Protection and Recovery Following Radiological Dispersal Device (RDD) and Improvised Nuclear Device (IND) Incidents*).

EPA prepared a revision to the PAGs Manual, referred to here as the 2007-2008 PAGs Revision. This revision made several substantive changes and additions to the 1992 EPA 400:

- Application to broader range of incidents than just nuclear plant facility accidents;
- Lowered thyroid dose for KI;
- Drinking water guidance;
- Long-term late-phase recovery site restoration using "optimization" approach (adopted from DHS PAGs);
- Updated numeric derived response and dose conversion tables based on newer radiological dosimetry (from ICRP 26 to ICRP 60).

To provide interested parties with information regarding the 2007-2008 PAGs Revision, ORIA implemented two overall outreach strategies: 1) an improved website, and 2) workshops presented at two conferences (NREP and CRCPD). This outreach was directed toward the officials who were expected to use the PAGs Manual – whom ORIA considers the customers of the services they provide. The outreach was focused on providing information about the proposed changes and how those changes might affect the way they used the PAGs Manual.

As the 2007-2008 PAGs Revision was prepared for publication in the Federal Register it gained increasing critical attention of interested non-governmental organizations, including InsideEPA, PEER and Committee to Bridge the Gap. These organizations raised questions regarding the 2007-2008 PAGs Revision, such as whether they were protective of public health and whether they represented a significant change in methodology from EPA's previous practices. These organizations indicated they had information that the Revision was opposed by other federal agencies and other offices within EPA.

The 2007-2008 PAGs Revision was prepared for the Federal Register, but was not published. With the new administration in January 2009, the Revision was held for further review.

CURRENT PAGS REVISION EFFORT After appointment of the new administration's leadership team within EPA, ORIA was tasked with developing an approach that would result in the issuance of a revised PAGs Manual. In the spring of 2010, a group of environmental organizations, led by Committee to Bridge the Gap, met with several EPA Assistant Administrators and others to voice their concerns regarding the 2007-2008 PAGs Manual.

METHODS

The authors of this report – both mediators and facilitators – were contracted to perform an assessment of the current PAGs Manual revision process, and the possibilities for engagement of stakeholders. We were provided by ORIA a list of approximately twelve people to interview, each with a stake in the issues. Together with ORIA, an introductory email was prepared and sent by Alan Perrin. In the email, stakeholders were invited to participate in the interview process in order to help ORIA learn of “*ways we can work with stakeholders as we improve the PAGs Manual*”. An Interview Guide was prepared; it is included in this report as Attachment A. It focused on questions of process and satisfaction. The Interview Guide did not include any description or discussion of the potential content of a future PAGs Manual. After conducting a number of interviews, we identified other persons or organizations we wanted to contact. Working with ORIA we contacted additional persons for interviews. When the potential content of the PAGs Manual came up during the interviews, all possibilities were acknowledged. We did not indicate whether or not ORIA would propose any particular changes.

INTERVIEWEES The largest group of persons identified as stakeholders to be interviewed we categorize as the ***Users/Customers***. These persons can be loosely described as the state radiological protection officials who are charged with the responsibility for taking the PAGs Manual guidance and implementing it within their states' emergency response plans.

The second group can be described as the **Activists**. Those persons represent non-governmental organizations with interests in the EPA's guidance on radiological matters. These included the Committee to Bridge the Gap, NRDC and PEER.

A third group, **Industry**, included two persons representing the Nuclear Energy Institute, contacted in a single joint interview.

A fourth group of persons/organizations is the **Federal Family**. These represent a constellation of interests relevant to this assessment, some directly involved through the PAGs Subcommittee. We reviewed some documentation regarding the interests of various federal agencies, and monitored a telephone conference of the multi-agency PAGs subcommittee. We did not interview members of the Federal Family outside of ORIA.

As noted earlier, we did not provide details about the PAGs Manual, whether or not a revision would be issued, or what any revision may or may not contain. Interview groups had varied reactions to speaking with us without having the details or timing of the proposed revisions to the PAGs Manual in front of them. Those reactions are summarized here:

- Those who have been looking forward to a revised PAGs Manual (mainly *Users/Customers*) were concerned that it might not be issued at all, that its issuance would be delayed to accommodate more process, or that it would not include new guidance that they thought would be helpful.
- Those who say they do not want a revision to the PAGs Manual (some *Activists*) were very concerned that one would be issued, contrary to their clearly expressed preferences. They were further concerned that it would contain new guidance they thought would be damaging. The simple fact that a situation assessment was being conducted raised for them the prospect that they had been misled by EPA's leadership, that ORIA was acting contrary to leadership's direction, or both.
- *Industry* interviewees raised the concern that there would be a process preceding publication in the Federal Register, and that this process would not be perceived to be – and in fact could not be – transparent and public. They indicated it was of the utmost importance that they not have, or be perceived as having, pre-decisional influence. They were also concerned that a process might be convened in an *ad hoc* or haphazard manner, and yet have a substantive affect on the resulting revision. Combined, these concerns raised for them the specter of a process that would have a substantive impact, yet one in which they could not participate.

Had interviewees been made aware of the potential revisions to PAGs Manual and the timing of the publication in the Federal Register, their comments about stakeholder engagement processes may have been different.

THEMES AND RECOMMENDATIONS

We have organized the interviewees' interests, concerns and preferences under several themes. We developed the following themes to identify the concerns and preferences we heard from the persons and organizations we interviewed, and to group them in manageable constellations of interests.

These themes, and the whole contents of this assessment, are not to be construed to be the opinion or policies of anyone else or of any other entity. They are meant to illuminate and articulate issues and perspectives in a way that allows ORIA to make informed decisions regarding any revision to the PAGs Manual that it may undertake to issue.

THEMES

The sturdiest of the themes pertain to stakeholders' preferences regarding outreach and engagement, which was the focus of our assessment. Other, less-robust themes emerged as interviewees understandably volunteered information about the possible substance of a revised PAGs Manual. However, given that we did not convey to interviewees what a new version of the PAGs Manual might or might not contain, these bits and pieces of substantive information were offered without context. We cannot say how parties will react to the proposed revisions to the PAGs Manual ORIA expects to publish in the Federal Register. We can tell you the reaction may be as intense as it was several years ago. We can speculate somewhat regarding the possible content to which the stakeholders may or may not object.

Interests in a revised PAGs Manual:

1. *All interviewees* recognize the need for the PAGs Manual to provide for the protection of human health in the event of a nuclear incident.
2. There is a recognition of the need for a revision and updating of the PAGs Manual among *Users/Customers* and *Industry*. *Activists* see no need for a new version.
3. *Users/Customers* are weary. They cannot understand why this has taken so long. They want guidance that is congruent with other federal rules, guidance and practices. Yet even without, it has been eighteen years already, and they will soldier-on regardless. They have a strong desire for consistency and clarity.
4. *Users/Customers* and *Industry* do not want to be caught between dueling agencies who cannot agree about how to implement guidance documents that are not in sync with each other.
5. *Activists* have clearly voiced their concerns about the content of the 2007-2008 PAGs Revision. They believe they received assurances – from EPA management, political appointees and politicians – that their concerns have been heard and EPA will act on them. It is not clear whether the content of a new PAGs Manual will indicate to them that their concerns have been heard or their interests have been met. The inclusion of any items that appear contrary to their publicly-stated positions are likely to indicate to them their concerns have not been met. If they believe that,

on the whole, their concerns have not been adequately addressed, those we interviewed are poised and ready to use their influence to advocate heartily for the outcome they want.

Interests in process:

1. Generally, all interviewees expect and welcome the opportunity to be informed.
2. *Users/Customers* and *Industry* welcome the opportunity to provide feedback during the public comment period following publication in the Federal Register. *Activists* discount the public comment period's effectiveness as a mechanism for providing meaningful feedback.
3. No stakeholders identified a strong interest in an opportunity to provide feedback or engage in a collaborative process prior to publication in the Federal Register.
4. *Industry* will not participate in collaborative activities or feedback systems that could appear as though they are trying to influence ORIA pre-decisionally. *Industry's* interest is in transparency above all. It is possible that *Industry* will not fully reveal its preferences or engage until the guidance is published in the Federal Register. *Industry* does have an interest in certainty and clarity.
5. *Activists* have provided their feedback to EPA's leadership – the level they perceived being necessary for it to be considered. In essence, having not been involved in any process provided by EPA, they developed their own process and created their own opportunity to provide feedback. By going directly to EPA's leadership – bypassing ORIA – they provided it where they believed it would be most effective.
6. It is important to keep in mind that *all* – interviewees and members of the Federal Family alike – have an interest in doing their job the best they can. This can mean advocacy, diligent adherence to schedules, or doing the best with the resources they have. Each individual and group is acting as rationally and thoughtfully as they can.

RECOMMENDATIONS

Recommendation 1: A general collaborative process or general feed-back process is not warranted prior to the publication of a revised PAGs Manual in the Federal Register.

This recommendation is premised on the presumption that a revised PAGs Manual will be published in the Federal Register soon, it will not contain any content that was not in the 2007-2008 PAGs Revision, and some of the more controversial aspects of the 2007-2008 PAGs Revision will not be included. If any of these presumptions are not correct, we would withdraw this recommendation to reconsider it in light of correct presumptions.

Rationale:

1. At the time of the interviews in the fall of 2010, ORIA was clear that it expected to publish a revised PAGs Manual in the Federal Register in a few months.
2. ORIA has also been clear that the concept for the revision of the PAGs Manual currently moving through the system is what they expect to publish in the Federal Register.

3. Given these two realities, we believe there is not the time or capacity to conduct a collaborative process or a meaningful feedback process prior to the publication of the proposed revisions in the Federal Register.
4. Furthermore, given our limited number of interviews we believe a collaborative or feedback process is likely not needed to help ORIA adequately address concerns raised in response to the 2007-2008 PAGs Revision. Here is why:
 - a. *Users/Customers* have participated in ORIA's previous outreach process. They are prepared to review a revised PAGs Manual published in the Federal Register and to provide technical review during the public comment period. They look forward to having a new PAGs Manual and see no need for more process.
 - b. As noted above, *Activists* see no need for more process.
 - c. *Activists'* primary concerns may be largely addressed and acceptable in the version of the PAGs Manual ORIA intends publish in the Federal Register.
 - d. *Industry* is not interested in any process which may be perceived as less than perfectly transparent and public. They have identified no need to provide input prior to publication of a revised PAGs Manual in the Federal Register. They see no need for any more process.
5. If publication in the Federal Register were postponed, there could be time to design and conduct a collaborative or feedback process. This would depend on the length of time before publication, and the availability of resources and commitment to conduct such a process.
6. Comments made during the planned and official public comment period may indicate that the PAGs Manual revision would be strengthened by some form of collaborative or feedback process (for more about this, please see Recommendation 3).

Recommendation 2: ORIA may wish to enhance their effort to foster federal concurrence so it is very robust, and so any remaining issues are fully illuminated and understood as a decision is made on the new PAGs manual.

Rationale:

1. The Communications Plan includes the following as one of four objectives: "Foster federal concurrence as the PAGs Manual is updated."
2. As this Situation Assessment was being finalized, ORIA clarified that the PAGs Subcommittee is, in effect, the author of the proposed revision to the PAGs manual. Staffed by ORIA, the PAGs Subcommittee then, by definition and practice, *will* concur with the language that is published in the Federal Register. It will be their product.
3. We know from the involvement of InsideEPA and PEER that some individuals within the Federal Family, and possibly some groups within the Federal Family, did not concur with the approach taken in the 2007-2008 PAGs Revision.
4. We do not know whether the concerns of these individuals and groups extend to the version of the PAGs Manual that is to be published in the Federal Register, or whether those concerns are limited to aspects of the 2007-2008 PAGs Revision they have already commented on.

Implementation:

1. Continue to use and enhance best collaborative practices when working with the PAGs Subcommittee. These can include: one-on-one discussions to ascertain outstanding issues and concerns; outcome-oriented meetings and conference calls; outside facilitation and response tracking when needed and a systematic approach to ascertain, elicit and coalesce federal perspectives.
2. Allow for the fact fostering agreement – even within a single agency – is an active process that can be labor intensive and iterative.
3. Consider offering and organizing ‘ambassador’ visits from ORIA EPA to interested Federal Family parties.
4. Be ready to hear there are concerns within the Federal Family. Have a plan in place to respond to, consider, or address these concerns.

Recommendation 3: ORIA should prepare for the possibility that comments received during the Federal Register public comment period will warrant considering an extension of the public comment period to incorporate a collaborative process.

Rationale:

1. We cannot say how parties will react to the proposed revisions to the PAGs Manual ORIA expects to publish in the Federal Register.
2. The reaction may be as intense as it was several years ago.
3. New information may come to light during the public comment period.
4. It may become clear that a stakeholder process is necessary to improve the substance of a new PAGs Manual, or to allow it to withstand a court challenge, or for a new Manual to be readily implemented.

Implementation:

1. Prepare a decision framework that gives you a methodical, rational system for determining whether or not the comment period should be extended.
 - a. A draft of this decision framework is provided as Attachment B.
 - b. Criteria for moving decisions within this framework must be developed by EPA ORIA.
2. If the comment period is extended, determine if the extension is simply to receive more comments, or if a consultative, collaborative, or negotiated process is warranted.
3. Alternately, consider convening a consultative, collaborative or dialog process for the implementation of the new PAGs Manual.
4. Prepare high-level leadership at EPA for the possibility that, under certain defined circumstances, ORIA may recommend extending the public comment period and/or beginning a collaborative, consultative or negotiated process.
5. Work with EPA management and/or Assistant Administrators to decide under what circumstances the proposed revisions to the PAGs Manual might change prior to finalization, the comment period might be extended, or a collaborative process might be initiated

Recommendation 4: ORIA should continue and refine the current plan for outreach.

Rationale:

1. The Communications Plan includes the following objective: "Inform stakeholders of proposed changes/updates to PAGs Manual." This is the second of four objectives. Continuing and refining your current plan for outreach, and being clear of its purpose, will help you meet this objective.
2. As noted earlier, all those we spoke to appreciate being kept informed.
3. To date, stakeholders have not received any new information about the proposed changes and updates to the PAGs Manual.
4. An intentional and well thought out outreach program will:
 - a) Help interested parties provide ORIA with targeted, effective and lucid comments on the proposed PAGs revision during the public comment period
 - b) Allow ORIA to ascertain if there are topics that are likely to generate sufficient controversy to warrant extending the comment period (Recommendation 3).

Implementation:

1. Be clear that the proposed revision was written in consideration of concerns received on the 2007-2008 PAGs Revision.
2. Provide easy access to information about the update **process** well before publication of the proposed PAGs Manual revisions in the Federal Register.
 - a) Process information includes clearly communicating how ORIA will respond to information received during the official public comment period.
3. **Decide how much outreach** ORIA is willing and able to do to let interested parties know where to learn about the process. Options include:
 - a) Sending out notices electronically (email, list-serves, on-line newsletters, web site notifications, etc.), requiring a relatively small amount of time, labor and resources.
 - b) Going to existing meetings and conferences with information about the process represents a higher level of effort.
4. Understand that outreach means giving people information. ORIA is **not requesting feedback**; this will come through the public comment period.
5. Decide if ORIA will provide **substantive** information about the proposed PAGs Manual revision prior to publication in the Federal Register.
6. If ORIA decides to provide substantive information prior to publication in the Federal Register, **decide how much outreach** ORIA is willing and able to do.
 - a) As noted above, there are different levels of effort required for different types of outreach. Be intentional in your choice of outreach mechanisms, thinking through how to reach all key stakeholders.
7. If people or organizations provide **informal** feedback, either before or after publication in the Federal Register, clearly communicate they should provide this feedback as **formal public comment** as well.

8. ORIA can get a sense of the degree of interest and concern both before and after publication in the Federal Register by systematically reviewing news articles, key websites and blogs and by paying attention to informal comments and feedback. Doing this will inform a decision on whether or not the official public comment period should be extended. We recommend ORIA:
 - a) Decide which news sources, electronic media, *etc.* to track
 - b) Develop standard questions that can be asked in informal conversations
 - c) Develop a mechanism for qualitatively tracking and analyzing informal comments and feedback, news items and discussion
 - d) Keep this mechanism up-to-date.

Attachment A: Interview Guide

The following guide was used during the interviews. Actual interviews varied considerably.

CONDUCTING INTERVIEWS

Purpose and Background: Explain setting / what's happening:

- Note that multi-agency PAGs subcommittee has reconvened to issue the PAGs in a new version. EPA interested in whether some process, before official public comment period, would be worthwhile. EPA wishes to listen, understand, be transparent. Dialog if possible.
- Explain purpose of assessment interviews. Explain assessors will make process recommendations based on the interviews.
- Role of neutrals.
- Explain confidentiality; how information gathered in interviews will be used / combined with other information. Note that we will close with an opportunity for them to say what they want us to share with EPA with attribution, what can be a part of a generalized discussion in situation assessment, and what is information they want to simply inform us (neutrals) as we work.
- Acknowledge what we know of the interviewee, that we got name from EPA ORIA; why it is important we hear from them
- Give opportunity to ask questions about situation assessment and neutrals
- Build trust/rapport

Basic Perspectives: Learn the presenting issues or perspectives from each interviewee. For example:

- Can you give me the 100-word synopsis of this situation?

Roles and Goals: Learn how interviewee understands their role and contributions. For example:

- Please tell me about your interest and involvement in issues regarding the PAG Manual.
- Please tell me about / your organization / your agency / your business / your job and how this affects / provides a foundation for your role in this dispute.
- What is it you most want to achieve regarding the PAG Manual?

Key Issues: Probe to learn more about key issues: history; intersections and complications. For example:

- Tell me more about _____;

- In order of importance, tell me three things we will need to know about the issue in order to support any process that might result from this situation assessment. Also, what should we read, etc?

Scientific and Technical Information: Often disputes are present themselves as completely dependent upon scientific and technical information, or 'dueling' policies. It is crucial to know what information each party believes is crucial to the decision. It is equally important to know if new or more sophisticated scientific and technical information would change anyone's mind. If not, then the core questions are about values and not about science. For example:

- Is there scientific or technical information do you think needs to be brought to the discussions? What would that be? Why is this information important?
- What individuals or organization(s) do you trust to provide this information? We often work with people to jointly determine how information will be brought to the discussion, and how it will be used. Are you open to this?
- Let's imagine that new science comes to light that illuminates facts you weren't expecting. Let's also imagine, for the moment, that this information comes from a source you have trusted in the past. How would this affect your work with others at the table; your discussions with the others involved?

Fairness; Attentiveness to Legal Constraints and Existing Policies: We call this 'process integrity: learning what parties need to see in place in order to know that the process is fair, deliberate and attentive to legal and regulatory processes.

- How will you know you and others have been treated fairly in this process?
- What legal and policy constraints do you see? Are these constraints immutable?
- What tangible things can EPA do to support a fair process?
- What at tangible things can others do – can you do – to support a fair process?
- In a complex process such as this, there are inevitably 'bumps in the road'. What 'bumps in the road' do you see ahead? Why? How would you suggest we both anticipate these bumps, and how shall we handle them if in fact they emerge?

Who Participates / Trust: These questions begin to define the nuts and bolts of a process design. For example:

- Who is essential to the success of any effort to peel the onion on PAG issues, and to resolve or inform conflicts? Why? Can you tell me how I can reach this person?
- Who else should we talk to? Why?

Seeing Success / Measuring Success: Through these questions we ask interviewees to articulate their best hopes for resolution / outcome.

- How would you 'fill in the blanks' here: "It is essential that the following issues are addressed if we are going to resolve this issue: ____, ____, and ____."
- And if you were to fill in these blanks? "At the close of this process, I would be extraordinarily pleased if _____ occurs."

Alternatives: To accurately gauge the likelihood of a successful process, we need to know why people would want to participate in the first place. A fine way to learn this is to ask parties what they can / will do if no process is initiated. For example:

- You've given us some very helpful thoughts about how EPA might engage you and other stakeholders around the PAGS. If EPA chooses to use some other process, do you have other ways to have input? Would you use these methods regardless? Why?
- How do you expect to achieve your goals? Would some sort of engaged process help further your goals? How?

Closing: Final questions; also describe how and when the assessors will get back to interviewee:

- Let me recap what I have here; you can correct me: _____
- Is there anything you would particularly like me to pass on to the EPA ORIA? Any information you like to inform my work, but go no further than this?
- Any final thoughts; things we may not have covered? THANK YOU.

Attachment B: Decision Sequence re: Comments on PAGs



