Office of Adjudications: Revisit/Revise Hearing Procedures & Rules of Practice May 17 – 21, 2010

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State of Connecticut
Department of Environmental Protection
Amey W. Marrella, Commissioner

Why this project? Why now?

- Review of Adjudications process and rules of practice to ensure efficiency and eliminate waste
  - Ex: Allow for electronic formats and submissions
- Public Act 10-158 (H.B. 5208)
  - Requires analysis of the hearing process for permit applications.
  - Requires implementation of identified hearing procedures.

Project Team Charter

<u>Opportunities for Improvements:</u>

Current hearing procedures, particularly as set forth in the DEP Rules of Practice, have not been thoroughly reviewed or officially revised since the Rules were first enacted in 1992. Over past years, the Office has developed standardized forms and procedures to carry out Rules more efficiently, but has been evident for some time that possible official revision to the Rules through rule-making is necessary to make the hearing process more efficient and effective. Overall goal is to enhance the ability of the Office of Adjudications to contribute to the DEP effort regarding its permitting and enforcement processes.

Project Team Charter (continued)

<u>Project Scope</u>

Use Value stream mapping of hearing process to identify and prioritize hearing procedures that can be revised/updated and/or clarified to streamline the hearing process and develop strategies for implementing improvements to (e.g., expedite) hearing process, including amendments to Rules of Practice if determined to be necessary. Create implementation plan that involves creation of SOPs (including tracking methods), elimination of unnecessary steps, and changes to Rules of Practice as necessary.

Project Team Charter (continued)

Goals (Metrics):

1. Reduce time for hearing process (request for hearing officer to proposed final decision) by 25%.
2. Reduce time for those prehearing, hearing and post-hearing processes within control of hearing officers by 20%.
3. Reduce timeframe for discovery/requests for production by 15%.
4. Increase use of settlement conferences in permit application cases where appropriate from <5% to 100%.
5. Achieve percent on-time delivery of 75%

Current State

Analysis of the Current State per "Value Stream Mapping"

- Many value added and necessary steps, however, most present opportunities for efficiency (e.g., the prehearing process).
- Some process timeframes need to be standardized.
- Process not sufficiently front-loaded causing delays in remainder of process.
- Education/guidance for all parties needs to be improved.
- Dedicated administrative support would enhance administrative efficiencies in the hearing process.
- Discovery process lacks clear boundaries.
- Settlement conferences underutilized.

What Does Good Look Like?

- Fair, impartial, inclusive and consistent process.
- Knowledgeable intervenors with relevant issues.
- Quality timely decisions protective of the environment.
- Less impact on staff resources.
- Shorter evidentiary hearings when appropriate.

Stakeholder Feedback

<u>What Does Good Look Like?</u>

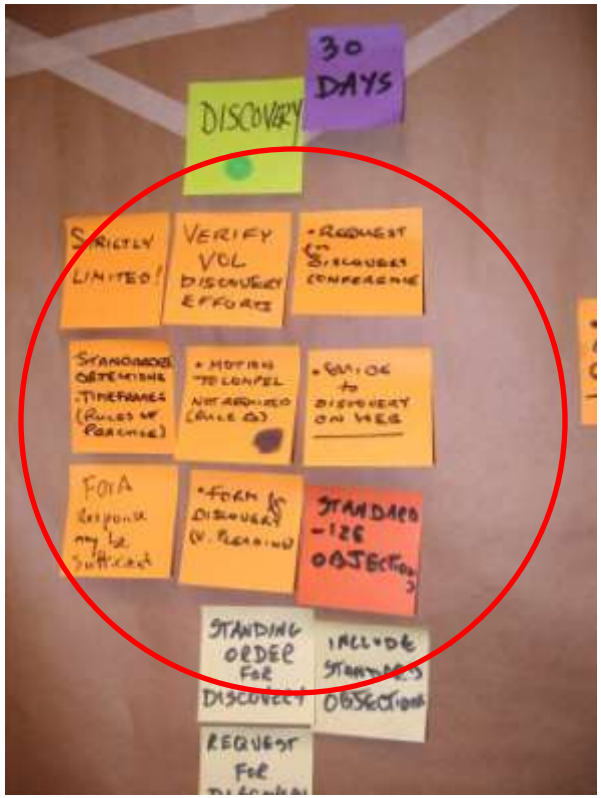
- Hearing process and results in compliance with the law.
- Meaningful participation by all parties and members of the public.
- Quality and complete record is created.
- Fair, impartial, inclusive and consistent process.

Stakeholder Feedback (continued)

- In general hearing process works well.
- Recommended areas of focus:
  - discovery
  - improve IT (e.g., search capability for decisions and online docketing)
  - staff represented by counsel when appropriate
  - improve guidance for intervention to provide clarity for unrepresented parties
  - increase posting of sample forms

Future State per Value Stream Mapping

New Efficiencies - Discovery Process



From 42-70 days to 30 days !!!
Circled ideas = opportunities to improve

"Front-loading" the Discovery Process

- Discovery limited to requests for production of documents, so…..
  - Notice of Status Conference directs parties (including intervening parties) to discuss requests pre-conference, encourage voluntary compliance
  - DEP directed to provide access to public files pre-conference and applicant to allow inspection of files; intervening parties to review files before making requests for production of documents.
- Conduct Discovery Conferences to resolve objections without need for motions process

Key Performance Indicators (Refined Metrics)

1. Reduce time for hearing process (request for hearing officer to proposed final decision) by **25%.**
2. Reduce time for those prehearing, hearing and post-hearing processes within control of hearing officers (e.g. settlement conferences, pre-filed testimony, pre-hearing evidence) by **20%.**
3. Reduce timeframe for discovery/requests for production by **15%.** (through use of voluntary/mandatory production of documents).
4. Increase use of settlement conferences in permit application cases where appropriate from **<5% to 100%.**
5. Forms successfully modified **50% complete within 2 months and 100% within 6 months.**

Project Implementation Plan

- 2-month, 4-month, 6-month, 8-month and 12- month goals
- Ongoing assessment, evaluation of implementation
- Ongoing process beyond 12 months
  - Result in revision of DEP Rules of Practice
  - Complete implementation of new procedures that do not require Rules revisions
  - Further consideration of "big picture" issues (e.g., public participation in adjudicatory hearings)
  - Consideration of public participation -- federal Clean Water Act hearing process v. DEP process

1 to 2 Month Project Tasks

- Develop Standard Operating Procedures for pre-hearing status conference
- Review FOIA/public notice requirements for pre-hearing and hearing process
- Revise forms on DEP intranet and web site to reflect new initiatives (e.g., ability to withdraw petitions for hearing, opportunity for pre-hearing settlement conferences) to maximize opportunities for efficiencies in hearing process

4-Month Project Tasks

- Evaluate "fast track" opportunities for adjudicatory hearings
- Plan and implement strategy for increasing efficiencies in discovery process (i.e., Requests for Production)
- Review/evaluate Rules of Practice for Discovery
- Evaluate declaratory ruling procedures and process

6-Month Project Tasks

- Develop procedures/process for Alternative Dispute Resolution/Mediation
- Develop necessary guidance for hearing and prehearing process
- Evaluate and implement revised intervention process and procedures
- Evaluate role of staff in hearing process
- Evaluate feasibility of electronic filing/docket system

8-month Project Tasks

- Review process and efficiencies regarding agreed draft decisions
- Review/consider revisions of post-hearing procedures
- Evaluate content requirements of proposed final decisions
- Evaluate final decision-making authority; consider delegation for certain contested cases

1-Year Project Tasks

- Complete first draft of revised Rules of Practice
- Complete implementation of new procedures that do not require revisions to Rules of Practice
- Schedule mini Lean Kaizen event to address additional responsibilities of the Office of Adjudications (e.g. enforcement, delicensing proceedings)

What we learned

- Our steps have value.
- Our efforts to create a complete record are appreciated.
- Significant opportunities exist to front-load process to achieve goals.
- Education and information will improve preparation of parties and inform expectations of public.
- Lean works and applies to our circumstances.

"WOW" Moments

- The Rules of Practice do not control the attainment of desired efficiencies, we do.
- Length of time is not as critical to stakeholder participants as a meaningful and waste-free hearing process.
- Combining existing practices in new ways will eliminate waste and increase efficiencies.

Did we do enough?

Oh Yeah!

- Stayed on track and avoided taking on issues outside the scope of the project.
- Identified opportunities for efficiency throughout the entire process without getting bogged down.
- Stayed within realistic parameters for goals and tasks.

WE CAME….WE SAW….WE LEANED.

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