APPENDIX I: COLLABORATION AND FACA AT EPA

EPA has been a leader among Federal agencies and departments in using collaborative approaches to environmental problem-solving. This guide will help EPA managers and staff to understand whether and how the Federal Advisory Committee Act impacts collaborative processes.

What is collaboration?

Collaboration can be thought of in two ways. First, it is an attitude that prompts people to approach their work in the spirit of cooperation and shared effort that leads to better, more creative results. Second, it is a specific approach to working with stakeholders, in which participants develop a mutually agreeable process for joint learning and problem solving.

As our environmental challenges become more complex, we are searching, jointly and cooperatively, for better ways to carry out the Agency's mission. Collaboration will not replace regulation or substitute for making tough decisions, nor is it appropriate for all situations. Still, EPA has found collaboration to be effective for arriving at mutually acceptable solutions to environmental problems.

Collaborative processes can take many forms and can be either formal or informal. The degree of formality will depend upon the purpose of a collaboration process; desired end product; the number and diversity of stakeholders; the scale, scope, and complexity of the issues at hand; the duration of the process; and other factors.

EPA's role in collaborative environmental problem-solving also can take many forms. Depending on the situation, EPA may: serve in a leadership role; act as one of many interested parties in a collaborative effort established by another public or private sector entity; or simply be the beneficiary of a collaborative effort by outside parties that did not involve EPA participation.

What is the Federal Advisory Committee Act?

The Federal Advisory Committee Act (FACA or Act), 5 U.S.C. App. 2, governs the establishment, management, and termination of advisory committees within the executive branch of the Federal government. FACA ensures that federal advisory committees are accountable to the public by maximizing public access to advisory committee deliberations and minimizing the influence of special interests through balanced committee membership. In addition, the Act seeks to reduce wasteful expenditures and improve the overall administration of advisory committees.

Federal advisory committees can significantly strengthen the Agency's collaboration processes. Moreover, establishing a Federal advisory committee can be the best approach for achieving EPA's management objectives and ensuring that advice provided to EPA is developed through a structured, transparent, and inclusive public process. EPA has a central role in the formation of a Federal advisory committee and is able to work with the committee and provide input on the substantive issues the committee addresses. Subcommittees and work groups that report back to the chartered advisory committee can further the work of the committee through collaborative processes. Agency managers and outside stakeholders generally view the advice provided by Federal advisory committees as highly credible due to the: balanced membership of the committees; thorough vetting and selection process for members; formal opportunities for members of the public to provide written and oral public comment; and transparency of the meeting process. While FACA sets up requirements that Federal advisory committees must follow, those requirements generally mirror the best practices normally used in collaborative processes.

How does FACA affect collaborative approaches at EPA?

In general, FACA applies to collaborative efforts when all of the following criteria are met:

- EPA establishes the group (that is, organizes or forms) or utilizes the group by exerting "actual management or control;"
- The group includes one or more individuals who are not Federal employees or elected officials of State, Tribal, or local government or employees with authority to speak on their behalf; and
- The product of collaboration is group advice for EPA.

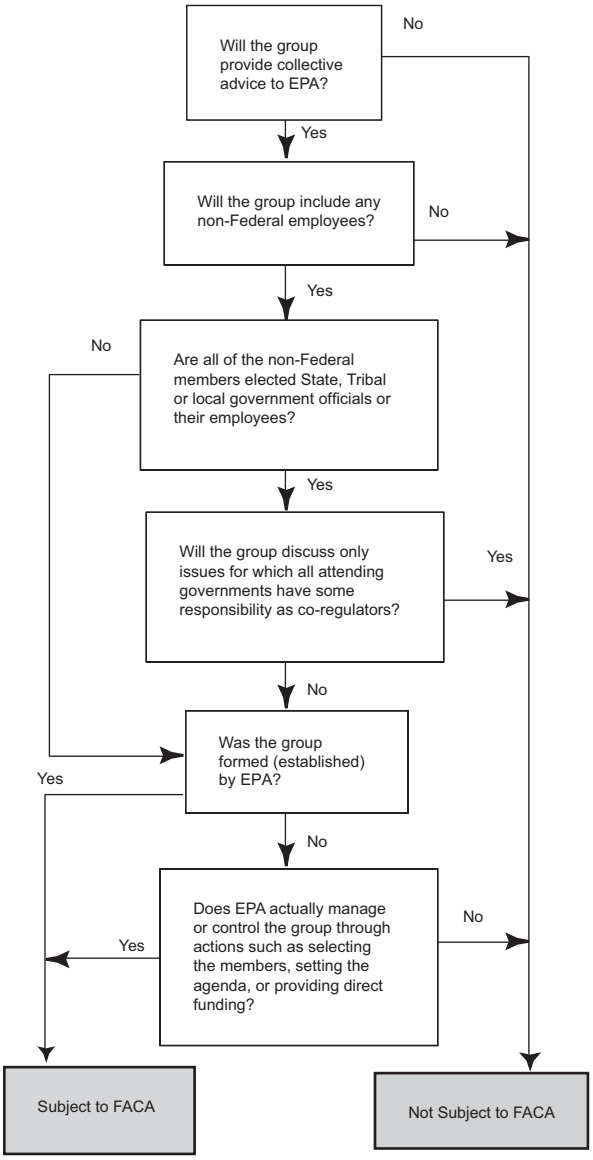
What does FACA require EPA to do?

To help EPA management meet all of the FACA requirements, the Office of Cooperative Environmental Management has developed a handbook that explains how to set up, manage and terminate a federal advisory committee. The handbook is available at http://intranet.epa.gov/ocem/ faca or www.epa.gov/ocempage/faca/index.html. The FACA requirements include the following:

- Develop a charter and publish notice of the establishment of the committee. A charter is a two-to-three page document that specifies the mission and general operational characteristics of the committee.
- Balance the points of view represented by the membership of the committee in relation to the function the committee is to perform.
- Announce meetings in the Federal Register in advance of the meeting.
- Open the meetings to the public and allow the public to send in or present comments.
- Keep minutes of each meeting, make committee documents available to the public, and maintain the committee's records.
- Appoint a Designated Federal Officer (DFO) to manage the committee.

Pre-collaboration situation assessments can assist EPA managers and staff by providing information about whether a collaborative approach may be appropriate in a given situation and, if so, whether FACA may apply. If the program office determines that a given collaboration effort would invoke FACA, Agency managers and staff should consult with the Office of Cooperative Environmental Management (OCEM) for guidance on setting-up and operating a Federal advisory committee. If there are any questions as to whether FACA might apply, managers and staff should consult with the FACA attorney in the Office of General Counsel, Cross-Cutting Issues Law Office.

FACA APPLICABILITY DECISION TREE



This decision tree is intended as general guidance only. If you have questions regarding the applicability of FACA to a specific group, you should contact the Office of General Counsel.

Examples of Collaborations at EPA

Collaborative processes may or may not be subject to FACA. Following are examples of Agency collaborative processes that are subject to FACA as well as collaborative processes that are not. The description of each example provides an explanation about why it was or was not subject to FACA.

Collaborations subject to FACA

1) Negotiated Rulemaking Committee on All Appropriate Inquiry

In 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law"). The law established some protections from Superfund liability. One criterion specified in the statute for obtaining the protection from liability is that landowners must conduct all appropriate inquiries (due diligence) to determine past uses and ownerships of a property prior to acquiring the property. EPA established a Negotiated Rulemaking FACA Committee consisting of both private sector stakeholders and state program officials who were familiar with and had experience in implementing processes to conduct all appropriate inquiry. The committee reached consensus on a draft regulation and agreed to support EPA's notice of proposed rule making. This committee was subject to FACA because:

- It was formed and managed by EPA;
- It was intended to and did provide advice to EPA.

2) National Advisory Council for Environmental Policy and Technology (NACEPT)

In 1988, NACEPT was established to provide advice to the EPA Administrator on a broad range of environmental policy, technology and management issues. NACEPT helps EPA tap into the knowledge, expertise, and experience (of public, private and non-profit groups) that would otherwise be unavailable to the Agency. The impact of NACEPT's recommendations include: (1) creation of the EPA Office of Environmental Education, (2) creation of the EPA position of Chief Information Officer, and (3) establishment of the EPA Technology Innovation Office. The committee was subject to FACA because:

- It was established and managed by EPA;
- It offered group advice to EPA;
- Membership included individuals who were not federal employees or elected officials of state, local, or tribal government.

3) National Environmental Justice Advisory Committee (NEJAC)

The National Environmental Justice Advisory Committee (NEJAC) was established to provide advice and recommendations to the Administrator on areas relating to environmental justice issues. The members of NEJAC, who represent a wide range of stakeholders (community-based groups; industry and business; academic and educational institutions; state and local governments, federally-recognized tribes and indigenous groups; and non-governmental and environmental groups), believe it is important for governments to consider environmental justice issues when making decisions that may affect human health and the environment. NEJAC has made numerous recommendations to EPA including development of a recommended "Model Plan for Public Participation," a tool to enhance the participation process and to promote early interaction with potentially affected communities prior

How does this guide relate to EPA's Public Involvement Policy?

EPA's Public Involvement Policy urges Agency officials to "maximize the use of existing institutional resources for consultation and involvement processes" such as FACA groups.

See the Public Involvement Policy, "Appendix 4 - Advisory Committees" at http://www.epa.gov/publicinvolvement/policy2003/appendices234.pdf.

to making decisions. The Plan was ultimately adopted by EPA and is currently utilized by several federal, state, and local governments. The committee is subject to FACA because:

- It was established and is managed by EPA;
- It offers group advice to EPA;
- Membership includes private stakeholders as well as officials or employees of state, local, and tribal government.

Collaborations NOT subject to FACA

1) Sustainable Environment for Quality of Life (SEQL)

EPA is working with stakeholders in the fast-growing area spanning Charlotte, NC, and Rock Hill, SC, to achieve a healthy environment, vibrant economy, and high quality of life. SEQL is an integrated environmental initiative for the 15-county metropolitan Charlotte region in North and South Carolina. Through technical assistance, regional vulnerability assessments, and water quality monitoring, EPA has assisted leaders to promote regional solutions for regional issues, which is the driver for this unique and innovative partnership between the Centralina Council of Governments and the Catawba Regional Council of Governments. It promotes implementation of specific Action Items on Air Quality, Sustainable Growth and Water Resources, and consideration of environmental impacts in decision-making at local and regional levels. SEQL is not subject to FACA because:

- Non-Federal entities convened/assembled it;
- SEQL does not render specific advice or recommendations to the Agency;
- EPA does not manage or control it (that is, EPA does not select the membership, set the charge, or provide funding).

2) Unified National Strategy for Animal Feeding Operations

In 1998, the interagency Clean Water Action Plan (CWAP) identified polluted runoff as the most important remaining source of water pollution. Among other action items, the CWAP called for USDA and EPA to develop a Unified National Strategy to minimize the water quality and public health impacts of animal feeding operations (AFOs) by using an appropriate mix of regulatory and voluntary approaches. One year later, following a series of negotiations between USDA and EPA and an extensive public outreach effort including eleven national listening sessions throughout the U.S., the final AFO strategy was released. The USDA-EPA AFO Strategy partnership was not subject to FACA because:

- The partnership group included only Federal employees;
- The listening sessions were used to obtain individual public comment on the development of the strategy.

3) The Smart Growth Network (SGN)

EPA joined with several non-profit and government organizations to form the SGN in 1996. The Network was formed in response to increasing community concerns about the need for growth that boosts the economy, protects the environment, and enhances community vitality. Since its inception, Network partners have worked cooperatively to implement national conferences, produce publications, and launch outreach campaigns. The SGN is not subject to FACA because:

- SGN functions as a forum for developing and sharing information, innovative policies, tools and ideas;
- SGN does not provide advice to EPA;
- SGN is not subject to strict management or control by EPA.

Who can I contact to learn more?

For information, advice and assistance on:

- Conducting situation assessments and designing stakeholder consultation and collaboration processes:

  Conflict Prevention and Resolution Center (CPRC)
  www.epa.gov/adr, 202-564-2922, adr@epa.gov

- Establishing or managing a Federal advisory committee or subcommittee:

  Office of Cooperative Environmental Management (OCEM)
  www.epa.gov/ocem, 202-564-2294

- Legal issues relating to FACA:

  The Office of General Counsel (OGC)/ Cross-Cutting Issues Law Office
  www.epa.gov/ogc/issues.htm, 202-564-7622

Best Practices for Collaboration	FACA Requirements
Conduct a convening or situation assessment to define issues and affected parties.	Establishment of committee requires analysis of need and membership.
Involve all affected parties in a manageably-sized group.	Maintain a balanced membership.
Develop a clearly defined purpose and stakeholder involvement outcome and a collective definition of roles, schedule, and procedures.	Formal charter states objectives, scope, schedule, resources. Additional ground rules or protocols may further define operations.
Conduct discussions in a transparent and participatory manner.	Open public meetings and opportunity for public comment.
Plan and announce meetings in advance so that attendees are prepared.	Meetings must be announced 15 days in advance in Federal Register.
Provide access to information, build common information base.	Meeting summaries are required and are publicly available.

APPENDIX II: BEST PRACTICES FOR GOVERNMENT AGENCIES: GUIDELINES FOR USING COLLABORATIVE AGREEMENT SEEKING PROCESSES

Report and Recommendations of the SPIDR Environment/Public Disputes Sector Critical Issues Committee Adopted by the SPIDR Board, January 1997. Copyright 1997 SPIDR (now merged with AFM and CREnet to form ACR, the Association for Conflict Resolution).

The recommendations presented in this report have been developed through a joint effort of the Society of Professionals in Dispute Resolution (Environmental/Public Disputes Sector) and the Consortium on Negotiation and Conflict Resolution in Atlanta, Georgia, supported by the William and Flora Hewlett Foundation. The Committee responsible for the work was comprised of experienced dispute resolution practitioners, government program managers and university researchers.

This report focuses on best practices for government agencies and other users in the United States and Canada, reflecting the membership of the SPIDR Environmental/Public Disputes Sector. While potentially applicable to other countries, the recommendations will likely need to be tailored to the political frameworks, institutions and cultural norms in those societies.

The report is intended as the first in a series of cooperative efforts between researchers and practitioners to respond to the emerging challenges of using collaborative conflict resolution processes in the public policy arena.

The Committee thanks the additional practitioners, government agency personnel and researchers who contributed immeasurably to this document through their review and comments. In addition, the Committee acknowledges the fine work of Stephanie Shupe in the layout and design of the report, Bill E. Green, III for the illustrations and the contributions of Martha Bean, Triangle Associates.

Critical Issues Committee

- Gregory Bourne, Co-Chair, Consortium on Negotiation and Conflict Resolution, Georgia Tech, Atlanta, Georgia
- Christine Carlson, Co-Chair, Ohio Commission on Dispute Resolution and Conflict Management, Columbus, Ohio
- James Arthur, Coordinator, Washington State Dispute Resolution Project, Olympia, Washington
- Howard Bellman, Mediator, Madison, Wisconsin
- Deborah Dalton, Consensus and Dispute Resolution Program, U.S. EPA, Washington, D.C.
- Michael Elliott, Consortium on Negotiation and Conflict Resolution, Georgia Tech, Atlanta, Georgia
- James Kunde, Coalition to Improve Management in State and Local Government, Arlington, Texas
- Michael Lewis, Mediator, Washington, D.C.
- Craig McEwen, Professor, Bowdoin College, Brunswick, Maine
- Suzanne Goulet Orenstein, Vice President, RESOLVE, Washington, D.C.
- Charles Pou, Practitioner, Washington, D.C.
- Wallace Warfield, Professor, George Mason University, Fairfax, Virginia

Executive Summary

The guidelines for best practice are proposed by the Society of Professionals in Dispute Resolution for government-sponsored collaborative approaches that seek agreement on issues of public policy. The processes these guidelines address have the following attributes:

- participants represent stakeholder groups or interests, and not simply themselves,

- all necessary interests are represented or at least supportive of the discussions,
- participants share responsibility for both process and outcome,
- an impartial facilitator, accountable to all participants, manages the process, and
- the intent is to make decisions through consensus rather than by voting.

These recommendations are directed primarily towards federal, state, provincial, and territorial government officials to help ensure successful use of collaborative processes for decision making. They may also be useful to local government, although consideration must be given to how stakeholder-based processes may affect more inclusive citizen participation strategies. The recommendations are:

1. An agency should first consider whether a collaborative agreement-seeking approach is appropriate
2. Stakeholders should be supportive of the process and willing and able to participate
3. Agency leaders should support the process and ensure sufficient resources to convene the process
4. An assessment should precede a collaborative agreement-seeking process
5. Ground rules should be mutually agreed upon by all participants, and not established solely by the sponsoring agency
6. The sponsoring agency should ensure the facilitator's neutrality and accountability to all participants
7. The Agency and participants should plan for implementation of the agreement from the beginning of the process
8. Policies governing these processes should not be overly prescriptive

Introduction

Background

Negotiation and consensus building have long been used to resolve policy conflicts. Governments, businesses, interest groups and individuals negotiate and use cooperative approaches to decision making every day, whether formal or informal, by choice or out of necessity. These activities are not new.

What is relatively new is the intentional application of these processes, assisted by an impartial facilitator, to a wide range of multi-party, multi-issue disputes and controversies. In the 1970s, mediators began helping parties settle environmental disputes, usually over site-specific issues, but also over land use and the allocation of natural resources. The use of collaborative efforts has evolved to developing policies and regulations for a broad array of issues. From about 40 cases in the 1970s, the number grew to over 400 during the 1980s, and the trend is continuing. An approach that began as a foundation-funded experiment has increasingly become a component of governmental decision making.

Reasons for this growth vary, but these factors stand out. First, consensus-based, agreement-seeking processes have proven successful in a wide array of applications, particularly where several agencies or levels of government have jurisdiction, power is fragmented, and there are a variety of stakeholders with conflicting views (e.g., resolving complex multi-party issues, developing regulations, policy making, strategic planning).

Second, the public is demanding more say in the policy-making process of government, which has accelerated the use of consultation and consensus building as ways of working out decisions that can be implemented. Consensus-based approaches have the advantage of building agreements that last. The focus on collaboration and seeking mutually acceptable outcomes contributes to improved understandings among participants, which in turn enables them to work out differences and arrive at better solutions. These consensus-based approaches are increasingly being viewed as a

cornerstone in efforts that call upon governments to be more efficient and effective.

Current Uses of Collaborative Processes: Concerns and Questions

Along with the growth in use of these processes, a number of concerns and questions have emerged regarding the appropriate use of these processes. These include:

Concerns about how collaborative processes are used by agencies who are the authorized decision maker(s):

- How can regulatory agencies share control over processes and products while retaining their mandates?
- How do the cultures of bureaucratic agencies adjust to decision making by consensus?
- By seeking consensus among stakeholders, might public officials in some cases essentially be avoiding the tough decisions they have been mandated to make?
- If public officials purport to be seeking agreement with stakeholders, but actually only seek advice or input, might they contribute to cynicism about government?

Concerns about participation:

- Who decides who can participate and how is that decided?
- How might increasing reliance on collaborative processes affect the ability of some groups to participate? Could they be spread too thin?
- How can agencies prevent participants from feeling co-opted or coerced?
- What if all interests cannot be identified? What if some interests cannot be represented? Does the collaborative process still go forward?
- If agreement is reached, will traditional opportunities for public comment be diminished?

Concerns about the proper use of mediators and facilitators:

- In the eyes of other participants, can an agency or department staff person serve as an impartial facilitator?
- When government agencies hire the mediator, how can selection and procurement be conducted to ensure the mediator's credibility with all parties?
- How can the mediator be accountable to all when under contract with an agency?

Concerns about maintaining the effectiveness of collaborative processes:

- How will governments' need for routine, consistency, and due process affect collaborative processes? Will governments prescribe, bureaucratize, and mandate an approach that has succeeded to date largely by being adaptive, flexible, and voluntary?
- Given the workloads and time pressures some government agencies are under, will more be expected from collaborative processes than they can deliver? Will there be enough time, money, and staff for such processes to succeed?
- How can consensus-based efforts produce effective, practical decisions that satisfy more than just the lowest common denominator?
- Will sufficient attention be given to strategies and resources needed to implement agreements reached?

Terminology of Collaborative Processes

As the use of collaborative approaches for resolving public issues has expanded, so has the terminology for naming and describing them. As a first step in sorting out the terminology, the Committee distinguished agreement-seeking processes from two other primary purposes for discussions between government agencies and the public – information exchange and advice. Given these objectives, the chart

below highlights the differences in outcomes that can be expected:

Only processes in the third category are the subject of this report, but labels for them abound. Some derive from labor/management bargaining. Others combine words that describe some attribute of collaborative consensus-based public policy processes.

The imprecise nature of these terms underscores the need for participants in each case to define their process clearly. As for labeling a particular process, participants usually refer to it in concrete, case-specific terms, such as "resolving the Westside urban growth issue," "trying to establish a new policy for nursing homes," "the airport noise negotiations," or "the harbor development roundtable." Regardless of the label, type of public issue being discussed, or venue within which it occurs, the essential activity is the same – people representing different interests trying to find a solution that works for all through negotiation, assisted by someone acting impartially who manages the process.

Central to this activity is a search for consensus, a concept that in itself can generate controversy, and that participants should also define for themselves. Commonly, the term is used in the practical sense of "Do we have an agreement everyone can live with — and that is doable?" Politicians often recognize a similarly practical but lower threshold for consensus, as in, "Do we have enough agreement to keep us out of trouble and to allow us to move forward?" The important principle is that these processes do not operate by voting or majority rule. Either the parties reach agreement (according to their definition) or they do not. If they do not, they may decide to explain how they disagree, but a majority/minority report is not a desired product of a collaborative effort.

Finally, this report employs the term "facilitator" for someone who manages a negotiated process. While facilitator and "mediator" are sometimes used interchangeably, facilitator is a more general term than mediator. Facilitators manage meetings for purposes other than negotiating agreements.

Purpose Outcomes

1. Information exchange: Improved communication and understanding; lists of concerns and/or options; better definitions of problems or issues
2. Feedback/Consultation: Opinions or suggestions for action are obtained; plans or drafts are refined
3. Agreement-seeking or decision-making: Agreements on actions or policies are reached; consensus is developed

Terms Used for Collaborative Processes

- Cooperative decision making
- Collaborative decision making
- Collaborative agreement-seeking processes
- Environmental conflict resolution
- Collaborative consensus-based forums
- Consensus building
- Consensus-based processes
- Joint decision making
- Shared decision making
- Environmental mediation
- Negotiated processes
- Multi-party negotiations
- Mediated negotiation
- Mediated approaches
- Mediated agreement-seeking processes
- Public policy mediation
- Policy dialogue
- Joint problem solving
- Facilitated consensus forum

- Facilitated joint decision making
- Collaborative agreement-seeking processes
- Facilitated negotiations
- Negotiated rulemaking
- Regulatory negotiation

Recommendations for Best Practice

The recommendations that follow are directed towards overcoming the concerns and problems that have been identified. They propose a set of best practices for use of collaborative decision-making processes.

Recommendation 1:

An Agency Should First Consider Whether a Collaborative Agreement-Seeking Approach is Appropriate

Before a government agency, department, or official decides to sponsor an agreement seeking process, it should consider its objectives and the suitability of the issues and circumstances for negotiation. In particular, before the sponsoring agency convenes a collaborative process, it is essential for the agency to determine internally its willingness to share control over the process and the resolution of the issue.

The decision to try to resolve a public issue by bringing together representatives of affected interests entails several important preliminary steps. The first is for department staff to consider whether the issues might be suitable for negotiation, and if so, whether negotiation might meet the agency's objectives and responsibilities.

There are many factors to be taken into account in making the determination: suitability of the issues, ripeness for decision, time available, political climate, and the nature of past and present controversies over the issues among the key interests. (Appendix A provides a check list of factors to be considered as part of an initial screening.)

If after an initial screening negotiation appears plausible, agency staff and management next should discuss whether they are willing to negotiate. An important consideration is the relationship of such a collaborative approach to the agency's statutory decision-making responsibility:

- What would be the role of the agency or department in the talks? Would the negotiations occur primarily among stakeholders with agency staff in the role of technical advisor? Or should the agency participate as a negotiating entity? Collaborative processes have succeeded under both options, but the agency's role should be clear.

- What form might an agreement take to be consistent with the agency's responsibility as final decision maker? For example, in some collaborations, consensus is expressed as an agreement that the agency or department translates directly into regulation or other official action. In others, the product is a consensus recommendation which the agency then considers in making a decision.

Misunderstandings between the agency and stakeholders can occur if the agency calls a meeting for one purpose, but tries to achieve another. One example is convening a process for information sharing and then expecting agreements to emerge. Another is holding meetings under the guise of consensus building, when information gathering is the sole and intended purpose, or portraying a public relations (opinion changing) initiative as a collaborative process. Misuse of collaborative processes diminishes the likelihood of their future use. The same cynicism that sometimes marks public reaction to government's efforts to solve problems can extend to improperly used collaborative processes. If agency management supports the idea of negotiation, then the next step is to begin discussing the possibility of a collaborative approach with the representatives of other stakeholders.

Recommendation 2:

Stakeholders Should Be Supportive of the Process and Willing and Able to Participate

In order for an agreement-seeking process to be credible and legitimate, representatives of all necessary parties — those involved with or affected by the potential outcomes of the process — should agree to participate, or at least not object to the process going forward. If some interests are not sufficiently organized or there is a lack resources and these problems cannot be overcome, the issue should not be addressed through collaborative decision-making.

When decisions are made in consensus-based forums, influence from non-agency parties increases. To preserve the legitimacy of the process, all interests must be adequately represented and have joint control over the shape of the process and its outcomes. Because collaborative decision-making processes have such potential power, they should be used only when people representing necessary interests can be sufficiently identified and are willing and have the resources to participate effectively. To proceed otherwise could undermine the effectiveness of collaborative processes.

Determinations about representation are easiest when stakeholders are obvious, and when they are prepared to participate effectively in the discussions. Reaching agreement may be difficult, but at least there is no question about the legitimacy of the process. When the issues at stake affect all of society, or at least a large segment of it, the identification and organization of stakeholders is much more difficult. If some interests are obvious but others are not so clear, or if interest groups are disorganized or lack sufficient power, time, or money to participate effectively, there are real dilemmas to be confronted about whether or not it is appropriate to convene a collaborative decision-making process.

The agency should specifically examine whether other agencies, departments, levels of government, and elected officials have a stake in the issues and seek their support for the process. The involvement of other governmental entities is often critical to successfully resolving the issues and implementing the agreements.

The burden of assuring that participants have the ability to participate effectively falls most heavily on the sponsoring agency or department. Training or orientation in how the process works, and support systems — expertise, information resources, or financial support to enable participants to get to meetings or to communicate with their constituencies — can be provided if acceptable to all parties as part of the process.

Recommendation 3:

Agency Leaders Should Support the Process and Ensure Sufficient Resources to Convene the Process

Agreement-seeking processes need endorsement and tangible support from actual decision makers in the sponsoring agency or department with jurisdiction and, in some cases, from the administration or the legislature. The support and often the involvement of leadership is necessary to assure other participants of the commitment of authorized decision makers who will be responsible for implementation. Their support helps sustain the process through difficult periods and enhances the probability of reaching agreements.

Sponsoring agencies also need to ensure that there are sufficient resources to support the process from its initiation through the development of an agreement. As part of the pre-negotiation assessment, sponsors need to determine how they will meet evolving resource needs and provide funds and staff to accomplish the goals of the negotiation.

In order to undertake an agreement-seeking process, agency or department leaders need to believe the issue is of high enough priority for them to lend their support and the resources needed to achieve a useful and implementable outcome. If leaders are aware of obstacles that could stand in the way of success, including political obstacles, they need to be willing to address those obstacles and help create the kinds of incentives that make it worthwhile for other stakeholders to participate.

When leaders show viable support, including consistent involvement in meetings and substantive discussions, other participants are

reassured that their investment of time and resources is worthwhile. If agency leaders do not provide support, caution should be exercised in initiating collaborative agreement-seeking processes. Without this support, the likelihood of success is greatly diminished.

The sponsoring agency needs to ensure that it is appropriately represented at the table, and is prepared to support its representative. It is also important for the sponsoring agency to be consistent, and to the extent possible, to speak with one voice throughout the process (especially at the time for decision making on key issues). Agencies should develop internal support for initiating and participating effectively in agreement-seeking processes.

Multi-party negotiations can require considerable staff time and funds. Participants may need technical assistance beyond what the agency can provide. Negotiators collectively may want the advice of outside experts. If a key party lacks sufficient staff or other resources, it may be important to provide them with organizational or technical assistance within the process. If resources cannot be secured to assist key parties to participate, either as part of the process, or by agreement or with help from the other parties, then the agency should use means other than collaborative agreement seeking to reach a decision.

Recommendation 4:

An Assessment Should Precede a Collaborative Agreement-Seeking Process

Before an agency, department, or official initiates an agreement-seeking process, it should assess whether the necessary conditions are present for negotiations to take place. Presence of the factors in recommendations 1-3 are best ascertained as part of a deliberate assessment.

There are three phases to successful agreement-seeking process. Phase 1, the assessment and preparation, or pre-negotiation phase, involves determining whether the necessary factors to ensure legitimacy are present as well as planning and preparing for the process. Phase 2 involves engaging in negotiations to try to reach agreement. Phase 3 involves implementing the agreement.

During the pre-negotiation phase, an assessment is conducted to help the agency and other participants determine whether or not to proceed. Potential participants need to agree to participate before an agency decides to pursue an agreement-seeking process. It is here at the beginning of the process when an experienced facilitator may be of greatest service. Unfortunately, agencies often call on the facilitator only after they have invited all the participants and scheduled the first meeting.

Primary factors contributing to the legitimacy of agreement-seeking processes include willingness by all key parties to participate, appropriate structure and management of the process, and existence of sufficient resources both to support the process and to develop an implementation plan. The assessment involves ascertaining whether these factors are present. A facilitator often plays an integral role at this stage, consulting with the agency to help clarify its objectives, and interviewing potential parties to ascertain their views. This phase provides an opportunity for the facilitator to develop agreements among all participants about the scope of the issues, objectives and design of the process, role of consensus as decision rule, and timelines. The assessment is thus essential for evaluating the factors in recommendations 1 through 3. While the assessment can take weeks, experience demonstrates that it is key to success and saves time overall. (See Appendix B for guidelines for conducting an assessment.)

Recommendation 5:

Ground Rules Should Be Mutually Agreed Upon by All Participants, and Not Established Solely by the Sponsoring Agency

All participants should be involved in developing and agreeing to any protocols or ground rules for the process. Once ground roles have been mutually agreed upon, the facilitator should see that they are carried out, or point out when they are not being followed and seek to remedy the problems. Any modification to ground rules should be agreed upon by all participants.

Ground rules should clearly state the purpose and expectations for the process and the end product, how the process will be con-

ducted and decisions made, the roles of the participants, including the sponsoring agency or department, the role of the facilitator, and other matters that are important to assure participants of the fairness of the process. (Appendix C contains guidelines for formulating ground rules.)

Jointly agreed-upon ground rules or protocols establish joint ownership and control over the process. Without this sense of parity and investment amongst all participants, it will be more difficult to instill confidence in the legitimacy of either the process or the outcomes. Ground rules also guide and empower the facilitator. These procedural safeguards are a straightforward mechanism to help ensure that the process is, and is perceived as, credible.

Recommendation 6:

The Sponsoring Agency Should Ensure the Facilitator's Neutrality and Accountability to all Participants

It is preferable for all parties to share in selection of the facilitator. When that is not possible, the agency or department has a responsibility to ensure that any facilitator it proposes to the participants is impartial and acceptable to all parties. The facilitator should not be asked by the sponsoring agency, or any other participant, to serve as their agent, or to act in any manner inconsistent with being accountable to all participants.

The impartiality and process management skills of a facilitator are particularly important in agreement-seeking processes. It is here that the facilitator serves as an advocate for and guardian of the underlying principles of collaborative agreement-seeking processes. (Appendix D provides a list of best practices that govern facilitator or mediator conduct in agreement-seeking processes.)

When the issue at hand is highly contentious or when participants have limited trust in other participants, a facilitator plays a particularly important role in establishing and maintaining the credibility of the process. A credible process is often either established or undermined in the early stages by such factors as how and by whom the facilitator is selected, how and by whom the participants are identified and invited, and how and by whom the process is planned and structured. Under these conditions, a facilitator for an agreement-seeking process should be independent of the sponsoring agency.

If an agency or department considers using a facilitator from within government (whether inside or outside the sponsoring agency), several questions should be asked: Is it likely participants will regard the facilitator as unbiased and capable of being equally accountable to all participants? Will the facilitator be able to act independently, or will he or she be under the direction of the agency? Will participants feel comfortable consulting or confiding in the facilitator when the going gets tough?

If an outside facilitator is to be engaged, that decision should be made early enough to enable them to conduct the pre-negotiation assessment and planning. Ideally, participants in the process should be involved in selecting and paying the facilitator. For many policy-making processes, however, it is common for the agency to pay the facilitator. Other participants need to be aware of this arrangement and comfortable that it does not jeopardize the impartiality of the facilitator.

When an agency engages a facilitator for a public policy dispute, the participants may not be involved in the selection process because of procurement requirements or because participants have not yet been identified. Under these circumstances, ground rules can include procedures to enable participants to review the facilitator's qualifications, to evaluate performance, and/or to replace the facilitator at any time during the process if participants feel that she or he is biased or ineffective.

The selection criteria for facilitators or mediators should be based on experience, skill, ability, and acceptability to participants, and not solely on costs. Lump sum or fixed-price contracts may not be the best mechanisms for hiring this kind of professional. Until the assessment is complete and a process designed, it is very difficult to predict the exact number of hours needed to work with participants toward reaching agreement. Procurement mechanisms ought to be flexible enough to allocate addi-

tional time and funds as warranted, so as to not slow down or halt the negotiation process.

Contracts should be negotiated and executed before the facilitator begins any work. Facilitators and sponsoring agencies should assume that all contracts could be read by all participants without destroying trust on any side. Contracts should assure that the facilitator has latitude to act independently of the sponsoring agency and should not constrain his or her ability to communicate with all participants.

Recommendation 7:

The Agency and Participants Should Plan for Implementation of the Agreement from the Beginning of the Process

There are two aspects of implementation: formal enactment and actual implementation. Planning for implementation is integral to the process.

One of the key reasons agencies decide to sponsor collaborative agreement-seeking processes is to improve implementation. Many agreements developed through collaborative processes are in fact a set of recommendations that need formal adoption. Implementation can be problematic if steps are not taken from the beginning to ensure linkages between the collaborative process and the mechanisms for formalizing the agreements reached.

The implementation phase of an agreement should be taken into account as part of the assessment and preparation phase. The likelihood for successful implementation is greater when those responsible for implementing the agreement are part of the process, or are kept informed about the process. The agreement itself should set out clear steps and stages for implementation: clarifying tasks, resources, deadlines, and oversight responsibilities.

Recommendation 8:

Policies Governing These Processes Should Not Be Overly Prescriptive

Policymakers should resist enacting overly prescriptive laws or rules to govern these processes. In contrast to traditional processes, consensus-based processes are effective because of their voluntary, informal, and flexible nature.

The kinds of processes encompassed by these recommendations occur within the framework of traditional policymaking practices in a representative democracy. They are adjuncts to — not replacements for — traditional practices. Collaborative approaches are based on participants' willingness to come together voluntarily to explore ways to reconcile competing and conflicting interests. This kind of exploration is not likely to happen in an atmosphere where people are required to participate or where their manner of participation has been narrowly prescribed.

Therefore, when legislation, rules and guidelines are developed concerning these processes, they should be limited to encouraging the use of collaborative agreement-seeking processes, and setting broad standards for their use. Overly prescriptive or burdensome guidelines can act as a disincentive to participation. Flexibility in designing and carrying out these processes is a factor necessary to their success. While there are situations when enabling legislation or rules can play a role in overcoming agency reluctance to initiate mediated approaches, over-codifying them will diminish the effectiveness of these flexible tools

Conclusion

These recommendations are intended to help agencies and practitioners conduct more effective collaborative agreement-seeking processes. They represent an effort to harvest lessons from the experience of facilitators and mediators over the past two decades and apply them to the challenges and barriers to success that have been observed. It is hoped that the recommendations will help lay a foundation for widespread adoption of these approaches by ensuring their quality and integrity.

Appendix A

Agency Checklist for Initial Screening to Determine Whether to Proceed

If the following factors are present, an agency can proceed toward the assessment phase:

- The issues are of high priority and a decision is needed.
- The issues are identifiable and negotiable. The issues have been sufficiently developed so that parties are reasonably informed and willing to negotiate.
- The outcome is genuinely in doubt. Conflicting interests make development or enforcement of the proposed policy difficult, if not impossible, without stakeholder involvement.
- There is enough time and resources. Time is needed for building consensus among conflicting interests, and resources are necessary to support the process.
- The political climate is favorable. Because these kinds of negotiation discussions occur in the political context, leadership support and issues of timing, e.g. elections, are critical to determining whether to go forward.
- The agency is willing to use the process.
- The interests are identifiable. It will be possible to find representatives for affected interests.

Appendix B

Guidelines for Conducting the Assessment and Preparation Phase of an Agreement-Seeking Collaborative Process

The sponsoring agency should seek the assistance of a facilitator experienced in public policy collaborative processes to conduct this phase of the process before initiating other activities. The following tasks should be accomplished:

1. The agency and facilitator should jointly evaluate whether the objectives of the sponsoring agency are compatible with and best addressed by a collaborative process.
2. Develop a statement outlining the purpose of the collaborative process, and its relationship to the sponsoring agency's decision-making process for communication to other potential parties.
3. Assess whether sufficient support for a collaborative process exists at the highest possible levels of leadership within the sponsoring agency.
4. Identify parties with an interest in the objectives and issues outlined by the sponsoring agency, and examine the relationships among the various interest groups and the agency.
5. Interview potentially affected interest groups and individuals to clarify the primary interests and concerns associated with the issues, and related informational needs.
6. Assess deadlines, resources available to support the process and the political environment associated with the issues and stakeholder groups.
7. Evaluate the influences of racial, cultural, ethnic and socio-economic diversity, particularly those that could affect the ability of interest groups to participate on equal footing.
8. Identify if assistance is needed by any interest group(s) to help prepare for or sustain involvement in the process.
9. Clarify potential obstacles to convening the process (e.g., non-negotiable differences in values, unwillingness of key stakeholders to participate, insufficient time or resources).
10. If no major obstacles are apparent, propose a design for the process including the proposed number of par-

ticipants (based on the range and number of major interest groups); the process for identifying and selecting stakeholder representatives; structure of the process (e.g., a committee with work groups); projected number and frequency of meetings; a preliminary overview of the process (e.g., identify issues, clarify interests, joint fact finding, brainstorm options); summary of resources anticipated and available to support the process; potential roles of the sponsoring agency, other participants and the facilitator; proposed meeting protocols; draft agenda for the first meeting; etc.

11. Prepare a report highlighting the results of the assessment as the basis for the sponsoring agency to decide whether or not to proceed. This may include actions by the sponsoring agency to respond explicitly to requests from other interest groups to include additional objectives or issues in the process. Under most conditions, the assessment report should be shared with the other process participants as well.

12. Pursue commitments of potential participants based on the assessment, proposed agency objectives, preliminary process design and their willingness to participate in the collaborative process in good faith.

13. If a major stakeholder group chooses not to participate, evaluate the implications of their non-participation with the sponsoring agency and other participants, recognizing that the process may not be able to proceed.

14. Allow the participants an opportunity to concur with the sponsoring agency on the person(s) selected to facilitate the process.

15. Incorporate participant responses into the proposed process design, meeting protocols and meeting agenda for initiating the next phase of the process.

Steps 12-15 may occur as part of an organizational meeting of all parties during which the parties jointly decide to proceed and plan future phases together.

After completing the assessment and preparation phase, resolving any major obstacles to the process and obtaining the commitment of the sponsoring agency and major stakeholders to proceed, conditions are appropriate for moving forward.

Appendix C

Formulating Ground Rules for Agreement-Seeking Processes

Ground rules usually address the following issues:

1. The purpose and scope of the process.

2. Participation: role of agency staff; whether participation of alternates is permissible; provision for inclusion of new parties; observers; other interested parties.

3. The roles of participants: whether all participants will have relatively equivalent status.

4. Decision rules: the meaning of consensus as well as what will happen if consensus is not reached.

5. The end product: gaining ratification; what the agency will do with the agreement; the degree of commitment by participants to abide by any agreement.

6. Understandings about participants' activities in other proceedings: whether 'good faith' participation will constrain the activities of participants or their constituents in other forums, such as a legislative session, administrative hearing or judicial proceeding.

7. Responsibilities of representatives for keeping their constituencies informed and gaining ratification of agreements reached at the negotiating table.

8. Informing those not at the table: who will be kept informed of progress and how this will happen.

9. Organization and conduct of the meetings: agenda; record keeping; responsibilities of the facilitator.

10. Selection and removal of the facilitator: the role of the participants in the selection, evaluation or payment of a mediator or facilitator; provision for replacing the facilitator if the participants feel he or she is biased or ineffective.

11. Withdrawal of a participant: If a participant withdraws, everyone left at the table should determine whether the process can go forward. If the participants want some other default procedure, they should agree to it beforehand and include it in the protocols.

12. Communications with the media: how and by whom.

13. The timetable or schedule.

14. Provision for use of caucuses.

15. Information: provisions for sharing information; confidentiality.

Appendix D

Do's and Don'ts for Facilitators or Mediators in Agreement-Seeking Processes

The following guidelines should govern facilitators or mediators as they conduct agreement-seeking processes:

1. Facilitators or mediators should not participate in any process that is misrepresented as to its purpose or that is intended to circumvent legal requirements.

2. Facilitators or mediators should serve as advocates for the principles that underlie collaborative decision-making processes, including structuring and managing the process to ensure representation and effective participation by all key stakeholders, whatever their cultural, racial, religious, or economic background.

3. Facilitators or mediators should not be advocates for any participant's point of view on any substantive issue.

4. Facilitators or mediators should protect the confidentiality of private communications with any of the participants.

5. Facilitators or mediators should gain the agreement of all participants to the ground rules for the process and to any subsequent modification to them. Once ground rules have been mutually agreed upon, facilitators or mediators should enforce them impartially.

6. Facilitators or mediators should address situations where it appears that any participant is not acting in good faith.

7. Facilitators or mediators should not be inhibited by any attempt of the sponsoring or funding agency to control the process through them, such as inhibiting their ability to communicate or manage communications with other participants. As a last resort, if the matter cannot be resolved satisfactorily, they should withdraw from the process.

8. Facilitators or mediators should advise the parties when, in their opinion, the process no longer appears to be meeting its objectives.

9. Facilitators or mediators should withdraw from the process if their continuing involvement is not acceptable to the group.

10. Facilitators or mediators should not be engaged to carry out other kinds of non-neutral activities for the sponsoring agency at the same time they are under contract to facilitate an agreement-seeking process. Facilitators or mediators should disclose when they

have continuing or frequent contractual relationships with one or more of the participants.

APPENDIX III: CHOOSING AN APPROPRIATE FACILITATOR[1]

The following steps provide a framework for participants to consider when identifying and selecting facilitators.

1. Identify what the neutral will do and the expected outcome of the process

Consider what the participants would like the neutral to do, for instance:

- Conduct an assessment and issue a report (Step 2);
- Facilitate the exchange of information and create a record of input;
- Assist with building a consensus recommendation;
- Mediate an agreement that will resolve a highly contentious dispute;
- Conduct a negotiated rule-making.

2. Decide whether EPA alone or EPA with the involved parties will choose the facilitator

3. Decide whether to use a facilitator from:

- Inside EPA;
- Inside the government;
- Outside the government.

4. Identify Selection Criteria:

Consider whether selection criteria should be developed solely by EPA or jointly with other participants. Further, consider which of the following are necessary, desirable, or not desirable in individuals or teams:

- Experience with or ability to handle a situation or process of this type, size, scope, complexity;
- Experience with similar types of substantive issues (e.g., superfund, endangered species, etc.);
- Experience, skill, or training in similar processes or contexts (e.g., rulemaking, voluntary programs);
- Education or professional experience/ background in a particular subject (e.g., certain sciences, law);
- Whether a team is desirable given the size of the group, complexity of issues or other factors. (Note that facilitators often form teams for particular work);
- A particular style/approach (evaluative/ directive to facilitative) or some personal characteristic (communication, flexibility, etc.) or references/reputation for competency, neutrality;
- Location of the practitioner (Is someone with geographic familiarity the best or someone from "outside" better? Someone who has worked in the region before? Someone who will not have to travel?);
- Any conflicts of interest.

Other selection criteria considerations:

- "Special" requirements, such as language skills and/or interpretation, technical support;
- Logistics and costs (fees, travel, other);
- Cultural differences or disabilities that will need to be acknowledged and dealt with (think of cultural differences more broadly than ethnicity, for example: professional cultures—lawyers and scientists; gender; social cultures–rural and urban; generational culture; etc.);
- General availability to take on the project.

[1]*The U.S. Institute for Environmental Conflict Resolution (www.ecr.gov) developed basic steps for choosing an appropriate neutral, from which these are derived.*

[2]*An evaluative/directive style is more appropriate for situations where participants need assertive process direction from a facilitator and where parties are more interested in getting to the substantive discussions. Facilitative styles typically engage participants in the design of the process and give equal attention to procedural and substantive concerns.*

5. Decide what specific information you can provide to facilitator candidates to describe the project, its goals, the issues, and the parties.

6. If you are working through an EPA contract such as the CPRC Conflict Prevention and Resolution Services (CPRS) Contract:

- Contact the Project Officer to discuss procedures under the contract;
- Decide whether you will accept a facilitator identified through the contract or whether you want a list of several to choose from;
- For more information on the CPRS contract, go to: *www.epa.gov/adr/ cprc_contract.html.*

7. If you have chosen to evaluate several candidates, choose candidates to interview and prepare for the interviews

- Decide whether to make a selection based on written information that is provided or based on interviews;
- Decide who will participate in the selection (e.g., workgroup, supervisors, outside parties);
- Once you have a "list" of possible candidates, identify what information the process participants want from candidates, such as a specific proposal, resume, case descriptions, additional materials, fee information, information regarding the neutral's availability for the project, and references;
- Determine how the list will be reduced — a "score/rank" and "strike" list or consensus method can be used to choose interview candidates.

In a score/rank process, each interviewer ranks each of the candidates' qualifications independently. When all candidates' qualifications have been reviewed and ranked, generally the top two or three candidates with the highest average rankings are selected to be interviewed.

When using a strike list, each interviewer is given the opportunity to eliminate a given number of candidates in order to winnow down the list.

A consensus method is often used for internal EPA discussions concerning facilitator selection. When using this method, relevant EPA staff review facilitator qualifications, evaluate them together for best fit based on the selection criteria, and reach agreement on the top candidates.

Regardless of the process chosen to reduce the pool of candidates, it should be agreed upon before interviews are conducted. Depending on the contract used to obtain facilitation services, you need to be careful about directed subcontracting. For example, when using the CPRS contract, you may (and should) identify selection criteria and even suggest names of facilitators who meet those criteria, but you may not direct the prime contractor to select a particular facilitator;

- Determine how well any particular candidate might meet the selection criteria;
- If references were provided, determine who will contact references and what questions will be asked of them;
- If you will conduct interviews, determine whether interviews will be conducted in person or by phone;
- Determine who will participate in and/or be present at the interview and how questions will be asked. As examples, questions can be asked by one person from a script, or each person can ask questions in "rounds." Determine what questions should be asked and how much time is needed/allotted. (See the list of Possible Interview Questions below.)

8. Interview Candidates and Select the Neutral

- Determine how the neutral(s) will be selected. As examples, a designated group or sub-committee can select (through a facilitated process or without facilitation), a "score/rank" and/or "strike" list can be used to choose interview candidates or assist in choosing the neutral;

- Determine how well any particular candidate meets the selection criteria and what the feedback from references indicated;

- Did the practitioner seem to have adequate process knowledge/ experience, adequate substantive knowledge/experience, a grasp of the essentials of the situation, use impartial language, ask good questions, listen well, give good advice on how to proceed, appear patient and flexible, describe a style/approach likely to succeed in the situation, seem to "resonate" with the group, and use the interview opportunity to set a collaborative tone?

Possible Practitioner Interview Questions

- Tell us about yourself and your background
- How would you describe your style, approach, and philosophy of (mediation, collaboration, public engagement)?
- What steps/tasks/approach would you take in this process?
- Please tell us about your experience or familiarity with:
  - Applicable substantive issues, e.g., endangered species, water rights;
  - Similar political, economic, social, and legal issues;
  - Working with similar parties;
  - Working with situations similar to this; how long the process took; the outcome; lessons learned;
  - Resolving disputes involving multiple governmental entities (with constituents), their attorneys, and citizens;
  - Issues in which there is public and press interest and with conducting sessions in an open/public forum;
  - Resolution of court-connected disputes;
  - Broad public controversies;
  - Economic/lifestyle/culture issues in disputes;
  - What has been your experience working in teams? What would be the advantages and disadvantages in this case? What staff, if any, will be assisting you?
- Additional questions may include:
  - How will you handle logistics? Do you have in-house capability?
  - How do you handle technical or scientific issues?
  - Are there any potential conflicts of interest?
  - Confirm or request fee and time availability information;
  - How much do think this will cost?
  - What questions do you have for us?
  - What strengths do you have that would make you the best choice for this project?

APPENDIX IV: ETHICAL STANDARDS OF PROFESSIONAL RESPONSIBILITY*

The Society of Professionals in Dispute Resolution (SPIDR) was established in 1972 to promote the peaceful resolution of disputes. Members of the Society believe that resolving disputes through negotiation, mediation, arbitration and other neutral interventions can be of great benefit to disputing parties and to society. In 1983, the SPIDR Board of Directors charged the SPIDR Ethics Committee with the task of developing ethical standards of professional responsibility. The Committee membership represented all the various sectors and disciplines within SPIDR. This document, adopted by the Board on June 2, 1986, is the result of that charge.

The purpose of this document is to promote among SPIDR Members and Associates ethical conduct and a high level of competency, including honesty, integrity, impartiality and the exercise of good judgment in their dispute resolution efforts. It is hoped that this document also will help to (1) define the profession of dispute resolution, (2) educate the public, and (3) inform users of dispute resolution services.

Application of Standards

Adherence to these ethical standards by SPIDR Members and Associates is basic to professional responsibility. SPIDR Members and Associates commit themselves to be guided in their professional conduct by these standards. The SPIDR Board of Directors or its designee is available to advise Members and Associates about the interpretation of these standards. Other neutral practitioners and organizations are welcome to follow these standards.

**These ethical standards were developed by the Society of Professionals in Dispute Resolution (now the Association for Conflict Resolution) in June 1986.*

Scope

It is recognized that SPIDR Members and Associates resolve disputes in various sectors within the disciplines of dispute resolution and have their own codes of professional conduct. These standards have been developed as general guidelines of practice for neutral disciplines represented in the SPIDR membership. Ethical considerations relevant to some, but not to all, of these disciplines are not covered by these standards.

General Responsibilities

Neutrals have a duty to the parties, to the profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests at the parties' expense.

Neutrals must act fairly in dealing with the parties, have no personal interest in the terms of the settlement, show no bias towards individuals and institutions involved in the dispute, be reasonably available as requested by the parties, and be certain that the parties are informed of the process in which they are involved.

Responsibilities to the Parties

1. ***Impartiality.*** The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all parties as opposed to a single party.

2. ***Informed Consent.*** The neutral has an obligation to assure that all parties understand the nature of the process, the procedures, the particular role of the neutral, and the parties' relationship to the neutral.

3. ***Confidentiality.*** Maintaining confidentiality is critical to the dispute resolution process. Confidentiality encourages candor, a full exploration of the issues, and a neutral's acceptability. There may be some types of cases, however, in which confidential-

ity is not protected. In such cases, the neutral must advise the parties, when appropriate in the dispute resolution process, that the confidentiality of the proceedings cannot necessarily be maintained. Except in such instances, the neutral must resist all attempts to cause him or her to reveal any information outside the process. A commitment by the neutral to hold information in confidence within the process also must be honored.

4. ***Conflict of Interest.*** The neutral must refrain from entering or continuing in any dispute if he or she believes or perceives that participation as a neutral would be a clear conflict of interest and any circumstances that may reasonably raise a question as to the neutral's impartiality. The duty to disclose is a continuing obligation throughout the process.

5. ***Promptness.*** The neutral shall exert every reasonable effort to expedite the process.

6. ***The Settlement and its Consequences.*** The dispute resolution process belongs to the parties. The neutral has no vested interest in the terms of a settlement, but must be satisfied that agreements in which he or she has participated will not impugn the integrity of the process. The neutral has a responsibility to see that the parties consider the terms of a settlement. If the neutral is concerned about the possible consequences of a proposed agreement, and the needs of the parties dictate, the neutral must inform the parties of that concern. In adhering to this standard, the neutral may find it advisable to educate the parties, to refer one or more parties for specialized advice, or to withdraw from the case. In no case, however, shall the neutral violate section 3, Confidentiality, of these standards.

Unrepresented Interests

The neutral must consider circumstances where interests are not represented in the process. The neutral has an obligation, where in his or her judgment the needs of parties dictate, to assure that such interests have been considered by the principal parties.

Use of Multiple Procedures

The use of more than one dispute resolution procedure by the same neutral involves additional responsibilities. Where the use of more than one procedure is initially contemplated, the neutral must take care at the outset to advise the parties of the nature of the procedures and the consequences of revealing information during any one procedure which the neutral may later use for decision making or share with another decision maker. Where the use of more than one procedure is contemplated after the initiation of the dispute resolution process, the neutral must explain the consequences and afford the parties an opportunity to select another neutral for the subsequent procedures. It is also incumbent upon the neutral to advise the parties of the transition from one dispute resolution process to another.

Background and Qualifications

A neutral should accept responsibility only in cases where the neutral has sufficient knowledge regarding the appropriate process and subject matter to be effective. A neutral has a responsibility to maintain and improve his or her professional skills.

Disclosure of Fees

It is the duty of the neutral to explain to the parties at the outset of the process the basis of compensation, fees, and charges, if any.

Support of the Profession

The experienced neutral should participate in the development of new practitioners in the field and engage in efforts to educate the public about the value and use of neutral dispute resolution procedures. The neutral should provide pro bono services, where appropriate.

Responsibilities of Neutrals Working on the Same Case

In the event that more than one neutral is involved in the resolution of a dispute, each has an obligation to inform the others regarding his or her entry in the case. Neutrals working with the same parties should maintain an open and professional relationship with each other.

Advertising and Solicitation

A neutral must be aware that some forms of advertising and solicitations are inappropriate and in some conflict resolution disciplines, such as labor arbitration, are impermissible. All advertising must honestly represent the services to be rendered. No claims of specific results or promises which imply favor of one side over another for the purpose of obtaining business should be made. No commissions, rebates, or other similar forms of remuneration should be given or received by a neutral for the referral of clients.

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APPENDIX V: CASE STUDIES

CASE STUDY A

Information Exchange: On-line Dialogue on Public Involvement in EPA Decisions

This case describes the use of an intensive information exchange process conducted as a dialogue over the internet. It illustrates how on-line dialogues can be a useful method of information exchange, particularly when there are many stakeholders and resources for in-person public meetings are limited.

Overview: As part of its effort to revise its 1981 public participation policy, EPA developed and released for public comment the Draft 2000 Public Involvement Policy. EPA then hosted an online dialogue on the topic of public involvement in EPA decisions to obtain public input on the Draft policy and to enable the public to address many topics related to public involvement.

Parties: 1,144 participants, 36 expert panelists, and 41 EPA hosts, from all 50 states, 2 territories, and six other countries.

Dates/Schedule: July 10 – 20, 2001.

Products/Outcomes: Over the course of the 10-day dialogue, a total of 1,261 messages were posted by 320 people, and on average, each participant read 70 messages for each message s/he posted. After an initial burst of introductions and discussions in the first three days, participation leveled off to about 40 to 60 people posting 90 to 130 messages a day. However, new voices kept emerging — one-third of the daily postings came from new participants and 29 persons posted their first message on the last two days. Most importantly, most participants reported having a positive experience; 76% were satisfied by the process and 87% thought similar dialogues should be conducted in the future. More than half of the participants (59%) thought their involvement would influence EPA policy.

EPA staff monitored the discussion to collect good ideas and negative public involvement experiences. EPA then grouped these ideas and experiences into topic categories and contracted with Information Renaissance to create web tables and a search engine for the public to perform keyword searches on topics of interest covered by the dialogue. EPA used the ideas from the dialogue to develop its Final Public Involvement Policy, which was released in May 2003.

Relevant Statute: None; however, this dialogue pertained to the revision of EPA's Public Involvement Policy, originally released in 1981, and a revised draft policy issued on December 28, 2000.

Additional Background Information: EPA has had a public involvement policy in place since 1981. In 1999, an EPA Advisory Committee recommended that EPA review its public participation requirements and practices. EPA formed a cross-Agency Workgroup in October 1999 that recommended that the Agency obtain public comment on and revise the existing 1981 policy. Specifically, comments on the 1981 policy suggested that, while the policy provided a good framework, it was not consistently implemented and warranted updating to reflect additional statutes that EPA administers, technological changes, and new public participation techniques. An Agency team developed the draft 2000 Public Involvement Policy, which was released for public comment on December 28, 2000.

Process Design: EPA opted for an online dialogue for several reasons. First, no funds were available to host regional public meetings, despite the fact that the Agency needed more public input on issues related to the draft policy. Second, EPA had prior success with online

dialogues when it hosted a Libraries Dialogue in September 2000 that explored opportunities for libraries to be a key source of environmental information for communities. Based on this experience, EPA felt confident that it could maximize participation through an online format to obtain input on the draft policy. Finally, EPA believed that the topic of public involvement in EPA decisions was a perfect subject for this dialogue format in that it had wide appeal to many audiences and because many audiences would be able to access the dialogue.

In designing the online dialogue, EPA identified several discussion topics. These included identifying and reaching the interested public and those hardest to reach; effective collaborative decision processes; required public participation (for permitting, rulemaking, etc.); technical and financial assistance; local environmental partnerships; state, tribal, and local government issues; and evaluation and accountability.

Lessons Learned: The amount of time participants devoted to the dialogue differed considerably. While a relatively small group of people (representing a wide array of interests) provided a large percentage of the total messages, they did not necessarily dominate the discussion. Those who participated less frequently often initiated topics. The most notable problem associated with this dialogue was the difficulty participants encountered in keeping up with the flood of messages and the large number of conversations going on at one time. Many people did not have time to read all the messages and relied heavily on the daily summaries.

CASE STUDY B

Information Exchange: Listening Sessions for the Total Maximum Daily Load Rulemaking

This case illustrates that listening sessions can provide an effective forum for agencies to encourage proactive and constructive engagement early in the policy development process. It further demonstrates that input obtained from listening sessions can be used to influence EPA guidance, even if the rulemaking that occasioned the information exchange is cancelled or the proposed rule withdrawn.

Overview: EEPA conducted listening sessions as a first step in developing a new rule that would require states, territories, and authorized tribes to develop Total Maximum Daily Loads (TMDL) of pollutants that a body of water can receive while still meeting water quality standards. The purpose of the listening sessions was to obtain stakeholder perspectives on key issues associated with the TMDL program and related issues in the National Pollutant Discharge Elimination System (NPDES) program.

Parties: EPA hosted the listening sessions. Parties included EPA and the U.S. Department of Agriculture (USDA); state agencies; local agencies; and environmental, agriculture, forestry, and industry groups.

Dates/Schedule: Five listening sessions that were conducted as part of that rule development were held in large cities around the country in October through December 2001 as part of the TMDL rulemaking.

Products/Outcomes: EPA held five listening sessions over a three-month period. Comments of all listening session participants were recorded in meeting summaries which were posted on EPA's website.

In March 2003, EPA withdrew the rule rather than allow it to go into effect, believing that significant changes would be required before it could represent a workable framework for an efficient and effective TMDL program. Nevertheless, EPA did issue guidance documents on TMDL assessment, listing, and reporting requirement in 2003 and 2005, respectively, that were based in part on information gathered from the listening sessions.

Relevant Statute: Section 303(d) of the Clean Water Act of 1972.

Additional Background Information: Over 40% of our nation's assessed waters still do not meet the water quality standards that states, territories and authorized tribes have set for them. An overwhelming majority of the population — 218 million people — live within 10 miles of the impaired waters. Under section 303(d) of the 1972 Clean Water Act, states, territories and authorized tribes are required to develop lists of impaired waters. These impaired waters do not meet water quality standards that states, territories and authorized tribes have set for them, even after point sources of pollution have installed the minimum required levels of pollution control technology. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs. By law, EPA must approve or disapprove lists and TMDLs. EPA issued regulations in 1985 and 1992 that implement section 303(d) of the Clean Water Act, the TMDL provisions.

Although TMDLs have been required by the CWA since 1972, until recently the authorized jurisdictions have not developed many. A federal advisory committee convened by EPA in 1998 issued recommendations for speeding up implementation of the TMDL program. EPA proposed a draft rule in 1999, followed by publication of the final rule in July 2000. However, implementation of the rule was blocked by Congress when it added a rider to an appropriations bill that prohibited EPA from spending fiscal year 2000-2001 money to implement the rule. In October

2001, EPA issued a rule extending the effective date for implementation of the July 2000 rule by 18 months to April 30, 2003. During that time, EPA planned to develop a new rule.

Process Design: Four public meetings, each focused on one of four different topics, were held in large cities around the country in October and November 2001. The four topics were 1) implementing TMDLs addressing nonpoint sources of pollution; 2) the scope and content of TMDLs; 3) EPA's role, the pace and schedule for developing TMDLs, and permitting issues before and after TMDLs are completed; and 4) listing impaired waters. A fifth session, which included all four topics, was held in Washington, DC, in December 2001.

The design of the five listening sessions involved presentations by EPA management and a listening panel composed of EPA Headquarters and Regional TMDL managers, state TMDL managers, USDA managers, and industry and environmental stakeholders who listened to the attendees' perspectives and shared their own perspectives as well. Attendees (120-300 per meeting) were seated at small tables (8-10 people) with a facilitator assigned to each table. Each table focused its discussion on questions posed on the general topic area addressed at that meeting. All comments were recorded on forms provided and collected by the facilitation team. Following the discussion periods, the facilitator asked a spokesperson from each table to highlight one issue that arose at his/her table, and then facilitated a discussion drawn from the 15-30 table spokespersons' highlighted issues. At the end of the meeting, the listening panel of EPA and stakeholder representatives responded to what they had heard. The listening panels, especially at the DC meeting, both presented their viewpoints and listened and reacted to the discussions of the participants. Table facilitators (EPA staff with experience in facilitation) assisted the table groups in working through each of the questions posed and keeping the groups on schedule. The moderation of the table report-out sessions by the facilitator were handled in a way that linked similar ideas and issues coming from the table groups.

Comments of all participants were recorded in meeting summaries which were posted on EPA's website. The meeting summaries included hundreds of comments which informed the work of the rule-writing team as it considered how to address future rulemaking efforts.

Lessons Learned: The design of the meetings maximized the amount of interaction and discussions that individual stakeholders had with each other and offered a format where each stakeholder had a number of opportunities to express its views to EPA and other stakeholders and get reactions.

Process Manager: Gail Bingham of Resolve served as the lead facilitator for this project.

CASE STUDY C

Information Exchange: Forum on Ritualistic Uses of Mercury

This case illustrates the importance of involving potentially affected populations in defining the problem and developing strategies to address the problem. It also demonstrates the importance of using an experienced cross-cultural facilitator to help frame the problem in a neutral manner and moderate sensitive discussions that pertain to issues of cultural and religious identity.

Overview: Overview: In response to repeated requests from the Mercury Poisoning Project in Brooklyn, New York, EPA's Office of Emergency and Remedial Response formed the Task Force on Ritualistic Uses of Mercury to gain a better understanding of the cultural and religious uses of mercury. This Task Force culminated in a two-day information sharing forum to discuss the cultural and religious components of this environmental and public health issue and brainstorm potential outreach and education strategies to be implemented by community-based organizations and local health departments.

Parties: Participants included Federal representatives from EPA, the Agency for Toxic Substances and Disease Registry, and the Consumer Product Safety Commission; State representatives from departments of health and environmental protection; representatives of non-governmental organizations; cultural and religious practitioners; community advocates; and academics.

Dates/Schedule: January 1999 – May 2001

Products/Outcomes: Based on information shared during the forum, the Task Force developed a series of potential approaches to reduce mercury exposure by recommending realistic and cost-effective actions that will promote health and well-being while respecting cultural traditions and community autonomy. The principle strategy suggested by the Task Force was to develop a coordinated effort between local health departments and local community organizations to inform mercury suppliers and the public about mercury's risks and encourage the use of safer alternatives; Federal agencies would play a supportive role in these activities. In addition, the Task Force suggested the development of a research agenda to better understand the health effects of indoor use of elemental mercury.

Relevant Statute: None; however any cleanup response to mercury releases on the Federal level must be pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.

Additional Background Information: In many urban areas in the United States, religious supply stores known as botanicas sell a variety of herbal remedies and religious items used in certain Latino and Afro-Cuban traditions, including Santeria, Palo, Voodoo, and Espiritismo. A number of studies have documented mercury's availability for purchase in many botanicas. Mercury is used to attract luck, love, or money; to protect against evil; or to speed the action of spells through a variety of recommended uses.

There is much that is unknown about the ritualistic uses of mercury. Little is known about how mercury is supplied to botanicas for retail sale. Scientific aspects, such as the fate and transport of mercury vapor indoors, are not well understood. No clinical data exist that confirms that people who use mercury for cultural or spiritual purposes (and people who share their living space) have elevated mercury levels. Nevertheless, mercury's volatility and long residence time indoors create a potential for direct inhalation exposures to individuals from these uses. Mercury is difficult to remove from home materials, and small amounts can lead to contamination for extended periods of time. Its widespread availability in botanicas suggests that indoor mercury exposure may be a problem for some users and their families.

However, mercury is a well-known and much-studied toxic substance. The Task Force designed its work to complement EPA's broader agenda to reduce mercury in the environment, which has focus primarily on reducing: 1) releases from coal-fired power plants; 2) consumption of methylmercury in fish; and 3) the use of mercury in schools and medical facilities.

Process Design: In an effort to ensure that all voices were heard, EPA hired a skilled facilitator experienced in cross-cultural issues to help design and moderate the forum, assisted by a team of facilitators who moderated all break-out sessions. The objectives of the forum included increasing understanding of the issues associated with ritualistic uses of mercury, developing and strengthening relationships, and working together to brainstorm workable solutions. The forum consisted of two panels: the first consisting of religious practitioners who shared their experiences and beliefs and information on how mercury is and is not incorporated into their practices; the second consisting of health educators who serve Latino and Caribbean populations. The breakout sessions focused on developing suggestions for conducting community outreach and education activities.

Lessons Learned: Discussions of religious practices often are delicate and require sensitivity and respect. Religious traditions that use elemental mercury in their practices evolved from native faiths brought to the New World by African slaves. Many of these practices were vigorously suppressed by slave owners. Given the history of religious oppression, practitioners of these religions might be sensitive to scrutiny by those in authority. Further the practice of these traditions involves issues of cultural and religious identity.

Given the central importance of religious identity and the practical challenges associated with changing personal beliefs practiced in the home, the Task Force successfully managed to create a forum that gave equal time and attention to understanding the importance and nature of the religious practices as well as associated potential health concerns. Further, the use of facilitator with experience in cross-cultural issues helped the Task Force to frame issues in a manner that was acceptable to all parties, so that none were offended or provoked by how the "problem" was defined.

Process Manager: Janet Murdock, formerly of ADR Vantage

CASE STUDY D

Recommendations Process: Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC)

This case demonstrates the importance of bringing the "right" participants to the table, having a convener of stature to serve as chair and lead the process, and assuring participants that their efforts to develop consensus-based recommendations would profoundly influence resulting policy.

Overview: This was a formally chartered FACA process aimed at developing consensus recommendations on a framework for screening and testing chemicals as to their potential to be endocrine disruptors, including how to set priorities for which chemicals should be subjected to screening, and what specific screens and tests should be used to determine endocrine disruption potential.

Parties: EPA served as the sponsor and chartering agency. The committee Chair was the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Scientists and other representatives from OPPTS and EPA's Office of Research and Development and the Office of Water participated, along with representatives of a number of other federal agencies. Other parties included representatives of state agencies, various components of the chemical industry and other industry sectors, water providers, labor and worker protection organizations, national environmental groups, environmental justice groups, public health groups, and research scientists.

Dates/Schedule: Building on a workshop conducted by EPA in April 1995, a multi-stakeholder meeting EPA conducted in May 1996, and the passage of legislation mandating the creation of an endocrine disruptor screening and testing program in August 1996, EPA formed the EDSTAC in October 1996. The EDSTAC met a total of 10 times in a variety of locations across the U.S. and issued its final consensus recommendations in a July 1998 report.

Products/Outcomes: The EDSTAC Report was developed through a deliberative FACA committee process aimed at developing consensus solutions to scientifically complex problems at both the work group and committee levels. The report contains detailed recommendations covering priority setting, screening and testing, and communications and outreach.

Relevant Statutes: The Food Quality Protection Act (FQPA), the Safe Drinking Water Act (SDWA) — both of which contained provisions mandating endocrine disruptor screening and testing — the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), and the Federal Food, Drug and Cosmetic Act (FFDCA).

Additional Background Information: A growing body of scientific research indicates that human-made industrial chemicals and pesticides may interfere with the normal functioning of human and wildlife endocrine, or hormone, systems. These endocrine disruptors may cause a variety of problems with development, behavior, and reproduction. In April 1995, EPA conducted a workshop to craft a strategy for assessing risk of endocrine disruption and to define research needs. Concerns over endocrine disruption became popularized with the publication of Our Stolen Future by Theo Colborne in March 1996. In May 1996, EPA sponsored a stakeholder meeting to further develop its response to the issue. Attendees urged the Agency to address screening and testing issues, and stressed the essential need for broad stakeholder involvement in this evolving program. Three months later, in August 1996, Congress passed the Food Quality Protection Act (FQPA) and amended the Safe Drinking Water Act (SDWA). Both of these laws contained provisions calling for the screening and testing of chemicals and pesticides for possible endocrine disrupting effects. These laws required EPA to develop a screening program by August 1998, to implement the program by August 1999, and to report to Congress on the

program's progress by August 2000. In response, EPA formed EDSTAC, charging the committee to provide advice on how to design a screening and testing program for endocrine disrupting chemicals.

Process Design: This process consisted of a multi-party public policy dialogue/negotiation that relied on consensus-based decision making. The facilitation team conducted a formal convening assessment to identify key issues and to select a balanced group of stakeholders with the appropriate expertise to serve on the committee. As a federally chartered advisory committee, all EDSTAC meetings were open to the public. A total of 10 committee meetings were held in different locations across the country. Public comment sessions were held at seven committee meetings in order for members of the public to provide input into the EDSTAC process. A wide diversity of stakeholders provided both oral and written comments via this mechanism.

The committee organized itself into four work groups: the Principles Work Group, the Priority Setting Work Group, the Screening and Testing Work Group, and the Communications and Outreach Work Group. Members of the facilitation team facilitated work groups with technical assistance from EPA. Each work group consisted of committee members, as well as other individuals who were not members of the committee but who were asked to participate in the EDSTAC process because of their particular expertise and perspective. Numerous work group meetings and conference calls were convened throughout the EDSTAC process.

The Principles Work Group developed a set of overarching principles to guide the development of a process and framework for screening and testing chemicals as to their potential to be endocrine disruptors. These principles, agreed to by the full committee, provided an important set of parameters and guidelines for negotiating the more detailed recommendations. Because EPA was participating actively at all levels of the process, it was understood by all that agreements reached in the EDSTAC process would very likely become the basis for EPA's endocrine disruptor screening and testing program.

Lessons Learned: A critical ingredient to the success of the EDSTAC was the fact that the person who had primary responsibility for developing EPA's response to the FQPA and SWDA mandate to establish a endocrine disruptor screening and testing program (i.e., the Assistant Administrator for OPPTS) was at the table and actively involved as the chair of EDSTAC. The process was therefore similar to a regulatory negotiation in that participants had firm assurance that their consensus-based recommendations would heavily influence policy. Her facilitative leadership and sustained commitment were essential to the success of the EDSTAC.

The development of a tentative consensus on a set of guiding principles proved to be extremely important in keeping the process on track. The facilitation team drafted preliminary language for the Principles Work Group, and while this was a risky step to take early in the process, and controversial with at least one well-respected participant, it ultimately helped to expedite the consensus-building process.

Every member of the EDSTAC had a level of scientific background and training that allowed them to participate effectively in the deliberations, which at times hinged on highly complex and cutting-edge scientific judgments. The involvement of research scientists alongside scientifically competent stakeholder representatives, while challenging, proved to be successful and resulted in an enduring set of core recommendations. One group of stakeholders that was not identified during the convening assessment phase and only emerged at the end of the EDSTAC process included groups representing animal welfare interests. These activists became interested in endocrine disruptors and EDSTAC due to the implications of increased testing on laboratory animals. While these groups became actively involved in the workshops and other processes that have occurred since the EDSTAC developed its recommendations, had they been identified or brought into the process from the outset, their participation may have been more productive/constructive.

Process Manager: Tim Mealey, now with the Meridian Institute, served as project director and lead facilitator while he was with The Keystone Center.

CASE STUDY E

Recommendations Process: Murray Smelter Site-Specific Facilitated Discussion

This case illustrates how use of a facilitated stakeholder process enabled parties to address simultaneously issues that often are treated as discrete problems. In this case, parties were able to cooperate in a site-specific remediation and develop a shared vision for the future of the site. This case also set a precedent for being the first Superfund site to link site redevelopment and cleanup based on an agreed future land use plan for the site.

Overview: The Murray Smelter working group was created to provide a forum for identifying and discussing cleanup and redevelopment strategies for the Murray Smelter, a 141-acre parcel of land that was listed on the National Priorities List in 1994.

Parties: EPA, the Utah Department of Environmental Protection, City of Murray, Responsible Parties (including Asarco, the operator of the smelters and former property owner), and current site property owners.

Dates/Schedule: October 1996 through June 1997.

Products/Outcomes: The nine-month process resulted in an agreed-upon remediation plan that is being implemented through a Consent Decree. This process was not subject to FACA because it was part of settlement discussions. The parties reached agreements on appropriate technical approaches and protective standards and strategies, and developed an Agreement in Principle that has served as the basis of certainty for EPA's proposed plan. In April 1988, EPA issued the Record of Decision for the site and entered into a Consent Decree that established the responsibilities for the cleanup and settled the liability issues at the site. The major portion of the cleanup work was completed in summer 2001. The majority of the site has now been purchased by Intermountain Health Care Health Services, and construction has begun there on its hospital campus. Some of the site is designated for retail use.

Relevant Statute: Comprehensive Environmental Response, Compensation, and Liability Act.

Additional Background Information: The Murray Smelter Superfund site is the former location of a large lead smelter in Murray City, Utah. The smelter operated for 77 years, from 1872 to 1949. Asarco operated it from 1902 to 1949. The lead smelting and arsenic refining operations affected the soil, ground water, surface water, and sediment at the 142-acre site and surrounding area. The Superfund site characterization report, prepared in 1996, showed elevated levels of arsenic and lead concentrations in soil and groundwater.

In April 1996, EPA and Murray City entered into an agreement that established Murray City's formal role in identifying future land uses at the site; participating in the development of cleanup options; and implementing institutional controls required by EPA's cleanup decision. The agreement had concrete benefits for all parties involved, including:

- Asarco would have a repository for contaminated soils and would receive the cooperation of current property owners during Asarco's work to clean up the site. In addition, Asarco would be recognized for its contribution toward community goals.
- The City of Murray would be able to receive higher taxes from the land and the site would become an asset to the Murray community.
- The current property owners would be removed from the threat of potential liability and would be able to sell their land to a developer at an increased value.

- The developer, who emerged during the period of discussion, would have a developable piece of property with a desirable location and would be able to receive the protection from liability available in a prospective purchaser's agreement.

Process Design: With the assistance of professional facilitators, EPA formed a Working Group in October 1996 to address redevelopment plans and discuss alternative cleanup strategies. By linking site redevelopment and cleanup, EPA was able to make decisions on cleanup requirements based on agreed future land use plans for the site. In many ways, this process was a forerunner of the Superfund Redevelopment Initiative. With commitments by all parties on how the land would be used, some mitigation and redevelopment activities could be combined. In one instance, the road-bed needed as part of the development of the site served the additional function as the repository for contaminated soils.

With a Brownfields grant from EPA in January 1997, Murray City hired a real estate consultant to advise the city and property owners about land value implications of various remedial strategies being developed and discussed in the Working Group.

Lessons Learned: This case offers several valuable lessons on how a collaborative stakeholder process can be an efficient approach to provide recommendations on the central issues on a Superfund project, such as working out the technical challenges and obtaining information about land use to serve as the foundation for the proposed remediation plan.

First, the parties fully embraced the problem-solving approach throughout the process. A traditional Superfund process might have focused on the preparation of technical documents that then were subject to public review and comment. It might also have taken a piecemeal approach by focusing on individual issues in turn. In this case, EPA used a multi-party working group process, involving all the interested parties, to identify all the issues and set the goal of meeting the collective list of interests. Although not all the parties embraced all the issues, each party agreed to explore ways to satisfy all the interests. They also agreed that the remediation issues needed to be linked with future land use issues.

Second, the process held together because the parties were willing to persist in searching for a mutually beneficial and technically acceptable solution. The parties, including their respective attorneys, established a positive working relationship early in the process and maintained a sense of humor and non-adversarial tone throughout the negotiation process. Further, the parties maintained clarity about their respective roles and respected the expertise each party contributed to addressing the issues.

Third, the use of a neutral third party to facilitate the working group discussions enabled EPA to maintain an appropriate role in the process. EPA was able to remain an advocate for its own interests and listen to the interests and concerns of others. This enabled EPA's role as a decision-maker on the remediation to remain clear.

Finally, the participation of the parties' attorneys was critical to the success of this process. The attorneys had multiple roles: 1) They advised their clients about what could and could not be done under the law; 2) They listened to their clients' (and the other parties') expressions of interests and looked for ways to meet those collective interests and 3) They reviewed the Agreement in Principle and other key documents to ensure that these were accurate and legally sound statements of their clients' commitments.

Process Managers: Louise Smart and Bernie Mayer of CDR Associates

CASE STUDY F

Recommendations Process: Federal Facilities Environmental Restoration Dialogue Committee (FFERDC)

This case demonstrates how stakeholder involvement outcomes can change over the course of a long-term process based in part on the political context and the changing level of trust among the parties. It further illustrates the importance of matching the collaboration outcome to the needs and will of the participants. In this case, the desired collaboration outcomes changed from an information exchange to consensus recommendations process.

Overview: This was a multi-year project that focused on developing consensus recommendations among a broad and diverse set of stakeholders for improving decision-making processes related to environmental restoration of contaminated federal facilities.

Parties: Federal agencies that own and manage contaminated facilities including the Departments of Agriculture, Defense, Energy, the Interior, and the National Oceanic and Atmospheric Administration; federal agencies that regulate or provide support for cleanups including EPA and the Agency for Toxic Substances and Disease Registry; state, tribal and local governmental organizations; and national, regional and local environmental, environmental justice and labor organizations.

Dates/Schedule: The process began in 1990 with informal discussions involving high level federal agency staff, congressional staff, and representatives of various environmental non-governmental organizations (NGOs). What began as the "National Policy Dialogue on Federal Facility Environmental Management" met four times between June 1991 and February 1992. The "Federal Facility Environmental Restoration Advisory Committee" (FFERDC) was formally chartered under the Federal Advisory Committee Act (FACA) in June 1992.

Products/Outcomes: The FFERDC produced two consensus reports; the first, which was referred to as an "Interim Report," was issued in February 1993. The second, the "Final Report," was issued in April 1996.

Relevant Statutes/Requirements: The Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and Federal Facility Compliance Act (FFCA). In addition, Executive Order 12898, which requires federal agencies to address environmental justice concerns in all of their programs, policies and activities.

Additional Background Information: At the time the FFERDC issued its Final Report, federal agency estimates indicated that the U.S. Government was responsible for contamination at approximately 61,000 sites nationwide, and the cost of cleaning up these sites was expected to be between $230 billion and $390 billion over the next 75 years.

In 1989 there were various public indications of support for a dialogue addressing the cleanup of federal facilities. Congressional hearings as well as letters of support from the EPA, state governors and attorneys general indicated that the issue needed to be addressed in a public forum. In late 1990, the Keystone Center conducted an informal convening assessment on the issue which led to the formation of a small ad hoc planning group consisting of representatives of several federal agencies, state agencies and governmental associations, national environmental groups, and others. The planning group met in 1991 to give the Keystone Center advice as to whether and how to proceed with the proposed dialogue. The planning group agreed that there was a need for a dialogue. However, due to the lack of trust among the parties, the planning group suggested that the initial objective of the dialogue should be to exchange information and perspectives on federal facility environmental management and priority-setting issues rather than the development of consensus agreements on these issues.

The National Policy Dialogue on Federal Facility Environmental Management met four times in 1991 and early 1992 and by the third meeting participants agreed that if they were to continue meeting, they should adopt an objective of developing consensus policy recommendations on how to improve upon the federal facility environmental restoration decision-making process.

In response, representatives of the EPA took steps to formally charter an advisory committee, which became known as the FFERDC. The FACA charter called for the FFERDC to "develop consensus principles and recommendations aimed at improving the process by which federal facility cleanup decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders."

Process Design: The process began as an informal information exchange dialogue and evolved into a consensus-based dialogue, formally chartered under FACA. The ground rules allowed Committee members to participate as individuals rather than official representatives or spokespersons of their agencies or organizations. The implication of this was that upon issuance of the Committee's consensus recommendations, additional formal processes were needed to ensure formal adoption within federal and state agencies. Consensus was defined as no dissent.

The FFERDC met approximately four times per year in meetings that were open to the public at a number of locations across the country. In addition, the Committee formed two work groups. The first work group addressed the need to establish a system for setting priorities within the context of the federal budget process and the state/federal regulatory oversight process for environmental clean-ups. The second work group addressed the question of how to improve the nature and quality of stakeholder involvement in the federal facility environmental restoration decision-making process. While the work group meetings were not open to the public, draft recommendations of the work groups were forwarded to the full Committee for consideration at open public meetings.

As the Committee was preparing to issue its first set of consensus recommendations during the fall of 1992, the outcome of the presidential elections resulted in a decision to refer to the recommendations as "interim" to help ensure their full consideration by a new Administration.

After the Committee issued its Interim Report in early 1993, the Committee held eight regional briefings to discuss the report's contents and solicit feedback on the recommendations. During these regional briefings, concerns were voiced that the views of local government and the environmental justice community had not been adequately included in the committee's interim recommendations. In response, FFERDC added new members to engage in its next phase of work, bringing the committee's total membership to 50 persons.

Upon recommencing its formal deliberations in 1994, the Committee once again met on a quarterly basis. At the outset of this second phase of work, the Committee chose to develop a set of overarching "Principles for Environmental Cleanup of Federal Facilities." These 14 principles, which were published in April 1995, were intended to provide the basis for making federal facility cleanup decisions and were meant to apply to all persons and institutions involved in the process. The Committee reconvened its priority setting and stakeholder involvement work groups and, through an intensive process of dialogue and negotiation, issued a Final Report in April 1996.

Outcomes and Implementation: In addition to the guiding principles, this report contained detailed recommendations on community involvement, the establishment of site-specific advisory boards, refinements of its 1993 interim recommendations on funding and priority setting, and on building capacity of various stakeholders to more effectively participate in the decision-making process.

A major outcome of the FFERDC was the establishment of advisory boards to provide affected stakeholders with a greater role in the decisions that affect the health **and environ**ment of their community. The concept of establishing site-specific advisory boards (SSABs) was quickly implemented by the Department of Energy, which established SSABs at all of its major nuclear weapons production facilities, and by the Department of Defense, which established over 200 Restoration Advisory Boards (RABs). In addition, the FFERDC's recommendations on funding and priority setting greatly impacted the manner in which such decisions are made by increasing the transparency and reducing the level of controversy of interrelated budget and regulatory oversight decisions.

Lessons Learned: The up-front convening assessment and informal information exchange dialogue process were important in educating the parties, building trust, improving working relationships, and creating the political will for establishing the FFERDC and seeing it through to its completion.

The eight regional briefings were an effective way to test the interim recommendations with a broader set of affected stakeholders. The briefings also provided an opportunity for FFERDC to make adjustments to its stakeholder involvement process and the substance of its recommendations. The inclusion of state and local government officials and environmental and environmental justice and local citizen representatives made the final outcome much more grounded in local conditions at the wide variety of facilities that were affected by the Committee's recommendations.

The combination of open public meetings at the committee level and private sessions at the work group level allowed for progress to be made in an open and transparent manner.

Conducting Committee meetings at various locations across the country allowed for a large number of people to provide input to the Committee and to develop a sense of trust and ownership in the process.

As noted above, this process spanned two presidential administrations. Much of the success of FFERDC was the result of a sustained commitment and excellent facilitative leadership on the part of two senior EPA officials, as well as others from the other participating federal agencies. Without such a sustained and high-level commitment it would not have been possible to initiate, let alone complete, this intensive six-year process.

Process Manager: Tim Mealey, now with the Meridian Institute, served as project director and lead facilitator while he was with The Keystone Center.

CASE STUDY G

Agreement Process: Negotiated Rulemaking on Performance Standards for Woodburning Stoves

This case illustrates how the use of a negotiated rulemaking process helped EPA to achieve strong compliance from a regulated entity through building a cooperative relationship and committing to compliance assistance.

Overview: EPA chartered a group under the Federal Advisory Committee Act (FACA) to negotiate the development of a proposed rule setting New Source Performance Standards (NSPS) for residential woodburning stoves.

Parties: EPA, woodburning stove manufacturers, state air pollution control and energy agencies; consumer groups, and environmental groups.

Products/Outcomes: EPA published the proposed rule on February 18, 1987, and promulgated final regulations on April 26, 1988. No litigation has ensued.

Relevant Statute: Section 111 of the Clean Air Act.

Additional Background Information: At the time, air emissions from woodstoves posed a significant and growing problem, and new control technologies had the ability to greatly reduce emissions and were commercially available. States were in the process of developing a patchwork of regulations and laws, and the woodstove industry was interested in achieving some consistency in order to reduce the costs of designing and producing stoves for multiple regulatory regimes. On August 2, 1985, EPA announced plans to develop New Source Performance Standards for Residential Wood Combustion Units.

Process Design: In February 1986, EPA chartered an Advisory Committee to negotiate new performance standards. Membership included a balanced mix of woodstove and catalyst manufacturers, public interest groups, and state officials. The first Committee meeting was held in March 1986, and the Committee completed negotiations as scheduled in August 1986, with agreement on the core issues. It appointed a drafting workgroup to fashion preamble and regulatory language. The Committee as a whole ratified the workgroup's proposed regulatory language, and EPA published the proposed rule on February 18, 1987. EPA received over 50 public comments.

Lessons Learned: One of the most important lessons from this effort concerns how negotiated rulemaking affects compliance. When the Agency develops a rule through a negotiated rulemaking procedure, in some sense it is declaring its intent to cooperate with the signatories to a negotiated agreement.

As a result of the negotiated rulemaking regarding the NSPS rule for new residential wood burners, EPA established a long-standing relationship with the wood heater industry and the Hearth Products Association (HPA). EPA has maintained a good relationship with HPA and many of the affected industries by providing compliance advice, guidance and various written materials. It has also met with HPA to promote a high level of compliance through various means including written materials which are then passed along to their members.

The cooperative relationship with the wood heater industry has worked well for EPA and has resulted in a high level of voluntary compliance. In programs such as this where there is a high degree of EPA-industry cooperation and a long history of successful dispute resolution, the introduction of a third party mediator and use of ADR processes may not be appropriate or needed. In the past, when enforcement of the wood heater NSPS rule has been necessary, the

rule violations have been quickly resolved by the affected entity and the appropriate penalties have been paid-in-full.

Process Manager: Phil Harter

CASE STUDY H

Agreement Process: Washington Navy Yard Permit Mediation

This case illustrates how in appropriate circumstances a formal mediation process can be used to identify shared interests and reach agreement between disputing parties. It further demonstrates the potential use of collaborative processes for reaching agreement on permit requirements.

Overview: This was a formal mediation process to address a dispute that arose when the U.S. Navy and the Anacostia Watershed Society separately filed appeals to the EPA Environmental Appeals Board regarding permit modifications for the control of stormwater runoff.

Parties: The parties included EPA Region 3, the U.S. Navy, the Anacostia Watershed Society (AWS), and the District of Columbia Department of Health, which participated as an interested party.

Dates/Schedule: The mediation took place between August and October 2000, and included face-to-face discussions, telephone conversations, and individual phone calls.

Products/Outcomes: The parties to the mediation reached agreement, first in the form of a draft Principles of Agreement that memorialized the terms of the settlement. EPA's Environmental Appeals Board then prepared and circulated a new order that was agreed to by the parties. The parties did not contest the Appeals Board Order, thereby dismissing the Navy and AWS appeals. The Order allowed the parties to negotiate details of the permit and at the same time remove the appeals from the Appeals Board docket, thus eliminating the time constraints required under that process. A permit was agreed to by the parties and is presently in effect.

Relevant Statutes: Clean Water Act; Title IV of the Federal Water Pollution Control Act Amendments of 1972 — National Pollutant Discharge Elimination Systems

Additional Background Information: The Washington Navy Yard is a federal facility located in Washington, DC, directly on the Anacostia River. In 2000, both the Navy Yard and AWS filed separate appeals of the Navy Yard's final storm water permit. EPA Region 3 had issued the permit to the Navy Yard in 1996, and since that time the Navy and the EPA had been negotiating the requirements and contents of the NPDES storm water permit for the Navy Yard. The permit containing effluent limits for copper, oil and grease, fecal coliform bacteria, total suspended solids, and polychlorinated biphenyls (PCBs).

The Navy argued that the effluent limitations were contrary to law and arbitrary and capricious, and that the monitoring requirements were unnecessarily burdensome. The AWS sought stricter monitoring requirements, effluent limitations for additional pollutants, and a no-discharge policy for PCBs. The District of Columbia, while not a party to the appeals and thus not strictly a party to the mediation, was a key player in the mediated negotiations because it had the responsibility to certify any final permit issued by the EPA.

Process Design: The ADR technique used for this process was a formal mediation. No formal conflict assessment was undertaken prior to beginning the process. The mediator convened and conducted the process as a series of individual and joint sessions among all of the parties. Using dispute resolution best practices, the mediator effectively helped the parties find an agreeable solution. Additionally, he was able to help parties forge new working relationships and to establish better ways for them to engage in future communications.

Approximately one-half of the sessions were joint meetings; the remainder included meetings with individuals, parties, or small groups (caucuses), depending on the needs of the parties. Meetings included face-to-face discussions, telephone conferences, and individual phone calls. Approximately one-third of the time was spent in joint formal mediation sessions, and approximately two-thirds of the mediator's time was spent in caucuses or phone conferences.

Lessons Learned: EPA successfully used an agreement process to reach consensus on the content of the permit and then used the settlement as the basis of a new permit. With the assistance of a mediator, the parties were able to identify their interests clearly and reach common ground on the permit conditions. In addition, this case offers important lessons regarding party representation in the process and "balance" among parties in the process. With respect to party representation, the role that one of AWS's representatives would play in the mediation process was not clearly defined. The lack of role clarity eventaully contributed to that individual's decision to terminate representation of AWS and ultimately appeal the permit, agreed to by the mediating parties, as a representative of another interested organization. To avoid that lack of clarity and the resulting appellate challenge to the negotiated permit terms, it would have been useful to spend additional time verifying roles and negotiation authority prior to convening the parties. This would logically have been an outgrowth of a conflict assessment prior to the initiation of the mediation, had it been conducted. (Although a formal conflict assessment was not conducted, the mediator did review materials and have separate telephone meetings with the parties prior to beginning the process.)

Second, the perception on the part of one participant of an "imbalance" between the negotiating groups could have been addressed by establishing up front who would be present from each organization/agency, and what their roles would be in the context of the mediation. This information should have been shared with all parties prior to the mediation to allow everyone the opportunity to prepare better for the negotiations.

Process Manager: John Bickerman

CASE STUDY I

Agreement Process: McKin Superfund Site, Grey, Maine

This case illustrates how a neutral mediator can help overcome significant levels of distrust and technical uncertainty to reach an agreement that satisfies all parties. In this case, mediation of an enforcement action was expanded to include many of the parties affected by contamination from the Site.

Overview: EPA used external neutral third parties first to conduct a conflict assessment to identify the parties and issues and recommend a process for negotiation. External neutrals were then used to convene a multi-party negotiation. EPA then engaged an internal neutral to co-mediate with the external neutrals, which resulted in a successful negotiation that satisfied all the parties.

Parties: The parties consisted of large, national potentially responsible parties (PRPs); a number of small PRPs; the Town of Grey; the Grey Water District; the Maine Department of Environmental Protection; property owners whose holdings were affected by the Site and proposed remediation efforts; individual citizens in the area concerned about continuing pollution or the site's effect on property values; an environmental group concerned with conditions in the Royal River; and an extremely small number of local residents who believed that the Site had affected their health.

Dates/Schedule: June 1997 through January 2001

Products/Outcomes: The mediation resulted in an agreement among all parties on the remedy and its implementation. EPA incorporated the agreement into a Consent Decree and Remedy Decision in 2001.

Relevant Statute: Comprehensive Environmental Response, Compensation and Liability Act.

Additional Background Information: The McKin Company operated in Grey, Maine, as a tank cleaning and waste transfer facility from 1965 to 1977. In 1977, contamination of 16 local wells caused the Town to close the site and issue a clean-up order to the McKin Company. EPA listed the Site on the National Priorities List in September 1983.

The parties entered into a Consent Decree in 1988, one provision of which required the PRPs to install and operate a pump and treat system to clean a contaminated groundwater plume. After five years of operation, the PRPs concluded that the system was doing little to treat the plume and received permission to shut it off. They requested a Technical Impracticability waiver, which engendered a series of conflicting technical studies, rancorous negotiations, and threats of litigation. In addition, many local citizens had concluded that they no longer wished to have the Town associated with a Superfund Site.

Process Design: EPA first hired a neutral to conduct a situation assessment to determine if the parties were willing to participate in mediation. Through this assessment, the neutral identified the issues to be negotiated, the parties to be included, and the credentials and experience that an acceptable neutral should possess. Following this assessment, EPA formally offered mediation services to the parties. At one point in the process, the parties scheduled a crucial meeting at a time that only one member of the mediation team could attend; however, the parties willingly accepted the participation of the EPA Region 1 ADR Coordinator as a co-mediator.

Lessons Learned: The key lesson is that even in a highly contentious situation, parties can reach an agreement that satisfies all interests. However, this requires a thorough situation assessment to determine the parties to be included and the issues to be discussed, and the

assistance of an outside neutral to structure and facilitate difficult conversations. In this case, the parties agreed to a natural attenuation remedy for the groundwater plume, thus achieving the PRPs' goal of not resuming the expensive pump and treat system. The Town passed a zoning ordinance to satisfy its interest in site institutional controls. The Friends of the Royal River were able to receive support for enhancement of the river, and the affected property owners were compensated by the PRPs.

The other lesson is that in the right circumstances, and with the right person, EPA personnel can be accepted as mediators by the parties, even in situations in which the agency is in the middle of a protracted dispute with a regulated entity or a citizens group.

Process Manager: Susan Podziba of Susan Poziba & Associates for the Situation Assessment; Michael Lewis/Linda Singer of JAMS/ADR as the external mediators; and Elissa Tonkin, EPA Region 1 ADR Coordinator and co-mediator

CASE STUDY J

Agreement Process: Negotiated Rulemaking to Develop the All Appropriate Inquiry Standard Required under the Small Business Liability Relief and Brownfields Revitalization Act

This case illustrates how the use of a negotiated rulemaking process helped EPA develop proposed federal standards and practices for conducting all appropriate inquiries (AAIs) by bringing together major stakeholders to discuss, negotiate, and reach consensus on the text of the proposed rule. It further illustrates the importance of conducting a convening assessment to determine the feasibility of, and make recommendations regarding, the rulemaking process.

Overview: EPA chartered a 25-member group under the Federal Advisory Committee Act (FACA) to develop a proposed rule establishing federal standards and practices for conducting the "all appropriate inquiries," as required under CERCLA, as amended under the Small Business Liability Relief and Brownfields Revitalization Act.

Parties: The parties included EPA's Office of Solid Waste and Emergency Response (OSWER); environmental interest groups; environmental justice groups; state, tribal, and local governments; real estate interests; the banking community; and environmental professionals.

Dates/Schedule: The AAI Negotiated Rulemaking Process began in August 2002, with the Convening Assessment, and was completed in December 2003 when the Committee reached final consensus on all issues.

Products/Outcomes: The ultimate product and outcome of the negotiated rulemaking process was the AAI Negotiated Rulemaking Advisory Committee's consensus document, which contains recommended proposed regulatory language. EPA intends to develop and publish its proposed rule in the Federal Register based upon this consensus language.

Relevant Statutes: Section 101(35)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended under the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Pub. L. No. 107-118).

Additional Background Information: The Small Business Liability Relief and Brownfields Revitalization Act (the "Brownfields Amendments" to CERCLA) amends CERCLA by providing protections from Superfund liability for landowners who qualify as contiguous property owners, bona fide prospective purchasers, or innocent landowners. One criterion specified in the statute for obtaining the liability protections is that landowners must conduct all appropriate inquiries (due diligence) to determine past uses and ownerships of a property prior to acquiring the property. In the Brownfields Amendments, Congress mandated that EPA develop federal standards and practices for conducting all appropriate inquiries.

Process Design: EPA contracted with a neutral third party to conduct a convening assessment, which was initiated in August 2002. The convener conducted interviews with about 60 interested parties to determine the feasibility of a negotiated rulemaking. Based on those interviews, the convener developed a Convening Assessment Report, which was finalized in December 2002. The report, which was based on an evaluation of the information derived from the interviews, recommended to EPA that is was feasible to proceed with a negotiated rulemaking process. EPA then published a Federal Register Notice announcing its Intent to Negotiate the Proposed Rule on All Appropriate Inquiries on March 6, 2003. On April 7, 2003, EPA published a Federal Register Notice establishing the All Appropriate Inquiry Negotiated Rulemaking Advisory Committee and announcing its first meeting. EPA held a public meeting on April 15, 2003, to accept comment on the purpose and membership of the Committee.

The first meeting of the All Appropriate Inquiry Negotiated Rulemaking Advisory Committee was held on April 29-30, 2003. The negotiations were conducted over six multiple-day meetings during the eight-month period between April and November 2003. Each meeting followed a formal agenda, was open to the public, and provided opportunities for public questions and comments. A series of work group conference calls occurred between meetings to continue discussion of issues, and throughout the process, work groups were formed to discuss issues that required more time than could be made available during Committee meetings. The Committee reached final consensus on all issues under discussion on November 14, 2003. On December 18, 2003, the Committee approved its November 12-14 meeting summary, which documented the Committee's final consensus on all issues.

Lessons Learned: EPA successfully used a negotiated rulemaking process to develop an AAI standard. A number of the components of the negotiated rulemaking process contributed to the success of the overall effort.

The convening assessment proved to be a critically important tool for determining the feasibility of a negotiated rulemaking process. It provided a clear articulation of the issues, dynamics, and perspectives that would become the focus of the committee discussions. It also helped EPA identify and name members to the committee with a real stake in the issues, as opposed to those with limited interests.

Establishing ground rules allowed the Committee to develop a common set of understandings concerning their governance—including their goals and deadline, decision-making rules, the responsibilities of the negotiators and facilitators, status of the agreement, and the relationship between member participation and final consensus. Establishment of a deadline proved to be particularly crucial to reaching final consensus; it was instrumental in achieving agreement and closure on the most difficult of decisions.

Balanced and knowledgeable Committee member participation and strong support from EPA management were crucial to the efforts success. The 25-member negotiated rulemaking committee represented a balance of interests, ensuring that the issues of concerns to major stakeholders were raised and addressed. Committee members were knowledgeable in the subject area, and committed to serving—with virtually perfect attendance at all meetings by principal members and/or their alternates. EPA senior management was supportive of the effort, and provided significant staff resources to support the committee, including a negotiator, regulatory analyst, a legal advisor, senior staff, administrators, and technical and process experts.

Process Manager: Susan Podziba & Associates provided convening and facilitation services for the negotiated rulemaking process.

APPENDIX VI: SELECTED STAKEHOLDER INVOLVEMENT REFERENCES

Selected Stakeholder Involvement References

EPA Intranet Sites

- intranet.epa.gov/
- intranet.epa.gov/reg-dev

EPA Public Involvement-related Links

- General information on public involvement *(www.epa.gov/publicinvolvement)*
- EPA's Public Involvement Policy *(www.epa.gov/publicinvolvement/policy2003/index.htm)*
- The following documents can be found at this link: *(www.epa.gov/publicinvolvement/involvework.htm)*
- Model Plan for Public Participation
- Pubic Involvement in Environmental Permits
- Engaging the American People
- Resource Guides
- Public Involvement in EPA Decisions
- EPA's Alternative Dispute Resolution Link *(www.epa.gov/adr)*
- Public Involvement in Environmental Permits – A Reference Guide (EPA-500-R-00-007, August 2000) *(www.epa.gov/permits/publicguide.pdf)*
- Final Supplemental Environmental Projects Policy *(www.epa.gov/compliance/resources/policies/civil/seps/fnlsup-hermn-mem.pdf)*

EPA Superfund Community Involvement Links

- General information *(www.epa.gov/superfund/community/involvement.htm)*
- Superfund Community Involvement Handbook *(www.epa.gov/superfund/tools/cag/pdfs/ci_handbook.pdf)*
- Early and Meaningful Community Involvement *(www.epa.gov/superfund/policy/pdfs/early.pdf)*
- Introduction to Community Involvement *(www.epa.gov/superfund/contacts/sfhotlne/comminv.pdf)*

FACA Links

- *http://www.gsa.gov/committeemanagement*
- *www.epa.gov/ocempage/faca/index.html*

Links to Outside Public Involvement Resources

- International Association for Public Participation *(www.iap2.org)*
- Institute for Participatory Management & Planning *(www.ipmp.com)*

Books and Handbooks

Beierle, Thomas C., and Cayford, Jerry. (2001). Evaluating Dispute Resolution as an Approach to Public Participation. Resources for the Future.

Bleiker, Hans and Annemarie. (2000). Citizen Participation Handbook for Public Officials and Other Professional Serving the Public. Institute for Participatory Management & Planning.

Carpenter, Susan L., and Kennedy, W.J.D. (1988). Managing Public Disputes. Jossey-Bass.

Dukes, E. Franklin, and Firehock, Karen. (2001). Collaboration: A Guide for Environmental Advocates. Institute for Environmental Negotiation, The Wilderness Society, National Audubon Society.

The Enlibra Toolkit: Principles and Tools for Environmental Management, First Edition. The OQUIRRAH Institute.