BETTER DECISIONS

THROUGH

CONSULTATION AND COLLABORATION

ACKNOWLEDGMENTS

Authors

Deborah Dalton is a Senior Conflict Management Specialist at U.S. EPA's Conflict Prevention and Resolution Center. Ms. Dalton advises EPA on public involvement and dispute resolution processes for developing rules, policies, enforcement actions and other environmental decisions. She has assisted in the design and conduct of more than twenty regulatory negotiations and policy dialogues at EPA and other federal agencies. Ms. Dalton is the project officer for EPA's national contract which provides neutral facilitators and mediators for public involvement and dispute resolution activities nationwide.

Philip J. Harter is the Earl F. Nelson Professor of Law and a member of the Center for the Study of Dispute Resolution at the University of Missouri – Columbia. Mr. Harter was previously Director of the Program on Consensus, Democracy and Governance at the Vermont Law School, a program funded by the Hewlett Foundation, and Visiting Associate Professor of Law. He has been a pioneer in the theory and practice of the use of consensus and other forms of dispute resolution involving government agencies.

Contributors

Stephen Garon, Ph.D, is a Senior Public Involvement and Dispute Resolution Professional with SRA International. Dr. Garon has facilitated numerous policy, planning, public involvement, and/or site-specific dialogues for U.S. EPA and other federal clients; performed public involvement and dispute resolution research, including the first Agency-wide evaluation of EPA's public involvement practices; and managed a roster of neutrals for EPA.

Suzanne Orenstein has been a public policy mediator and facilitator for environmental disputes for over twenty years. Ms. Orenstein has mediated over 40 major cases, conducted more than fifty training courses, and managed rosters of mediators. She has written about the intersection of public involvement and conflict resolution, as well as the application of environmental conflict resolution strategies to development disputes, endangered species, and water conflicts. Ms. Orenstein is currently in private practice in Massachusetts.

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A. Purpose of the Handbook

Involving the public in government decisionmaking makes sense for three key reasons:

- The dialogue can result in deeper and more practical insights into the issues than if the interested parties acted individually.

- Those affected are far more likely to understand and accept decisions when their concerns have been acknowledged and addressed.

- Citizen participation in government programs is a democratic ideal.

But how do you know what type of stakeholder involvement process is appropriate for your particular decision? What steps are involved in conducting such a process? How do you produce a high-quality, effective result within the time and resources you have available? This guide will help you answer these questions.

The Conflict Prevention and Resolution Center developed this manual to assist EPA managers and staff who are developing or managing policies, plans, regulations, or programs at the national, regional, or local levels to achieve EPA's Public Involvement Policy goals. While not specifically aimed at facility-level permitting, enforcement, or remediation, many lessons are transferable to these situations.

This document is a resource guide on public involvement best practices and strategies for EPA staff who are tasked with designing and/or implementing public involvement processes for various EPA activities. The discussions and advice in this document are intended solely as guidance. As indicated by the use of nonmandatory language such as "may" and "should," it offers recommendations and suggestions for EPA staff. This document does not substitute for any statutory authorities or regulations. This document is not an EPA regulation and therefore cannot impose legally binding requirements on EPA, states or the regulated community. EPA retains the discretion to adopt approaches that differ from this guidance. Interested parties are free to raise questions about this guidance and the appropriateness of applying it in a particular situation. EPA may change this document in the future, as appropriate.

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"On a personal level, I learned that when all parties join in on the dialogue, a better answer comes forth. It really is true that two (or more) heads are better than one."

— Stuart McMichael, Custom Print Inc., Common Sense Initiative

Stakeholder involvement is a process, not just an event.

Public, Stakeholders, Affected Party:

Public: is used in the broadest sense, meaning the general population of the United States. Many segments of the public may have a particular interest or may be affected by Agency programs and decisions

Stakeholders: refers to individuals or organizations who have a strong interest in the Agency's work and policies

Affected Party: denotes individuals or groups who will be impacted by EPA policies or decisions

Who are the Stakeholders?

Stakeholders have a direct or indirect interest in your decisions. Stakeholders include the following groups:

- People who directly implement the action — **the implementers or the regulated community**

- People who are affected positively by the results of the implementation — **the beneficiaries**

- People who might be adversely affected by the proposed action — **the neighbors**

- People who will provide goods or services to the implementing party — **the vendors**

- Agencies that share regulatory authority with EPA — **state, tribal, and local governments**

- People who care about the issue from a policy perspective — **the advocates**

This manual focuses on the preparation for involving stakeholders in decision-making processes because, in our experience, building a strong foundation at the outset ensures a more productive and efficient outcome. Indeed, a 2008 National Academy of Sciences study concluded that stakeholder involvement processes can improve the quality of policies and help them become implemented. "Public participation should be fully incorporated into environmental assessment and decision-making processes, and it should be recognized by government agencies and other organizers of the processes as a requisite of effective action, not merely a formal procedural requirement." Involving stakeholders takes time and planning to produce meaningful results. Without this commitment, you may waste time and money and the stakeholders may end up more alienated than if you had not consulted them at all. **A stakeholder involvement process is *not* an end in itself: it is a means to a better, more widely accepted decision.**

B. EPA's Public Involvement Policy

Many of the stakeholder involvement suggestions made in this manual are embodied in EPA's Public Involvement Policy. This policy updates and strengthens the first Agency-wide Public Participation Policy, which was published in 1981.

The Public Involvement Policy's goals are to improve the effectiveness of EPA's public involvement activities, ensure well-informed decisions, and encourage innovative methods for involving the public. The Policy states that for EPA to achieve its mission to protect human health and the environment, it needs to integrate "the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process. Public involvement also promotes democracy and civic engagement, and builds public trust in government." The fundamental premise of the Policy is that EPA should continue to provide ways for meaningful public involvement in all its programs, and consistently look for new opportunities to enhance public input. This means that EPA staff should seek input reflecting all points of view and carefully consider this input when making decisions; and work to create decision-making processes that are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decisionmaking. Such openness to the public will increase EPA's credibility, improve the Agency's decision-making processes, and inform its final decisions.

The Policy's core elements include the following seven basic steps for effective public involvement:

Step 1: plan and budget for public involvement activities;

Step 2: identify the interested and affected public;

Step 3: consider providing technical or financial assistance to the public to facilitate involvement;

Step 4: provide information and outreach to the public;

Step 5: conduct public consultation and involvement activities;

Step 6: review and use input, and provide feedback to the public; and

Step 7: evaluate public involvement activities.

These steps cover all types of public involvement.

The remainder of this chapter explains the value of stakeholder involvement and introduces you to five basic outcomes: outreach, information exchanges, recommendations, agreements, and stakeholder action. The remaining chapters are organized according to a five-stage process for collaborative stakeholder involvement:

Stage 1: Conducting a Preliminary Assessment, where you consider your goals and the needs of internal stakeholders (EPA staff and managers who have an interest in your program or decision) before making a preliminary decision about the type of stakeholder involvement process you will use.

Stage 2: Performing an External Assessment/ Convening, where you identify stakeholders and obtain feedback from stakeholders about your preliminary process selection.

Stage 3: Designing the Process, where you revise your original proposal and design your stakeholder involvement process.

Stage 4: Conducting the Process, where you implement your stakeholder involvement design and use what you learn in your decisionmaking.

Stakeholder Involvement References

Superfund Community Involvement:
www.epa.gov/superfund/ community/index.htm

EPA's Public Involvement Policy:
www.epa.gov/publicinvolvement/ policy2003/index.htm

Framework for Implementing EPA's Public Implementation Policy:
www.epa.gov/publicinvolvement/ policy2003/framework.pdf

These resources can be found at *www.epa.gov/publicinvolvement/ involvework.htm*

- Model Plan for Public Participation
- Public Involvement in Environmental Permits
- Engaging the American People
- Resource Guides
- Public Involvement in EPA Decisions

"(Inclusion of stakeholders) is a better approach all around than the traditional regulations generated and directed by EPA and States alone. The only disadvantage to involvement is the time investment required and the costs for stakeholders to participate."

— Dan Bartosh,
Texas Instruments
Common Sense Initiative

"When I got the stakeholders in and began planning all of the different things we were going to do, I was really upset because this was going to involve an awful lot of time and resources just to hear from the same people we hear from all the time… by the time I got done with this, I realized how important it was, that there was a lot of benefit to it and that, yes, it affected how we made our decision and the decision that we made … All you've done is expand your team … from a team of EPA staff and you've made it a full team of the scientific community, of interested partners who are going to be affected by your decision, and that means you can do a better job."

— Phil Hutton, EPA,
BT Corn and Cotton Reassessment

"Before participating in CSI, I viewed a permit as a simple, bilateral agreement between the company and the Agency. I now see it as an opportunity to involve local affected people so they can be supportive of our plans for improving the quality of life in the affected community."

— Michael Peters, Environmental Structural Metals, Inc.,
Common Sense Initiative

Stage 5: Providing Feedback and Evaluating the Process, where you report back to stakeholders and evaluate lessons learned about the process.

The appendices provide case studies and additional information to assist you through these stages.

C. Involving the Public Helps You

Government decisions are far more likely to achieve their goals, be implemented in a timely fashion, and be more cost-effective if they address the concerns of the people affected by them. No amount of understanding that you and your contractors have of an issue can substitute for having stakeholders explain their concerns, wants, and needs in their own voices. Being open to their input is critical. Oftentimes, affected parties will suggest approaches that fulfill the Agency's needs in a better, more cost-effective manner than if you had made the decision without their input.

Public decisions should be based on sound facts. EPA has extraordinary resources to develop technical information, but the private sector also houses vast, state-of-the-art information that can be used to make decisions. Residents can also share unique perspectives and local knowledge of their neighborhoods. If you engage stakeholders, you should be willing to review their information and data and consider acceptable trade-offs within the constraints of the statutes and regulations you are implementing. Conducting meaningful stakeholder involvement processes can help craft creative solutions that meet the needs of all involved parties, while remaining within the dictates of the statute or EPA policy. You can also prevent potentially debilitating second-guessing when you work directly with stakeholders to analyze the trade-offs.

Consultation and collaboration with interested parties outside EPA are powerful tools that can:

- **Greatly expand your knowledge and practical insights** into the issues on which you must act;

- **Expedite your work** by highlighting the issues that require the most attention so you can prioritize the use of your resources accordingly;

- **Instill in the stakeholders a sense of ownership and understanding** of the problem so they will accept decisions they might otherwise protest;

- **Generate support for decisions** that might otherwise be played out in other forums;

- **Develop ongoing relationships** to help you implement the policy; and

- **Resolve specific issues that have become politicized** and might otherwise end up at the White House, before Congress, or in court.

D. Early Planning Is IMPORTANT

Good stakeholder involvement processes should be planned early enough to allow both EPA staff and the stakeholders to obtain the necessary resources and data to interact effectively. You cannot assume that stakeholders are sitting around with abundant resources waiting for you to announce your intentions just weeks before the process starts. Both the Agency and stakeholders have strategic planning and budgeting processes that can lock up resources a year or more in advance.

For EPA staff, early planning includes the following tasks:

- Identifying the goals of the stakeholder involvement process

- Identifying and obtaining data on the problem and potential options

- Budgeting for personnel resources to conduct the stakeholder involvement process

- Budgeting funds for contractor resources (scientific, technical, communications, facilitation)

- Budgeting travel funds for Agency staff and/or invited stakeholders

It is important for you to notify potential stakeholders early about the kind of process you are considering. **("Early" usually means at least several months in advance.)** Stakeholders need sufficient time to:

- Respond to you with their thoughts about the proposed process;

- Obtain or budget personnel resources to participate in the process;

- Obtain or budget funds for their own consultants or experts;

Case Example

Importance of Early Planning

Many of the difficulties EPA staff encounter with stakeholder involvement are a result of late planning or late notification of stakeholders.

For example, EPA staff recognized too late their need for professional facilitation assistance to design and manage a public meeting regarding a highly controversial PCB site. The EPA site team hired the facilitator just two days prior to the meeting, allowing the facilitator little time to work with site team and the stakeholders to design an agreed-upon agenda to address issues of common concern. Because of late and poor planning, the meeting resulted in greater public distrust of the Agency, disappointment among EPA staff, and frustration on the part of the facilitator.

"Getting the public involved early is a vital part of the re-registration process because it lessens the amount of work that has to be done at the end of the process."

—B.A. Akinlosotu, CCA
Treated Wood re-registration process

Consultative and Collaborative Processes Used by EPA

Communication

Outreach
Purpose: To provide information
Types: Website
Fact Sheet
Print Hot Line
Federal Register Notice
Press Release

Consultation

Information Exchange
Purpose: Provide and exchange data, opinions and options
Types: Meetings with individuals
Public meetings
Workshops
Listening sessions
Availability sessions

Collaboration

Recommendations
Purpose: Provide non-binding, but influential advice or comments
Types: Advisory committees
Scoping sessions
Policy dialogues
Task force
Joint fact finding

Collaboration

Agreements
Purpose: Reach workable agreement or settlement
Types: Negotiated rulemaking
Agreement in Principle
Settlement agreement
Consent Order
Statement of principles

Collaboration

Stakeholder Action
Purpose: Empower stakeholders to take action
Types: Industry sector initiatives
Voluntary pollution reduction programs
Watershed collaboratives
Community Action for a Renewed Environment (CARE)
Sustainability forums

- Obtain or budget funds for travel, if necessary;

- Gather and review data; and

- Poll their constituents so representatives adequately understand the needs and positions they will represent.

E. Understanding the Continuum of Consultation and Collaboration

Working with external stakeholders goes by many names: **stakeholder involvement, public involvement, public participation, public-private partnership, deliberative democracy, constructive engagement, and collaborative problem solving.** All of these terms are commonly used within EPA. Conceptually, these procedures fall within two broad categories: **consultation** and **collaboration.** Consultations are processes where the Agency seeks and/or provides advice or information to members of the public.* Collaboration, on the other hand, is where the Agency and members of the public work together towards a common end. Collaboration involves sharing decisions.

EPA defines five outcomes of consultation/collaboration: outreach, information exchange, recommendations, agreements, and stakeholder action.

This handbook does not address outreach efforts in much depth, since many existing manuals are available for your use (some suggestions are listed in the outreach section). Instead, this manual will help you choose among the last four more intensive and inclusive options for stakeholder involvement.

In practice, you might find the option you started with growing into a different option (e.g., a recommendations process may turn into an agreement process). You are simply moving along a continuum that involves more planning and inclusion of stakeholders as you move from outreach and information exchanges toward recommendations, agreements, and stakeholder action. You should not feel limited to choosing only one option or afraid to adapt your stakeholder involvement processes to changing needs. In fact, for multifaceted issues with a large number of stakeholders, you may choose to break your decision-making process into phases in which you employ several different options along the continuum.

Note that the phrase "consultation with an Indian tribe" is a term of art and may require a more intensive and robust process.

Exhibit 2: Comparing the Attributes of Information Exchanges, Recommendations, Agreements, and Stakeholder Action

	Information Exchanges	Recommendation	Agreements	Stakeholder Action
Who Participates?	Anyone	Selective/by invitation	Selective/by invitation	Selective/by invitation or volunteer
Who Do Participants Represent?	Themselves	Themselves, an organization, or a constituency	Themselves, an organization, or a constituency	Themselves, an organization, or a constituency
Is Participation Constant?	Who participates is unpredictable or variable	Membership is stable	Membership is stable	Membership is stable
How are Decisions Made?	Individual statements only decisions not made	Consensus or vote	Consensus or vote	Consensus or vote
Are Decisions Durable?	No	Advisory	Usually	In some cases
How Many Can Participate Usefully?	10-100's	10-25	10-25	10-25
What's the Schedule?	Intermittent meetings	Regular schedule	Regular schedule	Regular schedule
What Type of Meeting Support Should be Considered?	Meeting management skills	Facilitation	Facilitation or mediation	Facilitation or mediation
Does FACA Apply? (consult legal counsel)	No	Usually, if EPA sets up, manages or controls	Usually, unless it's a settlement	Depends on to whom recommendations are addressed
What Level of Resources Is Needed?	$	$$	$$$	$$

F. Introduction to the Range of Stakeholder Involvement Outcomes

Stakeholder involvement processes are highly adaptive and can be modified to take changing circumstances into account. While pliable, they are not formless. The appropriate choice of consultative process will depend on the specifics of the situation. **You should be clear about the larger goal you are trying to achieve and select the stakeholder involvement process and outcome that meets your larger goal. Design the "forum to meet the fuss."**

While consultative processes can be grouped in many ways, their most defining characteristic is the end result or what follows when the discussions are concluded. Stakeholder involvement processes can result in five outcomes: *outreach, information exchange, recommendations, agreement, or stakeholder action.*

5 Stakeholder Involvement Outcomes

Outreach activities help Agency staff keep their constituencies informed about their plans, actions, and needs.

Information exchanges allow EPA staff to share and discuss data, options, issues, and ideas with the affected public in a more interactive way than simple outreach.

Recommendations activities involve a smaller number of stakeholders collaborating with one another and in some cases Agency staff to reach agreement on a set of (nonbinding) recommendations for action.

Agreement activities involve EPA management and representatives of stakeholders reaching an agreement by consensus.

Stakeholder action activities involve stakeholders collaborating with one another and sharing responsibility for making and implementing decisions, with EPA as a participant or sponsor.

Outreach Activities

Outreach activities help Agency staff keep their constituencies informed about their plans, actions, and needs.

Common Outreach Activities:

- Fact Sheets
- Public Comment Periods
- Web Sites
- Press Releases
- Federal Register Notices
- Large Public Meetings
- Presentations at Professional or Trade Meetings
- Presentations of Scientific Information
- Dockets

Each outcome has unique attributes:

- The goals its use will achieve
- Its benefits and limitations
- The stage in the decision-making process when it is most appropriate
- Resource requirements
- Types of participants
- How the results of the process are used

1. Outreach

Overview. EPA staff use outreach to keep their constituencies — those who are interested in or affected by their actions — informed about EPA's plans, actions, and needs. In addition to informing stakeholders about EPA activities, outreach also encourages stakeholders to communicate their needs and desires to EPA staff. Some forms of outreach, such as notice and comment in rule-making, are required by law.

Outreach is a good way to give and to get information, but it is not a dialogue where participants go back and forth, answering each other's questions and building on each other's ideas. A well-considered outreach process involves up-front planning to identify the audience, determine what it needs to know, communicate clearly and with the appropriate level of information, and establish points of contact for stakeholder reactions.

Outreach gives the public and stakeholders access to scientific and technical information to better understand the issues. While outreach is a critical element in the success of the other forms of consultative and collaborative processes, this handbook does not specifically address outreach activities. Nevertheless, all of the more intensive processes below will usually include some type of outreach (e.g., fact sheets, press releases, notice and comment).

For information on outreach processes and activities, consult the following:

- International Association for Public Participation *(www.iap2.org);* and
- Superfund Community Involvement *(www.epa.gov/ superfund/community/involvement.htm)*

2. Information Exchanges

Overview. During *information exchanges*, participants share data or ideas, provide information, express concerns, or provide individual input as you and your team build a basis for regulatory, compliance, or planning actions. Information exchanges can help define the problem and issues for further discussion, build trust, improve relationships, and allow interest groups to hear firsthand the concerns of other affected persons. **Through information exchanges, participants not only share information but they also discuss it** through question-and-answer periods and group discussions. Issues discussed may range from the very general to the very focused.

Attendance at information exchanges may be open or invited. You may plan one large meeting or a series of smaller workshops. Because information exchange processes do not typically limit the number of participants, individuals or firms usually represent themselves rather than select a person to represent them or their industry. The Federal Advisory Committee Act (FACA) does not apply to information exchanges because they are used only to give and seek individual information and individual input rather than collective advice, no matter how interactive the discussion may be. See Appendix I for more information on how FACA impacts collaborative processes.

However, bear in mind that FACA is not limited to situations in which the Agency looks for consensus recommendations or advice. Rather, it is the group dynamic that can make an information exchange meeting subject to legal challenge. When conducting information exchanges that offer individuals the opportunity to provide information and individual input to EPA, exercise caution to manage the meeting carefully so that discussion does not move into group advice that would be subject to FACA. While you may still pick up an informal "sense of the group," it will reflect a convergence of individual opinions rather than an effort to give group advice. With this in mind, you may want to seek advice from OGC's FACA attorney in designing some applications of information exchange processes.

Benefits. During an information exchange, stakeholders are able to provide more detailed and targeted comments than during traditional written notice-and-comment procedures. Information exchanges offer a chance to see reactions to "what if" proposals, allowing you to gauge the level of acceptance or opposition to proposed actions or policy alternatives and reasons for any

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Information Exchange

Purpose:

Provide and exchange data, opinions and options

Methods:

Meetings with individuals

Public meetings

Workshops

Listening sessions

Availability sessions

"**The stakeholders are not dummies; they know a lot. We need to work with them hand-in-hand and let them tell us what their issues are** rather than the other way around. It's also important to share information in a way that the community can understand it."

—Dana Williams, Region 2
Environmental Justice Policy Project

Information exchanges are appropriate for these goals:

- Gaining insight into the views of your constituencies while retaining decision-making authority

- Building a common insight into the issues that need to be addressed when crafting the decision

- Gaining specific, narrowly focused technical information

- Getting the reaction of interested groups to a proposal when it is too early or too late in the decision-making process to develop general recommendations or negotiate final agreements

- Helping allay controversy due to misinformation or misperceptions about Agency proposals

  See Appendix V for Information Exchange case studies.

resistance. Once you are further along in your decision-making, you can use information exchanges to explain scientific information, technical data, and options.

These exchanges provide assurances that particular issues are being addressed, thus raising the comfort level for those impacted by the proposal.

Limitations. Participation by an individual or organization does not assure that the party will accept or support the final decision. Full and balanced representation may not be possible since you may have little control over who attends, resulting in an incomplete summary of the individual views on an issue.

As in traditional notice-and-comment procedures, you may hear only the publicly held positions of the parties, as opposed to the underlying interests or needs that could be addressed by other means. In other words, it may be hard for a party to admit to a risk or weakness unless it can also participate in its management. An information exchange may actually increase frustration with the Agency if parties misunderstand the purpose of the exchange and find that their views and ideas are not used in subsequent stages of your decisionmaking. Thus it is important to set expectations and make clear the constraints of an information exchange process. For example, when planning an information exchange process, you might clearly state to the public what the Agency is committing to — i.e., that it will keep the public informed of what the Agency is planning, listen to public concerns and suggestions related to the proposed Agency actions, and provide feedback on how public input influenced EPA's decision.

There are many ways of conducting information exchanges other that mass public meetings. You may want to consult references on public participation such as:

- www.epa.gov/publicinvolvement

- Public Involvement in Environmental Permits—A Reference Guide, EPA-500-R-00-007 *(www.epa.gov/permits/publicguide.pdf)*

- International Association for Public Participation (IAP2) Toolbox (*www.iap2.org/associations/4748/files/toolbox.pdf)*

- Institute for Participatory Management & Planning (www.ipmp.com)

- Superfund Community Involvement Handbook (www.epa.gov/superfund/community/cag/pdfs/ci_handbook.pdf)

3. Recommendations

Overview. Unlike information exchanges, processes leading towards **recommendations seek to tap the collective judgment of the participants**. Advisory groups often review or develop data that are quite specific. Typically, EPA staff impanels a balanced group of people who have technical or policy expertise in the subject and/or who would be affected by the action under discussion. The group, often together with EPA representatives, deliberates and develops joint recommendations. In this way, EPA decisionmakers receive the benefit of different viewpoints distilled into specific recommendations from the group. Policies built on the advice of such a group are more likely to be endorsed by the people/organizations involved. Groups can also highlight a range of policy options and illuminate the pros and cons of each option.

An advisory group is usually limited in size to the number of people who can address the issues efficiently. If the Agency initiated the committee to obtain collective advice, these advisory groups are generally subject to the provisions of FACA. Input from a wider audience than just the advisory group is possible because FACA committees meet in public and are open to statements from the public. Committee membership is stable over time and the committee typically meets several times a year. EPA may also participate in advisory groups constituted and managed by outside organizations. These advisory groups may offer recommendations to EPA without involving FACA providing EPA does not manage or control the group. Examples include the American Society of Testing and Materials (ASTM) and other professional organizations.

The group can make decisions by a majority vote, consensus, or some combination of the two, depending on the group's bylaws or ground rules. Although there may be implicit understandings and expectations, neither party makes commitments. EPA does not necessarily agree to abide by or adopt some or all of the recommendations, and the parties do not necessarily provide a cohesive or consistent set of recommendations or agree to support the ultimate decision, even if it reflects their recommendations.

Benefits. FACA Section 5(b)(2) requires the membership of advisory committees to represent a fair balance of viewpoints. This diversity provides a well of creativity and viewpoints. Participants in advisory groups can challenge and react to the presentations of others, so the results are likely to be more focused and fully developed

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Recommendations

Purpose:
Provide non-binding but influential advice or comments

Methods:
Advisory committees
Scoping sessions
Policy dialogues
Task force
Joint fact finding

Recommendations Processes are appropriate for these goals:

- Developing general approaches that tap the creativity and expertise of people and organizations outside the government

- Reaching agreements on the value and availability of data and/or policy options prior to decisionmaking

- Stimulating break-through thinking to solve persistent problems

- Finding common ground between competing constituent groups

See Appendix V for Recommendations Processes case studies.

In a recent interview to document the stakeholder involvement activities that were performed as part of the Pesticide Management Plan rule—a rule that was 15 years in the making but still has not been finalized—the interviewee observed that many benefits resulted from the extensive stakeholder involvement process. "Even though the rule has been delayed, all the states have begun planning based on the content of the rule; 26 states now have revised plans, and two tribes have sought regional concurrence. They are still using the concepts and guidance to work on these issues."

— Chuck Evans, EPA

than those from information exchanges. Advisory groups working on recommendations can also tackle technical and detailed information that would be too complex or tedious in an information exchange setting.

Since participants make no advance commitment to support the recommendations that may evolve, an advisory group is often a comfortable setting for EPA staff and stakeholders to discuss issues. In many cases, the group may reach agreement on recommendations more easily because EPA concurrence is not required. However, you should take the recommendations seriously while reserving the right to make another decision.

Information on FACA can be found in Appendix I of this document or at:

- *www.gsa.gov/committeemanagement*

- *www.epa.gov/ocem/committees.htm*

Limitations. The balance and diversity of representatives is very important, but less affluent interest groups may not have the technical, legal, or financial resources to attend multiple meetings in distant cities. EPA may pay travel and per diem expenses for some or all participants in FACA advisory committees, but budgets for these may limit the number of participants. It is also important to provide adequate guidance (e.g., boundaries on the acceptability of outcomes) and resources (e.g., technical information) to achieve meaningful results.

Unlike situations in which the parties know their agreement will have direct or immediate impacts, participants in advisory groups may be less inclined to engage in broad give-and-take dialogues, or make the hard choices inherently involved in crafting detailed solutions. Because it can be difficult to get parties to focus on possible trade-offs, individuals may choose to consider only their priority issues and thus fail to consider making recommendations as part of a complete package.

If the ground rules do not require full consensus for a decision, the parties who disagree with the outcome may see little reason to seek creative solutions and may have an incentive to oppose implementation of the proposal. If voting is used, issues should be fully deliberated before a vote is taken to prevent the majority from ignoring the concerns of minority interests.

A careful situation assessment (discussed in Stages 1 and 2, respectively) can mitigate some of these limitations by identifying and providing resources, clarifying the issues to be addressed, and carefully structuring ground rules.

4. Agreements

Overview. Working towards information exchanges and recommendations are powerful ways to inform both you and your constituents, to build the basis for action, and to create public acceptance for a decision. But they stop short of supplying one of the fundamental benefits of negotiations: **agreement processes reach a mutually acceptable decision that the parties agree to implement**. Processes that produce agreements can reduce the total time needed to reach a final decision, build support among stakeholders, lead to early implementation, and greatly reduce the threat of second-guessing and future litigation.

Agreement processes seek consensus between Agency staff and stakeholders. The agreement may encompass the entire action under consideration, such as a negotiated rule and its accompanying preamble, or just major parts of the action, such as a substantive outline of a rule, policy, or program. Because agreements build on the scientific and practical expertise of the parties and address their needs directly, agreements often include creative, cost-effective solutions. The results of these decisions can be more stringent than Agency staff would likely issue in the absence of stakeholder support, yet they can be cheaper to implement. This paradox stems from all parties' ability to judge where they can make the best investments.

During negotiations, participants usually represent constituencies explicitly and report back to them periodically. Committee members often include high-level decisionmakers. Membership is stable over time, and the committee typically meets several times. Committees that are used to develop recommended policy or rules are generally subject to FACA because their purpose is to offer collective advice to the Agency. As a result, they are chartered in advance (there is a provision that GSA act expeditiously for negotiated rule-making committees), the meetings are announced, and they are open to the public.

Processes used to resolve legal challenges or lawsuits are not subject to FACA; hence they are not chartered in advance, notice of meetings is not provided, and meetings may not be open to those not involved in the lawsuit.

While the resulting agreement may or may not be legally binding, failure to implement the agreement may harm the credibility of the party who doesn't implement their part of the agreement. Before entering into such an

Agreements
Purpose:
Reach workable agreement or settlement
Methods:
Negotiated rulemaking
Consensus permit
Settlement agreement
Consent Order
Statement of principles

Agreement Processes are appropriate for these goals:

- Developing creative, flexible, and detailed solutions that tap the expertise of people and organizations outside the government

- Coordinating multiple government agencies in the implementation of requirements or plans

- Providing a forum for working out a mutually acceptable approach when parties have the power to block implementation

- Making a decision when the level of political controversy requires direct participation of the interested parties

- Achieving a high degree of voluntary compliance

- Making decisions when other processes will produce stalemate or inferior products

- Bringing to closure well-focused proposals or issues that are ready for resolution

See Appendix V for Agreement Processes case studies.

agreement all legal, policy, budget and scientific reviews should be completed by all parties (especially EPA) to the agreement.

Benefits. An agreement process has at least two purposes: crafting the agreement itself and developing support for it. This process, when it works, creates a feeling of ownership among all participants regarding the resulting policy or regulations that encourages widespread support and implementation. Working towards an agreement, though it may be a lengthy process, can actually save you significant time and resources. An agreement is usually a durable solution that can be implemented quickly, with a minimum of controversy and a greatly reduced chance of judicial review. Furthermore, experience has shown that regulated parties often begin to implement the new standard or program before its official promulgation.

Because agreement-seeking processes enable the parties to participate directly, they have been used repeatedly to obtain decisions in the face of controversy. The negotiating committee, including EPA staff, can decide how much information it needs to reach a decision, thus limiting parties' incentives for loading a docket with technical information of marginal practical value. Participants also develop a deeper understanding of the scientific and technical issues, as well as the needs and interests of the other participants, and are able to make precise trade-offs to maximize those interests in light of the overall circumstances.

Limitations. Consensus decisions can be resource-intensive in the short run. Finding willing representatives from some of the affected interests is sometimes difficult, especially if the parties are involved in other negotiations or are more comfortable in adversarial settings. Without analyzing the issues in some detail, both you and the stakeholders may be pessimistic at the outset that an agreement can be reached. A careful situation assessment is essential for identifying stakeholder representatives who have the interest, resources, and ability to participate in a collaborative process. Moreover, a situation assessment will help clarify the issues to be addressed and identify appropriate ground rules for participation.

Although processes for reaching agreements can significantly increase the practical information available, staff members sometimes fear they will lose control of the process. Therefore, you should exert greater care in setting up and conducting agreement processes than with other stakeholder involvement processes.

5. Stakeholder Action

Overview. In some cases, specific regulations cannot resolve a complex problem, or legal authorities do not exist to make a regulation the most effective means to accomplish a goal. When these conditions are present, and EPA is not the mandated decision maker or implementer of a solution, stakeholder action processes may be appropriate. The goal of stakeholder action processes is to empower members of an industrial sector or affected community to develop creative solutions that they themselves will implement, although EPA may provide leadership and resources and act as a participant.

EPA typically invites attendees to participate in stakeholder action processes, which often consists of a series of meetings, workshops, dialogues, or other interactive gatherings that emphasize the generation of solutions that are acceptable to all involved. Individuals usually participate as representatives of organizations or constituencies, rather than themselves. FACA typically does not apply to stakeholder action processes because EPA, as a participant, is not seeking the group's advice in order to make a decision. Instead, the stakeholders are responsible for making and voluntarily implementing whatever decision is reached. As such, the long-term durability of decisions developed during stakeholder action processes is be best secured when a group is able to approach or achieve consensus.

Stakeholder action processes have been employed with success to develop large-scale, voluntary programs that affect major industries and have significant public impacts. Among the motivations for stakeholders, especially in the private sector, to engage in these processes is the desire to be seen as a "market leader" or a "community leader" and take an action that would be applauded by the Agency and others as being environmentally friendly.

Benefits. Stakeholder action processes harness the energies of multiple parties to deal with a complex problem that EPA cannot solve alone. By placing the responsibility for success on the parties themselves, and providing them with resources to develop innovative solutions to meet their needs and interests, EPA acts as a catalyst and helps the parties build a sense of ownership of and commitment to the final outcome. Furthermore, because they share responsibility for the effort, stakeholders hold each other accountable when it comes to results, rather than focus on Agency actions.

Stakeholder Action

Purpose:
Empower stakeholders to take action

Methods:
Industry Sector Initiatives
Voluntary Programs
Watershed Collaboratives

Stakeholder Action Processes are Appropriate for These Goals

- Creating solutions to complex problems beyond the reach of existing legal authorities or regulations

- Empowering stakeholders to develop and implement voluntary programs that affect major industries and/or have significant public impacts

- Inspiring or catalyzing stakeholders to collaborate to take action on an issue

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Limitations. Stakeholder action processes are built on the assumption that participants have some incentive for voluntarily making and implementing decisions on complex issues. They further assume that parties who participate in the decision process also commit to assisting with implementation measures. Failure to understand and ensure stakeholder participation incentives and/or commitment to agreed-upon implementation measures could cause the process to unravel and make parties reluctant to engage in future voluntary efforts. A careful situation assessment to determine participation incentives and commitment to the process should be performed before launching a stakeholder action process. ∎

Stages for Developing a Stakeholder Involvement Process

Stage 5. Benefitting From the Results. Use the results in the decision. Evaluate the lessons learned and share the knowledge you have gained.

Stage 4. Conducting the Process. Follow through on your commitments by implementing the stakeholder involvement plan as designed. This involves a commitment of energy, resources, and time to ensure nothing slips through the cracks. Know in advance how you intend to use the results of your stakeholder involvement process. Link the public involvement clearly and appropriately to the decision to be made.

Stage 3. Designing the Process. Once you have obtained feedback on your preliminary process decision (proposed stakeholder involvement outcome), you and/or a facilitator are ready to design the process you will use. This includes the who, what, when, and how. The details can make or break your stakeholder involvement process, so make sure you've done all you can to make it run smoothly and efficiently.

Stage 2. Conducting a Situation Assessment (External). An external situation assessment is a feasibility assessment where you and/or a facilitator obtain information and advice about your proposed stakeholder involvement process. Conducting an external situation assessment includes identifying stakeholders, interviewing representatives of affected interests, identifying issues to discuss in a stakeholder involvement process, assessing the willingness of stakeholders to participate, projecting likely outcomes, and recommending a detailed stakeholder involvement process.

Stage 1. Conducting a Situation Assessment (Internal). The first step is an internal situation assessment where you consider what major decision the Agency is considering, your goals and concerns, and how the decision fits within the broader plan or program. Make an initial determination concerning which stakeholder involvement outcome seems most appropriate (i.e., information exchange, recommendations, or agreement).

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STAGE 1: SITUATION ASSESSMENT— INTERNAL

Developing and implementing stakeholder involvement is a multi-stage process that begins with a situation assessment. The situation assessment consists of two components: 1) an internal assessment, which is the subject of this chapter, and 2) an external assessment, which is discussed in the following chapter (Stage 2).

During the internal assessment, you articulate what major decision the Agency is considering, your goals and concerns, and how this decision fits within the broader plan or program. As part of this assessment you make an initial determination about which stakeholder involvement outcome seems most appropriate. While the scope and rigor of this planning process will vary depending on the decisions to be made, it should precede all stakeholder involvement efforts. Identifying and acknowledging your goals, objectives, and constraints, and understanding the factors that determine success, are keys to knowing which process to use.

A. Conducting an Internal Assessment

When developing a stakeholder involvement strategy, a number of factors can help point you towards one approach or another. Ask yourself the following questions:

What Are the Issues and How Will Stakeholder Involvement Help Me Make a Decision? Before engaging in any consultative or collaborative process, it is important to carefully analyze what you hope to accomplish. What issues are you hoping to resolve or complete? Why do you or your managers think stakeholder involvement is appropriate? How will it help EPA achieve its goals? Only when you are clear on the purpose of the stakeholder involvement process should you select and design the appropriate process. If you are not clear on the purpose, then you may choose the wrong process, which might interfere with your ability to accomplish EPA's objectives.

How Controversial is the Decision? A high level of controversy could argue both for and against a particular type of process. Can you fully implement your decision without litigation or challenges? If you believe you need support outside the Agency to accomplish your goals, you should probably try to be as inclusive as possible. If you don't particularly need outside support, outreach and information exchanges might be sufficient.

In this chapter:

A. Conducting an Internal Assessment

B. Involving Other EPA Staff in Your Decision

C. Determining if Agency Action Warrants Stakeholder Involvement

D. Making a Preliminary Decision

If the Agency's goal is to:	Then consider:
Allow the affected public to raise issues of concern to provide information and opinions	Information Exchanges
Gain insight on technical issues and possible solutions without developing specific recommendations	Information Exchanges
Secure sophisticated recommendations on controversial or complex issues while making a unilateral decision	Recommendations
Secure a durable agreement on a regulation, program, or plan	Agreements
Inspire stakeholders to collaborate on own action	Stakeholder Action

If your prefered role is:	Then consider:
Deciding with limited influence from others	Information Exchanges
Deciding with a desire for fully-developed ideas from outside the Agency	Recommendations
Understanding and working through disagreements in order to make a decision	Recommendations
Implementing a decision requiring the support of others	Agreements
Serving as a catalyst to encourage stakeholders to decide on and implement a voluntary action.	Stakeholder Action

If you are in this stage:	Then consider:
Scoping out the issues	Information Exchanges
Seeking information from stakeholders to support selection of an option	Recommendations
Deliberating several well-defined issues on a complex topic	Agreements
Close to implementing a decision and seeking possible reactions	Information Exchanges
Considering non-regulatory or voluntary actions	Stakeholder Action

If:	Then consider:
You don't know all the parties	Information Exchanges
There are too many parties	Information Exchanges
Parties are all over the map in terms of their needs	Information Exchanges
Parties are engaged and interested but not committed	Information Exchanges
Parties are identifiable and organized in interest groups	Recommendations or Agreements
Parties are engaged and desire collaboration	Agreements
Parties have the incentive and capacity for voluntary action but need help getting organized	Stakeholder Action

What's Your Preferred Role? EPA staff plays different roles in different situations, including being a sponsor, a resource, a participant, a leader or catalyst. If playing one role or another is important, you should recognize it when designing the process. The extent to which you are open to letting others participate in the decisionmaking is important to your decision.

Do You Have Adequate Data to Proceed with the Decision? Can external resources contribute to identifying needed information? Can external resources provide additional information useful to the decision?

What Is the Timeframe? Where you are in the overall decision process can have a bearing on which type of stakeholder involvement procedure you use. If the decision is far off, you should use an information exchange to determine the level of controversy or acceptance on the issue. If a decision will be made in the near term and you expect stakeholders to challenge the Agency's information and decisionmaking, you may want to consider a recommendations or agreement process.

What Resources Are Available? Decisions vary in terms of importance, urgency, and funding available to expend in their development. Each of these has a role in determining what public involvement process to follow. Generally speaking, the more inclusive the process, the more resource-intensive it can be. In the long run, however, more inclusive processes may actually save resources if they result in better or long-lasting decisions. You should consult with your managers regarding the level of resources that might be available.

Who are the Most Likely Stakeholders and Are They Willing to Work with EPA? Where is your issue on the priority list of external stakeholders? Are external stakeholders aware of your timelines? Familiar with your data? The extent to which stakeholders are willing to discuss issues openly and participate in discussions with EPA staff and other stakeholders will affect the process.

Is EPA seeking voluntary action to address a specific issue? Some issues are beyond the reach of a single agency program, or EPA may not be in a position to implement a decision on its own. In such circumstances, the best course of action for EPA may be to encourage stakeholders to work together to take on part or all of the decision and/or its implementation. When considering a stakeholder action process, you should consider the relationships among critical stakeholders and their history of working together to make or implement decisions.

B. Involving Other EPA Staff in Your Decision

Staff and management of other EPA offices are important "internal stakeholders" in your process of drafting rules, policies, permits, or plans. You should make sure you know what these internal stakeholders need from your project and design ways to integrate them into your process. There are three general rules of thumb for working with internal stakeholders.

Tip #1: Involve Them Early. You should determine early who may be involved on what issues, and involve them as soon as possible in your planning, design, and implementation of stakeholder involvement activities. Don't leave it up to the grapevine—you should contact stakeholders directly. If you are working on a Major or Significant Rule, or in cases where you are entering into an intensive recommendations or agreement process, you may need to inform EPA's Office of General Counsel and the Office of Management and Budget (OMB) of your plans.

Tip #2: Get Buy-In Along the Way. The more focused your stakeholder involvement process is on producing recommendations or an agreement with diverse external stakeholders, the more important it is for your internal stakeholders to buy into the goals and the techniques you are using. You should seek management support for the level of shared decisionmaking before you begin and at every critical point during implementation. If your management and the management of other internal stakeholders do not understand the level of collaboration, they could later demand that issues be revisited, which could compromise your process.

EPA staff often use workgroups with representatives from various Agency offices. For instance, if you are working on a Tier 1 or Tier 2 rule, you will be preparing an Analytic Blueprint. The drafting of the Analytic Blueprint is an ideal time to plan for stakeholder involvement activities, to get the involvement of your workgroup and management in the planning process, and to obtain their commitment to participate in the implementation of the stakeholder involvement process.

Tip #3: Keep Them Engaged. If you are conducting outreach or information exchange activities, you may wish to invite your workgroup members to observe or participate. If they cannot for whatever reason, you should keep them up-to-date and share information through meeting summaries, handouts, bulletins, briefings, etc. If issues surface that you believe may concern

Tips for working with internal stakeholders

- #1: Involve them early.
- #2: Get buy-in along the way.
- #3: Keep them engaged.

"Having access to political leadership was essential. We had a senior agency decisionmaker participate in the meetings in order to make real-time decisions. This helped ensure the commitment and support of senior management."

—Ward Penberthy,
Voluntary Children's Chemical
Evaluation Program

Exhibit 3: Site and Project Specific Stakeholder Involvement References

- Public Involvement in Environmental Permits— A Reference Guide, EPA-500-R-00-007, August 2000 *(http://www.epa.gov/permits/ publicguide.pdf)*

- *www.epa.gov/publicinvolvement/ involvework.htm* for a collection of guidance and resource manuals

- Superfund Guides

  - Community Involvement Handbook *(http://epa.gov/superfund/ community/cag/pdfs/ci_ handbook.pdf)*

  - Early and Meaningful Community Involvement *(http://epa.gov/superfund/policy/ remedy/pdfs/92-30099-s.pdf)*

  - Introduction to Community Involvement *(http://www.epa.gov/superfund/ contacts/sfhotline/comminv.pdf)*

- Final Supplemental Environmental Projects Policy

  (http://www.epa.gov/Compliance/ resources/policies/civil/seps/ fnlsup-hermn-mem.pdf)

your internal stakeholders, you should raise them as soon as you can. Be aware that it might take additional time for your workgroup members to elevate potential issues to their line management.

The more focused your stakeholder involvement process is on producing a set of recommendations or an agreement, the more involved internal stakeholders should be. You should consult workgroup members in the planning and design of the process and keep them informed of the information you are gaining and any recommendations or agreements you may be considering. Ideally the most essential members of your workgroup (e.g. General Counsel attorneys, economists, risk analysts) should be active players in any process likely to produce recommendations or agreements. Involving them during the whole process can prevent "late hits" and misunderstandings regarding statutory authorities, while providing information needed to justify actions based on economics, risk, or technology.

C. Determining if Agency Action Warrants Stakeholder Involvement

Many EPA activities can benefit from stakeholder involvement, and in some cases, it is required by statute. Stakeholder involvement can be especially useful in rule-making, policy-making, program development, and site-specific activities.

In 2003, EPA issued its Public Involvement Policy which reaffirmed EPA's commitment to the involvement of the public in rulemaking, permitting, financial assistance programs, major policy decisions, and delegation of authority to other levels of government.

Rulemaking. Several statutes and executive orders affect the development of rules, as illustrated in Exhibit 4. If you are writing a rule subject to these requirements, you may wish to consult with your office's Regulatory Steering Committee representative, the Office of General Counsel, and the appropriate resource people within EPA. For instance, if your rule may have a significant impact on a substantial number of small businesses, small communities, or other small entities under the Regulatory Flexibility Act (RFA) as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA), you may wish to consult with specialists in the Regulation Management Staff as you plan your stakeholder involvement process.

Policymaking or Program Development. These activities are less prescribed by statute or executive order

Exhibit 4: If You Are Working on a Rulemaking, Consider These Statutes, Executive Orders, and Policy

Executive Order (EO) or Policy	*Whom to Consult*
Regulatory Flexibility Act as amended (OPEI) including Small Business Regulatory Enforcement and Fairness Act (SBREFA)	Office of Policy, Economics, and Innovations Regulatory Management Staff
Unfunded Mandates Reform Act	Regulatory Management Division (OPEI)
Paperwork Reduction Act	Office of Environmental Information (OEI)
National Technology Transfer Act	Regulatory Management Division
E.O. 12866 Regulatory Planning and Review	Regulatory Management Division
E.O. 13175 Coordination with Tribal Governments	Office of Water (OW)— American Indian Environmental Office
E.O. 13007 Indian Sacred Sites	OW—American Indian Environmental Office
E.O. 13132 Federalism	Office of Congressional and Intergovernmental Relations (OCIR)
E.O. 12898 Environmental Justice Policy	Office of Enforcement and Compliance (OECA)—Office of Environmental Justice
E.O. 13045 Children's Health Protection	OA—Office of Children's Health
E.O. 13211 Actions that Significantly Affect Energy Supply, Distribution, or Use	OPEI
Peer Review Policy	Office of Research and Development (ORD)

than rulemaking. While you may not be required by law to follow certain procedures, you should review the list of statutes, executive orders, and policies in Exhibit 4 to see how they might affect your project. You should also know from the beginning all of the offices who will be asked to sign-off on your policy or program plan within EPA. Consult with your managers about the need to involve the Office of Management and Budget or state or tribal agencies in your project.

Site-Specific Activities, Enforcement, or Planning. You should review existing policy and partnership agreements for your program to see if other EPA offices, states, or tribes should be involved in your stakeholder involvement activities. Negotiations to settle enforcement actions typically involve only EPA and the violator and perhaps state agencies. Many site-specific agreements (e.g., Superfund records of decisions and consent decrees) undergo public comment periods prior to be-

"**EPA's Science Advisory Board, in a near-final report evaluating stakeholder processes and how best to ensure that scientific information is fully integrated into such processes, noted that stakeholder processes can be time-consuming and expensive and therefore the types of process used must be calibrated to the importance of the issues at stake. That principle ought to apply overall so that the right tools are applied to the right job.**"

—David Clarke
On-line Dialogue on Public
Involvement in EPA Decisions

coming final. While enforcement settlements involving only fines rarely involve other stakeholders, it is common for neighbors, activists, and local officials to be interested in the prosecution and settlement of a case. How to involve them without compromising the integrity of the negotiations is a serious planning question. In most cases, outreach or limited information exchanges are all that is feasible. However if the facility and the Agency undertake remedial actions or modify operations as a result of a settlement, then the active involvement of the surrounding community may be necessary.

D. Making a Preliminary Decision

Once you've thoroughly examined your options and consulted with your managers and other internal stakeholders, you are ready to make a preliminary decision about the ideal outcome of stakeholder involvement for your situation. You should use the questions on the following three pages and the advice in this chapter to select a preliminary process outcome. In Stage 2, you should use the external assessment as a reality check for your proposal to pursue an information exchange, recommendations, agreement, or stakeholder action process. ■

Questions to Answer in the Internal Assessment Stage

1. **What is the Agency's mandate on the issue—does it permit a range of solutions?**

_____

_____

_____

_____

2. **What action is the Agency considering?**

_____

_____

_____

_____

3. **What decisions may the Agency wish to consider?**

_____

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_____

4. **How can the decision be improved by external input?**

_____

_____

_____

_____

5. **What goals do you want the stakeholder involvement to accomplish?**

    a. Allow the affected public to raise issues of concern and provide information and opinions.

    b. Gain insight on technical issues and possible solutions without developing specific recommendations.

    c. Secure sophisticated recommendations on controversial or complex issues while making a unilateral decision.

    d. Collaborate with stakeholders on a controversial decision.

    e. Inspire stakeholders to collaborate on a voluntary action.

6. **What is the role of EPA in decision making?**

   a. Deciding with limited influence from others.

   b. Deciding with a desire for fully-developed ideas from outside the Agency.

   c. Mediating disagreements among stakeholders so you can make a decision.

   d. Implementing a decision requiring the support of others.

   e. Serving as a catalyst to inspire stakeholders toward voluntary action.

7. **What resources are available?**

   a. Money

   b. Staff

   c. Technical contractors

   d. Grants

   e. Existing committees

8. **Who are the key internal stakeholders?**

   _____

   _____

   _____

   _____

9. **Who are the key external stakeholders?**

   _____

   _____

   _____

   _____

   a. **What is the history and/or current state of relationships on this or related issues?**

   _____

   _____

   _____

   b. **Where is your issue on external stakeholders' priority lists?**

   _____

   _____

   _____

10. What stakeholder involvement statutes or executive orders are applicable?

_____

_____

_____

_____

11. What is your timeframe and how flexible are the deadlines?

_____

_____

_____

_____

12. What kinds of data are currently available to EPA and to all parties?

_____

_____

_____

_____

a. What other information could be useful?

_____

_____

_____

b. How can external parties assist usefully in data development?

_____

_____

_____

13. What stakeholder involvement process seems best matched to your needs?

_____

_____

_____

_____

_____

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STAGE 2: SITUATION ASSESSMENT— EXTERNAL

A. What is an External Situation Assessment?

To maximize the potential of stakeholder involvement, it is important to consult with possible participants about the issues and the nature of the proposed process. EPA's Public Involvement Policy recommends that "when possible, consult or involve the affected public to ensure that the approaches selected consider and, if appropriate, accommodate the potentially affected parties' needs, preferences, schedules and resources, as well as the Agency's needs." This step is known as an external situation assessment.

Conducting external assessments for information exchanges, recommendations, agreements, and stakeholder action processes involves many of the same tasks. This task is often performed by a "convener," a neutral third party who gathers information to test the feasibility of a particular stakeholder involvement process or outcome. A convener's duties generally include the following tasks:

- Identifying potential interest groups and participants

- Informing potential participants about EPA's interest in a stakeholder involvement process

- Interviewing interested parties to determine their concerns and interest in working with EPA

- Identifying which issues the parties believe should be explored in the stakeholder involvement process

- Assessing resource and time requirements for both EPA and the stakeholders

- Recommending what process to use, what issues to address, whom to invite, and what schedule to follow, based on the input received and the stated goals of EPA staff and management

- Assessing the likelihood of ultimate success for processes seeking recommendations or agreements

The scope and intensity of external assessment efforts should grow as you move from information ex-

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In this chapter:

Definition of Convener:

The term "convener" refers to a neutral third party (i.e., facilitator or mediator) who gathers information to test the feasibility of a particular stakeholder involvement process or outcome. The convener typically identifies and interviews potential participants to identify issues for discussion and make a recommendation about an appropriate process and schedule. The convener documents results of the external assessment in an assessment report, often referred to as "the convener's report."

changes to agreement processes. Participants can be assembled through open meetings of any interested persons, by nominations received following public notice, or through direct contacts with people you have worked with in the past. Outreach efforts can identify new individuals who should participate either because they will be affected or they have special insight or expertise into the issue.

If you are contemplating a recommendations process, an external assessment is very important because it will help identify the full diversity of views on an issue and gauge the time commitment parties would need to make in order to participate. The convener's predictions regarding the fruitfulness of an advisory process can help you decide whether it is worth the time and resources.

If an agreement is anticipated, the parties assembled at the table will be working with you to reach a meaningful decision. Therefore, an even more thorough external assessment is needed to ensure that appropriate issues are identified, crucial points of view effectively represented, and consensus is at least possible, if not likely.

If you are considering a stakeholder action process, the convener should assess the stakeholders' incentives to engage with one another in a collaborative process and perform an active role in implementing the results of the process. Further, the convener can assess and make suggestions regarding what EPA can do as a catalyst to inspire or reward voluntary actions.

B. When to Start—Four General Tips

Tip #1: The more resource-intensive your stakeholder involvement process, the earlier you should communicate your intentions to outside stakeholders. All organizations have budget processes and each party to a stakeholder involvement process needs adequate resources to participate and time to marshal resources.

Tip #2: The more directed your process is towards recommendations, agreements, or stakeholder actions, the earlier you should start because:

- It takes significant time to identify and sort through possible interest groups and appropriate representatives of these groups;

- Representatives need time to gather information, needs, and opinions from their constituencies; and

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Managing Details Takes Time

- You should give stakeholders at least one month's notice of any significant meeting

- Some parties may need even more time to gather resources, and you may need to contribute resources to improve their ability to participate

- The chartering process for FACA may take two to four months, including the time to identify members and draft a charter

- The GSA regulations require FACA committee meetings to be announced in the Federal Register 15 days in advance (41 C.F.R. 102-3.150(a)). Allow another five days for processing time

- Processing most contract actions (small purchases or task orders) can take three to six weeks

- You may need significant time to obtain contract support for facilitation, logistics, or scientific/technical support.

   Tip #3: Logistical coordination is time-consuming. Potential participants and facilitators aren't sitting around waiting for you to call them. Phone tag can delay identification of appropriate participants. Coordinating convenient meeting dates can be difficult with a large group, especially when people represent their constituencies in many different forums.

   Tip #4: It always takes longer than you think! How early is early? Ideally you should begin talking with stakeholders when you start gathering technical data or request funding for your project. This may be six to 18 months before you are actually ready to commence a stakeholder involvement process.

C. When to Use a Neutral Convener

   In consultative procedures such as information exchanges, in which there may be no need to limit the numbers of participants or balance the group's membership, you may be able to identify the proper parties and bring them into the process without the assistance of an outside convener. But in recommendations, agreement, and stakeholder action processes, an external assessment can be difficult and time consuming yet critical to laying a foundation for success. Although you may be familiar with many of the interested parties, other interests may be difficult to identify or you may not anticipate a reaction from them. An outside convener brings neutrality to the task; this allows private parties the opportunity to provide more candid assessments than they would provide directly to EPA staff.

When is a neutral convener most important?

- For an information exchange, it is less important, but potentially useful, to employ a neutral convener

- Using a neutral convener in recommendations, agreement, and stakeholder action processes can help identify issues and stakeholders of which you may be unaware

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Pros and Cons of Agency as Convener

Pro:
- Knowledge about issues and options
- Familiar with parties
- Authority to invite parties
- No cash cost
- No delays for contracting

Con:
- May know too much
- May be biased
- May not be considered neutral
- May not have enough time
- May not have skills
- Limited in ability to make independent recommendations
- May not be trusted with confidential information

In these situations, the convener's goal is to understand the situation from the perspective of those s/he is interviewing. That can only be achieved if the convener promises those interviewed that their discussions will be confidential.

D. Suggestions for Finding Stakeholders

Going beyond your personal phonebook is important if you truly wish to hear all sides of an issue. Here are 16 resources that can help identify stakeholders:

1. Check **the docket** for previous versions of your rule or action or for closely related rules or policies. The docket index will list all who commented on the Agency's action. You may use this as a reference to get a feel for potentially interested organizations.

2. Contact your **Assistant Administrator's communications staff** regarding the individals or organizations interested in actions from your office.

3. If your action or policy involves a particular chemical, the workgroup chair, team leader, communications staff, or docket manager may be able to help.

4. Contact the **EPA Office of Public Affairs** or its regional equivalent to obtain the lists of its contacts in certain subject areas.

5. Contact **EPA Regional Offices** with respect to identifying potential stakeholders, especially when seeking a diversity of perspectives within a particular constituency (e.g., a small chemical plant).

6. Contact **state coordinators or community relations coordinators** when dealing with localized issues.

7. Contact the **Small Business Ombudsman** for assistance with small business identification.

8. Contact the **EPA Office of Cooperative Environmental Management (OCEM)** for information on the scope of existing FACA committees and their memberships.

9. Contact the **EPA Office of Congressional and Intergovernmental Relations** for information on state and local government contacts.

10. Contact the **EPA Office of Environmental Justice** for assistance in identifying whether there are environmental justice issues at play and who might be involved.

> "While we came to the table as representatives of specific organizations, businesses, and regulatory agencies, we all came to see how communities are the ultimate stakeholders."
>
> — Robin Morris Collin and Robert Collin
> University of Oregon

> "The table must be balanced in terms of power or the effort will not head in the right direction. People who have little money but a lot of direct understanding and intelligence need to be at the table, and need to be compensated for their time and effort. Often you will see people at the table who have excellent full-time jobs—and being there is one of their jobs. This automatically sets up an inequality."
>
> —Paula Fitzgerald Yoon
> On-line Dialogue on Public Involvement in EPA Decisions

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11. Contact the **EPA American Indian Environmental Office** for assistance in identifying whether there might be tribal issues and who might be involved.

12. Consult **directories of environmental groups and trade associations**. These may be available in the library or your AA or RA's communications office (e.g., the National Wildlife Federation's Conservation Directory, association directories, corporate yellowbooks, etc.).

13. Search **the Internet**.

14. Post a notice on **your office's web site**.

15. Publish a **Federal Register notice** asking interested parties to identify themselves.

16. Contact **trade journals** with a press release or, for local facilities, determine the most widely read publications and place an article or ad in them.

17. Ask **key stakeholders** for additional contacts. Generally stakeholders know who else is involved in the issue. Facility representatives can identify local officials and citizens. Trade groups can identify member companies or organizations.

When do you stop searching for stakeholders? When you are confident that you have discovered all the sides of the issue and all the major players. You don't have to find everyone, just representatives of the different points of view. At some point in your search you will be given fewer and fewer new names. This is a good indicator that you can move on, as long as you have been searching broadly and you remain open to new parties approaching you later in the process.

Once you have identified the universe of potential parties, you can start paring it down to those who are most affected, interested, and likely to contribute views. Start the external assessment process by contacting these parties first.

E. Conducting the External Assessment Process

In investigating and designing a stakeholder involvement process, you or the convener typically asks interviewees the following questions:

- What issues do you think should be addressed? Which are **priority issues**? How well defined are the issues? What issues should not be discussed?

Case Example

Beyond the Usual Parties

When conducting an external assessment regarding a proposed negotiated rulemaking for the revision of the Clean Air Act rule on fugitive emissions, the convener obtained a list of stakeholders from EPA staff. After contacting all of the "usual" parties (environmental groups, chemical manufacturers, petroleum refiners, state governments), the Agency published a "Notice of Intent to Negotiate a Rule" in the Federal Register as a matter of form.

The notice described the issues and the potential participants in the negotiation and asked for comment. In response to the notice, the City of Louisville, Kentucky, proposed adding one of its local air pollution management staff to the committee as a representative of local government interests. The Agency concurred with the suggestion and added the representative to the committee.

During the negotiations, this stakeholder was one of the most helpful negotiators on the team, contributing actively to the final agreement of the committee.

Conducting the External Assessment Process

The International Association for Public Participation uses a five-step process for conducting public participation. The first step is to identify the stakeholders and define the issues for public participation. This step includes the following activities:

- Identify key stakeholders and stakeholder groups
- Identify potential impacts of the decision and potential levels of controversy
- Identify the issues and interests of stakeholders and levels of concern
- Define the problem in such a way that it includes the perspectives of all participants.

Initially, "… (the Common Sense Initiative program) tended to have undefined goals and objectives, too many sector groups, and far too many projects within some of the sectors. In future efforts, we will look for a narrower and more clearly defined mission, a pared-down, focused effort."

— John Adams
Natural Resources Defense Council

- **Who else cares** about this situation? What are each party's basic interests? Are they mutually exclusive? What is the history of relationships on these or similar issues?

- How **well educated** are you and the parties on the likely issues?

- How **well organized** are you and other parties to participate effectively?

- How much **time and resources** are you and other parties willing to devote to the process? Do you have access to adequate resources?

- What is a **realistic outcome** of this stakeholder involvement process? Is "closure" desirable, necessary, and/or possible?

- What do you think will happen if some sort of collaborative process is **not** used?

- In your view, **what could be gained** by exchanging information, soliciting joint recommendations, negotiating agreement, or engaging in stakeholder action on these issues? What do you fear you could lose?

- What **kinds of data** will be important for addressing the issues? Do you think these data exist? Who has them? Are more needed? Who should participate in deciding what data are gathered or used? What data/information/expertise can you bring?

- What is the most credible, efficient, and comfortable way for you to receive notices and information?

- What **legal, resource, or other barriers** to a successful stakeholder involvement process do you see for yourself and others?

- If the group were trying to reach agreement but couldn't, **what would you do**? What do you think others would do?

- What **concerns** do you have about the particular involvement process? Do you need additional information about these processes?

- What **ground rules** or procedures do you believe should be followed to ensure the process is fair and effective?

- What meeting, note-taking or recording techniques are you comfortable with?

- If a process seeking recommendations, agreement, or stakeholder action were undertaken, **would you participate**? Who else would need to be there for the process to be credible and durable?

- What qualifications should a neutral third party have in order to facilitate this process?

In addition to these standard questions, special attention should be paid to the following issues in the external assessment process:

Issue Identification and Development. As you move along the continuum from outreach to agreements, there is a greater need to identify in advance what issues will be on the table. If the issues are not developed beforehand, some parties may be reluctant to participate for fear that they would be forced into discussing issues they would prefer to avoid. Also, having the stakeholders identify or decide in advance on a package of issues can be extremely valuable in accomplishing the goals of the process, reaching consensus, or crafting optimal solutions. For recommendations and agreement processes, it is helpful for a convener to identify in advance related issues and the range of parties' views. Conducting a thorough external assessment can significantly expedite the work of the negotiating group by framing the issues in a way the group can comfortably address them.

Balancing Interests. The more explicit the recommendations, agreement, or stakeholder action, the greater the importance of careful analysis regarding who must be included in the process. The method of decision-making—vote or consensus (see Stage 3)—may affect how members are balanced. It is desirable—and may be required if you are in a FACA process—to have a balance of participants. In a process that may be governed by majority vote, you will probably want some numerical balance among interests, so no one interest group can dominate the discussions or intimidate others. In consensus processes, somewhat paradoxically, numerical balance is less crucial since each party is empowered to block consensus, so it is difficult for a minority to be numerically outvoted.

EPA staff can make a preliminary determination about participants, then use the external assessment process to adjust the list. For both recommendation and agreement groups, the number of direct participants should be limited to 25 or fewer if feasible. Larger groups can become logistically unwieldy and may bog down in meetings unless you break the group into smaller workgroups that will address specific issues to be con-

> "Looking back (at the stakeholder involvement process), I think there may have been some imbalance among the interest groups represented. There was a tendency for some groups' members to stick together as a kind of united front, making it harder to reach a compromise. In order for diverse forums to work, balanced stakeholder representation is critical."
>
> — Frank Grimes,
> United Steel Workers of America

sidered by the larger committee. If you would like to include more people indirectly, additional individuals or representatives of groups can form caucuses and they can designate one or more people to represent them formally in the process.

Individual Versus Representative Capacity of Participants. Different situations call for a variety of representative capacities. Conducting an external assessment can help decide whether participants represent themselves as individuals or as representatives of an entity, organization, interest group, or of a general point of view (e.g., small businesses). Representational responsibility can be linked to the level of support expected for the outcome: if an organization is expected to promise not to object to certain negotiated outcomes or to implement them, then organizational representatives are needed. On the other hand, participating in an individual capacity is far easier because the decisions do not carry the responsibility of speaking on behalf of a broader group. Individual participants feel far less duty to "call home" to check before agreeing to something. A representational capacity, on the other hand, may require extensive deliberations in caucuses, back at their offices or with their constituencies, before positions can be taken. The primary benefit of representative capacity is that members may have buy-in from a larger group or a collection of groups.

Nature of Participation by the General Public. During the external assessment process, you should explore the role of the general public in the process. While many consultative processes are open to the public, the nature of general public participation varies. Unless the purpose of the process is to receive broad public input, it is helpful to designate at least the core participants in advance. This is especially true if more than one meeting is contemplated because continuity of participation will help move discussions forward.

For information exchanges and recommendations, anyone who attends will usually have at least some opportunity to offer public comment. Make it clear when designing the process whether people who were not explicitly invited but who attend the meeting will be able to participate fully or whether they will be limited to submitting questions or comments. (If you are involved in a FACA process, only the members of the committee may participate fully in the committee's discussion and deliberations; others may observe and provide oral and written comment.) Sometimes segments of an agenda may be set aside for members of the general public to offer views on a topic.

How does the general public participate?

- During information exchanges, the general public is usually invited and encouraged to speak to the group

- During recommendations processes, the agenda usually includes a specific time for public comments and provide for submission of written coments

- The general public may be allowed to participate in an agreement process with the unanimous consent of the committee

- Public participation in stakeholder action processes varies widely depending on the nature of the project

During agreement processes, unless the decision would resolve pending litigation or administrative actions, meetings of a government organized committee are generally open to the public, and those who attend are usually permitted to submit statements or offer comments at designated points. But the process belongs to the committee members, and the participation by the public should not eclipse that fact.

Public participation in stakeholder action processes varies considerably depending on the nature of the project. Some projects offer little or no opportunities for public participation because the process involves only those parties willing to engage in voluntary action on non-regulatory matters. Other projects, especially those on the community level, provide for ongoing and elaborate public participation as different parties cycle in and out of the stakeholder action process based on the specific issue and action under consideration.

F. The Convener's Report

After completing the interviews and analyzing the information collected during the external assessment process, the convener will typically provide a written and/or oral report that:

- Discusses the issues and perspectives of those interviewed, but without attribution;

- Assesses the feasibility of the process;

- Recommends a design for the process;

- Defines the elements of a successful process;

- Recommends who should be contacted to participate in what role;

- Recommends what issues should be considered;

- Lays out a schedule of events;

- Discusses resource needs; and

- Identifies the desired qualifications for a neutral for the process.

The convener's report for an information exchange may be relatively short (one to two pages). When the issues are complex and controversial and agreement is the goal, the convener's report should be more complete and formal. Maintaining confidentiality is important in

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After Receiving a Convener's Report:

1. Have internal stakeholders review the draft report

2. Receive an oral debriefing on the written report with key management from relevant EPA offices

3. Suggest only factual changes to the report

4. Request additional research, analysis, or options if major questions are raised

5. Accept a final report from the convener

6. Provide the final report to the parties interviewed by the convener

7. Make a decision on the appropriate stakeholder involvement process using report recommendations

8. Use the report to support FACA charter (if necessary)

9. Use the report information for notices

Dangers of Proceeding without an Assessment

- A process might proceed even though some parties are not motivated to see it through in good faith

- The issues may be framed in ways that prevent or discourage stakeholders from coming to the table

- Key participants may be left out

- A process might start without sufficient resources needed to complete it

Case Example

The Value of Assessment

In one situation assessment for a negotiated rulemaking, EPA strongly desired an agreement process, but the primary industry group preferred to seek legislative relief. If a consensus process had gone forward, that industry group would not have been fully committed to a negotiated process while it was seeking relief in another forum.

the external assessment process for agreement groups, so it is not appropriate for EPA staff to ask the convener to identify individuals who took a particular position or to inquire about the views of a particular party.

G. The Results of the External Assessment Process

Once you've received the convener's report (or recorded your own observations if you conducted the analysis yourself), you or internal stakeholders will typically have an opportunity to offer comments. EPA should refrain, however, from seeking to rewrite the report, since it should reflect the convener's data gathering, independent recommendations, and the interviewees' perspectives. In recommendations and agreement processes, you should seriously consider sharing the convener's report with non-Agency parties who were interviewed as well. In fact, the Regulatory Negotiation Act provides that the convener's report is a public document. It is essential to share the convener's report for stakeholder action processes given that the stakeholders will need to assess the commitment level of other parties before engaging in a collaborative process geared toward voluntary action. In all cases, sharing the document adds legitimacy and integrity to the process and helps establish a transparent and positive atmosphere. The information gathered in the external assessment process can be used to ratify, refine, or revise your initial decision made in the preliminary planning stage. Also, you should use the information in the convener's report as well as your desired stakeholder involvement goals to define the elements of a successful stakeholder involvement process. You may later use these as the criteria for evaluating the success of your process.

If you decide to move ahead with a stakeholder involvement process, you and/or the convener should contact potential parties to verify their interest in participating in the suggested process and take additional steps to ensure that all affected interests have an opportunity to participate. You may issue a public notice, such as a Federal Register notice or press release, of your intent to move forward with a stakeholder involvement process, to make sure all relevant entities are aware of the proceeding.

For Negotiated Rulemaking Committees, EPA is legally required to publish a notice in the Federal Register and elsewhere announcing its intent to form the committee, request comments, and obtain a charter under the Federal Advisory Committee Act for the negotiating

group. This process permits persons who believe their interests will not be adequately represented to apply to participate or to nominate others.

Based on your internal assessment, you made an initial decision about the ideal stakeholder involvement outcome for your situation. Your next step is to conduct, or have a neutral convener conduct, an external assessment to confirm your preliminary decision or to modify your desired stakeholder involvement outcome. You should use the questions on the following pages, as well as the contents of this chapter, to guide you as you plan for and conduct the external assessment process. ■

Questions to Answer in the
External Situation Assessment Stage

1. Based on your preliminary assessment, what stakeholder involvement process seems most appropriate (information exchange, recommendations, agreement, or stakeholder action process)?

_____

_____

_____

_____

2. Based on the desired stakeholder involvement process and time frame for the decision, how much time is needed to conduct the convening and implement the stakeholder involvement process?

_____

_____

_____

3. Is a neutral convener needed for the external assessment process? What factors argue for or against the use of a neutral convener?

_____

_____

_____

_____

4. What resources are needed and available to conduct the external assessment process (money, staff, technical contractors, etc.)?

_____

_____

_____

_____

5. **For your issue, what resources should you and the convener consult to identify the stakeholders?**

    _____

    _____

    _____

    _____

6. **What questions should you or the convener ask interviewees as part of the external assessment process?**

    _____

    _____

    _____

    _____

7. **If you're considering a recommendations, agreement, or stakeholder action process, what factors should you consider to determine the composition of the stakeholder group?**

    • **What decision-making method will be used—voting or consensus?**

    • **Is it necessary or desirable to seek a balance of interests among the participants?**

    • **Should participants represent themselves as individuals or as representatives of a specific group or interest?**

    • **What should the size of the group be – how many direct participants should be included?**

    • **What should the role of the general public be in this process?**

    _____

    _____

    _____

    _____

8. **What information should be included in the convener's report?**

    _____

    _____

    _____

    _____

9. How will you use the convener's report to advance the stakeholder process design? Make a list of the internal and external parties that need to read and discuss the report and what steps are needed to finalize the process design?

_____

_____

_____

_____

STAGE 3: DESIGNING THE PROCESS— WHAT, WHEN, WHO, HOW

After the situation assessment has been completed, you should have a clear destination in mind for your stakeholder involvement process: information exchange, recommendations, agreement, or stakeholder action. The next step is to design a process that achieves your goals as efficiently as possible. In this chapter you'll review many details that can make or break a stakeholder involvement process.

A. Finalizing the Process Choice: "What"

You may find it helpful to review Exhibit 2 in the Introduction and the charts in Stage 1 that relate Agency goals to stakeholder involvement outcomes to make sure that the process outcome you've chosen matches the goals and resources you have.

1. Purpose

You should be able to state the purpose of your stakeholder involvement process in no more than one clear paragraph.

Examples:

Information Exchange. The purpose of this process is for EPA to present the data and options for controlling dimethyl chickenwire emissions from manufacturing facilities under the Clean Air Act section xx. Through this process, individual members of the public, including manufacturing representatives, state and local air pollution officials, and local and national environmental groups will be able to review the data and suggest additional sources of information and additional options for controlling emissions.

Recommendations. The purpose of this committee is to analyze the options for environmentally acceptable handling and disposal of wastes during the manufacture of electronic circuit boards and to recommend to EPA a range of acceptable options.

Agreements. The purpose of this committee is to reach agreement, if possible, on the total maximum daily load (TMDL) for sediment and dimethyl chickenwire in the Green River.

Stakeholder Action. The purpose of this process is to identify actions that each member of the collaborative group can take voluntarily to reduce the amount of nasty air in the City of Obscured Light.

☑**hecklist**

End Products

☐ Possible comments

☐ Analyses

☐ Data

☐ Meeting summary

☐ Report or review of information

☐ Options list with discussion/ analysis

☐ Options list with recommendations

☐ Recommendations

☐ Agreement, policy, rule, guidance text

☐ Agreement, policy, rule, guidance outline

☐ Other

2. End Product

Once you can state the purpose of your stakeholder involvement process you should decide what the end product of the process will be. Will it be a compendium of the comments and discussions of a public meeting? Will the group coalesce around a set of recommendations? Will the group enter into a negotiation with EPA to draft a proposed rule, standard, or policy? Or will the group identify actions each member can take to implement the program?

You should derive both the purpose and the end products of the stakeholder involvement process from information obtained during the situation assessment. They should also be subject to some discussion with the stakeholders at the beginning of the process—everybody should be operating from the same assumptions about the subject of the discussion and the agency's preference as to the process and end product.

One way to involve the stakeholders in the design of recommendations, agreement, or stakeholder action processes is to hold an organizational meeting. This meeting is held before the design is finalized and the participants have received formal invitations to participate. The agenda includes discussion of how to chair or facilitate the process, what the purpose and end products of the process will be, and other design issues discussed in this chapter. It is important to get the buy-in of stakeholders in the design of the process and to make sure that they are ready, willing and able to participate in the process.

Misunderstandings or differences of opinion on these issues should be resolved as early as possible in the stakeholder involvement process. The purpose and end products may change and evolve throughout a lengthy process—you should be flexible about revisiting the purpose and end products but be sure to state your desires and decisions as you go along.

If you are going to use a recommendations or agreement process that is subject to the Federal Advisory Committee Act (FACA), you need to consult with the Office of Cooperative Environmental Management (OCEM) and with the Office of General Counsel, Cross Cutting Issues Law Office. OCEM can provide a manual that will help you meet the requirements of FACA (see Appendix I of this manual) and the OGC attorney can advise you on legal issues or implications of your proposed process.

In general, Information Exchange processes are not subject to FACA even if they are interactive or iterative

in nature, as long as they do not ask the stakeholders to "render specific advice or recommendations." It is always useful to make sure that (1) you involve a wide range of stakeholders in your process, and (2) you conduct your process in an open and accessible manner—such as conducting meetings at convenient times and places, announcing the meetings in advance, and not restricting access to the meeting. Not only are these good practices from a policy point of view, they are also good practices from a public involvement point of view.

B. Process Structure: When, Who, How

The situation assessment should also give you information on how to structure the process itself:

1. When will it start?

Is it useful to conduct a process to scope out the issue or rule at the very beginning or to jointly identify data and information needed to proceed? Or do you have most of the information in hand and want participation in identifying and analyzing the options? It is important to consider your timeframe for completing the project. Consider the opinions of your management and of the external stakeholders regarding the level of their interest and participation. Consider your resources. In general, your relationship with outside stakeholders will be better and your final product will be more informed the earlier you begin your stakeholder involvement process. But this needs to be balanced against your own resources and needs.

2. Who will come?

What will their roles be? There are numerous participant categories—Agency participants, other co-regulators, regulated parties, general public, trade associations, environmental groups, contractors, experts. Even in information exchange processes, which seem so simple (announce a meeting, conduct the meeting...), the presence and roles of each group should be carefully considered so that the process is rewarding to both the Agency and the outside stakeholders. Each person/group has a role to play in the process—seek to understand what those roles are. Who will lead the meeting? Who will make presentations? How will participants express their needs and ideas?

Information Exchanges. At the outset, the group, regardless of its purpose, needs to understand who may

☑hecklist

When to Begin

- ☐ Scoping phase
- ☐ Data needs identification
- ☐ Data/information gathering
- ☐ Data analysis
- ☐ Options identification
- ☐ Options analysis
- ☐ Options selection
- ☐ Implementation planning
- ☐ Implementation review

For easy-to-use ideas on how to design and implement effective pubic involvement processes see: *www.epa.gov/publicinvolvement/ brochures/*

✅hecklist

Who Will Come?

Agency Substantative Participants

- ☐ manager/decision maker
  role: chair, facilitator, speaker, participant, observer
- ☐ program staff
  role: chair, facilitator, speaker, participant, observer
- ☐ other Agency staff
  role: chair, facilitator, speaker, participant, observer
- ☐ contractors
  role: speaker, participant, observer

Process/Information Assistance

- ☐ meeting director—agenda leader
- ☐ facilitator
- ☐ mediator
- ☐ technical/scientific consultant
- ☐ logistics staff—registration, paper handling, room arrangements
- ☐ recorders—flip charts, written notes

External Participants

- ☐ any interested person—preregistered, walk-on
- ☐ invited participants
- ☐ media
- ☐ co-regulators
- ☐ tribes
- ☐ state organizations
- ☐ elected officials—federal, state, local
- ☐ regulated parties
- ☐ trade associations
- ☐ environmental public health—national, regional, local
- ☐ consumer groups
- ☐ general public
- ☐ environmental justice
- ☐ small business
- ☐ small communities
- ☐ scientific experts
- ☐ academics
- ☐ other (what)

speak and in what order. Can anyone who attends have the right to the floor and address other comments that are made? Or is the purpose to hear the views of each participant with no opportunity for rebuttal or exchanges among them? In a public meeting or informal hearing, the latter is likely to be the case, since the purpose of the meeting is to inform EPA staff about the concerns of the affected populace and allow the public to hear EPA's views.
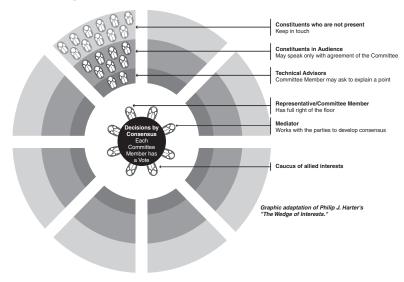
In a technical workshop, for example, where issues are raised and discussed, key players or members may be designated, with others simply observing or speaking only at designated points. Opportunities will exist to discuss some issues in more depth.

Recommendations and Agreement Processes. In recommendation or agreement processes, committees develop ground rules or operational procedures that specify who is permitted to speak at what time. Often during these processes, committee members consult with others in their interest group, including technical advisors. These other persons are collectively known as a caucus and their ideas are funneled through the committee member who sits at the table. There are three other sets of participants to consider: alternates; resource, technical or legal advisors; and general public observers. The Wedge of Interests graphic depicts the roles of committee members, caucuses, technical advisors, and constituents.

Stakeholder Action Processes. Participation in and the structure of stakeholder action processes vary considerably and often resemble a blend of information exchanges, recommendations, and agreement processes. EPA participation also varies because EPA does not have any role implementing the actions.

EPA representatives should be technically qualified to participate and high enough in the Agency hierarchy so their statements carry some authority, but not so high that they will not have time to prepare and participate effectively. Typically, the Agency representative will be the person who is responsible for making the initial decisions on the issues. S/he will usually want to work with other Agency decisionmakers and reviewers to ensure staff keeps up with developments and that the Agency's negotiating positions are agreed upon in advance. This assures that incremental agreements in the negotiations have adequate internal backing, coordination, and management review before they are pursued with the larger group.

The Wedge of Interests

Constituents who are not present
Keep in touch

Constituents in Audience
May speak only with agreement of the Committee

Technical Advisors
Committee Member may ask to explain a point

Representative/Committee Member
Has full right of the floor

Mediator
Works with the parties to develop consensus

Decisions by Consensus
Each Committee Member has a Vote

Caucus of allied interests

Graphic adaptation of Philip J. Harter's "The Wedge of Interests."

It is a good idea for ground rules for recommendations, agreement, and stakeholder action processes to address whether members may have alternates (some groups do not allow this unless the alternate attends all meetings in order to have adequate information), who can be an alternate (does the person have to be from the same company, organization, or should the person be from one of the other members of the represented constituency), and how alternates can participate in the process (can they speak when they are observers, can they participate actively in meetings when the member is absent, can they participate in the decision making or just the discussion).

The groundrules may also spell out how technical, legal or resource advisors' information can be presented. Sometimes members summarize or present the information that is provided by these sources. At other times, groups have created ways for the member to ask the group to permit an advisor to address a particular issue or question or to make a presentation.

For some information exchange processes and for most recommendations and agreement processes that are open to the public, provisions may be made in the groundrules or management of the process to obtain the input or comments of the general public who may either be observers in the room or who may be interested constituents "back home." There are numerous ways to do this. Many groups set aside a time each day to be open to comments from observers—who may have been asked to request time in advance or who may be recognized from the floor. The facilitator may ask for questions to be posed on cards passed to the front, or

"The ability to hit the road and engage people was very important rather than waiting for them to come to us during the comment period, which was a very foreign and formal thing. To take the informal approach of engaging these people one-on-one was the best way to do it regarding this particular subject matter and with these stakeholders."

—Holly Pugliese
Service Information Regulation
for Light Duty Vehicles and Trucks

in written comments to be given to the members or read by the chair or facilitator.

To reach out to those "back home," some groups have taken their meeting process "on the road," holding meetings in locations near affected citizens, or taking a field trip to a facility or site. Groups have held public meetings at these local sites in addition to or in place of a shorter period of time at the end of their own meeting.

3. How will the process work?

Will it be a single meeting, a series of meetings on the same topic, an iterative series of meetings, or a committee process? The typical information exchange process is an open public meeting, with some invited participants but open to anyone else who is interested enough to attend. These meetings can produce a wide variety of products—but they may or may not be the most productive design. There are probably scores of designs that could be used, particularly for information exchange processes. The bibliography (Appendix VI) lists a number of books, manuals, and websites that can give you some ideas that might be more dynamic or productive than the usual open public meeting. Read about some of them to see if they might achieve your goal and end product.

For recommendations and agreement processes, the typical design consists of a committee representing the interest groups identified by the situation assessment. Even within this process structure, there may be scores of designs combining plenary, subcommittee, workgroup, and public meetings; field trips; and conference calls and internet discussions, to name a few. Don't assume that you have to stick with a design that has a committee of 20 meeting every month until they have reached an agreement (or collapsed from exhaustion). Think about whether you can use an existing committee either within the Agency or government or sponsored by an outside organization. If so, is the scope of their existing charge flexible and relevant and are the existing members appropriate, or do you need to change the charter or add or subtract members? You should do a mini external assessment to make sure that the right stakeholders are at the table plus any interests that were added in response to the notice of intent.

While face-to-face meetings are good for interactive discussion, emerging technology may make it possible to reduce the costs of face-to-face meetings (meeting rooms, airfares, travel time) by using teleconferencing,

videoconferencing, or discussion groups on the Internet. These technologies have been used for information exchange processes and for assisting the communications for recommendations and agreement processes. You may or may not be able to run a whole stakeholder involvement process through these technologies, but they can certainly contribute to ongoing dialogue and dissemination of information and data. When used carefully, these technologies may help you achieve your stakeholder involvement goals; when used carelessly, they may preclude or impede their achievement. Be sure to check to see if there are legal restrictions on how you use these technologies.

C. Process Design

1. Ground Rules

Ground rules are the written operational procedures and standards of conduct that all participants agree to abide by before the consultative process begins. When groups use Robert's Rules of Order, these may be called bylaws.

For information exchanges, minimal ground rules may be sufficient and they might address only the issues being considered, who speaks in what order, and for how long. Where controversy or complexity is anticipated, ground rules may extend to rules of civility and the facilitator's authority. As the process moves from one-time information exchanges toward recommendations and agreements, there is a matching need for structured ground rules tailored to the parties' heightened needs and expectations. Since advisory and consensus groups usually have multiple meetings and seek closure on recommendations or regulatory language, written ground rules spelling out the procedure of the committee and the nature of any commitments in a final agreement will be important.

In information exchanges, it is useful to present ground rules at the beginning and be open to a brief discussion of them. Since most information exchange processes are of short duration, extensive discussion of ground rules is unnecessary.

In recommendations and agreement processes, you or the facilitator can present a draft of ground rules, but the group as a whole should discuss and agree on the protocols at the outset. Involving all parties in crafting ground rules will increase everyone's commitment to the process, show that agreements are possible, and help

☑hecklist

Ground rules usually address the following issues:

☐ The purpose and scope of the process

☐ Participation, including use of alternates and provisions for adding new members

☐ Participant roles

☐ Decision rules, including the meaning of consensus and what will happen if consensus is not reached

☐ The end product to be achieved

☐ Understanding of participants' activities in other proceedings

☐ Organization and conduct of the meetings

☐ Selection and role of facilitator

☐ Communication with the media

☐ Schedule or timetable

☐ Information, including provisions for sharing information and confidentiality

Options

How Decisions Will Be Made

- Individual opinions
- Convergence of opinions
- "Sense of the group"
- "Weighing the dissent"
- Majority vote
- Super majority vote — what percentage
- Consensus — of individuals or of interests

Case Example

Defining Consensus is Critical

In a recent EPA FACA process, the committee agreed to make all decisions by consensus—defined as unanimity—or a positive affirmation of agreement. The definition of unanimity was applied rigidly to all decisions, from when to hold the next meetings to agreement of individual pieces of its larger recommendations.

The committee spent hours trying to achieve unanimity on the date of a future meeting. Committee members became discouraged and exhausted in these efforts and finally decided to reexamine the definition of consensus in their ground rules. After consulting several consensus-building experts, the committee revised its definition to apply to larger collections of small decisions or packages of recommendations rather than applying the definition of consensus to each element of a larger package.

The Committee also changed the definition of consensus to mean no one opposed the package, a subtle but important change from requiring every member's affirmative support. With these changes, the members were able to reach consensus agreements on packages of recommendations when previously they couldn't reach consensus on the individual recommendations. The members also decided that issues such as meeting dates and the sequence of items on the meeting agenda did not require consensus.

deal with any subsequent unruly behavior. You can use examples of ground rules from past EPA groups as a draft for your group, but be careful as most ground rules have been tailored to fit specific processes and may not be appropriate starting points for your group.

2. Decision-making Methods

How the group will make decisions is probably the most important ground rule. A combination of decision-making tools can be used, but it should be clear to everyone which tools will be used for which types of decisions. Since information exchange processes by definition do not reach agreement, only the first two of the following apply. Recommendations or agreement processes may use any of these.

Individual Opinions. Each person or organization speaks its own opinions with no attempt to reconcile them with others in the group.

Convergence of Opinions. After the meeting you identify one or more general themes, or convergence of opinion, within a group.

"Sense of the Group" or General Concurrence. Even without a formal vote, the leanings and general views of the group may be apparent. The facilitator may announce his or her views of the sense of the group and unless someone disagrees strongly, that will serve as the decision.

"Weighing" the Dissent. The group (perhaps with help of the facilitator or mediator) can weigh the dissent by balancing a few who strongly object against a greater number who feel less concerned about a particular issue. Another approach is to collectively assess the nature of the disagreement or to ask a dissenter to obtain a second to determine the legitimacy of any complaints.

Votes. Voting can be used to make decisions, either using a customary majority vote or a super-majority (such as 2/3 or 3/4) to represent the decision of the group. You should discuss whether a majority and minority report may accompany the record of the vote.

Consensus. Consensus usually means everyone on the committee must affirmatively concur with the decision or at least not object to it. A variant of this is that each distinct interest represented on the group must concur, but not each individual. For example, if a caucus represents an interest, the caucus as a whole must sign

off on the decision, but not each member. An additional variant is that the consensus—however defined—can be among those who are present when the decision is made; that is, if someone is absent when the decision is made, his/her views are simply not taken into account.

The ground rules should address whether someone can abstain to avoid defeating a consensus. If someone feels that when viewed as a whole, the decision is beneficial, but does not want to endorse one particular part of it, s/he might abstain on that issue, but concur on the whole. The ground rules might also address whether someone must affirmatively endorse the decision or whether each is given a veto, and unless a veto is exercised, the decision is taken as the consensus of the committee. In this case, silence is construed as acceptance.

Usually, a group seeks consensus for the entire package, recognizing that parties will likely not fully agree with each piece. If consensus is sought for each component of a complex decision, the process is very likely to bog down and reach an impasse. One of the major reasons that consensus processes are so effective is that different people have different needs, and the consensus process enables them to achieve overall decisions that make them better off than they would be otherwise. Another benefit of consensus processes is that they allow for sophisticated trade-offs that are not possible in other forms of decision-making.

3. Meeting Management

Meetings are much more productive when persons are assigned to the roles of meeting leader and/or manager. Groups should fill these roles with the person or persons who can best add credibility to the process you have chosen by performing the following tasks or functions:

- Helping the group define its goals and objectives

- Providing leadership in discussions of technical information or policy

- Working with participants to structure an appropriate agenda

- Communicating with participants before and after meetings to move the process along

- Providing a record of what occurs at meetings so that all participants are comfortable with what

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Definition of Consensus:
Consensus means that everyone on a committee either affirmatively concurs with, or at least does not object to, a particular decision or package of recommendations.

Two types of Chairpersons

A *substantive chairperson* is someone who has a substantive knowledge of the technical or policy issues and can lead detailed discussions of technical data, information, and options. The substantive chairperson can be someone from the Agency— a workgroup chairperson, a project leader, a supervisor or manager— or someone invited from outside the Agency who is an expert or respected leader in the field.

A *process chairperson* may be a facilitator or mediator who isn't necessarily an expert in the technical information but who has meeting management skills and perhaps conflict resolution skills. A process chairperson may be a staff person or manager from the Agency or other governmental partners or may be a professional facilitator retained by the Agency and/or the participants to manage the meetings or process.

> **"People often view a chairperson as an authority figure and choose a chairperson accordingly as a senior, powerful, or authoritative member of the group, or simply as the most powerful person in the group who agrees with one's own general perspective. This makes it even more unlikely that a chairperson will facilitate rather than advocate and maneuver. I have experienced many more well-facilitated than well-chaired meetings and advisory or decision-making processes."**
>
> —Barry Zalph
> On-line Dialogue on Public
> Involvement in EPA Decisions

> **"Collaboration is needed for the majority of projects and policies; however, it is often easy to lose sight of the reason for the collaboration and let the process snowball to an unmanageable degree."**
>
> —Celeste Hoehne
> On-line Dialogue on Public
> Involvement in EPA Decisions

is happening and have consistent information to provide to their constituencies

- Keeping discussions focused and constructive

- Ensuring that all participants have an appropriate opportunity to participate

- Seeing that agendas and schedules are followed

- Serving as guardian of the credibility and efficacy of the process

- Recording the sense of the group or recommendations or agreements of the group

- Assisting parties in evaluating technical data, information, and options

- Helping parties to overcome impasses or disagreements.

Various titles describe the people who play some or all of the roles above, such as chairperson, facilitator, mediator, or technical or policy lead. One well-chosen and well-prepared person can sometimes fulfill all of these roles, particularly in very short-term information exchange processes. However, the longer and more focused the process, the more you should consider using more than one person to provide leadership in managing the process.

In designing your process, consider carefully what type of chairperson, meeting manager or facilitator you really need to accomplish your goal.

Selecting a Chairperson. When selecting a chairperson, ask yourself these questions:

- Do you need both substantive and process leadership?

- Do you need a well-known and trusted substantive expert who will add technical leadership and credibility to your process? Can that person be a resource person or does s/he need to be the chair?

- How will you access good meeting management skills?

- Do you need conflict resolution and impasse-breaking skills?

- Do you need the Agency to be perceived as providing key leadership or do you need the chair to be

an outsider to establish credibility in a different way?

- How will the chairperson be chosen? Will the person be appointed by the Agency due to expertise or political considerations; elected by the participants; be the Agency project leader or manager; or be the facilitator?

- Do you need the leader to demonstrate the credibility of the process through his/her neutrality?

Even if you decide to have an outside chairperson, the Agency still provides leadership to any group it convenes. The Agency informs and regularly reminds the group of EPA's needs, goals, constraints, and intentions. If the Agency does not take a leadership role in expressing these, the group can lose focus and flounder or make recommendations the Agency has no power or desire to implement.

Using Meeting Directors, Facilitators and Mediators. Using a meeting director, facilitator, or mediator to run the stakeholder involvement process can free EPA program staff to participate in a more substantive fashion without having to worry about the details of running the meeting. The meeting director's, facilitator's, or mediator's duties should be set forth in the ground rules.

Responsibilities include:

- Seeing that agendas and schedules are followed

- Helping the group define its goals and focus on accomplishing them

- Keeping discussions focused and constructive

- Ensuring that all participants have an appropriate opportunity to participate

- Serving as a guardian of the credibility and efficacy of the process

- Working with all parties to craft an agenda and reassessing the agenda during the meeting

- Structuring the process to overcome impasse or deal with difficult situations.

In some instances, particularly short-term information exchange processes, all you may want is a "meeting director," a person whose job is to shepherd the accomplishment of the agenda, watch the time, and

If an internal chairperson:	Then Consider:
Doesn't have the time to assume all the duties of the position	Arranging for contractor or staff support
Isn't considered neutral by participants	Asking the chair to share process responsibilities with a facilitator or process chairperson
Can't advocate on the Agency's behalf without being perceived as biased	Using a neutral facilitator or mediator
Doesn't have the leadership and meeting management skills to accomplish the goal	Supplementing his/her presence with a process chair or facilitator

If an external chairperson:	Then Consider:
Doesn't have the leadership or meeting management skills to accomplish the goal	Supplementing her/his presence with a process chair or facilitator
Is a substantive expert, but not a process expert	Asking the chair to share process responsibilities with a facilitator or process chairperson
Doesn't have the resources to handle logistical and communications duties	Assigning those duties to an EPA staff person or contractor
May not be able to advocate his/her own interests while managing an equitable process	Reconsidering using an external chair so that s/he may fully represent his/her interests without conflict

Facilitators and mediators must be:

- Neutral or unbiased on the substantive issues
- Fair to all parties
- Accountable to all members
- Free from undue influence

Conveners, Meeting Directors, Mediators, and Facilitators:

What's the Difference?

A "convener" works prior to the commencement of a consultative process to assess the feasibility of going forward with a process, tentatively design a process structure, and identify participants and issues. The convener may be a process designer, a facilitator, a mediator or meeting director.

A "meeting director" keeps watch over the agenda and schedule.

A "facilitator" chairs meetings, keeps discussions moving, and ensures that all parties have a chance to participate effectively.

A "mediator" typically performs all the above tasks, but also manages and assists negotiations between the parties, helps them identify their major interests and develop possible solutions, seeks to overcome impasses, and ensures that all reasonable opportunities for settlement are explored.

recognize speakers or commenters. You should analyze your project and make sure that additional skills are not needed.

A facilitator or mediator is a person more skilled and experienced in adapting the agenda to the reality of the situation. The facilitator or mediator does not have a stake in the outcome and should treat all parties equally. S/he should be familiar with consultative processes, skilled in conflict resolution, and, if necessary, able to grasp and communicate complicated issues. In highly technical negotiations, some substantive expertise may be important. This does not mean the facilitator should be a technical expert in the subject, since that alone can lead to feelings of bias. Rather, familiarity with the issue allows the facilitator to be a fast learner and to appreciate the nuances of the views of the parties.

Whether the facilitator comes from inside or outside the Agency (a topic addressed in greater detail below) and whether selected by EPA staff or the group, s/he should be truly impartial and accountable to all parties and have latitude to act independently of your office. That necessarily means that no one from EPA or the rest of the committee should try to control the facilitator's or mediator's actions. S/he represents the process and all of the members of the committee, not just EPA staff. In that role, s/he may have to challenge assumptions, serve as an agent of reality, or even push a bit to achieve closure. Moreover, s/he may occasionally have to deliver bad news to you about the views and concerns of other parties. Don't "shoot the messengers" in these instances or try to use them to gain information inappropriately.

The ground rules of the process should set out what happens if the participants become unhappy with the meeting director, facilitator, or mediator. Can s/he be "fired?" If the parties find the facilitator or mediator to be biased or ineffective, you should discuss these concerns with the mediator; s/he may have a good explanation for what is happening. If not, you may be able to agree on changes in the mediator's performance or behavior. Alternatively, if participants continue to feel discomfort over the mediator's performance or behavior, it may be appropriate for the group to ask the mediator to resign. The ground rules should address the criteria and process for hiring a new facilitator in the event this becomes necessary.

There are four general approaches to obtaining facilitation or mediation services in a consultative process:

Selecting a Neutral Facilitator. At the outset, if a neutral convener was used, you might consider using that person as the facilitator or mediator. The convener may have developed a rapport with the parties and an understanding of the issues; thus, it is more efficient for the same person to serve in both capacities.

If it is to be a contentious and/or long-term process, you should consult with the participants about whether continuing on with the convener is acceptable or whether they want to participate in a process to choose a mutually acceptable facilitator or mediator. Although it may be awkward, you could do this at the organizational meeting. In an information exchange, the identity of the facilitator or his organizational affiliation is less likely to be significant than in recommendations and agreement processes.

When EPA Facilitation is Acceptable. In some situations, EPA staff can handle the facilitation without outside assistance. In information exchanges, where the purpose of the gathering is to develop information as opposed to resolving issues, a facilitator will need only to keep the process functioning smoothly toward the stated endpoint. If there is neither considerable controversy nor a large number of people involved (say, less than 15), you or another EPA staff person can facilitate ***if you have time to fully perform all of the preparatory and functional roles without falling behind in your substantive responsibilities.*** Even with large or potentially controversial information exchanges, the facilitator's role will be to run the meeting and not to obtain confidential information from the parties. Thus, someone from the Agency can fulfill the role, although the person should have some facilitation training and experience.

The more an advisory group is intended to secure frank policy views or agreement from diverse interests as opposed to developing technical expertise, the more important it is for the facilitator to be independent. In those cases, the group should select the facilitator. If there is too close a relationship between the facilitator and EPA staff, either because the person is from a related office or because too much control is exerted, then other parties may not fully trust the facilitator.

When a Facilitator from Outside the Agency is Useful. Many advisory groups and all agreement processes will benefit from an expert facilitator who can help the group get organized, keep focused, and move towards agreement. The closer the process comes to addressing policy issues, the greater the need for the facilitator to

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Internal or External Facilitator

When to Use:
Internal:

- When sponsors and parties share tasks

- If parties have good working relationships

- If atmosphere is collaborative

External:

- When parties distrust one another

- When parties need to reveal confidential information to the facilitator

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"I encourage the use of professional facilitators, namely outside third parties. While I do understand that the Agency does have a corps of facilitators, I find it is extremely difficult for them to remain objective. Oftentimes I find they switch hats mid-stream, which violates their objectivity."

—Marci Kinter
On-line Dialogue on Public
Involvement in EPA Decisions

be neutral. Otherwise, some participants are likely to feel the process is biased against them.

When a Mediator is Useful. The greater the degree of controversy or complexity, the more helpful it is for a mediator to meet separately with the parties to better understand their needs and help them develop their own perspectives on the issues in deliberation. A mediator can hold confidential, separate meetings with the parties, overcome impasses, structure parties' information sharing to help the negotiations, and obtain closure on a lasting agreement. A mediator can suggest options, engage in shuttle diplomacy, and help parties understand what may happen if the negotiations fail.

To be effective, a mediator should have the confidence of all parties. This usually means that the mediator needs to be perceived as neutral and rigorously independent of the Agency office involved in the negotiation. An Agency employee may or may not be seen by outsiders as neutral or unbiased.

It is inappropriate for any party to an agreement-seeking process to:

- Attempt to exert control over the mediator

- Seek confidential information from the mediator regarding other parties' views or statements

- Inhibit or manage the mediator's communications with others

- Ask the mediator to advocate a point of view

- Otherwise jeopardize the mediator's impartiality.

If any party thinks the mediator is acting inappropriately, the party should raise this issue with the mediator, as previously discusssed. If the discomfort continues, it may be appropriate for the group to ask the mediator to resign. The ground rules should discuss the group's ability to address this situation.

4. Notice to Participants

Participants in your stakeholder involvement process should receive notice of events (whether meetings or teleconferences). External stakeholders have repeatedly complained that the government (1) does not give enough notice for external stakeholders to be prepared, and (2) does not communicate the notice in useful ways.

Providing Notice

Most EPA programs and statutes have either regulatory or statutory notice provisions—note that these are *minimum provisions;* you can always give notice earlier, and, in some cases you should give significantly more notice.

- What are the statutory or regulatory notice requirements for your project?

- What is your deadline for assimilating information from the public into your project decision?

- How much time do parties need to gather and digest information and prepare their views?

If you expect your stakeholders to come to your process prepared to offer information, data, concrete opinions or options, they should get adequate notice. ***For many groups of people, this may mean a month or more in advance—***most outside stakeholders have full-time jobs that are not totally consumed with your program issue. They therefore need time in advance to seek out the information that will make the process truly useful to themselves and to you. Stakeholders who have not had time to prepare are the ones most likely to "just say no" because they have not had time to prepare any thoughts on your program, or to have communicated within their constituencies to come up with more useful, creative responses.

External stakeholders also fault government for how and where it publishes or communicates notice—not everybody subscribes to the Federal Register. With adequate advance time you can supplement any required Federal Register notices with notices to trade journals, notices on your website, mailings to your mailing list, press releases, phone calls, etc. During the situation assessment you should ask people what is the most credible, efficient, and comfortable way to receive notices and information. You should use these ideas.

If you want to reach out to any and all potential participants, you should attempt to give notice in the most creative ways possible. Or, if your process is open to all but you are seeking specialized experience, expertise or knowledge, you may want to target your notice and invitations, while remaining open to "walk-ins."

Your notice should be designed to give stakeholders a realistic picture of how open to active participation the process will be. Needless to say, your notice should be easy to understand. You should follow the Agency policy and use "plain language."

5. Summaries and Minutes

The reason that you are conducting a stakeholder involvement process is to gain additional information and insight not available to you within the Agency. Making sure that you have a good record of what the stakeholders say to you is a given. However, there are numerous ways to record this information.

You could tape record or have a court reporter record every word that is said—this obviously preserves all the information presented—but at a cost and not just the money. Transcripts of public events typically may

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Notifying Participants

EPA's Public Involvement Policy states that "as early in the decision-making process as possible, the Agency should notify all parties on the appropriate contact lists and, when appropriate, the news media, of opportunities to participate and provide them with relevant information." Furthermore, "Agency officials should provide early advance notice of public involvement processes so that the public can obtain background information, formulate their needs and interests and obtain expert assistance, if necessary." Methods for notifying participants include:

- publications, fact sheets, technical summaries, relevant supporting documents
- public service announcements, articles and news releases through local media
- electronic communications, such a Web pages, on-line dialogues, and list serves
- telephone communications

> "(It is difficult) for grassroots community activists and working people to be players in the same arena with industry and government. If working people take time away from work to participate in a multi-stake-holder forum, they do not get paid when they don't work. The fundamental question for us is: How do we ensure the community's right to speak for itself does not get lost when ordinary people don't have enough time or money to contribute?"
>
> — Robin Morris Collin and Robert Collin
> University of Oregon

Case Example

Summarizing Success

A summer intern was asked to review the meeting summaries of a particularly contentious negotiation that had eventually settled successfully. The intern had not attended any of the meetings and only had the meeting summaries to rely upon for information on the process.

The intern, in talking with her mentor, mentioned that the process seemed very collaborative and friendly—which initially surprised the mentor, who had attended the committee deliberations. However, upon reflection, she realized that the facilitator had taken care to use the meeting summaries to build agreement when agreement occurred and to downplay contentious and adversarial behavior and discussions. When participants read the summaries they were reminded of their successes, not their failures.

go on for 20 to 100 pages. This may be more than you need to have. Consider whether anyone will ever read all of that information before you go to this length. In some cases, you may need to do this because of statutory or regulatory requirements.

However, some stakeholders in some processes— particularly those that involve interactive discussions rather than just presentations of views—may be less comfortable with having every word recorded. They may fear that their comments may be taken out of context and thrown back in their faces. Summaries will often not identify the speaker or quote directly what is said lest doing so will stifle the participants' willingness to engage in vibrant exchanges of ideas. Consider whether using "group memory" techniques, such as recording key points on flip charts or overheads, or using computer-generated visuals, may serve your needs as well, without attribution to particular individuals. Some facilitators do not use "group memory" techniques; some stakeholders may also be uncomfortable with them— you should ask in the situation assessment what recording or note-taking techniques they are comfortable with. Many facilitators include a note-taker or recorder on their team or an Agency staff person (or a technical contractor can play this role) who takes written or typed notes during the conversations. But be aware that some groups find the tap-tapping of computer keys during the discussions quite annoying.

Participants should discuss what form of summary or minutes, if any, they would like to have of the process. In longer-term recommendations and agreement processes, the meeting summary requirements may be part of the operating ground rules discussion. Should the chair, leader, or facilitator produce a meeting summary, the participants should decide how long and detailed it should be and whether it should attribute ideas or comments. Will all of the participants get a chance to review the summary and suggest corrections or will just the Agency review the summary? Will the summary be distributed only to the participants or be distributed widely, posted to a docket or to a website?

Meeting summaries can be a major tool in recommendations and agreement processes because they are a way in which the chair or facilitator can summarize agreements, questions, options and tasks remaining. Also remember that FACA Section 10 requires FACA advisory committees to keep minutes of each meeting.

6. Communication

Process design should consider the ongoing need for communication between the Agency and the external stakeholders, and between the external stakeholders and their constituencies. Communication will not happen effectively and efficiently unless it is planned. Here again you should examine the roles of your Agency participants and facilitator, if any, clearly assign all of the communication responsibilities. and establish clear deadlines for sending and receiving information. Your situation assessment results and ground rules discussion can provide you with information on the participants' needs and preferences on the methods, frequency, and timing of communications.

7. Information

Stage 1 pointed out that all stakeholder processes are dependent on the outreach function—upon maintaining communication and flow of information. Stakeholders in all types of processes need information from you and from each other so that they can be truly involved and not merely reactive. Information needed by the stakeholders can be divided into two categories: Technical or scientific information and process information.

Technical information includes documents and information that describe the nature of the environmental issues that will be discussed. It also includes access to the data and analyses that the Agency is able to share by policy and law. Before you provide information, it is important to ask yourself if it is credible, understandable, and complete.

Many stakeholders may not have the technical expertise to understand highly technical information—the situation assessment should have investigated the internal capabilities of the stakeholders and made recommendations for how best to level the information playing field so that full participation is possible for all parties in the process. EPA's Public Involvement Policy lists considering providing technical or financial assistance as one of the seven basic steps to effective public involvement. Some possible ways to provide assistance include:

- Providing access to agency technical staff for briefings, and/or answers to questions

- Translating technical documents into lay language by agency staff or contractors

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Timing Questions for Informing Participants

- How long is it likely to take your stakeholders to read the information you are providing in the notice?

- How long is it likely to take your stakeholders to obtain any other information that might be available from you or others?

- Is it important for stakeholders to converse within their constituencies and to bring a wider range of data, information and options to the process?

- Are the constituents close to the representatives or will communication take time and resources?

> ### Information/Data Needed
>
> - Who will provide it?
>
> - When is it available?
>
> - When is it needed?
>
> - What is the most effective format to provide the information?
>
> - What is the most convenient/ credible method to provide access to information?
>
> - Do any of the parties need "translation" of the information?
>
> - Who will receive the information?

- Providing access to outside technical experts

- Providing technical expertise to the committee if you are embarking on a recommendations or agreement process

- Arranging for technical or scientific panel presentations on important topics by experts in the field who can clearly explain the issues choices

- Arranging for site visits or field trips to observe technical or manufacturing processes.

Process information is information about the stakeholder involvement process that you are using. Earlier in this chapter we asserted that the public should be involved at some level in the decision and design of the process. You may need to provide background information to the stakeholders on:

- how the process will work

- who will make the technical decisions and when

- how the input of the stakeholder process will be communicated and how it will be used

- what feedback the Agency will provide to stakeholders regarding their influence on the decision.

Some other questions to address in your planning for access to information:

- How are you going to make sure that information is made available to all stakeholders who want access to it?

- Will you put it on a website, provide copies in a notebook or on a computer disk, put it in a docket, provide a list of information and allow stakeholders to check off what they want to receive?

- Will you provide information only upon request?

- Will you provide it proactively to all interested parties?

- Who are you going to involve in reviewing the available information and deciding what needs to be provided?

- Are there legal or confidentiality issues regarding the data and analyses?

- How will you ensure that stakeholders who do not attend meetings have the information they need?

- Will you have a mailing list or website?

- Will you conduct meetings in different places so that additional stakeholders can participate or observe?

- How will you provide information to stakeholders who join the process late so that they can catch up?

- Are there any language barriers—does the information need to be provided in other languages?

For information exchange processes, you can communicate this information in a short statement or in the ground rules presented for the process. For recommendations and agreement processes, the chairperson or facilitator can discuss this with the stakeholders and incorporate it into ground rules. For lengthy processes with a wide variety of stakeholders, a briefing on EPA decision-making processes and an orientation or training on win-win negotiations and/or consensus-building principles can be conducted at the beginning of the process.

8. Resources

The resources required to conduct stakeholder involvement processes vary according to how complex the process is, how many stakeholders there are, how intense the discussions will be, and how long the process will take. The EPA Public Involvement Policy encourages EPA management to estimate proactively and provide resources for appropriate public involvement processes.

There are some costs that the Agency incurs with or without "public" involvement—costs for data gathering, data analysis and options generation, and sharing the information with co-regulators within federal, state or tribal governments.

Public involvement process costs include:

- Meeting logistics (e.g., meeting rooms, equipment, conference calls)

- Outreach and communications (e.g., fact sheets, discussion papers, meeting summaries, mail costs, photocopying, web design)

- Meeting facilitation

- Travel costs (for meetings or field trips for Agency staff and stakeholders)

- Expert consultants

- Staff time in the public involvement process itself.

To understand and place these costs in perspective you can ask yourself the following questions:

- What is the value of the resources the stake-holders bring to the table? Many stakeholders can contribute data, analyses, and information that will add to your information base; other stakeholders can

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Case Example
Consensus Building Orientation Benefits the Negotiation Process

In the Asbestos in Schools negotiated rulemaking process, the facilitator presented a short orientation/ training session on interest-based bargaining (win-win negotiations) and consensus building. The training involved lecture material and simple role play simulations for the participants to practice the concepts. While the participants had initially been skeptical that they needed this training, at the end of the training and throughout the process, individuals would refer back to lessons learned in the training session as they worked through difficult issues. For example, participants would remind each other of the rules of brainstorming or the processes for proposing straw proposals.

A good professional facilitator may cost $175-$250 an hour. But consider the investment in resources invested by committee members. Most of the participants in a recommendations or agreement process may bill out at a rate similar to the facilitator and there are 20 or so people on the committee. Your investment in a professional facilitator will help make the most of the resources invested by the committee.

Planning and Budgeting for Public Involvement Activities

Planning and budgeting for public involvement activities constitutes the first of seven steps for effective public involvement. EPA's Public Involvement Policy states that, "when preparing budget and planning documents for regulatory and non-regulatory programs, Agency officials should make provision for: resources and staff time dedicated to public involvement activities; time for conducting and evaluating public involvement activities; and staff and resources to provide technical assistance to the involved public where appropriate."

pay their own travel and expert costs and provide expert information to you that would otherwise not be available or would be costly. Some stakeholders can provide services in kind—meeting rooms, refreshments, field experiences—that contribute to the success of the process. How do the costs compare with the overall costs of the project?

• What are the potential costs (direct and to the environment) of delay due to unhappy stakeholders at the end of the project?

• Are there other organizations within EPA that can contribute either personnel resources or funding? Are there outside organizations that can provide resources—either personnel, funding, or technical resources?

• Are there opportunities to integrate the costs of the public involvement program with other projects that have similar needs? Can other FACA committees provide expertise? Can outside organization technical committees provide information?

D. Integration with Other EPA Processes

Regardless of the result of the stakeholder involvement process, EPA staff is still responsible for assuring that the agreement is consistent with applicable legal standards and relevant policies. Thus, many stakeholder involvement processes may be reviewed by other segments of the Agency or DOJ and possibly integrated with SBREFA requirements, OMB review, and requirements for consultation with co-regulators. Other parts of the Agency, other federal agencies, tribal governments and state governments may need to be briefed to reduce the chances that an outcome is unacceptable to others in positions of authority.

You should explain to stakeholders at the beginning of the process what you anticipate doing with the results and what internal or other external review will be needed, when that will occur, and how long it might take.

Your external assessment process confirmed your preliminary assessment of your ideal stakeholder involvement outcome or prompted you to revise your desired outcome. In either case, in Stage 3 of developing your stakeholder involvement process you design the process to achieve your goals as efficiently as possible. When designing your process, you should use the questions on the following pages to help you think through the what, when, who, and how of your process. ∎

Design Consideration Questions

1. **What is the purpose of your stakeholder involvement process? Be able to state it in one clear paragraph.**

   _____
   _____
   _____

2. **What will be the end product of your stakeholder involvement process?**

   _____
   _____
   _____

3. **Are you going to use a recommendations or agreement process that is subject to the Federal Advisory Committee Act? If so, are there any legal issues associated with your proposed process?**

   _____
   _____
   _____

4. **Who from the Agency will participate in the process and what will their roles be?**

   _____
   _____
   _____

5. **What other interests should participate?**
   - ☐ **Co-regulators?**
   - ☐ **Regulated parties?**
   - ☐ **Trade associations?**
   - ☐ **Environmental groups?**
   - ☐ **Environmental justice groups?**
   - ☐ **Substantive experts?**
   - ☐ **Other?**

   _____
   _____
   _____

6. **What kind of process support is needed, if any?**
   ☐ **Meeting director?**
   ☐ **Facilitator?**
   ☐ **Mediator?**
   ☐ **Technical/scientific consultant?**
   ☐ **Logistics staff?**
   ☐ **Recorders?**
   ☐ **Other**

   _____
   _____
   _____

7. **What are the groundrules for the stakeholder involvement process? Do/should they address any of the following issues:**
   • **Will alternates be allowed and how will they participate in the process?**
   • **Who will be allowed to speak during the meetings? Will opportunity be made available for the public to comment?**
   • **How will technical, legal, or resource advisors' information be presented?**
   • **How will decisions be made?**
   • **What are the meeting summary requirements?**
   • **What is the process for dealing with a facilitator/mediator who is perceived to be ineffective?**

   _____
   _____
   _____

8. **What forms of face-to-face processes will you use?**
   - ☐ **Public meetings?**
   - ☐ **Workgroups?**
   - ☐ **Focus groups?**
   - ☐ **Advisory committees?**
   - ☐ **Panels?**
   - ☐ **FACA groups?**
   - ☐ **Other?**

   _____

   _____

   _____

9. **What forms of electronic interactions will you use in your process?**
   - ☐ **Web sites?**
   - ☐ **Teleconferences or 800 call-in numbers?**
   - ☐ **Videoconference?**
   - ☐ **Internet list serve or dialogues?**

   _____

   _____

   _____

10. **How will participants in your stakeholder involvement process receive notice of stakeholder involvement events?**
    - • **How far in advance will notice be sent?**
    - • **What means will you use to inform participants?**

    _____

    _____

    _____

11. **What kinds of costs can you anticipate concerning your stakeholder involvement process?**
    - ☐ **Meeting logistics?**
    - ☐ **Outreach and communications?**
    - ☐ **Facilitation of meetings?**
    - ☐ **Travel costs (for Agency staff and stakeholders)?**
    - ☐ **Expert consultants?**
    - ☐ **Staff time?**
    - ☐ **Other?**

    _____
    _____
    _____

12. **How do you plan to use the results of your stakeholder involvement process? What internal or external review will be required and how long do you anticipate that it will take?**

    _____
    _____
    _____

STAGE 4: CONDUCTING THE PROCESS

A. Five Roles for EPA Staff

EPA staff charged with making and implementing a decision occupy a special place in any stakeholder involvement process. EPA staff generally occupy five distinct roles. First, in the administrative role, EPA sponsors the meeting(s), provides the facilitator, and frequently provides the logistical support for the process.

EPA's second role is to provide information and analysis. For example, EPA staff usually has access to co-workers or consultants who can generate data for use in discussions and perform necessary analyses. It is important to continually provide good scientific data and analyses so the decisions are grounded in good science.

The third role for EPA staff, particularly in agreement processes, is as an interested party. EPA expresses its opinions, needs, and constraints at the beginning of the process and continues to do so throughout the process. This reduces the chance that other participants may build up expectations that EPA cannot meet. You can ask questions and obtain information and clarification as well as provide it.

EPA's fourth role is as a leader and ultimate decisionmaker. Without discouraging the free exchange of ideas, staff should take the lead and participate fully in the ebb and flow of discussions in any type of stakeholder involvement process. In agreement processes, since the Agency will act unilaterally if the negotiations do not yield agreement, EPA occupies a special place as first among equals. After initial discussions with the participants, it is often helpful for staff to take the lead in negotiations by providing a first draft of the factual underpinnings of an issue and transforming it into the outline of a proposed agreement.

EPA's fifth role is to serve as a catalyst. In this capacity, EPA staff initiates stakeholder participation in Agency decisions and/or inspires stakeholders to collaborate on voluntary actions.

Your participation sets the stage and tone for the collaboration you seek from private interests. EPA leadership can be critical in determining, for example, whether someone may take an adversarial stance or work more cooperatively. To be an effective participant,

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In this chapter:

A. Five Roles for EPA Staff

B. How to Work Well with a Facilitator/Mediator

C. Adapting Your Process to Changing Circumstances

D. Knowing When the Process is Over

Roles for EPA Staff:

- Sponsor
- Resource
- Participant
- Leader
- Catalyst

you may need to encourage participants to explore and explain their ideas and to elaborate on issues they have raised, so the full range of information becomes available. Since many parties are accustomed to reacting in an adversarial manner to EPA proposals, it may take some prompting to get participants to address the matter at hand constructively.

The more policy-laden the discussions are, the more helpful it will be for you to discuss fully and candidly the range of thoughts and concerns on an issue. The other participants should raise issues and stretch for creative, mutually acceptable solutions. Without this leadership, the parties may feel inhibited from developing a group dynamic that stimulates meaningful collaboration. This is one important role for a process facilitator or mediator.

In recommendations and agreement processes, it is a good idea to describe your needs, constraints, and expectations at the outset. When possible, participate in the ebb and flow of the deliberations so that other stakeholders fully understand the Agency's needs.

B. How to Work Well with a Facilitator/Mediator

If the design of your stakeholder process involves a facilitator, it is important to establish the facilitator's role at the outset of the process. The facilitator establishes the pace of the meeting(s). S/he also records the progress of the interactions and assures they are meaningful. As previously discussed, in some processes the facilitator also plays a mediating role. To help a facilitator play this role effectively, it is important for participants to keep the facilitator informed about their wants and needs from the process. If parties are unavailable, disingenuous, or unclear with the facilitator, it can set the discussions back and even engender misunderstanding or bitterness among the rest of the participants.

For stakeholder involvement processes to succeed, it is a good idea for all parties, including EPA staff, to follow these guidelines:

- Work jointly on the agenda and meeting summary with the facilitator and other parties

- Don't ask the facilitator to represent your position or do anything else that would compromise the neutrality of the process. The facilitator needs to remain neutral

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Working Well with a Facilitator or Mediator

In order to help the facilitator or mediator perform her role, you should:

- Be candid with the facilitator/mediator about EPA's positions, needs, and constraints

- Keep the facilitator/mediator informed about events that may affect the process

- Work jointly on agendas and meeting summaries

- Don't compromise the facilitator's/mediator's neutrality or constrain her/his ability to talk with other parties

- Allow the facilitator/mediator to use professional judgment and expertise

- Don't constrain the facilitator's ability to talk with the other parties

- Respect that the facilitator may have confidential conversations with parties. Be clear about what information is confidential and what can be shared

- Be candid with the facilitator about your positions, goals, and needs

- Work out a comfortable relationship regarding "chairing" the meeting; allow the facilitator to run the meeting procedurally so EPA or the chairperson can run the meeting substantively

- Keep the facilitator informed about events that may affect the process

- Involve the facilitator in your caucus discussions when appropriate or when you need assistance building internal agreement

- Allow the facilitator/mediator to use her professional judgement and expertise.

It is a good practice to work with the facilitator to monitor how the process is working and prepare to make any adjustments. If at any time during a stakeholder involvement process participants believe that the process or the ground rules are not accomplishing their purpose, they should be able to change or even abandon them. The ground rules often provide for this reassessment option.

C. Adapting Your Process to Changing Circumstances

Public involvement is a process, not an event. Even if you were able to make decisions on all of the considerations discussed in Step 3, in an ongoing process, things may happen that you did not anticipate. Data take longer to obtain or are different than expectations. Stakeholders introduce new assumptions or unanticipated needs. Funding for the process increases or decreases; externally driven schedules lengthen or shorten the time to conduct the process. Be flexible— "semper Gumby"—as one facilitator says.

You should establish points in your process, whether it be an information exchange, recommendations, agreement, or stakeholder action process, to reassess whether the process is meeting the goals you set out at

☑ Checklist

Reassessment/Redesign

☐ Are we still making progress?

☐ Are we still learning new things?

☐ Is the process still appropriate?

☐ Do new parties need to be added?

☐ Do adequate data continue to be available?

☐ Do issues need to be added or subtracted?

☐ Is the end product still appropriate?

☐ Does a continued commitment to action still exist?

☐ Are the resources adequate to complete the process?

Stakeholder Involvement Process Redesign

If you decide it's necessary or beneficial to revise your stakeholder involvement process, you should:

• Adequately justify the discontinuation of the current process

• Adequately design the replacement process

• Involve the facilitator or chairperson in the redesign

• Involve and inform the stakeholders of changes to the process

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the beginning. You should reassess the following components of your stakeholder involvement process:

• Is the chairperson providing positive leadership?

• Are EPA staff well organized and working together or would a change be helpful?

• Is the facilitator effective and maintaining her/his neutrality?

• Are the parties working well together, or is one being disruptive?

• Do other parties need to be added?

• Is communication among stakeholders timely, effective, and efficient?

• Is the available information appropriate and sufficient, or do you need to obtain more information/ data?

• Does the process appear to be satisfying the evaluation criteria you identified back in the external situation assessment (Stage 2)?

Do you need to convert a recommendations process into an information exchange process because reaching agreement in not achievable? Can you convert an information exchange process into an agreement process because the stakeholders are converging on a consensus that you can use in decision making? Has an external event resulted in a sudden shortage of time to complete a recommendations process, so you need to convert to an information exchange or even an outreach process? Have some stakeholders left an agreement process because their needs cannot be met? Have EPA and the parties involved in a stakeholder action process concluded that EPA has to take action to address the issues under discussion?

When considering a major change in your stakeholder involvement process, you should consult with the Office of General Counsel (OGC) on how to properly and legally conclude one stakeholder involvement process oriented toward a specific outcome (e.g., recommendations) and begin another seeking a different outcome (e.g., agreement). Changing your desired stakeholder involvement outcome may require changing your charter or statement of purpose. If you were to change your desired outcome from recommendations to agreement, it is important to consult with an OGC attorney regarding compliance with FACA requirements.

In addition to consulting with OGC, it is crucial to involve and inform the stakeholders of any proposed changes to the process—they need to understand your needs and motivations for changing the process and their buy-in is necessary to accomplish the goals of a redesigned process. Sudden changes in process design without adequate discussion may impair your credibility in the process and also in the technical discussions. If, after a reassessment, you need to revise your stakeholder involvement process, you should make sure you have adequately designed the replacement process or adequately justified the discontinuation of the current process. If you are using a facilitator or chairperson, they should be involved in the reassessment and redesign.

If you or the other parties judge a facilitator to be ineffective, biased or otherwise a barrier in the process, you should have procedures to discuss these problems with the facilitator and either agree to changes in performance or replacement of the facilitator.

In the event a replacement is necessary, it is important to work with all participants to define the characteristics of an acceptable facilitator and involve the participants in the choice of the new facilitator. Ethical standards of practice for facilitators appear in Appendix IV.

Once you redesign the process you may need to change the ground rules. If you are in a recommendations or agreement process, these changes should involve the participation of the other members of the group. If this affects a FACA Committee, consult with OCEM to determine whether these changes affect the committee's charter or other FACA requirements.

D. Knowing When the Process Is Over

Setting a schedule with target deadlines is important to keep the group moving forward. In many cases, external factors may determine the pace of the process. Interim deadlines for assessing the progress of the group can help prevent delay and abuse. The participants should be made aware of internal Agency commitments and deadlines, as well as any external deadlines. Refer back to the stated objectives of the process to determine when you have achieved your desired result.

In Stage 3, you designed your stakeholder involvement process. In Stage 4, you implement the process as designed in Stage 3, or as needed, adapt your process to changing circumstances. As you implement your

process as initially designed or revise it in light of new circumstances, you should know in advance how you intend to use the information obtained through or the results of your stakeholder involvement process. When preparing to conduct your process you should consider the questions on the following page. ■

Questions to Consider in Conducting the Stakeholder Involvement Process

1. **What roles will EPA staff play with respect to your stakeholder involvement process?**

    ☐ **Sponsor?**

    ☐ **Resource?**

    ☐ **Participant?**

    ☐ **Leader?**

    ☐ **Catalyst?**

    Who will fill which roles?

    _____

    _____

    _____

2. **What should the facilitator know about EPA's position and goals? What issues is EPA willing to discuss? Which issues are off the table?**

    _____

    _____

    _____

3. **What are the logical points in your process to assess whether the process is meeting the goals you set out at the beginning? What are those goals?**

    _____

    _____

    _____

4. **Who should participate in the assessment of your process?**

    _____

    _____

    _____

5. **Are there any target deadlines that are driving the process? If yes, what are they?**

    _____

    _____

    _____

STAGE 5: BENEFITING FROM THE RESULTS

A. Incorporating the Results into Decisions

Among reasons that you conducted a stakeholder involvement process during your decisionmaking were to:

- Greatly expand your knowledge and practical insights into the issues on which you must act;

- Expedite your work by highlighting the issues that require the most attention so you could prioritize the use of your resources accordingly;

- Instill in the stakeholders a sense of ownership and understanding of the problem so they would accept decisions they might otherwise protest;

- Generate support for decisions that might otherwise play out in other forums;

- Develop ongoing relationships to help you implement the policy; and/or

- Resolve specific politicized issues that might otherwise end up at the White House, before Congress, or in court.

You faced the challenge of designing and conducting a stakeholder involvement process that gave you information, analyses and options that were a useful and timely contribution to your decision-making process. You devoted substantial resources to working with stakeholders and they, in turn, devoted substantial resources to working with you. It is important that you actually <u>use</u> this knowledge in your decision.

1. Ratification of Agreements

In an agreement-based process, the Agency and the participants may have promised that, if an agreement is reached, the Agency will use it as a basis for the final decision (rule, policy, standard, settlement) and the parties agree to do their part to implement it. This agreement is based upon the following assumptions:

- Each party has determined through consultation with its constituency and management that the agreement is acceptable; and

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In this Chapter:

A. Incorporating the Results in Your Decision

   Ratification of Agreements

B. Providing Appropriate Feedback to Public

C. Learning From Your Experience

   1. Debriefing the process

   2. Evaluating the process

D. Telling Your Story

Ways to Prepare for Workgroup Ratification

- Maintain timely two-way communication with workgroup through distribution of meeting summaries, data, and analyses

- Keep a website updated or have a list serve or internal electronic discussion group

- Encourage workgroup members to attend public involvement meetings or events to listen for themselves and to participate within the limits of the groundrules of the process

- Conduct regular meetings or conference calls to provide updates to your workgroup

- Acceptable means that the agreement is within applicable statutes, regulations and/or policies and can be implemented within budget, personnel and time constraints

The process of determining acceptability should be done *before* the agreement is signed or finalized. This process is called ratification. The ratification process is most important when you are involved in an agreement process. Entering into an agreement without having ratified the terms internally can result in tremendous damage to the Agency's credibility.

In a recommendations process, ratification may be somewhat less essential because some recommendations processes are specifically designed either to produce a range of recommendations or to challenge the Agency. However, that said, recommendations from a long-term process should be taken very seriously, and the Agency should provide feedback before the group reaches a final recommendation.

Ratification is not usually possible or necessary in an information exchange process. The process is designed to generate information, data, analyses, or alternatives. It is important that the Agency be candid throughout the process about what is possible and why, but the process is not designed to result in an agreement subject to ratification. Similarly, ratification is usually unnecessary in stakeholder action processes, particularly if the decisions produced do not call for any Agency actions in the implementation process.

Team or Workgroup Ratification: Many regulation, policy, planning or site decisions have an EPA team or workgroup with representatives from relevant headquarters and regional offices with differing missions and viewpoints. It is important that this team be on board for the decisions—it should know what the alternatives were and why the package developed as it did. Incomplete coordination with workgroups or teams has stalled many decisions while the team tried to accommodate all views.

Management Ratification: Don't leave briefing of upper management of your office or other relevant offices (management or your team members) until the last meeting with stakeholders. Management needs to understand not only what is being recommended or agreed upon, but how the group got to that place, what options were considered, rejected and why. Depending on the level of management at the table, education of management may be simple or fairly time consuming.

To obtain final ratification, you should consider whether it is necessary or appropriate to obtain the decision in writing—does your management need to sign a document? Or is verbal agreement appropriate? Generally, the process ground rules specify the type of agreement needed from each party. As you approach the end of the process you may wish to consult with the facilitator or mediator because the situation may have changed.

Most agreements should be presented as packages for ratification as a whole, not as a menu of separate items to concur upon separately. The whole generally represents many smaller accommodations or trade-offs that have been made to make the whole more acceptable to all parties. In these cases, it is important to discuss ratification of the whole with the workgroup and management. If there are parts that are totally unacceptable, be ready to suggest alternatives to your negotiating group or committee.
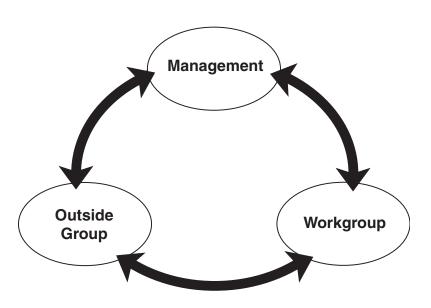
In a recommendations process, it is still valuable to give the group a sense of the acceptability and implementability of the recommendations and any suggestions or alternatives for making the recommendations more acceptable. Even though ratification is not necessary, the group must inform those who are making the EPA decision of the recommendations in order to affect the decision-making process. Many times the decision-making process and the recommendations process are working in parallel—it is important to establish feedback loops to coordinate all parties involved and ensure that recommendations are made.

Ways to Prepare for Management Ratification

- Provide opportunities for upper management to occasionally be on the agenda at meetings or events to listen to concerns from stakeholders or briefings from the group

- Invite the facilitator to make presentations to management – keeping in mind the need for neutrality

- Invite the chair, executive committee, or a small group from your committee to brief management occasionally

- Prepare fact sheets, discussion papers, etc.

Remember that management needs to know how the group got to a decision as much as what the decision is.

This same feedback loop process is also useful in information exchange processes. The process may be one with more stops or pauses rather than a continuous loop because the public involvement events may be focused on certain milestones or narrow issues, but the timing for communicating results to the decisionmakers is key. If information arrives too late, it is not useful and may discourage future input from stakeholders. People don't see much point in contributing time, ideas, and resources to decisions that are already made – why not just save the resources for litigation or some other fight?

B. Providing Appropriate Feedback

This is one of the most difficult aspects of public involvement—most stakeholders are disappointed when the only feedback they get is a general discussion of their points in the preamble or responsiveness summary. However, in most cases, it is logistically difficult or extremely expensive to respond personally to each comment submitted or discussed.

It may be useful to discuss appropriate, satisfying feedback methods with the parties during the situation assessment process. It may also be more satisfying to provide continual feedback during each part of the process rather than trying to get it all together at the end. You may want to consider having managers summarize what they heard at the end of each meeting or event, or to summarize the comments in meeting summaries along with a description of how and when the information will be given to decision makers and who the decision makers are.

In recommendations and agreement processes, it is easier (by comparison) to give feedback on ideas because stakeholders discuss ideas as they are presented; stakeholders can see how decisionmakers are weighing the information and options. As part of your process design, you should determine how and to whom the stakeholder group will present recommendations for consideration and the steps to provide feedback. Frequently it is also useful to know other parties' processes for considering options so that expectations about the feedback and communications processes are well understood by all parties.

It is common practice for a preamble or responsiveness summary to accompany the final decision. Sometimes it is hard for the participants to find their contributions reflected in these summary discussions. It may be useful to approach these documents from the

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Options for Providing Feedback

EPA's Public Involvement Policy lists reviewing and using input and providing feedback as one of the seven steps for effective public involvement in any Agency decision or activity. It states that "the Agency should provide feedback to participants and interested parties concerning the outsome of the public's involvement." Options for providing feedback to the public include:

- Responsiveness summaries and preambles posted on a website, the docket or in public places, or distributed via mail or email

- Continual feedback throughout the duration of a process

- Press briefings and news releases

- Meetings

- Thank-you letters

US EPA ARCHIVE DOCUMENT

point of view of the participants as well as preparing a record for potential litigation. It should be a communications document that rewards stakeholders who participated by discussing how their contributions affected the decision.

Just as you are encouraged to write thank-you letters after receiving a gift, it is polite and respectful for the Agency to write back to a committee that has presented recommendations or helped to develop an agreement. The letter should acknowledge receipt of the document and thank them for the effort it took to generate it, and to estimate the time and process that the Agency will now undertake to make the decision. It may also be rewarding to conduct some type of reception or ceremony for the committee to thank them and to celebrate their reaching consensus. Sometimes these little acknowledgments and appreciations make a world of difference in the public involvement process.

In information exchange processes, you can post the comments to the docket and your website for all to see. You can also describe to participants in stakeholder involvement events what will happen to the summaries or discussions—who will get them, what other information the Agency will produce and consider, and where and when the responsiveness summary will be posted. The internet may be a great tool to provide feedback and updates since it is easier to access than physical dockets.

C. Learning from Your Experience

So—you made your decision, but did you or your organization learn anything about the process? Too often participants in a public involvement process move on to new issues and new processes without pausing to reflect deliberately on lessons learned. Learning is not shared or not shared well within the organization. The organization doesn't learn what it would take to do the process better.

1. Debriefing the Process

You should have had regular meeting or event debriefs with your team, management, and/or facilitator. But before moving on, stop, and with your team and the facilitator/mediator, debrief the whole process. You should write up a memo with recommendations and circulate it to others and the file. Sometimes this process is called a "Plus/Delta" process—what worked well and what you would change:

- Did you achieve your process objectives?

- Was the information gained useful in the decision-making? Why or why not?

- What worked well?

- What worked poorly? Why? Were there problems with resources, personalities, content, context, timing, design, skills, logistics?

- What would you do differently next time?

- What would your facilitator/mediator advise differently next time?

- How could you, your team, or the facilitator improve your respective performances in the future?

- What do you think would have happened if you didn't use a collaborative process?

2. Evaluating the Process

You can build an evaluation component into your process during the situation assessment and design phases. Maybe you conducted individual meeting or event evaluations. Evaluating the whole process is not as easy as combining these separate evaluations. During the situation assessment and design steps you decided on the purpose, goals, and objectives of the process—in other words, your measures of success. Did the process, viewed as a whole, accomplish these measures? Why or why not?

A number of evaluation protocols exist on the EPA Public Involvement website and from U.S. Institute for Environmental Conflict Resolution (IECR) and EPA's Conflict Prevention and Resolution Center (CPRC). You should consult with knowledgeable staff in these organizations to design an evaluation protocol that fits your process and your measures of success. It is important to plan for the resources to conduct the evaluation—questionnaires or interviews take personnel or contractor resources to conduct and summarize. Many evaluations have sputtered out due to lack of resources at the end or lack of interest due to parties moving on to the next hot issue.

Once the results are in, you should distribute them to management, workgroup members, CPRC, the Office of Policy, Economics, and Innovations, and others who might learn from your process how to better perform stakeholder involvement processes. An evaluation that

sits in your drawer is contributing little to the institutional improvements that are necessary.

D. Telling Your Story

Human society learns from stories. It is important to tell yours. You should write up a case story or case study or have your facilitator or contractor write it up. Present your story at technical and scientific conferences to educate your peers about what you learned and how your decisions were made better due to involving the public. Present your story at community and public involvement conferences to get feedback about how to improve. Use your story in training others in your field during technical training sessions or courses.

Post the case story or case study on your website or prepare handouts or brochures. Submit your case story or case study to CPRC (adr@epa.gov) or IECR (www.ecr. gov) so that word gets out to an even wider audience. Get the word out—EPA engages in a great deal of successful public involvement but sometimes misses getting credit for it because the stories are not told widely or documented for the future. Similarly, don't be shy about issuing press releases that explain how public involvement benefited agency decisions. In particular, press releases provide EPA a means to acknowledge and credit parties who engage in stakeholder action processes, providing incentives for stakeholders to participate in future voluntary actions.

So now that you have concluded your stakeholder involvement process, what should you do? Having invested significant amounts of time, money, and energy, you and the stakeholders should reap the benefits of your collective efforts by using the input and knowledge obtained through the process in your decision. You should also explain to the stakeholders how their input was used in your decision. In addition, you should evaluate your stakeholder involvement process to understand what worked, what didn't, and how you might improve future stakeholder involvement processes. As you conclude your stakeholder involvement effort, you should use the questions on the following pages to think through how to use the results of your process, provide feedback to the stakeholders, and evaluate your process. ■

Sharing Your Story

There are many ways of documenting your story for the benefit of others. The following outline is one that can be adapted to developing a stakeholder involvement process case study or case story.

I. Background — describes the context and the stakeholders. The stakeholder involvement process occurs in the context of some EPA program activity and often also in the context of the community and stakeholders involved in it. You need to describe this context if the reader of the case study is going to understand the stakeholder involvement event. Your discussion of the stakeholders should include who are they are how they might be affected by the EPA action.

II. The Stakeholder Involvement Process — is the heart of the case study report and should be described thoroughly. You should describe the stakeholder involvement outcome sought and your reasons for that choice. In addition, describe the mechanics of the process — in other words, what the process consisted of and how it was conducted—so that others may learn from your experience.

III. Evaluation — identify the range of factors that influenced the success (or lack thereof) of your stakeholder involvement effort. You should include in this discussion a description of the outcome of the process, the stakeholders' satisfaction with the outcome and with the process itself, and the lessons you learned from the experience.

Send your case study to adr@epa.gov.

Questions Regarding Benefiting from the Stakeholder Involvement Process

1. How will you incorporate the results of your stakeholder involvement process into the decision to be made?

_____

_____

_____

_____

2. What measures will you take to prepare for ratification?

   ☐ Maintain two-way communication with workgroup and management?

   ☐ Keep an updated website or a list-serve?

   ☐ Encourage workgroup members to attend public involvement events?

   ☐ Provide opportunities for upper management to be on the agenda at meetings or to listen to stakeholder concerns?

   ☐ Conduct regular meetings/conference calls to update your management and workgroup?

   ☐ Invite the facilitator to make presentations to the workgroup or management?

   ☐ Invite the chair or executive committee to brief management?

   ☐ Prepare fact sheets or discussion papers?

   ☐ Other?

3. How will you provide feedback to the stakeholders on how their participation and comments influenced the decision or outcome?

_____

_____

_____

_____

4. How often will you and your team debrief the process? What methods will you use?

_____

_____

_____

5. **What are the criteria you will use to evaluate the process? What are the tools/mechanisms you will use? What resources will you commit to the evaluation process?**

_____

_____

_____

_____

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

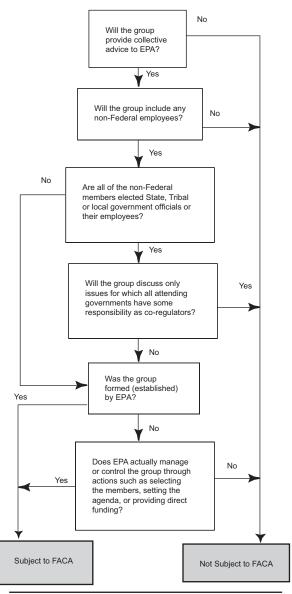- The product of collaboration is group advice for EPA.

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/ocem-page/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

> ## 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.

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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

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.

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

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

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- 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 se-

lected, 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 contrac-
tual relationships with one or more of
the participants.

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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.

Association for Conflict Resolution

5151 Wisconsin Avenue, NW

Suite 500

Washington, DC 20016

phone 202-464-9700

fax 202-464-9720

email: membership@acrnet.org

url: www.acrnet.org

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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.

Better Decisions through Consultation and Collaboration

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/fnlsuphermn-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.