

US EPA ARCHIVE DOCUMENT

INTRODUCTION

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

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.

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**

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/involveork.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

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;

“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

- **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	<p style="text-align: center;">Outreach</p> <p>Purpose: To provide information</p> <p>Types: Website Fact Sheet Print Hot Line Federal Register Notice Press Release</p>
Consultation	<p style="text-align: center;">Information Exchange</p> <p>Purpose: Provide and exchange data, opinions and options</p> <p>Types: Meetings with individuals Public meetings Workshops Listening sessions Availability sessions</p>
Collaboration	<p style="text-align: center;">Recommendations</p> <p>Purpose: Provide non-binding, but influential advice or comments</p> <p>Types: Advisory committees Scoping sessions Policy dialogues Task force Joint fact finding</p>
Collaboration	<p style="text-align: center;">Agreements</p> <p>Purpose: Reach workable agreement or settlement</p> <p>Types: Negotiated rulemaking Agreement in Principle Settlement agreement Consent Order Statement of principles</p>
Collaboration	<p style="text-align: center;">Stakeholder Action</p> <p>Purpose: Empower stakeholders to take action</p> <p>Types: Industry sector initiatives Voluntary pollution reduction programs Watershed collaboratives Community Action for a Renewed Environment (CARE) Sustainability forums</p>

- 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 explore 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	Meeting management	Facilitation	Facilitation or mediation	Facilitation or mediation
Should be Considered?	skills			
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

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 than 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

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 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

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).

