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EPA'S PUBLIC INVOLVEMENT NETWORK NEWS



"Public Involvement brings the pieces together"

Winter 2006

Welcome! We are pleased to present the third issue of "Public Involvement Network News" – an electronic publication of EPA's National Center for Environmental Innovation, designed for public involvement practitioners within and outside EPA.

In this issue we are featuring several articles related to the work of EPA's Conflict Prevention and Resolution Center (CPRC) developed for *Network News* by CPRC staff members. You will also see an article focused on what makes effective partnerships for collaborative problem solving.

We want *Network News* to help you carry out your vital work as effectively as possible, so please tell us what kinds of articles and information would make *Network News* valuable for you. We also want this to be a forum where practitioners can share their experience and knowledge with each other. Please send us your ideas on what you can share, or what you would like to learn from others – or better yet, just send a draft article to bonner.patricia@epa.gov.

In This Issue:

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- **Deciding on the Appropriate Process for Preventing or Resolving Conflicts** - Interesting and informative article with practical information on deciding which steps to take to prevent or resolve conflicts.
- **What is Alternative Dispute Resolution?** – Helpful tips on how to resolve environmental conflicts.
- **How Do I Know Whether I Need a Facilitator and Where Would I Find One?** - A facilitator (or mediator) can be useful and sometimes even essential in conducting a collaborative problem solving or dispute resolution process. Find out if you really need one and how to find a good one.

What's New

- 🍏 Want to liven up your public involvement activities? Check out the extensive Tools and Techniques Links on EPA's Public Involvement web page at <http://www.epa.gov/publicinvolvement>
- 🍏 On November 28, 2005, Joshua Bolten, Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) signed a policy memorandum on environmental conflict resolution (ECR). The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The policy directs senior staff of key federal departments and agencies to develop basic ECR principles and recommended guidance on ECR. Over the next two years, the U.S. Institute will work collaboratively with senior staff from the Departments of Agriculture, Army, Commerce, Defense, Energy, Homeland Security, Interior, Justice, Navy, Transportation, the Office of Management and Budget, the Environmental Protection Agency, the Federal Energy Regulatory Commission, and the Council on Environmental Quality to develop basic principles and draft guidance. Planning for implementation of the policy is now underway. For a copy of the memorandum, see http://www.ecr.gov/n_pos200512.htm. For further information, contact Jeff Lape, Director of EPA's Conflict Prevention and Resolution Center, lape.jeff@epa.gov or 202-564- 6055.
- 🍏 In February a new group, the Collaboration Practitioners Network, will convene for the first time. The major goals for gathering collaboration practitioners from across the full range of EPA's programs and regions are to: 1) facilitate the sharing of information, experiences, tools and strategies with one another and, in turn, others within network members' own organizations; and 2) to provide input to/feedback on tools, services, or activities developed under other elements or future phases of the Collaboration Action Plan.

The Network will supersede and build on the work of the Public Involvement Improvement Council (PIIC). Thanks to all who served on the PIIC since its formation in October 2003, and congratulations for successfully guiding the development of information and evaluation tools, including the Public Involvement Resources and Training database, the Public Involvement Feedback Information Collection Request (ICR) with its 23 approved surveys, ten brochures on "how to" do effective public involvement, a website and this quarterly newsletter.

Featured Upcoming Events

National Environmental Partnership Summit 2006
[\[http://www.environmentalsummit.org\]](http://www.environmentalsummit.org)

The 2006 Summit, to be held May 8 -11 in Atlanta, will explore the theme of environmental stewardship. This meeting is for all who want to become better stewards of the environment: individuals or representatives of small, medium or large businesses or industries, local, state or federal government agencies, federal facilities, non-profits or community based organizations, and educational institutions.

National Community Involvement Conference - Register at
[<http://www.epa.gov/ciconference>]

The 2006 conference entitled "Something Good is Brewing: Achieving Environmental Results Through Community Involvement" will be held in June 27-30, 2006 in Milwaukee, Wisconsin. Conference registration is free for EPA Employees.

Let's Talk...Questions, Tips and Stories

This is your section of the newsletter. Do you need public involvement advice? Do you have questions about process design, evaluation or techniques? Do you have a great tip on process or technique you'd like to share with the PI Network? Do you have a success story or a lesson learned to share?

Send your contributions to GroupStakeholders@EPA with the Subject line: For Network News. To be dropped from the mailing list, write to bonner.patricia@epa.gov

Featured Articles

Survey Results Provide Insights on Effective Partnerships

modified from an article by Janet Ady in NCTS Journal, summer/fall 2005

As environmental protection has become more complex, EPA has recognized that collaborative approaches are an effective way to achieve the Agency's mission. Partnerships with other entities with common goals can creatively and efficiently address public health and environmental protection goals. As EPA has moved forward with collaborative problem solving and partnership efforts, so too have other Federal Agencies, particularly the Fish & Wildlife Service (FWS) of the Department of Interior (DOI).

As partnerships and collaboration are integrated into policies and the way we work, it is increasingly important to develop a clear understanding of what variables influence their effectiveness. To this end, FWS National Conservation Training Center's (NCTC) Division of Education Outreach worked with the University of Florida School of Forest Resources and Conservation to study FWS partnerships.

Surveying Employee Perceptions

This broad-based study explored FWS employee perceptions of partnerships, and attempted to elicit specific skills that are used in successful partnerships and the factors

that contribute to success. The study was to determine at which stages less successful partnerships break down, what specific skills are lacking in less successful partnerships, and what obstacles hinder success. Another goal was to identify tools and resources that employees could use to enhance their ability to develop and implement partnerships. A supplemental study followed to examine the relationship between perceptions of partnerships and employees' personal history, job characteristics, and partnership characteristics.

Pilot Testing

After initial interviews and pilot testing, 354 FWS employees completed the survey. Respondents answered questions regarding their background, questions on their perceptions of partnerships, questions on both successful and less successful partnerships they have worked on, and questions on tools and resources required for success. Data collection took place between September 2002 and August 2004. Seventy-two percent of the FWS employees asked responded to the questionnaire.

Key Findings

One key finding was that employee perceptions of partnerships are generally positive. They feel that creating and sustaining partnerships is an art affected by both the skill of the facilitator and the personalities of the partners. They believe that partnerships do not always require formalization and are most successful when they occur naturally. In general, these employees are confident in their partnering abilities and their role representing the FWS.

Successful Partnerships

Most examples of successful partnership were local in scale and small-to- medium in size, with less than nine partners. Almost all partners in the examples used were actively involved in the partnership. The goals of these partnerships included both resource conservation and relationship development. The skills and abilities most responsible for success are based on connecting with other people at the table. Essentially, success is attributed to the ability to find the right people to partner with and then working toward developing a productive relationship. Trust, along with effective communication, provides the foundation to developing a successful working relationship. Knowing everyone's responsibility in the partnership, finding common goals, and being flexible in how to achieve those goals are also important parts of sustaining a successful partnership.

Common Obstacles

Interestingly, examples of both successful and less successful partnerships shared almost all of the same characteristics, including goal, size, and scale. Additionally, several of the top obstacles identified as responsible for lack of success were the same as those listed as responsible for success. Thus, when those skills and abilities identified as critical to success are missing, the partnership goals are not met.

Finding Common Ground

The obstacles of working with antagonistic partners and dealing with disparate missions highlight the importance of finding common ground, both on a personal and professional level. Additional obstacles to success include lack of time, personnel, and financial support. Unfortunately these challenges are not uncommon in an era of increasing demands on both the resource and the employees working to protect it, and shrinking agency budgets where financial resources are stretched thin. This highlights the importance of finding the right partners, persistence, and flexibility—all variables that employees felt were critical to success.

Importance of Relationships

Although some measure the success of their partnerships solely by the achievement of resource conservation goals (n=77, 43%), just as many mention the importance of the development and retention of a relationship with partners (n=77, 43%). Additionally, several people indicated that they measure success by the willingness of partners to continue partnering and not by a specific end product.

Importance of Course Work

Several FWS courses were mentioned as being helpful in guiding people toward becoming a team player and encouraging creative problem solving. Many useful suggestions to expand or improve existing training included not only what is taught but also how, where, and who is targeted. Many employees described the importance of hands-on, interactive training that uses examples of actual successful and failed partnerships developed by FWS employees. Other suggestions included creating a partnership network or mentoring program where employees can connect with each other and share successes and challenges to benefit from others' experiences and knowledge.

Employee Backgrounds

The supplemental study was designed to explore the relationship between perceptions of partnerships and the backgrounds of the employees. Variables such as time spent partnering and training attendance were examined. Employees who: have attended partnership training, establish their own partnerships, have a high correlation between job goals and partnership success, and spend a significant amount of time partnering share several perceptions. They view partnering as a flexible process dependent more on relationships than on formalities that can lead to greater success than individual efforts. They are comfortable with their level of training and believe they have the skills they need to feel confident representing the FWS.

Differences in View Points

Employees who: have not attended training, work mainly in partnerships established by someone else, have a low correlation between job goals and partnership success, and who spend little time partnering tend to view partnerships as a time consuming venture that receives little support from their supervisors and produces all or nothing outcomes. The number of partnerships worked on, the employee's supervisory role, their years with the FWS, and job location did not affect the employee's perceptions of partnerships.

Value of this Study

This study will provide valuable input as the NCTC Division of Education Outreach works with other FWS programs to develop training and technical assistance to those involved in FWS partnership efforts. (*Network News* editors hope you'll find something useful too!)

Deciding on the Appropriate Process for Preventing or Resolving Conflicts

Joanne Dea and Deborah Dalton, CPRC staff

Imagine these situations:

In each of the following situations you are faced with parties or members of the public who have opinions, ideas or information useful to you in doing your job to protect public health and the environment.

1. You are a HQ person assigned to write a *rule* on the control of tri-ethyl whatchamacallit and while you have boxes of information on the chemical you are experiencing a lot of conflicting information from stakeholders on the practicality, costs of controlling the chemical and on risks the chemical poses to humans and wildlife. How can you understand better the information and opinions of stakeholders in order to write a rule that will not be challenged in court?
2. You are a regional person assigned to write a *permit* for a facility releasing di-methyl chickenwire. You know from the local media that the local residents and chamber of commerce have a variety of opinions about the control measures proposed by the company in the permit application. How can you write a permit that will not be subject to challenge?
3. You are a regional manager who has to attend the next meeting on a local land *cleanup or restoration project* and you know the local stakeholders have a wide variety of ardently held opinions and that national stakeholders also are interested in precedents that might be set at the site. How can you approach the design of the meeting in order to hear all of the stakeholders and see where there might be converging interests?
4. You are a regional *enforcement* attorney or case officer who has notified a company in your area of a major violation. The company disagrees with both the characterization of the violation and the amount of penalties to be assessed and is willing to engage in time consuming litigation before undertaking measures to deal with the problem. How can you more successfully engage the company so that mitigation of the pollution can take place at the earliest possible time?

You may spend hundreds of hours on this rule, case or project and, just like you plan out the steps for accomplishing the scientific, technical, economic, or policy elements of the project, you can plan in advance whether and how stakeholders can be incorporated in your project or case.

Best practices (www.iap2.org, www.acrnet.org) suggest that involving the stakeholders in the planning and choice of consultation or collaboration efforts results in a process

that is more satisfying to all involved and contributes to a higher likelihood of success of the project itself.

How could you involve the stakeholders in deciding whether, when and what kind of consultation or collaboration process EPA undertakes? One possible answer is to conduct a **situation assessment**. In each of these situations you could use an experienced facilitator or mediator to conduct a situation assessment and to make expert recommendations about how to design an appropriate consultation, collaboration or dispute resolution process.

What is a situation assessment?

A situation assessment is an informal study process used to determine whether an issue is ready for involving stakeholders and if so, what the goals, design and timing of the stakeholder process might look like, for instance a series of public meetings, a Federal Advisory Committee or a negotiation.

Conducting a situation assessment involves one-on-one or group discussions with affected people or organizations and review of background information suggested by the affected parties to obtain of views and differing perspectives on the about key issues and potential for resolution. Situation assessments are most informative and comprehensive when discussions with affected stakeholders can be confidential and when issues or statements are not attributed to individuals by name or organization.

Common practice is to have a “**neutral third party**” facilitator or mediator conduct the assessment and report the results either in an oral debrief or a written report to the Agency and parties contacted during the assessment. The advantage of using a neutral for a situation assessment is that each of the affected persons or parties can be frank and candid about their positions and interests - this contributes to the ability of the neutral to make professional recommendations about the feasibility of different types of stakeholder engagement processes.

Elements of a Situation Assessment:

The person conducting the situation assessment will discuss informally many of the following topics with all appropriate affected parties. Note that there are differences in the identification of appropriate affected parties between enforcement cases, where it is common practice to involve only the respondent and the Agency, and policy or program decisions, where a wider definition of affected parties is used.

- What are the issues?
- Who needs to be involved?
- What information needs to be available?
- What kinds of interactions are possible between the parties?
- What timing issues may be involved in the project?

A situation assessment can take a few hours, in the case of a two party enforcement case, for instance, or can take a hundred hours, in the case of a complex, multiparty case or regulation discussion. How long it takes depends on the number of parties to be contacted, the complexity of the issues involved, the amount of controversy about the issues and the intensity of the proposed stakeholder process.

In many cases, the situation assessment is an entirely separate step from the beginning of a stakeholder engagement process; in some cases it may be an evolving and inseparable part of the Agency's interaction with the parties. Other names for situation assessment are stakeholder assessment, conflict assessment or mediation assessment.

What is a neutral third party?

A neutral is an individual who is seen by the Agency and the stakeholders as unbiased or uninvolved with the issues and parties. A neutral has no real or perceived official, financial or personal involvement or conflict of interest in the situation, unless such interest is fully disclosed in writing to all parties. It is also essential that the neutral be able to maintain the confidentiality of discussions with the parties. Anyone that fits this definition can serve as a neutral third party, including someone within an organization that is a party in the issues or an outside professional expert. Other names for a neutral include facilitator or mediator.

What is the result of a situation assessment?

A situation assessment can result in a range of discussions or reports from the neutral: an informal discussion with the parties, a short memo suggesting a design and timeframe or a formal report outlining the assessment process, the findings and the recommendations of the neutral for next steps. Usually the analysis by the neutral includes an estimate of the willingness and commitment of those interviewed to engage in a stakeholder process and the feasibility of various processes. It is possible that the neutral will recommend that no stakeholder or ADR process take place.

The decision to proceed with a stakeholder assessment is left in the hands of the Agency and the stakeholders. Entering into a stakeholder or ADR process must be voluntary and take into account the needs and schedules of all of the participants.

Note from your Editor

If you are a public/community involvement practitioner beginning a new project, you can use situation assessment to examine the issue or community you will be working with. Whether you need to involve a third party neutral or do a preliminary analysis on your own, is your call. If nothing else, this short list of questions will help you think through what you may need to do a good job of involving stakeholders.

Questions (ask the same questions internally and externally)

- What's Up?
 - What are the issues; how do the potential participants see them?
 - What are their underlying needs, interests and values?
 - What's the past history on the issue?
 - How well informed are potential participants on the issue?
 - What are the relationships among the potential participants?
- So What?
 - What are the likely outcomes if the issue is not resolved?
 - What are the potential environmental, economic, social and political outcomes desired?

- Who Cares?
 - Who are the recognized potential participants?
 - Who's missing from the list who might/should be involved?
 - Whose support or opposition is crucial to any process to resolve the issue?
- What's Next?
 - What decision and process options exist?
 - Is additional information on the issue needed?
 - What can be done to interest those impacted but not yet involved?
 - What are realistic objectives for a resolution or decision process?
 - What processes can enable potential participants to develop and discuss additional creative options?
 - Is outside help needed to implement the process?

What is Alternative Dispute Resolution?

Laura Bachle, CPRC staff

“Alternative to what?”

That's the question I usually get when asked about the kind of work I do. In answering this fundamental question, I usually tell a story I first heard from a colleague about a farmer and a motorcycle rider.

Scene 1: Seems this young chap was buzzing along in his Harley one day on one of our rural byways when he accidentally struck and killed a chicken. The farmer, standing right by the side of the road, rushes out, shaking his pitchfork and yelling. The motorcyclist and the farmer exchange some heated words.

How many people are involved in this dispute? Two. (Three if you count the chicken.)

The local sheriff, who happens to be in the vicinity as well, rushes up and separates the two parties, anticipating that they are about to come to blows. He talks to each person separately, issues the motorcyclist a ticket, and they all leave the scene.

How many people? Three

Scene 2: The farmer calls his lawyer. The motorcyclist calls his lawyer. The lawyers file suit.

How many people now? Four.

Scene 3: A Year Later: The case is going to trial. There's a judge, a jury, the lawyers, the farmer, his wife and relatives (plus the grieving chicken clan), the motorcyclists, his motorcycle club, the sheriff, plus various and sundry experts.

How many people are involved in this dispute now? Well, at least 17 (12 jurors, 2 lawyers, the judge, the farmer and the motorcyclist).

What happened to the dispute? It escalated way out of control of the farmer and the motorcyclists. Look at all the people who have gotten between the farmer and the motorcyclist. The dispute is no longer theirs to resolve. They can't, even if they wanted to.....

Ok, so now let's re-play the first scene....but this time, let's have the sheriff recommend **mediation**. Here's the definition of mediation from EPA's Conflict Prevention and Resolution Center's website: (www.epa.gov/adr)

"Mediation is a process in which a neutral third party (the mediator) assists disputants in reaching a mutually satisfying settlement of their differences. Mediation is voluntary, informal, and confidential. The mediator helps the disputants to communicate clearly, to listen carefully, and to consider creative ways for reaching resolution. The mediator makes no judgments about the people or the conflict, and issues no decision. Any agreement that is reached must satisfy all the disputants. "

Farmer Joe and Bill the biker go to the local Community Mediation Center. They get a mediator. The mediator helps them talk to each other directly. They resolve the issue. Bill apologizes. They embrace...turns out the farmer is a long lost relative....all is better than before!!!!

How many people are involved in this dispute now? Three (really two, because the mediator is just there to help the other two talk to each other, right?)

So **Alternative Dispute Resolution (ADR)**, in its original sense, referred to methods of resolving disputes as an alternative to the traditional legal system. The Federal Government has memorialized a definition of ADR in the [Administrative Dispute Resolution Act of 1996](#) [PDF - 12 pp., 38 K.] as: "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof." 5 USC 571(3).

All these ADR techniques involve a **neutral third party**, a person who assists others in designing and conducting a process for reaching agreement, if possible. In essence, all a neutral third party really does is create a "safe place" for a difficult conversation. The neutral third party has no stake in the substantive outcome of the process. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement.

Ok, but the problems I work on rarely involve chickens...you say. You are right. Unlike the example above, the conflicts that we see in the environmental arena are far more complex, and the people directly involved or affected are far more numerous. We deal with complex, multiparty and multi-issue situations, often ones in which both the facts are in dispute AND the parties are in conflict. We have adopted the term **environmental conflict resolution** to capture the type of public policy ADR practice used at EPA.

Environmental Conflict Resolution (ECR) is also neutral-assisted, and includes things like: conflict prevention, convening or situation assessments, and facilitation. (For a more detailed explanation of ECR, please refer to the Office of Management and Budget and President's Council on Environmental Quality's Memorandum on Environmental Conflict Resolution at http://www.ecr.gov/n_pos200512.htm)

Sometimes it is possible to **prevent disputes before they occur**, by creating and strengthening communication among stakeholders regarding substantive issues, how stakeholders interact and relationships among stakeholders. Use of third parties to engage in public participation process design, team building and coaching can assist in preventing conflict.

Convening (also called situation assessment - see related article) involves the use of a neutral third party to help assess the causes of the conflict, to identify the persons or entities that would be affected by the outcome of the conflict, and to help these parties consider the best way (for example, mediation, consensus-building or a lawsuit) for them to deal with the conflict. The convener may also help get the parties ready for participation in a dispute resolution process by providing education to the parties on what the selected process will be like.

Facilitation is a process used to help a group of people or parties have constructive discussions about complex, or potentially controversial issues. The facilitator provides assistance by helping the parties set ground rules for these discussions, promoting effective communication, eliciting creative options, and keeping the group focused and on track. Facilitation can be used even where parties have not yet agreed to attempt to resolve a conflict.

Can't you resolve environmental conflict without a third-party neutral? Of course you can! The farmer and the motorcycle rider would have been much better off if they had engaged in **principled negotiation** or **collaborative problem-solving** from the very beginning, but since that's not **Alternative Dispute Resolution**, we will have to leave it for another article.

How Do I Know Whether I Need A Facilitator And Where Would I Find One?

Deborah Dalton, CPRC staff

A facilitator (or mediator) can be useful and sometimes even essential in both the convening (situation assessment) planning stage and in conducting a collaborative problem solving or dispute resolution process. A good facilitator is more than just someone who calls people up and invites them to a meeting and far more than a meeting manager who makes sure the agenda items are discussed on time and people don't interrupt one another.

Using a facilitator in convening a project or case.

In a separate article we discuss the concept of a Situation Assessment or a convening study. This assessment process helps you identify appropriate, interested and affected stakeholders, discovers and documents the range of issues that all stakeholders perceive as being a part of the decision making and uses this information to design an appropriate, timely and effective process for dialogue and resolution. Your role as a sponsor of the project can also be used to conduct this assessment. Or you can use a

facilitator from another part of EPA or from a contractor to conduct the study. There are advantages and disadvantages to either option.

Using a facilitator to manage the collaborative problem solving or dispute resolution process.

A good facilitator or mediator can bring many things to the actual process of dialogue or negotiation.

- Assist in identifying all appropriate, affected and interested parties
- Assist in discovering and articulating the range of issues for all stakeholders
- Design the process and monitor its effectiveness
- Develop meeting schedules and agendas by involving all of the parties
- Act impartially, be accountable to all for conducting a fair process
- Develop and “enforce” ground rules for the process
- Chair meetings – freeing agency technical people to present agency needs and positions
- Assist in writing summaries and next steps during the process
- Assist in identifying when to move on in discussion
- Assist in identifying and overcoming impasses
- Consulting with each party either in plenary or separately about problems
- Assist in identifying need for resources
- Assist in obtaining closure
- Assist the parties with documenting an appropriate agreement
- Evaluating the lessons learned and making process improvement suggestions
- Monitoring the implementation of the agreement
- Being available if new issues arise

Pros and Cons of Agency Program Manager as Convener or Facilitator.

You or someone in your office could act as facilitator and conduct the situation assessment and facilitate the dialogue. Or, if you have some contract funding, you could access many expert facilitators and mediators through contracts or other procurement mechanisms.

Here are some pros and cons of doing it your self:

Pros:

Expert knowledge of the issues and options
 Close relationship with decision maker
 Familiar with the affected parties
 Authority to invite the parties and to make the decisions
 No cash cost
 No delays for contracting process

Cons:

Too much knowledge could interfere with understanding stakeholders' issues
 Supervisory relationship with decision maker may make parties reluctant to be candid
 Too much familiarity with affected parties may result in not identifying new parties

Relationships with the existing parties may cause stakeholders to be less candid about their positions

May not have the time necessary to devote or it may take away from preparation of technical and policy preparations

May not have the skills necessary to consider all of the design options

Limited in ability to offer independent collaboration process options

May not be trusted by the stakeholders with confidential information about their positions.

Difficulty being both a neutral process leader and a substantive negotiator

My manager thinks that using a facilitator or mediator for my project will be seen as an admission that we cannot do the work ourselves and may mean delegating EPA's authority to an outsider or to stakeholders.

Considering the long list of Cons, bringing in a neutral facilitator may be the best thing you can do for your project. Facilitators and mediators are there to assist you and the other parties in a collaborative or dispute resolution process reach an agreement. The needs of the parties dictate the scope of facilitators' activities. Generally this means that they do *NOT* make recommendations or decisions about substantive technical, scientific or policy issues. Facilitators will tell you that it is not *THEIR* process; it is yours (the parties'). They do make recommendations regarding best practices for collaboration or dispute resolution and will advocate for a good dialogue process. Most EPA contractors have provisions in their contracts that forbid them from making decisions about EPA policy or regulations.

As to the fear that the stakeholders will take over and make your decisions; EPA cannot delegate its statutory or regulatory decisions to stakeholders. However, we can share the responsibilities for identifying all of the relevant data, for generating and evaluating all of the options and for testing the options against reality. The final decision is always EPA's.

Did you know that EPA has a dedicated, nationwide contract to obtain skilled facilitators and mediators?

The EPA Conflict Prevention and Resolution Contract (www.epa.gov/adr) is available to all EPA program and regional offices. This contract has access to more than a hundred experts located nationwide who can help you design and conduct public participation, collaboration and dispute resolution processes. You need to bring your own funding and provide a contract task order manager for your project. CPRC staff can help you draft the scope of work and the costs estimates.

So – what are the steps I can take to bring on a neutral facilitator?

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

- 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 if EPA will choose the facilitator alone or with the involved parties

3. Decide whether to use a facilitator from:

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

4. Identify Selection Criteria:

Consider whether EPA should develop selection criteria alone 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 and 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 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, e.g. 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

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 about 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.

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), or 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 Interview Questions for a Neutral Facilitator or Mediator:

- 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 with teams? What would be the advantages and disadvantages in this case? What staff, if any, will be assisting you?
- 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 make you the best choice for this project?

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“Public Involvement brings the pieces together”