US ERA ARCHIVE DOCUMENT

## 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.

#### In this chapter:

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# 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 coregulators, 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

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#### 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.

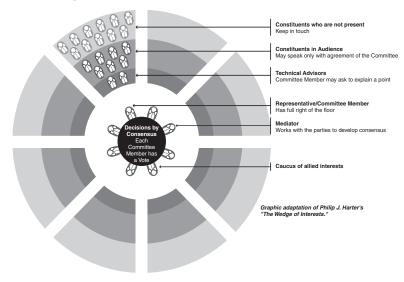
In a technical workshop, for example, where issues are raised and discussed, key players or members may be designated, with others simply observing or speaking only at designated points. Opportunities will exist to discuss some issues in more depth.

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



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

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## 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

#### **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.

#### Better Decisions through Consultation and Collaboration

"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

#### 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

"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 agreementseeking 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 discussed. 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

#### **Notifying Participants**

EPA's Public Involvement Policy states that "as early in the decisionmaking 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 processesparticularly 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 computergenerated 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 notetaking 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

#### 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?

#### Better Decisions through Consultation and Collaboration

#### 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

## 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?
	<ul><li>☐ Substantive experts?</li><li>☐ Other?</li></ul>

<ul> <li>6. What kind of process support is needed, if any?</li> <li>☐ Meeting director?</li> <li>☐ Facilitator?</li> <li>☐ Mediator?</li> <li>☐ Technical/scientific consultant?</li> <li>☐ Logistics staff?</li> <li>☐ Recorders?</li> <li>☐ Other</li> </ul>	
<ul> <li>7. What are the groundrules for the stakeholder involvement process? Do/should t address any of the following issues:</li> <li>• Will alternates be allowed and how will they participate in the process?</li> <li>• Who will be allowed to speak during the meetings? Will opportunity be made available for the public to comment?</li> <li>• How will technical, legal, or resource advisors' information be presented?</li> <li>• How will decisions be made?</li> <li>• What are the meeting summary requirements?</li> <li>• What is the process for dealing with a facilitator/mediator who is perceived to ineffective?</li> </ul>	

8.	What forms of face-to-face processes will you use?		
	□ Public meetings?		
	<ul> <li>□ Workgroups?</li> <li>□ Focus groups?</li> <li>□ Advisory committees?</li> <li>□ Panels?</li> <li>□ FACA groups?</li> <li>□ Other?</li> </ul>		
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?								
	<ul> <li>□ Meeting logistics?</li> <li>□ Outreach and communications?</li> <li>□ Facilitation of meetings?</li> </ul>								
						<ul><li>□ Travel costs (for Agency staff and stakeholders)?</li><li>□ Expert consultants?</li></ul>			
	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?							